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Gregory Boucher
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INTRODUCTION

Today, the Major League Baseball ("MLB") Players Association provides players with an outlet to combat the MLB Owners' control over the fiscal aspects of the game of baseball. This has not always been the case; the Players Association did not become a formidable labor organization until 1966 when Marvin Miller took over as executive director.[1] Having only $5,400 to its name when he took over, Miller raised $66,000 for the Players Association by signing an agreement with Coca-Cola to put players' pictures under bottle caps.[2] Miller's presence as executive director of the Players Association gave hope to ballplayers that their union could eventually become strong enough to eliminate MLB's reserve clause, the owners' greatest weapon to maintain complete control over the players' salaries.

Major League Baseball's reserve clause prevented players from switching teams without their owner's approval. From the inception of MLB in the late 1870s, the reserve clause ensured that once a player signed a contract with his team, at the end of every season, an owner could place his name on a "reserve list" that prevented other owners from signing the player to a contract. Therefore, if a player wished to play the following year, the player was forced to either sign the contract offered by the owner or sit out the season hoping for a better contract.[3] Under Miller's leadership, the Players Association established itself as a formidable labor organization

[1] Roger I. Abrams, *Legal Bases: Baseball and the Law*, TEMPLE UNIVERSITY PRESS, Philadelphia, 1998, p. 74. Prior to taking over as Executive Director, Marvin Miller had 16 years of experience as a chief economist for the Steelworkers Union

[2] *Id.*

[3] *Id.* at 45.

by eliminating the "reserve clause" in 1976 and enforcing its labor organizational rights in response to the owners' unfair labor practices during the 1980s and 1990s.

This paper will track the evolution of MLB's fiscal control from the owners' dominance during the late 19th century and majority of the 20th century to the equalized playing field that benefits players today. First, the Supreme Court cases that established baseball's anti-trust exemption will be explored. Next, an overview of how the Players Association was first recognized and how it defeated the reserve clause. Finally, the Players Association's assertion of power in the late 20th century will be discussed, demonstrating how MLB players achieved their labor organizational rights that they had been denied for so many years.

I. The Supreme Court Grants Baseball an Antitrust exemption

Baseball is the only sport for which the Supreme Court has granted an exception to federal antitrust laws.[4] The Sherman Antitrust Act of 1890 states that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States . . . is declared to be illegal," while the Clayton Antitrust Act of 1914 enabled private parties to "sue to recover for damages caused by anticompetitive conduct."[5] These antitrust laws were enacted to promote the free trade of commerce between the states. When applied to baseball, one might be led to believe that a reserve clause, which restrained the trade and free flow of players from team to team, would be illegal under these federal antitrust laws.

The applicability of federal antitrust laws to Major League Baseball was first discussed by the Supreme Court in 1922.[6] The *Federal Baseball* Court encountered a situation where MLB

[4] *Radovich v. Nat'l Football League*, 352 U.S. 445, 451 (1957).
[5] 15 U.S.C. § 1; 15 U.S.C. §§ 12-27; Roger I. Abrams, *Legal Bases: Baseball and the Law*, TEMPLE UNIVERSITY PRESS, Philadelphia, 1998, p 49.
[6] *Federal Baseball Club of Baltimore v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922).

destroyed a rival baseball league "by buying up some of the constituent clubs in one way or another inducing [most clubs] to leave their League."[7] The Court held that MLB is not within the Sherman Antitrust Act because baseball games "are purely state affairs."[8] By reasoning that baseball games across state lines was merely incidental to the game, not essential, the Court held that playing games across state lines was not an activity that fell within the Commerce Clause.[9] The Court compared MLB and the playing of games across state lines to other forms of businesses that are not considered to be a part of commerce: "a firm of lawyers sending out a member to argue a case, or the Chautauqual lecture bureau sending out lecturers, does not engage in such commerce because the lawyer or lecturer goes to another State."[10]

The second case to come before the Supreme Court concerning federal antitrust laws and MLB was decided in 1953.[11] In *Toolson v. New York Yankees*, the Supreme Court affirmed its decision in *Federal Baseball* by simply concluding that because Congress had not passed legislation to include baseball under antitrust laws, the Court would not overrule its *Federal*

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[7] *Id.* at 207.

[8] *Id.* at 208; by ruling that baseball games were "purely state affairs," the Court concluded that the Sherman Act did not apply to Major League Baseball because the Sherman Act only applies to those activities that fall under Congress's power to make laws under the Commerce Clause of the Constitution. The Commerce clause is found under Article 1, Section 8, Clause 3 of the Constitution and states that "Congress shall have the power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.".

[9] *Id.* at 209(holding that the Commerce Clause reasoning has long since been abandoned. When *Federal Baseball* was decided in 1922 the Court adhered to Commerce Clause jurisprudence that stemmed from cases such as *Hammer v. Dagenhart*, which limited the federal government's ability to enact laws under the Commerce Clause. 247 U.S. 251 (1918). The federal government's ability to pass laws concerning commerce has expanded greatly though the Supreme Court's expanded jurisprudence arising from the New Deal and the Civil Rights era of the 1960's. Some of the important cases that expanded Congress' reach under the Commerce Clause from the New Deal include: *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *United States v. Darby*, 312 U.S. 100 (1941); *Wickard v. Filburn*, 317 U.S. 111 (1942). Cases that demonstrate the Court's expansion of the Commerce Clause during the Civil Rights Era include: *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); *Katzenbach v. McClung*, 379 U.S. 294 (1964). Thus, if the Supreme Court was first faced with the same set of facts as *Federal Baseball* at some point after 1937, it would have likely found that baseball was engaged in Interstate Commerce.).

[10] *Federal Baseball Club of Baltimore*, 259 U.S. at 209.

[11] *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

Baseball decision.[12] The Court believed that MLB had relied on its exemption from antitrust laws and overruling its past decision would disrupt the business of baseball. [13] The Court ruled that any change in the application of antitrust laws to baseball should be completed through congressional legislation. The opinion was only a paragraph in length and cited no prior case law.[14]

Justice Burton, with Justice Reed concurring, wrote a lengthy dissenting opinion arguing that baseball is clearly engaged in interstate commerce. In support of his argument, Burton pointed to evidence of MLB's

> well-known and widely distributed capital investments used in conducting competitions transmitted between states, its numerous purchases of materials in interstate commerce, the attendance at its local exhibitions of large audiences often traveling across state lines, its radio and television activities which expand[ed] its audiences beyond state lines, [and] its sponsorship of interstate advertising.[15]

Concluding that baseball was clearly engaged in interstate commerce, and therefore the Sherman and Wagner Acts applied to baseball, Burton argued that organizations such as MLB can only be granted an exemption from antitrust laws if Congress grants an express exemption.[16] Without a Congressionally mandated exemption, Burton argued that the Supreme Court did not have the power to create an exemption through congressional inaction.

Flood v. Kuhn, decided in 1972, completed the Supreme Court's trilogy of cases that addressed MLB's exemption from antitrust laws.[17] *Flood* involved an outfielder named Curtis Flood who played baseball for 12 years before he was traded from the St. Louis Cardinals to the Philadelphia Phillies in 1969. Upset about the trade, Flood wished to become a free agent.

[12] *Id.* at 357.
[13] *Id.*
[14] *Id.*
[15] *Id.* at 357-58.
[16] *Id.* at 364-65; Footnote 11 on page 364 of the opinion points out that Congress has expressly exempted some organizations from Antitrust Laws. Justice Burton gives examples of Federal Statutes that have been exempted: some labor organizations, farm cooperatives and insurance agencies.
[17] *Flood v. Kuhn*, 407 U.S. 258 (1972).

Despite his knowledge of the *Federal Baseball* and *Toolson* decisions, Flood filed an antitrust lawsuit against the owners, once again challenging the validity of the reserve clause. Both the district court and circuit court of appeals found for the owners by relying on the past two Supreme Court decisions.[18]

The Supreme Court's majority opinion in *Flood v. Kuhn* concluded that MLB was engaged in interstate commerce.[19] Although the Court admitted that MLB was engaged in interstate commerce, the Court stated that MLB had an exemption from federal antitrust laws.[20] Relying on the *Toolson* decision, Justice Blackmun stated, "[i]f there is any inconsistency or illogic in all of this, it is an inconsistency and illogic of long standing that is to be remedied by Congress and not this Court."[21] The opinion argued that Congress had implicitly approved the *Federal Baseball* and *Toolson* line of decisions by "positive inaction" because Congress had introduced more than 50 bills concerning baseball's antitrust exemption and none were passed to eliminate it.[22] The *Flood* decision also admitted that its trilogy of cases was an anomaly because antitrust laws were applied differently to all other major sports.[23]

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[18] *Id.* at 265-68.
[19] *Id.* at 282.
[20] *Id.* at 283.
[21] *Id.* at 284.
[22] *Id.* at 283, 281; unfortunately the Supreme Court has been unclear on how much congressional inaction creates "positive inaction." The Court has contradictory opinions leading up to the *Flood* decision on the role that congressional inaction should have on the Court's rulings. *Boys Markets, Inc. v. Retail Clerk's Union* stated that "in the absence of any persuasive circumstances evidencing a clear design that congressional inaction be taken as acceptance ... the mere silence of Congress is not a sufficient reason for refusing to reconsider the decision." 398 U.S. 235, 242 (1970). *Boys Markets* does not provide much guidance because it does not detail how much congressional silence is needed for "positive inaction." Cases that support the view that "positive inaction" by Congress gives the Court the ability leave a prior ruling alone include: *Joint Indus. Bd. v. United States*, 391 U.S. 224, 228-29 (1967); *United States v. South Buffalo Ry. Co.*, 333 U.S. 771, 774-75, 784-85 (1948). Cases that support the view that "positive inaction" by Congress is not a good reason for the Court to leave a prior ruling alone include: *Blonder-Tongue Labs v. Univ. Found.*, 402 U.S. 313, 327 n. 17 (1971); *Giroud v. United States*, 328 U.S. 61, 69 (1946) (stating that "[i]t is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law.").
[23] *Id.* at 282-283.

Despite allowing MLB an exemption to federal antitrust laws due to Congress' "positive inaction", the Supreme Court failed to create exemptions for other sports where Congress had also displayed "positive inaction."[24] In 1957, the Supreme Court in *Radovich v. National Football League* did not allow the National Football League the same antitrust exemption given to baseball.[25] The *Radovich* decision foreshadowed the Court's declaration 15 years later in *Flood*, which denied the application of baseball's antitrust exemption to all other major sports.[26] Looking to congressional action, the *Toolson* court supported its ruling by pointing out that Congress did not extend the baseball exemption to football or other sports because four different bills that would apply baseball's antitrust exemption to all sports were introduced and not passed by Congress in 1951.[27] The *Radovich* Court claimed that it only upheld baseball's exemption in *Toolson*, just five years earlier, because "it was concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity." [28] Using this reasoning, the *Radovich* Court admitted that baseball should not have had its exemption, but the cost of overruling the exemption outweighed the benefits.

The *Radovich* decision highlights the problems contained within the Supreme Court's flawed logic used in the *Toolson* decision that continued baseball's antitrust exemption. Under the Court's "positive inaction" argument, football should also have received an exemption because Congress never passed a bill preventing football from receiving an antitrust exemption similar to baseball's exemption. Football can, and most likely did, rely on the *Federal Baseball* decision during its startup and everyday operations, thus, football was likely disrupted and hurt by the

[24] *Radovich*, 352 U.S. 445; *see also United States v. Shubert*, 348 U.S. 222 (1955); *United States v. Int'l Boxing Club*, 348 U.S. 236 (1955).
[25] *Id.*
[26] *Radovich*, 352 U.S. at 447-48; *Flood*, 407 U.S. at 282-83.
[27] *Radovich*, 352 U.S. at 450 n.7.
[28] *Id.* at 450. Italics added.
[31] *The Am. League of Prof'l Baseball Clubs*, 180 N.L.R.B. 190 (1969).

Radovich decision. Because of football's reliance on the *Federal Baseball* and *Toolson* decisions, under the Court's analysis in *Toolson*, football should also be exempt from federal antitrust laws.

II. How the Players Association was Created and Recognized

The National Labor Relations Board ("NLRB" or "Board") first took MLB under its jurisdiction in 1969 when its umpires sought recognition as a union.[31] The NLRB's, *The American League of Professional Baseball Clubs*'s decision ruled that baseball was involved in interstate commerce, a conclusion that the Supreme Court had yet to come to as of 1969.[32] The NLRB concluded that baseball was involved in interstate commerce based upon: the substantial amounts of money exchanging hands between teams of different states, team travel across state lines for games, the Supreme Court's recognition of boxing and football as sports that are engaged in interstate commerce, a recognition of an assumption by Congress that all other sports are subject to regulation under the Commerce Clause and because neither party participating in the lawsuit disputed that professional sports affected interstate commerce.[33]

Even when the NLRB finds that a business or industry is subject to the Board's jurisdiction, the Board may decline jurisdiction over a labor dispute.[34] The owners argued that the Board should decline jurisdiction because the owners' internal self-regulation prevented their business from having a substantial effect on interstate commerce.[35] The Board did not agree with this

[32] *Id.* at 190-91.
[33] *Id.*
[34] National Labor Relations Act, section 14(c)(1); *Id.* at 191; Section 14(c)(1) of the National Labor Relations Act ("NLRA") states "[t]he Board, in its discretion, may, by rule of decision or by published rules . . . decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction . . . ."
[35] *The Am. League of Prof'l Baseball Clubs*, 180 N.L.R.B. at 191.

argument because of baseball's poor internal self-regulation at the time and because of the large effect MLB had on many aspects of interstate commerce.[36] MLB's internal self regulation was an inadequate system because the commissioner was the arbitrator of disputes; he was not unbiased (the owners' paid the commissioner's salary).[37] Even if there was an adequate self-regulation system set up between the owners and umpires, the Board asserted jurisdiction over baseball because of the lack of self-regulation between MLB and all other employees of MLB, including the players.[38]

In addition to arguing that the NLRB should decline jurisdiction over MLB as a whole, the owners tried to avoid the NLRB's involvement in baseball by attempting to classify umpires as supervisors, exempting them from the NLRA.[40] Anyone deemed a supervisor under § 2(11) of the NLRA is not considered an employee, and §14(a) states that employers do not have to consider supervisors "as employees for the purpose of any law, either national or local, relating to collective bargaining." The Board dismissed the owners' argument by concluding that umpires were not supervisors, "the umpire merely sees to it that the game is played in compliance with the rules. It is the manager and not the umpire who directs the employees in their pursuit of victory."[41] As a result of the NLRB's decision, the umpires unified and were certified as a union through a secret ballot election supervised by the NLRB according to § 9(b) of the NLRA.[42]

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[36] *Id.* at 190-91.
[37] *Id.* at 191.
[38] *Id.*
[40] U.S.C. §§ 151-169.
[41] *The Am. League of Prof'l Baseball Clubs*, 180 N.L.R.B. at 193; the Board's decision also gave notice to baseball managers that they would not be recognized by the owners as part of the Players Association if they desired to join the players.
[42] *Abrams*, *supra*, at 79.

The NLRB's *American League of Professional Baseball Clubs* gave the Players Association's bargaining power in future negotiations with the owners. Before the decision, the owners voluntarily recognized the Players Association. However, after the decision, the Players Association knew it would be recognized by the Board as a labor organization, one afforded all protections of the NLRA.

Although there was some form of a Players Association in place throughout the 20th century, the Players Association first asserted itself in 1966 when Marvin Miller took over as Executive Director. In anticipation of the 1969 NLRB ruling, Miller convinced the owners to agree to the first Collective Bargaining Agreement ("CBA") between the Players Association and the owners in 1968.[43] Included in the agreement was a formal grievance procedure that, like the umpires' agreement in 1969, gave the commissioner final say on each arbitration issue.[44] A year later the CBA replaced the commissioner with a third party arbitrator to ensure that the commissioner would not be biased in favor of the owners.[45]

The reserve clause, which contained a list of all players from each baseball club, ensured that no player was free to join another team once their contract ran out. Once a player signed with a team at a young age, the reserve clause prevented the player from becoming a free agent; he was forced to re-sign a contract with his current club at the end of each season. His only other option was to hold out and not play the season, a player could only switch teams was if he was traded or released. The owners argued that baseball needed the reserve clause so that teams could stay on an even playing field with each other to ensure a competition balance between the teams. Without the reserve clause, owners feared that players' salaries would become too high and the

[43] *See generally Abrams*, *supra*, at 79.
[44] *Id.* at 82.
[45] *Id.* at 83.

larger market teams would offer free-agents higher salaries, altering the competitive balance of the league. [46]

Before the start of the 1972 season the players went on strike for a short period, resulting in the cancellation of 86 games and a new CBA which was formally agreed upon in February of 1973. The new CBA did not erase the reserve system, but it established a method for improving players' salaries. Under the new agreement, a player unhappy with the owner's contract proposal could bring his salary dispute to arbitration.[47] Even with this new arbitration power, the Players Association made another effort to eliminate the reserve clause through the arbitration of John Alexander "Andy" Messersmith's contract in 1975.[48]

The Players Association took a different approach in Andy Messersmith's arbitration than their previously failed arguments before the Supreme Court. The owners took the position that the "reserve clause" was not arbitrable because of a clause in the 1973 bargaining agreement that stated the agreement "does not deal with the reserve system."[49] The arbitrator disagreed, and concluded that the issue of the reserve clause was arbitrable due to the numerous references to the reserve system in the bargaining agreement. According to the 1973 bargaining agreement, the reserve clause stated that if the owner and player could not agree to the terms of a contract for the upcoming year, the team shall have the right "to renew this contract for the period of one year on the same terms."[50] The Players Association interpreted the reserve clause as only forcing the player to be bound to their current team for the period of one year; the team could renew a

[46] *See generally Abrams*, *supra*, at 79.
[47] In what has now become known as baseball arbitration, both the player and owner submit different contract proposals to the arbitrator. The arbitrator must choose either the owner's proposed or the player's proposal, the arbitrator cannot award the player with a salary in the middle of the two proposals.
[48] *Kansas City Royals Baseball Corp. v. Major League Baseball Players Assoc.*, 409 F. Supp. 233 (W.D. Mo. 1976).
[49] *Kansas City Royals Baseball Corp.*, 409 F. Supp. at 241; Article XV of the 1973 Bargaining Agreement.
[50] *Id.* at 235.

player's original contract for only one year after the terms of the original contract ended.[51] Countering the players' argument, the owners claimed that "each renewal of 'this contract' also renewed the one-year option clause, which the club could then renew again and again."[52] The impartial arbitrator agreed with the Players Association's interpretation and declared Andy Messersmith a free agent.[53]

The owners appealed the arbitrator's decision to the Western District Court of Missouri.[54] The court first recognized that arbitration is the preferred method of solving labor disputes.[55] The district court then looked to the Supreme Court's *Steelworkers* trilogy: "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."[56] Following this lead, the district court concluded that the arbitrator could logically conclude that the Messersmith issue was arbitrative, and that the arbitrator's decision should not be overturned because the arbitrator's reading of the contract was reasonable.[57]

The owners again appealed, this time to the Eighth Circuit Court of Appeals.[58] After looking at evidence demonstrating both the owners and the players' understanding of the reserve system,

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[51] *Id.* at 236, n. 1.
[52] Abrams, *supra*, at 79.
[53] *Kansas City Royals Baseball Corp.*, 409 F. Supp. at 237.
[54] *Id.* at 233.
[55] 29 U.S.C. §§ 141-67; § 203(d) of the Labor Management Relations Act, states in part: "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."
[56] *Kansas City Royals Baseball Corp,* 409 F. Supp at 247 (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)) ; *see also United Steelworkers of Am. v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).
[57] *Id.* at 254.
[58] *Kansas City Royals Baseball Corp. v. Major League Baseball Players Assoc.*, 532 F.2d 616 (8th Cir. 1976).
[60] *Id.* at 631.

the court concluded there was no consensus of what the reserve clause stood for, and because the language was unclear, the arbitrator merely interpreted the meaning of "reserve system."[60] Again, the arbitrator's decision was upheld because it was found to be reasonable.[61] Despite its victory, the Players Association decided a compromise with the owners would be their best course of action. The Players Association reasoned that if all of the players simultaneously became free agents, player salaries may actually decrease because of the large supply of players competing with each other for contracts. The Players Association agreed to a system that allows for players to be reserved by their team for the first six years in the Major Leagues.[62] Players in the first few years of service have their salaries strictly tied to a ladder system with maximum salaries, and those in the latter stages of the six-year commitment are to take salary disputes to arbitration.[63]

III. The Players Association Asserts its Power

After the elimination of the reserve system, the owners' made several failed attempts to regain their lost power. During the late 1980s, the owners colluded against the players during three different off-seasons in an effort to keep player salaries down by agreeing to give low contract offers to free agents. On all three occasions, the Players Association filed grievances under the CBA claiming a violation of Article 18 of their CBA that barred players and owners from engaging in collusion. The owners were found guilty on all three grievances and paid the players close to $400 million in damages related to lost salaries.[64]

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[61] *Id.*
[62] *See generally* Abrams, *supra* note 79, at 132-33.
[63] *Id.*
[64] *Id.* at 138-147.

Finally, in 1994, when the CBA expired, the owners tried to install a salary cap so they could keep costs down and maintain or increase profits. The players started the 1994 season without a CBA, and set an August 12, 1994 deadline to strike if the owners would not back down from their demands to reduce players' salaries by means of a salary cap. As threatened, the players enforced their § 7 rights under the NLRA and began a strike. The owners fought back by canceling the rest of the season (including the World Series) on September 14 while the players remained on strike. Unable to reach a new deal over the winter, the owners decided in March, 1995 to abandon talks with the players and use replacement players for the ensuing season.[65] In response, the Players Association sought a preliminary injunction under § 10(j) of the NLRA in federal district court to stop the owners from leaving the bargaining table and starting the season with replacement players.[66]

The district court reaffirmed the power of the Players Association by enforcing the Players Association's rights as a labor organization under the NLRB.[67] Before bringing the matter to District Court under section 10(j) of the NLRA, the Players Association first filed an action with the NLRB where an Administrative Law Judge ("ALJ") decided that the owners had violated the NLRA.[68] Once the ALJ concluded that the Players Association would likely win, the Association sought to enforce the decision by enacting their right to an injunction under § 10(j) of the NLRA.[69]

The ALJ and the District Court relied on three different subsections of § 8 of the NLRA for its decisions in favor of the Players Association. Section 8(d) of the NLRA mandates a duty to bargain collectively in good faith. Section 8(a)(1) declares it an unfair labor practice for

[65] *NLRB v. Major League Baseball*, 880 F.Supp. 246, 252 (S.D.N.Y. 1995).
[66] *Id.*
[67] *Id.* at 261.
[68] *Id.* at 250.
[69] *Id.* at 261.

employers to prevent employees from exercising their rights given to them under § 7 of the NLRA. Section 8(a)(5) proclaims that it is an unfair labor practice for employers to refuse to bargain collectively with employees. The Players Association asserted, and the ALJ agreed, that the owners' decision to stop negotiations and insert replacement players violated §§ 8(a)(1) and (5) of the NLRA.[70]

By deciding in favor of the Players, the district court ruled that players' salaries were a "mandatory" subject of bargaining, and thus the owners did not bargain in good faith.[71] When the owners unilaterally decided their next CBA needed to include a salary cap, the court found that the owners violated the duty to bargain collectively in good faith by stopping negotiations and walking away from the bargaining table. The district court issued an injunction to prevent the owners from resuming baseball with replacement players and to order both sides back to the bargaining table to bargain in good faith.[74]

Although not addressed in the court's opinion, by forcing both sides back to the bargaining table, the court decided that an impasse in negotiations had not occurred.[75] By not addressing this issue, it can only be concluded that the court decided an impasse was not possible.[76] If an "impasse" in negotiations was reached, the owners would have been free to initiate unilateral

[70] *Id.* at 250.
[71] *Id.* at 257; the District Court concluded that "[a] unilateral change of an expired provision of a mandatory topic, such as one involving wages, is an unfair labor practice, as it violates the duty to bargain collectively in good faith.".
[74] *Id.* at 261.
[75] The "impasse" doctrine cannot be found in the NLRA, however, courts have read the NLRA to grant the "impasse" exception because the NLRA does not force employers and unions to come to agreements, the NLRA merely forces both sides to bargain in good faith. For a more detailed analysis of the role impasses play in collective bargaining, look to: Ellen J. Dannin, *Legislative Intent and Impasse Resolution Under the National Labor Relations Act: Does Law Matter?*, 15 HOFSTRA LAB. & EMP. L.J. 11, 26 (1997).
[76] In order to have an impasse, the parties must both bargain in good faith. *Id.*

changes, such as inserting replacement players.[77] Because the owners failed to bargain in good faith by unilaterally changing a mandatory subject of the bargaining agreement (players salaries/salary cap), an impasse was impossible. This struck a final blow against the owners' attempt to take back the control they lost when the reserve clause was eliminated and demonstrated the strength the Players Association had gained as a labor organization by enforcing its rights under the NLRA.

CONCLUSION

The business relationship between players and owners in MLB changed drastically during the 20th century. Although MLB still maintains its antitrust exemption, the NLRA gave the Players Association the right to organize and oppose the owners' prior control over players' salaries. Through their right to organize, the players established a formidable union, completed many successful bargaining agreements, eliminated the reserve clause, and enforced their § 7 and § 8 rights under the NLRA by forcing the owners to bargain in good faith.[78]

Despite three flawed Supreme Court decisions, the NLRA gave the Players Association leverage for current and future Collective Bargaining agreements. Using the Supreme Court's "positive inaction" rationale behind its decisions, which grants MLB an exemption from federal antitrust laws, the Players Association can be assured that their current bargaining position should not dissipate in the future. If the owners attempt to challenge the NLRB's conclusion (finding MLB under the purview of the NLRA), the players can argue to the Supreme Court that Congress' inaction, by failing to pass a bill to exempt MLB from the NLRA, is "positive inaction" ratifying the NLRB's decision that MLB's labor negotiations must abide by the NLRA.

[77] If an impasse is declared and an employer implements unilateral changes, the changes cannot be more favorable than the proposals which were made to the union. *Id.*
[78] *Supra* note 65, at 261.