

Major League Baseball's Antitrust Exemption and the Impact of the Curt Flood Act

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### Abstract

For many years, professional baseball has enjoyed a privileged antitrust exemption apart from other professional sports. With the passing of the Curt Flood Act in 1998 this exemption was removed; however, the act may not be as influential as it seems. Court rulings were prominent in initiating and maintaining the antitrust exemption for professional baseball. These include the Supreme Court Trilogy, especially the case of Curt Flood, a baseball player who fought against the reserve clause system which limited his and other players' employment options. Collective bargaining as well as arbitration became dominant in professional baseball labor relations under the jurisdiction of the National Labor Relations Board and the National Labor Relations Act. Although the collective bargaining process in Major League Baseball has been contentious, it provided more bargaining power to the players, resulting in the elimination of many unfair labor practices including the reserve system. The Curt Flood Act of 1998, which allows professional Major League Baseball players to file lawsuits under antitrust regulations, served as the final step in equalizing the power between players and owners. Early predictions about the act concluded that it would either help strengthen baseball's antitrust exemption or harm the collective bargaining process. Other researchers thought that the act would not have much of an effect at all because of its limitations and requirements. But others have noted some positive results, specifically in labor negotiations between players and owners, which point to the act having a genuine influence on Major League Baseball.

## Major League Baseball's Antitrust Exemption and the Impact of the Curt Flood Act

### **Antitrust Laws and Baseball's Unique Exemption**

Labor relations in professional sports have long been characterized by control of the teams and owners over employed athletes, restricting their ability to determine the teams for which they would play as well as the amount of payment they would receive. Two specific areas which have been most prominent in limiting a player's employment options are the player draft system and the reserve clause system. The draft limits the players' abilities to determine which team they will work for when starting their professional careers, while the reserve clause system restricted the players' continued employment options once they were already in a sports league. Both of these situations made the players essentially the property of their team and left their futures up to the determination of the team for which they played. The ultimate issue with these systems is that the policies which favored the owners were being established and upheld by the owners, giving the players no way in which to have their interests addressed (Gilroy & Madden, 1977).

For many years professional baseball has been an especially egregious infringer of players' rights, enjoying a privileged antitrust exemption unlike other professional sports. This antitrust exemption meant that professional baseball players, or anyone else who had cause, could not file a lawsuit against Major League Baseball (MLB) under antitrust laws (Gilroy & Madden, 1977). Antitrust laws usually refer to the original legislation passed in 1890 known as the Sherman Act, which prevents companies from monopolizing trade in their industry and prohibits conspiracies intended to restrain trade or commerce (Bautista, 2000). The act was vague in that the language used did not provide enough details for it to be taken at face value. For example, the act outlawed

every contract that restrains trade, which could be taken to mean every contract in existence, since a contract necessarily limits the parties involved to only dealing with each other. By wording the Sherman Act in this way, Congress in effect left the interpretation of the act and its scope to the judicial branch (Alito, 2009).

Confusion about the applications of the law as well as a landmark ruling concluding that unions can be found guilty of conspiring to restrict trade caused Congress to enact exemptions to the Sherman Act in order to protect the collective bargaining process from antitrust laws. These pieces of legislation include the Clayton Act of 1914, the Norris-LaGuardia Act of 1932, and the National Labor Relations Act of 1935, which collectively not only resulted in labor being exempt from the Sherman Act, but also created policies and guidelines encouraging bargaining between organized labor groups and management. Other non-statutory exemptions have come through several rulings by the Supreme Court, including the *United Mine Workers v. Pennington* case, reaffirming the protection of the agreements created through collective bargaining negotiations from antitrust laws (Bautista, 2000).

Baseball's antitrust exemption has been a crucial contributing factor in hindering baseball players' abilities to determine their own employment situations and in allowing the reserve clause system and other unfair labor practices to persevere through baseball's extensive history (Gilroy & Madden, 1977). With the passing of the Curt Flood Act in 1998, the application of this antitrust exemption to labor relations in MLB was limited. The act did not completely remove the exemption, but instead allowed current MLB players to file lawsuits against MLB regarding matters of their employment under antitrust laws. However, the ultimate impact of the act on the interactions between MLB players and owners, especially as seen in the process of reaching collective bargaining

agreements, is not easily discerned (Grow, 2009). Three different opinions about the ultimate impact of the act have emerged as a result of careful evaluation of labor relations in MLB in the years since 1998. These theories include that the act has had a positive effect on recent negotiations between baseball players and owners; that the rigorous procedures to enforce the act are too complicated to be useful; and that because of the impact of collective bargaining the act is ineffective (Bautista, 2000; Grow, 2009; Grow, 2012).

### **History of Baseball's Antitrust Exemption**

No legislation specifically addressed whether or not MLB possessed an exemption from antitrust laws before the passing of the Curt Flood Act in 1998. Instead, court rulings were instrumental in initiating and maintaining the antitrust exemption for professional baseball. Three cases known as the "Supreme Court Trilogy" are crucial to fully understanding the antitrust exemption afforded to MLB: the Federal Baseball case, the Toolson case, and *Flood v. Kuhn* (Wolohan, 1999).

### **Predecessor to the Trilogy**

Prior to and influential in the ruling of the Federal Baseball case was the case of *American League Baseball Club of Chicago v. Chase* ruling. In June of 1914, a baseball player for the Chicago White Sox of the American League of Baseball named Harold H. Chase was already under contract to play for the Sox when he decided to leave them and instead play in the newly formed Federal Baseball League with their Buffalo Club. Chicago attempted to prevent the move by seeking a court injunction since Chase's contract was subject to the National Agreement (Wolohan, 1999).

Earlier, in 1901, the American League of Baseball had been established and began to present a formidable threat to the National League of Professional Baseball Clubs,

which had already been in existence for 25 years. After initially competing with each other for players, both leagues signed a contract in 1903 known as the National Agreement, assuring that the two leagues would be treated equally and would honor the other league's player contracts. But the agreement also included a promise that both leagues would observe the reserve clause which, along with other rules put forth in the agreement, set in place the foundation for what labor relations in professional baseball would be like for nearly 100 years (Alito, 2009).

In the case of *Chicago v. Chase*, the courts decided to refuse the White Sox' injunction on the basis that the contract and its reserve clause were unenforceable because of a lack of mutuality. The courts recognized that the contract lacked equal obligation and remedy by both parties, as seen in the sole ability of the team to decide whether to terminate the contract or retain the player for the year following the contract's expiration. This ruling did two things for labor relations in baseball. First, it set the precedent for the courts in not granting injunctions to baseball teams based on the player contract, because such a contract was not enforceable. But it also set the stage for controversy over whether these contracts violated antitrust laws because the courts acknowledged the unfair qualities of the reserve clause system (Wolohan, 1999).

After the ruling about the injunction was decided, the court began to further examine the actual reserve clause found in the contract as a result of the National Agreement to determine if it violated the newly enacted Sherman Act. The courts determined that although organized baseball had created a monopoly within the United States and their agreement between the National and American leagues was clearly in violation of antitrust law, baseball did not constitute interstate trade or commerce. Instead the courts labeled professional baseball as a mere sport or game that did not fall

under the jurisdiction of the Sherman Act (Wolohan, 1999). Despite this ruling, the court clearly disapproved of the involuntary nature of baseball's contracts stating that the stronghold that organized baseball held on the players was "so great as to make it necessary for the player either to take the contract prescribed by the commission or abandon baseball as a profession" (as cited in Wolohan, 1999, p. 351).

### **Federal Baseball**

The first part of the trilogy of non-statutory regulations that formed what is known as professional baseball's antitrust exemption was the 1922 U.S. Supreme Court ruling in the case of *Federal Baseball Club of Baltimore, Inc. v. the National League of Professional Baseball Clubs* (Wolohan, 1999). A new league of professional baseball, the Federal League, formed in 1913 and soon grew to rival the National and American Leagues, competing for spectators and players and quickly becoming successful. However, after only two years of competition, financial struggles forced the league to reach a peace agreement with organized baseball which dissolved the Federal League and therefore all of its member clubs (Alito, 2009). The agreement only made provisions for two of the Federal League owners to buy into existing Professional Baseball teams and some of the players' contracts to be auctioned off to National League teams. This left most of the clubs, including the one in Baltimore, with virtually no options other than to fold and dissolve as well (Wolohan, 1999). In reaction to the ruin of its organization, the Baltimore franchise filed an antitrust lawsuit against everyone that could be linked with the monopoly on baseball including both leagues, all of their teams, their current presidents, the National Commission president, the former league president, and the two owners who were able to join ties with current league teams (Alito, 2009).

Baltimore's claim that the leagues acted in violation of antitrust laws in ways that caused damages to the Baltimore club was initially agreed with by the District of Columbia Supreme Court in 1917, who awarded the club \$240,000 in damages as well as its attorney fees. But that ruling was subsequently overturned by the U.S. Court of Appeals for the D.C. Circuit, which cited the Chase case from 1914 in defense of its ruling that baseball was not commerce or trade. According to the definitions of the words trade and commerce in *Webster's Dictionary* that the court used, the business of baseball did not include the necessary transfer of something such as people or goods. The court concluded that the players and equipment which did move between states for exhibitions were incidental to the game and separate from the actual products being sold which are the baseball games (Alito, 2009). The court noted that the providing of baseball exhibitions is "local in its beginning and in its end" (as cited in Wolohan, 1999, p. 353). The implications of these decisions were that the reserve clause and the actions of the leagues did not fall under the regulations of antitrust laws because they were related to the movement of the players and not the actual product, which in this case was the baseball games (Alito, 2009).

Dissatisfied with the ruling, the Baltimore club appealed to the U.S. Supreme Court where the counsel for the defense added to the argument by saying that in order for baseball to even exist at all, it depended on being free from antitrust regulations (Abrams, 1999; Alito, 2009). Justice Oliver Wendell Holmes, Jr., reviewed the Supreme Court's decision and provided the unanimous opinion for the court in 1922. In his very brief analysis that consisted of only two paragraphs, Justice Holmes, much like the D.C. Court of Appeals, focused on whether organized baseball itself fell under the regulations of the Sherman Act instead of whether the particular actions of the defendants were in violation

of antitrust laws. His analysis of the question of the business of baseball being interstate commerce centered on the idea that the nature of baseball was an intrastate affair, despite the necessity of players crossing city and state borders (Alito, 2009). The Supreme Court agreed with the D.C. Court's decision, holding that the business of baseball was not subject to the Sherman Antitrust Act (Wolohan, 1999).

Despite many challenges and questions of its legitimacy, this ruling would survive for the next seventy-six years until the Curt Flood Act was passed in 1998. The first test of the decision came before the next case in the Trilogy in the form of *Gardella v. Chandler* (Wolohan, 1999). This case involved a player who was under contract to play for the New York Giants club for the 1946 season, but instead signed on to a Mexican league for one year before that league fell apart (Gallant & Staudohar, 2003). However, upon his return to the United States he discovered that organized baseball had blacklisted him and he could no longer play baseball for any team. The commissioner at the time, Albert B. Chandler, had put in place a rule banning any player who moved to the Mexican League from professional baseball. Gardella decided to challenge his banning and in effect the reserve clause and the Supreme Court ruling in the Federal Baseball case by suing organized baseball (Wolohan, 1999).

After the case was appealed to the Second Circuit Court in New York, the court purported that the addition of radio and television broadcasting of baseball games changed the nature of professional baseball to interstate commerce. This meant that the case had the necessary legitimacy that was said to be lacking in Federal Baseball to warrant proceeding with the trial. In his comments about the New York court's two to one decision, Judge Frank claimed that the recent rulings of the Supreme Court made the Federal Baseball case outdated and no longer of any relevance. The entire court also

showed an extreme disgust with baseball's reserve clause which they said "results in something resembling peonage of the baseball player" (Wolohan, 1999, p. 355).

Although the monopoly of organized baseball appeared to finally have been seriously challenged, the NY court realized that they did not have the authority to overturn a Supreme Court ruling. Despite these initial promising opinions, the case was never heard after it was sent back to the Federal District Court of New York because professional baseball had settled out of court with Gardella by reinstating him into the league and offering him a sum of \$60,000. The case served as a serious scare for organized baseball, but after all the proceedings had ended baseball's antitrust exemption still stood (Gallant and Staudohar, 2003).

#### ***Toolson v. New York Yankees***

The next case in baseball's antitrust exemption trilogy is that of *Toolson v. New York Yankees*. George Toolson was a minor league pitcher under contract to play for his parent club, the New York Yankees (Wolohan, 1999). Since the Yankees had more pitching talent than they needed, Toolson was asked to transfer to a lower level of minor league play, which would have seriously hampered his career when instead he needed to be advancing it. When the Yankees decided to utilize the reserve clause in Toolson's contract and prevent him from signing with another major league team, Toolson did not report to the team's minor league affiliate (Gallant and Staudohar, 2003). In an attempt to free himself from the Yankees while continuing to pursue a career in Major League Baseball, Toolson filed an antitrust lawsuit against the Yankees in 1952 (Abrams, 1999). By this time, baseball's antitrust exemption had become an established principle in the courts, and once this case made its way to the Supreme Court it would be the first

opportunity for the judges to correct the exemption from the ruling in Federal Baseball (Gallant and Staudohar, 2003).

But the Supreme Court determined in a one page decision that the ruling in Federal Baseball would remain and that the exemption for Major League Baseball would not be removed by the courts (Wolohan, 1999). The court cited not only the original case in 1922 for its reasoning, but also the fact that in the 30 years following the verdict Congress had not acted against the decision. Not only that, but Congress's inaction had allowed baseball, and specifically the reserve clause system, to continue to grow under the understanding that it was protected from existing antitrust laws (Abrams, 1999; Gallant and Staudohar, 2003). This decision was particularly interesting given that just prior to the case a subcommittee of the House of Representatives had concluded a hearing on the baseball industry, particularly the reserve system and baseball's antitrust exemption. In that hearing, Congress determined to take no action in reference to the antitrust exemption since it was assured that any error the Supreme Court might have initially committed in the Federal Baseball case would be corrected in the upcoming Toolson case (Abrams, 1999).

Although the verdict was the same for Toolson as it was for Federal Baseball, this time the decision was not unanimous. Justice Burton was one of the judges who argued for the opposition. Much like the courts in the Gardella case had determined, Justice Burton thought that it was impossible to deny that baseball had changed enough since 1922 to make the declaration that professional baseball was not interstate trade or commerce inapplicable. Justice Burton also thought that only Congress should have the right to determine what businesses would be exempt from the Sherman Act and they had failed to pass any legislature granting baseball or any other professional sport this kind of

immunity. Despite these reasons, the Supreme Court made its decision to maintain the Federal Baseball ruling and in doing so, determined that the legislative rather than the judicial branch would have to be responsible for changing the antitrust exemption originally granted in 1922, if it were to ever change at all (Wolohan, 1999).

***Flood v. Kuhn***

The final and probably most influential case in regards to the preservation of baseball's antitrust exemption was the Flood v. Kuhn case. The plaintiff, Curt Flood, was a baseball player for the St. Louis Cardinals who had played at an all-star level, leading his team as a centerfielder to three pennants in the 1960s. He had also been a highly regarded member of his community and well respected by his teammates and coaches for 12 years (Abrams, 1999). Then in 1969, the Cardinals traded Flood to the Philadelphia Phillies, without involving Flood in the decision or even informing him of the move until it was already completed. Flood did not want to be traded and wrote a complaint to MLB's Commissioner, Bowie Kuhn, asking to be declared a free agent so that he could talk with other MLB teams about playing for them (Gallant and Staudohar, 2003). He made his intent clear: that the issue was not about money or location, but his right to choose his employer and not be subjected to a reserve system that felt like a form of involuntary servitude (Mathewson, 1999).

The Commissioner refused to go against the Cardinals' decision, which Flood approached as a question of civil rights, prompting Flood to file a lawsuit against the Commissioner, the two league presidents, and 24 MLB teams in 1970 (Abrams, 1999; Bautista, 2000). Flood's lawsuit claimed that MLB and their reserve clause system, which could force him to leave his profession of baseball if he did not comply with his team's wishes, were in violation of Federal and state antitrust regulations. Flood also

brought a new accusation against MLB when he added that the monopolization of baseball infringed on his 13<sup>th</sup> Amendment civil rights against involuntary servitude (Abrams, 1999; Gallant and Staudohar, 2003). After the District Court and Second Circuit Court of Appeals rejected Flood's claims on the grounds of the previous Federal Baseball and Toolson rulings, the case reached the Supreme Court once again. This time the plaintiff had the backing of the MLB Players' Association and former Supreme Court Justice Arthur Goldberg. Almost 50 years after the original Federal Baseball case, the court was presented with yet another chance to remove baseball's antiquated antitrust exemption (Abrams, 1999).

But the Supreme Court came to the same conclusion as it had in the past, in a five to three decision, that professional baseball would still have a unique exemption from antitrust laws to continue its reserve system (Gilroy & Madden, 1977). This time the court also examined the history of baseball and listened to some baseball players who talked about the reserve system before reaching its decision. In his second year on the Supreme Court, Justice Harry Blackmun provided the controversial decision (Abrams, 1999). The court determined that the antitrust exemption was an established aberration that catered to baseball's unique attributes and constraints necessary in order to sustain the game (Abrams, 1999; Bautista, 2000; Gallant & Staudohar, 2003). Although the court agreed that the exemption was an "anomaly" and that baseball now undoubtedly engaged in interstate commerce, it determined that organized baseball should be allowed to keep its exemption because of the years of history during which baseball operated under its protection without judicial or legislative interference (Bautista, 2000; Gallant & Staudohar, 2003). According to Justice Blackmun, the principle of *stare decisis* applied in this case and, once again, if anything was to change then it would have to occur by

Congress's determination rather than the courts (Abrams, 1999; Champion, 2009; Gallant & Staudohar, 2003).

Providing the opinion for the dissent in the case was Justice Douglas who made the point that if this case were being examined for the first time without any prior history, then the opinion would be undoubtedly in favor of Curt Flood. There would be no question as to whether baseball should be exempt from antitrust laws since baseball was clearly a trade involved in interstate commerce. Justice Douglas also argued that Congress' inactivity did not mean that the Supreme Court should not attempt to correct its mistake regarding baseball's original antitrust exemption. The inactivity of the legislative branch that the court's decision relied upon was neither in favor of the exemption nor in opposition to it, Justice Douglas proposed, since Congress had not passed any laws providing professional baseball with a unique exemption either. But these arguments were the minority opinion in the vote and baseball's antitrust exemption was maintained once again (Wolohan, 1999).

Following this ruling, the only challenges to baseball's antitrust exemption in court occurred in regards to its scope. In the case of *Charles O. Finley & Co. v. Kuhn* in 1978, the owner of the Oakland Athletics baseball team, Charles Finley, decided to sue Commissioner Bowie Kuhn for refusing to allow the sale of three Athletics players. Finley argued that baseball was exempt from antitrust laws in regards to only the reserve clause system rather the entire business of baseball. The courts determined otherwise, ruling that any aspect of professional baseball was intended to be protected from antitrust laws in the Flood case. A similar ruling was also given in the case of *Professional Baseball School & Clubs, Inc. v. Kuhn* in 1982 where the plaintiff argued that the player

assignment system, franchise location system, and league rules all violated antitrust laws (Wolohan, 1999).

In other cases following these ones, the courts seemed to change their opinion and began to narrow the extent of the exemption. In the case of *Piazza v. Major League Baseball*, the owner of the San Francisco Giants attempted to sell the team in 1992 to Vincent Piazza and Vincent Tirendi, who would relocate the Giants to Tampa Bay, Florida. The National League President, Bill White, along with the Ownership Committee for MLB prevented the move and provided the Giants owner, Robert Lurie, with an alternative buyer who offered \$15 million less than Piazza and Tirendi were offering. The district court determined that the Flood ruling was limited to the reserve system, not the purchase, sale, and relocation of baseball teams which was being evaluated in this case. The case never reached its 1993 trial date as MLB reportedly settled with Piazza and Tirendi for \$6 million (Wolohan, 1999).

But MLB's actions prompted other lawsuits including *Butterworth v. National League of Professional Baseball Clubs* in 1993, where the court upheld the initial opinion and interpretation found in the Piazza case, remarking that it defied normal reason for baseball to have that broad of an antitrust exemption while other professional sports did not (Champion, 2009). Other cases, such as *Postema v. National League of Professional Baseball* in 1993 and *Morsani v. Major League Baseball* in 1999, came to the same conclusion as in *Butterworth* that baseball's antitrust exemption was limited to the reserve clause system. But the courts were not completely unified on this interpretation, as the ruling in *McCoy v. Major League Baseball* in 1995 stated that according to the opinions in the Supreme Court Trilogy the exemption was intended to encompass all of baseball (Wolohan, 1999).

### **Influence of Collective Bargaining on the Reserve System**

Since legislation and the courts failed to free MLB players from the constraints of the unfair labor practices within MLB, it was now left to the players themselves to overcome these obstacles (Abrams, 1999; Hylton, 1999). The majority of changes in baseball regarding unfair labor practices such as the reserve clause system came not through the courts, but rather as a result of the National Labor Relations Act of 1935. In the case of baseball, the act provided the means for unionized players to negotiate agreements with their employers, which would be MLB and its teams. The statute forces both parties to negotiate in 'good faith', meaning with the intent to reach an agreement, although not mandating that they actually reach one. The courts then included in the act's list of mandatory bargaining subjects all the ways in which free agency systems in professional sports are regulated (Bautista, 2000).

The players took advantage of this new outlet for their requests to be recognized when in 1954 they formed the Major League Baseball Players' Association (MLBPA). It was initially fostered into existence by MLB to provide the players a way in which they could communicate with the owners, with the intent of preventing the players from forming a union. This communication system allowed the players to present requests to the owners, who still controlled whatever changes would be made in a one-sided manner (Bautista, 2000). Then in 1966 the National Labor Relations Board (NLRB), which was responsible for overseeing the collective bargaining process, granted the MLBPA certification as a union under the NLRA. This allowed the MLBPA to begin negotiating with MLB regarding labor restrictions including the reserve clause (Hoffman, 1969; Gallant & Staudohar, 2003).

What really took the organization from being a society of players to a powerful acting union was the transformation of the MLBPA in the late 1960s by Marvin Miller, the director of the union (Abrams, 1999). Miller was known for his bargaining resume and his ability to improve salaries and working conditions for those he represented. In 1969, at the same time that Miller was hired, the NLRB acknowledged that since MLB was interstate commerce, it would be under the NLRB's supervision while also subject to the stipulations of the NLRA. This was a very important breakthrough for the players because it allowed them to not only unionize and collectively bargain with MLB, but also to enjoy protection from unfair labor practices in a way that could not be affected by baseball's antitrust exemption (Bautista, 2000).

The reserve clause system was initially restrained after an allowance for an independent arbitrator to hear salary disputes from players was included in the 1973 MLB collective bargaining agreement, or CBA (Bautista, 2000; Gallant & Staudohar, 2003). In 1976, the players used a salary dispute to challenge the reserve clause system. The MLBPA brought the case before the chosen arbitrator, Peter Seitz, claiming that the reserve clause in a player's contract should only be binding for the first year following the contract's expiration. The owners argued that the clause could be interpreted to allow a team to renew a player's contract perpetually. But Seitz determined that such a right could not be construed from the text of the clause (Bautista, 2000). He also declared that, apart from an express contractual agreement between a player and a team, players could not be subjected to a reserve clause as it was described in the current MLB rules. According to Seitz's interpretation, such a reserve system could however be a legitimate part of MLB if it was specifically included in a CBA upon which both parties agreed (Gilroy & Madden, 1977).

This ruling initiated free agency in baseball, despite objections by the owners and their attempts to have the decision overruled in courts. The courts had already been in the practice of protecting anything found in a CBA that resulted from bargaining in 'good faith' from antitrust lawsuits, and MLB's agreed upon arbitration process was not excluded. This protection of CBAs is commonly known as the 'non-statutory labor exemption' and continues to prevent the actions of labor unions, including strikes, from being prohibited by antitrust laws (Gallant & Staudohar, 2003). In the time following this influential change in MLB, the players were able to remove the effects of the owner's monopoly of baseball on players' employment, much to the same ends that antitrust laws would have done (Abrams, 1999). Although the collective bargaining process has better equalized the power between the MLB and the MLBPA, the relationship between the owners and players has frequently been contentious and involved work stoppages (Bautista, 2000).

After the players went on strike during the 1985 season over a disagreement about whether or not to include a salary cap or revenue sharing system in the new CBA, the owners decided together to try to curb the quickly escalating player salaries by agreeing amongst themselves not to sign any free agents. Donald Fehr, the MLBPA president who succeeded Marvin Miller, argued in an arbitration grievance that the MLB owners had colluded together in an unfair labor practice. The arbitrators agreed with the MLBPA in 1990 and awarded the players monetary compensation. The relationship between the owners and players would not get better for a long time and the owners frequently participated in bad faith practices in order to combat the loss of control they were experiencing. Positive steps were taken such as the 1990 collective bargaining session which, following a lockout by the owners, resulted in a new CBA and a new

understanding by both parties of the necessity of approaching the table in good faith (Bautista, 2000).

However, in 1994, one year after the 1990 CBA expired, both parties had been bargaining for about two years without reaching a new agreement. The players decided to strike in July of 1994 and the owners reacted by cancelling the entire season, including the World Series. Both parties accused the other of not bargaining in good faith and the situation escalated to the point that President Clinton intervened, causing a federal court to pass an injunction forcing baseball games to be continued under the rules of the 1990 CBA while the owners and players continued negotiations. After four years of negotiations, they finally reached an agreement that was to last until the year 2000. These situations were evidence of an increasingly bitter environment where owners and players in baseball acted in regards to their own interests, rather than working together for the good of the game (Bautista, 2000).

### **The Curt Flood Act of 1998**

The Curt Flood Act serves as the most recent step in equalizing the power between players and owners in labor relations. Following the troublesome 1995 season, senators in Utah, Vermont, South Carolina, and New York decided to introduce a new bill called 'The Curt Flood Act' to address the need for antitrust regulations in baseball (Bautista, 2000). The bill was introduced in 1997 and when MLB and the MLBPA heard of it, they both agreed during collective bargaining gatherings to cooperate in supporting and promoting the legislation (Bautista, 2000). With the approval of professional baseball, the senators added an amendment and then submitted it for the Judiciary committee to approve in 1997. In 1998, over seventy-five years after the Federal Baseball case had initially provided the antitrust exemption, the House of Representatives

as well as the Senate passed the Curt Flood Act, and then the President signed it into law (Bautista, 2000; Edmonds, 1999).

The Curt Flood Act's stated purpose is to provide professional major league baseball players with coverage under antitrust laws and "the same rights under the antitrust laws as do other professional athletes" (Curt Flood Act, 1998, sec. 2). The act amends the Clayton Act by including a new section at the end of it describing exactly in what ways antitrust laws apply to MLB (Bautista, 2000). The first aspect of this description is that it does not apply to the minor leagues, the first-year player draft system, the Professional Baseball Agreement between major and minor league baseball teams, or any other form of baseball besides MLB (Curt Flood Act, 1998; Hylton, 1999). To combat the long history of misinterpretations regarding which areas the antitrust laws apply, the act contains specific descriptions of what should not be subjected to antitrust laws. These areas include the business of baseball as it relates to franchise expansion, location and relocation, ownership transfers, marketing and sales, licensing, and the relationships between the Commissioner and the owners as well as employers and employees including umpires. The act also gives a detailed definition of who qualifies as a major league baseball player. But the most important part of the act is that it declares the business of baseball and all of the actions of the persons in MLB related to the employment of MLB players to be subject to antitrust laws as they would be in any other professional sport involved in interstate commerce (Curt Flood Act, 1998). This means that only the actions by MLB associated with player relations, including things such as a salary cap and the reserve clause system, would be under antitrust scrutiny according to the act (Wolohan, 1999).

Just before the act was passed, members of Congress made a few remarks about the bill which are noteworthy. Representative Henry Hyde said that the act serves as a historical breakthrough where baseball players, owners, and the minor leagues all agreed on how to apply antitrust laws to the business of baseball. He also argued that given the tumultuous past of these parties, Congress needed to realize the importance of passing this bill. According to Hyde, the legislation needed to be extremely narrow so that the current successful state of collective bargaining in baseball would not be affected. He noted that the bill was specifically written so that only a limited portion of the antitrust exemption would be removed, leaving the rest of it intact. Other speakers, including Jim Bunning, a US representative from Kentucky as well as a member of the Baseball Hall of Fame and former member of the MLBPA Executive Board, agreed that although the act's scope was very limited and did not completely remove the antitrust exemption, it was a good first step (Edmonds, 1999).

### **Impact of the Curt Flood Act**

Early opinions about the effect of the Curt Flood Act agreed that instead of removing baseball's antitrust exemption, it in effect strengthened it (Wolohan, 1999). Critics pointed to the potential hindrances as well as the extremely narrow application of the act as reasons for this opinion (Edmonds, 1999; Grow, 2009). Since the act does not apply to any players besides those in major league baseball, it leaves much of the business of baseball under the old antitrust exemption (Mathewson, 1999; Hylton, 1999). This is in contrast to the court cases that followed *Flood v. Kuhn*, which had been in the habit of ruling that only baseball's reserve system was under the antitrust exemption (Mathewson, 1999). By intentionally narrowing the scope of the act, Congress effectively left the rest of baseball exempt from antitrust laws (Hylton, 1999).

However, some have argued that leaving a portion of the antitrust exemption untouched actually helps prevent baseball from being a monopoly, since that would allow Congress to better direct the actions of Major League Baseball owners towards precompetitive ends. With a weapon such as the threat of completely removing MLB's antitrust exemption, Congress is able to influence the owners' decisions, especially regarding the league's expansion and the movement of its franchises (Grow, 2012). But this influence was used in other areas besides just the growth of the league. In the mid-2000s, Congress was also able to use this threat to encourage MLB to implement stricter PED testing standards and policies for its players (Grow, 2012). Once the exemption is fully removed, Congress will not only lose this power, but will also have no leverage with which to pressure the owners into implementing good labor practices (Grow, 2012).

Another reason that the Curt Flood Act does not present a legitimate threat to the antitrust exemption is that the requirements for a player to file a successful antitrust lawsuit under the act are complicated and rigorous (Matzura, 2009). A part of these restrictions is that only current MLB players are protected under the act and furthermore the act only applies to league actions that affect those players' employment (Edmonds, 1999). Another way in which the act was intentionally limited was in regards to what is known as the non-statutory labor exemption. This exemption allows collective bargaining and federal labor laws to supersede any antitrust claims from employees or employers. The reason this exemption was put in place was because collective action such as strikes and lockouts by a union or management could potentially be regarded as impeding commerce in the business's market (Edmonds, 1999).

In an attempt to protect labor unions from federal injunctions, Congress passed a statute which declared unions to be legal groupings that did not restrain trade. This law

was not very effective in the courts since in a case shortly following the legislation, strikes were ruled to be in violation of antitrust laws, using a limited interpretation of that statutory exemption of labor law to justify the decision. In other cases, the legislation did not protect actions by a union that were done for the interests of other parties, such as other labor unions, nor those that involved a conspiracy between employees and employers to manipulate the labor environment beyond what was necessary for the purposes of bargaining (Edmonds, 1999).

Then, in 1976 in the case of *Mackey v. National Football League*, the court of appeals removed the confusion and established what is known as the three-prong test used to apply the non-statutory labor exemption. The first part states that any action where a restraint on trade only affects the parties involved in collective bargaining is to be protected under the exemption. Secondly, the only kinds of agreements that can be exempt are those concerning mandatory bargaining items, as determined by the NLRA. Lastly, the exemption can only apply to agreements that have been reached by genuine arm's-length bargaining (Edmonds, 1999; Matzura, 2009).

Since the non-statutory labor exemption was enacted and clarified, both unions and management groups have learned that anything agreed upon in a collective bargaining situation is protected from antitrust laws. Because of this, the players' union in a professional sport must be decertified in order for topics discussed in collective bargaining negotiations to be brought to court in an antitrust lawsuit. This decertification process is difficult and time-consuming, which may deter the MLBPA from attempting to file a lawsuit under this act. However, there have been some examples of successful sports union decertification. In 1987, directly following the strike by the National Football League Players Association, a group of players successfully filed an antitrust

lawsuit against the NFL apart from their union and passed the Mackey three-prong test in court. But this did not occur until the players became desperate as the season was played without them and replacement players were used on the field (Edmonds, 1999).

A final proposed reason that the Curt Flood Act might be damaging to the relationship between MLB players and owners is that allowing MLB players to be protected under antitrust laws will subvert the collective bargaining process. This is a possibility since the opportunity to get out of an impasse by means of a lawsuit is a tempting alternative to the difficult task of working through the issues at the bargaining table. With the option of an antitrust lawsuit, both players and owners will have little reason to offer real compromises and the negotiations will end up with the parties putting up fronts instead of bargaining. Based on what has happened in other sports, researchers predict that if baseball players were to file antitrust lawsuits as individuals every time that they do not achieve their desired results, then labor solidarity among the players would be destroyed. One last point is that once antitrust lawsuits are used, they tend to be relied upon more and more often instead of negotiating (LeRoy, 2012).

Other researchers predicted that the Curt Flood Act would not have much of an effect on labor relations in Major League Baseball (Grow, 2009; Curtis, 1999). Because it contains so many limitations on what areas antitrust laws apply to baseball, the Curt Flood Act does not affect most of the business of baseball. Although it is possible that the act will help change some things in labor relations, it is unlikely that its influence will be dramatic or that it will serve as the final part of baseball's antitrust exemption story (Curtis, 1999). Since both baseball owners and players were pushing for the act to be passed, it can be inferred that its purpose was merely as a symbol rather than a catalyst

for change (Abrams, 1999). The cooperation by both parties also could be simply a sign of their eagerness to repair their previously hostile relationship (Curtis, 1999).

The employment changes due to the collective bargaining and arbitration process, combined with the players' increase in bargaining power, may have made the Curt Flood Act altogether irrelevant (Grow, 2012; Mann, 2012). By the time that the act was passed, free agency, which was one of the main goals of removing baseball's antitrust exemption, was already common practice (Hylton, 1999; Mathewson, 1999). The act can be seen as only a symbolic reaction to Curt Flood and his revolutionary actions, and not intending to change the situations which he was revolting against. Also, the act was long overdue, coming after Curt Flood and many of his peers had not only left baseball but had also passed away, so the act only benefits current players who are no longer facing the same difficulties that originally necessitated this act (Hylton, 1999; Mathewson, 1999). However, some have pointed out that the progress in removing unfair labor practices could be halted or even reversed through collective bargaining in the same way in which it was achieved (McGettigan, 1999).

Other evidence challenging the act's necessity includes that there has not yet been a MLB player who has filed a lawsuit under the Curt Flood Act nor has there been any attempt to decertify the MLBPA in preparation for such a lawsuit (Grow, 2009). Also, due to the complicated measures needed to successfully file a lawsuit under the act (including decertifying the union and halting the collective bargaining process), the value of antitrust action under the Curt Flood Act may be so small that it is only used as a last resort rather than a legitimate option (Edmonds, 1999).

Despite these views, recently there have been noticeable, positive effects of the Curt Flood Act on labor negotiations between players and owners (Grow, 2009). The

valid threat of antitrust action by major league baseball players was predicted to instigate otherwise reluctant owners to participate in good faith collective bargaining (Bautista, 2000). Evidence of this has been seen since the Curt Flood Act and its threat of antitrust action have forced the MLB owners to approach collective bargaining with the MLBPA more cautiously. In the three most recent negotiations, MLB has tried to impose policies such as a salary cap on the MLBPA and even attempted to force the cap on players' salaries during an impasse, at which point the NLRB had to intervene. But in the negotiations for the 2002 CBA, the owners did not even bring up the issue of a salary cap for the first time in over twenty years. The owners also made a promise that they would not attempt to unilaterally impress any policies on the MLBPA in the future. Prior to the act, MLB had experienced five collective bargaining situations in twenty-four years that had all been contentious and resulted in eight work stoppages in that period of time (Grow, 2009).

Although the decertification of the MLBPA would be required and although it has not yet been attempted, the opportunity for the players to file a lawsuit, which was not previously available, is now present. It is highly unlikely that one of the most clever and astute unions in professional sports would have lobbied so much for an act that would prove useless. This threat is even more valid in light of the fact that unions in other professional sports leagues, including the National Football League and the National Basketball Association, have successfully used decertification to either file a lawsuit or compel owners to negotiate in good faith (Grow, 2009).

Some would argue that recent peaceful negotiations have resulted from other factors such as the financial success of the league and the unwillingness of both parties to hurt the league with another work stoppage (Grow, 2009; Staudohar, 2003). However,

neither of these reasons are enough to support the drastic change in the collective bargaining atmosphere for MLB. It is not a coincidence that the current state of peaceful negotiations, including reaching two consecutive collective bargaining agreements without labor stoppages, has occurred since the enactment of the Curt Flood Act. The same critics who argued that the Curt Flood Act would have no effect also predicted that the strife between MLB owners and players would continue, which has not been true. This is not to say that the Curt Flood Act was the only reason that negotiations have gone so well in MLB recently. But as Steven Fehr, an outside counsel for the MLBPA, pointed out, the Curt Flood Act provides a positive effect on the environment of MLB's collective bargaining negotiations (Grow, 2009).

### **Conclusion**

Throughout the years, MLB's antitrust exemption has been supported, analyzed, criticized, and defended by anyone who had an opinion and the ability to make it known. Although originally intended in the Federal Baseball case to allow for the business of baseball to operate without interference according to its unique aspects, the ruling eventually became outdated. MLB was no longer the small grouping of clubs that did not foster business between states other than the players and teams travelling for games. The business of baseball grew to accurately fit the description of interstate commerce, yet the exemption stayed intact. The Supreme Court, who initially enacted the exemption, passed the responsibility of fixing the situation to the legislature, who in turn went quiet on the subject for over seventy-five years. It was not until after two more significant court rulings, Toolson and Flood, as well as many other smaller cases, that the exemption was partially lifted by the Curt Flood Act of 1998.

Although the Curt Flood Act removed a portion of the antitrust exemption, collective bargaining was more influential in removing the reserve clause and other unfair labor practices. But it came with a cost, as the sudden equalizing of power between owners and players caused disagreements and tension between the two parties, much of which still lingers today. Many of these collective bargaining sessions have led to harmful work stoppages that threatened baseball's very existence. Once free agency began, owners felt the financial burden of rising costs as they attempted to outbid other teams for the best players. As contract salaries skyrocketed, the relationship between the owners and players grew even more hostile, with both parties acting in their own best interests, putting aside the well-being of the sport.

However, since the Curt Flood Act was passed into law, both the MLB and the MLBPA have improved in their approaches at the bargaining table. There is optimism that the recent peaceful negotiations are going to become regular occurrences in the future, now that the players are protected under the Curt Flood Act. But researchers are aware that there are many factors involved in the relationship between the owners and the players, making it difficult to attribute all of the positive steps in collective bargaining to the influence of the Curt Flood Act.

Other opinions have pointed out that the act's constraints leave much of the business of baseball still exempt from antitrust laws. The Curt Flood Act may turn out to be inconsequential because of the arduous process required to decertify the MLBPA before bringing a lawsuit to court. It is still unclear if the act was in actuality a symbolic way to honor a great baseball player, with no intended impact on the present day relationship between MLB owners and players. There is still much more research to be done and evidence to be examined once MLB players have had more opportunities to

bring their disputes with owners to court under antitrust law. Whether or not the case for baseball's antitrust exemption has finally been settled still remains to be seen.

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