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An Overview and Comparative Analysis of the Collective Bargaining Agreements in the NBA, NFL, and MLB

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AN OVERVIEW AND COMPARATIVE ANALYSIS OF THE COLLECTIVE BARGAINING AGREEMENTS IN THE NBA, NFL, AND MLB

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I. CHAPTER 1. INTRODUCTION

Sports have always been an integral part of American society. We have always had a special place for them in our hearts and minds. Whether debating which player is the best in a sport or which team will win the championship, there is always something that stirs us to fanaticism and hysteria when it comes to watching or playing the games that have become so important in our lives. While it may be the homerun, slam dunk, or touchdown that we view as the essential part of sports, it is really the behind the scenes acts of the players and owners that dictate what we watch live or on television. This behind the scenes action is encompassed by the act of collective bargaining, which has existed in sports since the beginning but did not take on a name until the middle of the 20th century. Collective bargaining in sports is the process by which owners in the professional sports leagues negotiate with the players in their league on every issue that affects the sport. The collective bargaining process is one that has a long and contentious history in each sport, because at its core it is the process that seeks to take power away from one group and give to the other and vice versa. The very nature of it calls for debate, disagreement and discontent.

In this paper I will look at how the three major sports leagues, the NBA, MLB, and NFL have used the collective bargaining process to create the working conditions that now exist and allow each league to be successful. I will look at the history of the collective bargaining process in each sport and how that process evolved to create the collective bargaining agreements that exist today. After looking at the history of each sport's bargaining procedures, I will look at the major concepts developed within the collective bargaining process and compare these major concepts amongst the three sporting leagues.

This analysis comes at an appropriate time given that the collective bargaining agreements in all three sports are set to expire after the 2010-2011 seasons. This paper will serve as an introduction to the principles that will arouse the most debate such as free agency, salary caps, and revenue sharing. I hope that this paper will diligently outline the major issues apparent in the recent collective bargaining agreements, provide a historical analysis of them and offer a reasonable solution for the problems that arise from these issues.

II. CHAPTER 2. NBA COLLECTIVE BARGAINING AGREEMENT

History

As with most professional sports organizations, basketball began as a sport that was largely unregulated by governing bodies. Without the precedent of labor unions, or government involvement the two major basketball associations (the Basketball Association of America and the National Basketball League) were completely controlled by the franchises within each organization and their owners. The beginning of the player's union movement came in 1954, when Bob Cousy began to organize the NBPA (National Basketball Players Association) by writing to an established player from each of the league's teams in hopes of encouraging solidarity among the players.[1]From 1946 t[i]o 1949 players used the two opposing leagues as leverage to ensure that their salary demands were being met. This meant that if a player did not receive the salary that they felt their play dictated they would just switch leagues depending on whether a team in either league would pay them the money they felt they deserved.

In 1949 the two leagues merged to form the National Basketball Association. "The merger left players with two options: play for the salary the NBA offered you or play Amateur Athletic Union basketball for a company team, the latter was an option that a

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[1]Robert Bradley, "Labor Pains Nothing New To The NBA," The Association for Professional Basketball Research http://www.apbr.org/labor.html (accessed October 1, 2010).

few top players chose including Clyde Lovellette, Jim Pollard and George Yardley."[2] 1954 initiated the beginning of the first players union by writing to the top players from every team in the league. Cousy wrote to: Paul Arizin of Philadelphia, Carl Braun of New York, Bob Davies of Rochester, Paul Hoffman of Baltimore, Andy Phillip of Fort Wayne, Dolph Shayes of Syracuse and Don Sunderlage of Milwaukee. Cousy also went to NBA president Maurice Podoloff at the January 1955 NBA All-Star game with a list of concerns for the player's rights. After Cousy's efforts were rebuffed by the league and the owners and his list of concerns were denied, Cousy met with the AFL-CIO over possible union affiliation. After this meeting the NBA agreed to bargain in good faith with the players union and the NBA Board of Governors formally recognized the NBPA and agreed to a list of terms which included: A seven dollar per diem and other reasonable traveling expenses; An increase in the 1957-58 playoff pool; Regular players would no longer be able be required to report to training camp earlier than four weeks prior to the season; The elimination of exhibition games within three days of the season opener or one day prior to a regular season game; Paler contracts would be mailed no later than September 1st; referral of player-owner disputes to the NBA league president or a committee of three NBA governors to be chosen by the player; Considerate treatment for the player in regards to radio and television appearances; And reasonable moving expenses for a player traded during the season.

The next large step taken by the players union in negotiating with the league was the adoption of a pension plan for retired NBA players. Negotiations over the pension plan stalled until the 1964 NBA All Star game, when players threatened to sit out of the All

[2] Ibid

Star game unless the league made some sort of guarantee that there would be a pension plan following that season. In May of 1964 the league instituted a policy where the owners would contribute 50% toward the purchase of a $2,000 endowment policy...[3]Shortly after this concession, in 1967 the NBPA finally gained a pension plan of $600 a month for players with ten years of service at age 65. The NBPA was also able to negotiate an 82 game regular season, and their first revision to standard player contracts, which raised the minimum rookie salary to $10,000 and the minimum pensioned veteran's salary was raised to $12,500.

In 1983 the league was faced with a major problem, as several franchises were suffering from substantial financial losses. These financial losses led to large amounts of deferred payments to players, which nearly caused a strike of the 1982 season. In 1983 the player's union and the league agreed to a groundbreaking collective bargaining agreement that would influence all the major sports leagues. The new agreement included: a salary cap guarantying the players between 53% and 57% of the NBA's gross revenues and a guarantee that the league would maintain 253 player jobs even if there was a reduction in the number of teams.[4]

At the conclusion of the 1995 season, the owners imposed a lock-out to put pressure on players in negotiations for the new collective bargaining agreement. In September of 1995 the owners voted 24-5 in favor of the agreement reached between the union and the owners and the player representatives voted 25-2 in favor of the new agreement. The agreement was signed in June of 1996 and included: unrestricted free agency for all

[3] Ibid
[4] Ibid

players following the conclusion of their contracts, a guarantee of 48.04% of all basketball related income to the players, a rookie salary cap with a graduated scale depending on what position in the draft the player was chosen, and the “Larry Bird Exemption” which allowed teams to re-sign their own free agents to any price.[5]

After the 1997-98 season the owners voted to re-open the collective bargaining agreement, since thirteen of the NBA teams had claimed losses at the end of the season. In order for the owners to force the players union to renegotiate the agreement there was a work stoppage for the first time in NBA history on July 1, 1998 as the owners locked the players out. After losing half the season the players agreed on maximum players salaries based on number of years in the league, longer rookie contracts, and an escrow tax in 2001-02 if salary expenditures exceeded 55% of basketball related income.[6] After the concessions made during the 1998 lockout, the NBA had a prosperous season. Since the lockout the NBPA and league have had successful negotiations including their talks which lead to the current collective bargaining agreement which is set to expire after the 2010-11 season.

[5] Ibid
[6] Ibid

NBA 2005 Collective Bargaining Agreement

The current NBA collective bargaining agreement was agreed upon by the NBA and NBPA in 2005. The agreement will last through the 2010-2011 NBA season. The collective bargaining agreement contains all the relevant legal ramifications relating to disputes between the league and its constituent owners and the players who play for each individual franchise. The agreement outlines rules for player conduct, allocations for traveling expenses during the season, drug testing, player arbitration, rookie and veteran pay as well as other relevant regulations that are to be resolved between the league and the union. For the sake of this paper I will focus on sections in the agreement that relate to player contracts and the salary cap. In light of the recent economic recession, the NBA figures to have a very contentious debate over the parameters of the new collective bargaining agreement that would go into effect at the beginning of the 2011-2012 season. The most controversial elements of the collective bargaining agreement will be the new salary cap, the new restrictions on contracts given to free agents, and how to help struggling small market teams.

NBA Salary Cap

The NBA Salary Cap is a "soft cap" meaning there is allowance for teams to pay out salaries that are higher than the league mandated salary cap. The Salary Cap is a figure that changes each year and is dependent on the calculation of BRI (Basketball Related Income). BRI is calculated based on the aggregate operating revenues received by the NBA, NBA Properties Inc, including any of its subsidiaries whether now in existence or created in the future, NBA Media Ventures LLC, any other entity which is controlled by the NBA. This includes regular season gate receipts, net of applicable taxes, surcharges, imposts and other charges imposed by the government; all proceeds of any kind from the broadcast or exhibition, or the sale or license to broadcast or exhibit NBA preseason, Regular Season and Playoff games on any and all forms of radio, television, telephone, internet, or any other communications media; the sale of novelties in team-identified stores located within such radius of the Teams home arena; as well as a percentage of sales of luxury seats and fixed arena signage.[7]The teams within the NBA agree to maximize BRI to the best of their abilities. For each year the salary cap will equal the percentage of projected BRI, less projected benefits, divided by the number of teams scheduled to play in the NBA during the year. The projected salary cap percentage has been 51% since the 2006-2007 season.[8] So, the NBA salary cap has been 51% of BRI divided by the 30 teams that make up the NBA. The minimum team salary under the current agreement is 75% of the salary cap in a given year. If a team fails to make salary payments equal to or greater than the minimum team salary, the NBA will make that team make payments equal to the shortfall.[9]The NBA collective bargaining agreement holds that a team shall not exceed the salary cap mandated by the league; however there exists several exceptions to the salary cap which allow teams to have salary figures that exceed the league cap. These exceptions are what make the NBA salary cap a soft cap rather than a hard one. These exceptions include: The Veteran Free Agent Exception, the Disabled Player Exception, the Bi-annual Exception, the Mid-Level Salary Exception, the Rookie Exception, the Minimum Player Salary Exception, and the Traded Player Exception.

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[7] *2005 National Basketball Association Collective Bargaining Agreement*. Article VII Section 1 pg. 95
[8] Ibid Article VII Section 2 pg.120
[9] Ibid Article VII Section 2 pg.122

Salary Cap Exceptions

The Veteran Free Agent Exception consists of the Qualifying Veteran Free Agent clause and the Non-qualifying Veteran Free Agent clause. The Qualifying Veteran Free Agent clause allows teams to pay the maximum amount to a player, who stays with a team for three seasons after being drafted by them and does not extend his contract after the second season. The players would then receive a maximum contract in his fourth season. The maximum contract for a player entering his fourth season would be 25% of the Salary Cap in effect at the time the contract is executed or 105% of the salary for the final season of the player's rookie contract, or $9 million.[10] This exception is commonly referred to as the Bird exception and was implemented so that teams would be able to exceed the cap in order to retain their own players. The Non-qualifying Veteran Free Agent clause allows a team to pay a premium for their own free agents after two seasons of playing with the team. The new contract can be 120% of the salary from their prior contract, or rookie contract and bonuses.[11] The Disabled Player Exception allows a team to sign or acquire one replacement player to replace a player who, as a result of a disabling injury or illness is unable to render playing services. The Bi-annual exception, is an exception that each team can use each year to sign one or more players, not to exceed two season in length totaling up to a calculated amount. The amounts have been: $1.67 million, $1.75 million, $1.83 million, $1.91 million, $1.99 million, and $2.09 million for the past six seasons in chronological order starting in 2005-06.[12] The Mid-Level Salary Exception gives teams the right to sign one or more player's contracts not to exceed five years in length, which in aggregate, provide for salaries totaling up to 108%

[10] Ibid Article II Section 7 pg. 33
[11] Ibid Article VII Section 2 pg.123
[12] Ibid Article VII Section 2 pg.124

of the average player salary for the prior salary cap year. The Minimum Player Salary Exception gives teams the ability to sign a player to a contract, not exceeding two years in length that is equal to the minimum player salary applicable to that player. The Traded Player Exception allows teams to replace a traded player with one or more replacement players whose player contracts are acquired and are no more than 125% of the pre-trade salary of the traded player plus $100,000.

Escrow and Tax Arrangement

The NBA has implemented an Escrow account system to ensure that player salaries do not account for more than the recommended percentage of BRI. This is an important insurance policy for the league since it ensures that owners are protected from overpaying player salaries, which gives relief to teams that do not bring in as much revenue from ticket sales. The amount placed in the escrow account is called the aggregate compensation adjustment amount and it was set at the onset of the 2005 collective bargaining agreement. The amount was 10% during the 2005-2006 season, 9% during the 2006-2010 seasons and is set to be 8% during the 2010-2011 season. With these percentages set an amount is deducted from each player's salary and placed in the escrow account. The Escrow account is affected by two possible scenarios relating to the amount of BRI in a given year. The first scenario is an "overage", and occurs when the total salaries and benefits for players in the league exceed the amount equal to the designated percentage of BRI for that year. In the event of an overage the NBA is entitled to receive from the escrow agent, the compensation amount placed into the account by each individual player. The second scenario is called an aggregate compensation adjustment amount shortfall and this occurs when the amount received by the NBA from the escrow account is less than the aggregate compensation adjustment amount for that year. In the event of a shortfall, where the NBA pays too much in player salaries and cannot recuperate that amount from the escrow amount during that year, the aggregate compensation for the following year is reduced by the amount of the shortfall. In both of these scenarios the owners and league have an insurance policy in place, which ensures that player salaries do not exceed the recommended amount set forth in the agreement.

The tax level set forth in the collective bargaining agreement is one that has been widely accepted as the maximum salary allowable for NBA teams. It is simply referred to as the "Tax Level" in the agreement but is popularly referred to as the NBA luxury tax, which sets the maximum allowable salary for each team. The tax level is calculated by computing 61% of projected BRI, subtracting projected benefits for that year, and dividing this number by the number of teams in the league that year. Each team whose team salary exceeds the tax level any year is required to pay a tax to the NBA equal to the amount by which the team's salary exceeds the tax level.[13]Teams are required to pay the tax no later than ten business days following the completion of the audit report for the prior year. The NBA distributes the funds that it receives from teams that have salaries above the tax level to each team that does not owe a tax an amount equal to the aggregate tax remitted to the NBA multiplied by a fraction, the numerator of which is one and the denominator of which is the number of teams in the NBA during that year.[14]Therefore the NBA has created an incentive for teams that do not exceed the tax level by rewarding them with the taxes of the teams that do exceed it. This system also allows smaller

[13] Ibid Article VII Section 12 pg. 211
[14] Ibid Article VII Section 12 pg.213

market teams to benefit from exercising restraint in salary expenditures, and maintaining a level playing field with larger market teams who spend more on player salaries.

Free Agency

NBA free agency allows players who have played out the entirety of their contract to either negotiate a contract with their current team or move to another team based on their choosing. The ability to choose where one wanted to play was a major development for professional sports and athletes. This power which previously belonged to the owners, is what transformed sports from an industry that was dominated by owners and leagues to an industry that is now dominated by athletes and sports agents. The NBA has a moratorium period in which players are free to negotiate with teams but not sign new contracts with teams that takes place right before free agency begins. This period has been scheduled for each season that is encompassed by the present collective bargaining agreement. The period is generally between the first day of July and lasts until the seventh, eighth, tenth, or eleventh day of July. The NBA has two major classifications for free agents. Unrestricted free agents are free agents that are free at any time beginning on the first day of the moratorium period to negotiate, and free at any time after the last day of the moratorium period to enter into, a player contract with any team. A restricted free agent is a free agent that is free at any time beginning on the first day of the moratorium period to negotiate a contract with his prior team and to negotiate an offer sheet with any other team other than his prior team, and is free at any time after the last day of the moratorium period to enter into a contract with his prior team or any offer sheet with any team other than his prior team.

III. CHAPTER 3. MLB COLLECTIVE BARGAINING AGREEMENT

History

Baseball's labor history is one that extends far before the formation of the Major League Baseball Players Association. In fact the MLBPA is the fifth organization created to represent the interest of professional baseball players. Before the initial meeting of the MLBPA there was the National Brotherhood of Professional Baseball (1885-1890), the League Protective Players' Association (1900-1902), The Baseball Players Fraternity (1912-1918), and The American Baseball Guild (1946). The stage was set for player unionization in professional baseball after the owners of the National league decided to implement the "reserve rule" in 1880, which allowed clubs to protect five players from signing with other teams after playing with a team for one year. This was a big change for players since they were used to being able to switch teams at will since most contracts were only for one year. "Players enjoyed the perfect freedom of free agency and, in fact, this system of the mid 1800s was much more competitive than the system that exists today."[15]This reserve rule gradually increased to include every player on a team by the 1887 season. The National Brotherhood of Professional Ball Players was formed in 1885 was formed to curtail the power that was increasingly held by the owners.

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[15] James Dworkin, *Owners versus Players: Baseball and Collective Bargaining* (Boston: Auburn House Publishing, 1981), pg. 8

By 1890 the players were so upset about the amount of control the owners held that they formed a rival league called the Players League. The aim of the Players league was to directly compete with the National League for fan support and revenue, and through this competition force the National League into some sort of a compromise that would be beneficial for both the league and the players. After the 1890 season a meeting between officials of both leagues signaled an end to both the Players league and the National Brotherhood, as the National League assured players of no reprisals and fairer employment conditions, including a revision to the reserve clause to change it into an "option to renew" clause.[16]Working conditions did not change much after the agreement with the players as there still remained a maximum on salaries set at $2,400 per season, teams could pay a player whatever minimum they could, players were forced to purchase their own uniforms and suffer through poor travel conditions and hotel accommodations, and the reserve rule still applied to every player within the National League. After the 1900 season, several leaders of the rival American League tried to persuade players to switch leagues in order to leave the oppressive conditions of the National League.[17]In the American League higher salaries could be paid and players were not bound to one team, so many players did in fact switch leagues. The American League was so successful that it was recognized by the National League in 1903. With the recognition by the National League and the players' ability to negotiate higher contracts with the American League there was no need for a formal union, as both players and owners were satisfied with the agreement between leagues.

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[16] Ibid pg. 12
[17] Ibid pg.13

In 1914 the Federal League was set up as yet another rival league born from the poor sentiment some players felt about the working conditions under the National and American Leagues. The Ty Cobb strike, which occurred after Ty Cobb was suspended indefinitely after fighting with a spectator, caused the players to think that it was time for some sort of players association to exist in order to fight back against the owners. The Federal disbanded after 1915, with little progress made in the way of establishing a unified players union. In 1946 Robert Murphy organized the American Baseball Guild, whose aims were to redress the major grievances of that had existed since the beginning of professional baseball. The Guild's primary aims were: putting an end to the reserve clause, arbitration over salaries and all other player-owner disputes, guaranteeing players a share in their purchase price, a minimum salary of $7,500 per season, and more equitable contractual arrangement than the one in place where owners could cancel a player's contract on ten days' notice.[18]The Guild failed to become the unified players association that it set out to be and it did not accomplish its major goals, however it did offer some small concessions in favor of the players. The league began to choose player representatives from each club to discuss working conditions with owners; these representatives were able to negotiate improvements in travel arrangements, exhibition pay, and a pension plan.[19]

In 1953 the players of Major League Baseball hired J. Norman Lewis as legal counsel in matters between the players and owners. In 1954 the players supplemented this move by creating the Major League Baseball Player's Association (MLBPA) that began

[18] Ibid pg. 18
[19] Ibid pg. 20

as just a means for players to have a united voice in dealing with the owners, not as a formal union. Under the direction of Marvin Miller, the MLBPA initiated the first collective bargaining agreement by 1968. The players received higher minimum salaries, increases in pension, disability, and health insurance benefits. Both sides also agreed to a grievance procedure which paved the way for future bargaining in good faith.[20]The next collective agreement was ratified in May of 1970 to last for three seasons, and included further minimum salary increases, and an extension of grievance arbitration. In 1972 the players went on strike for thirteen days, because of the owner's failure to address the issues of pensions and payments for games missed due to strike. These two issues were addressed by the league and order was temporarily restored. In 1976 the owners locked the players out, in hopes of expediting the process of agreeing on a new agreement. The major concern for the players in negotiating the new agreement centered on changing the old reserve clause that was still present in baseball. The players had attempted numerous times through legal action to amend the reserve clause because it was such an impediment to player's freedom to choose teams and it placed a ceiling on salaries. The first attack on the reserve clause came in the Toolson case, where New York Yankee player George Toolson filed suit against Major League Baseball because the New York Yankees had assigned Toolson to their minor league club and after refusing to play he was placed on the team's ineligible list. Because of the reserve clause in his contract he could not play for another team and was thus barred from playing baseball that year. Toolson's suit claimed that the reserve clause in his contract violated antitrust law. The Supreme Court had already ruled that Major League Baseball was exempt from the

[20] Ibid pg. 32

antitrust law in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs* and the court upheld this ruling in favor of Baseball again in the case against Toolson. The second case involved Curt Flood, who was a star outfielder for St. Louis for twelve years before being abruptly traded to the Philadelphia Phillies in October of 1969. Curt Flood complained about the trade and asked Commissioner Bowie Kuhn to declare him a free agent, but was denied since it held in his reserve clause that his playing rights belonged to the team he was traded to.[21]After this request was denied Flood filed a suit that once again charged MLB with violating anti-trust law with the reserve clause. Flood's case was taken all the way to the Supreme Court, where the court ruled in favor of Major League Baseball. The court cited its earlier decisions in *Toolson and Federal Baseball Club of Baltimore*, and maintained that Baseball was exempt from anti-trust law.

The breakthrough for the players came during the collective bargaining negotiations in 1976. After the 1975 season, pitchers Andy Messersmith and Dave McNally filed grievances with the MLBPA seeking to have an arbitrator declare them both free agents, since they had both completed one year contracts with their respective teams. Arbitrator Peter Seitz heard both the arguments from the MLBPA and the owners and ruled that both players were free agents since there was no existing contractual relationship between the players and their teams, and thus the players could not be reserved for another year of service. The result of Seitz' arbitration decision "changed the nature of baseball's historic perpetual reservation system into a reserve system limited to

[21] Ibid pg. 64

but a single one-year option on a player's services."[22]The owners immediately understood that this meant that after a player's contract expired and the player was reserved for one season they would become a free agent and have the ability to choose which team they wanted to play for and the amount of money they required to play. The 1976 collective bargaining agreement included the new system of free agency, which "in essence gave each team a six-year guarantee on a player's services, after which time the player and club could agree to further contractual terms or the player could become a free agent."The agreement also included how teams would be compensated for free agents that signed with other teams. The compensation was that a team who signed another team's free agent would be required to give the player's former team a draft pick in the June Amateur Player Draft. After small strikes in 1980, 1981, 1984 and 1985 the next major year for collective bargaining came in 1990. "Management's collusion activities after the 1985 labor agreement added tension to the 1990 negotiations."[23] This collusion referred to the owners refusing to bid on free agents following the 1985 season. Arbitrator Thomas Roberts also found the owners guilty of collusion by avoiding free agents following the 1986 and 1987 seasons as well. The 1990 negotiations also focused on the topic of revenue sharing, or the transfer of revenues from one team to another, which the owners wanted to implement in order to discourage competition and lessen economic incentive to overbid for players. After a 32-day lockout, the MLBPA and MLB finally came together in forming a new labor agreement. The new agreement included: an increase in the minimum salary from $68,000 to $100,000, and increase in pension

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[22] Ibid pg. 79
[23] Kenneth Jennings, *Swings and Misses: Moribound Labor relations in Professional Baseball* (Connecticut: Praeger Publishers, 1997) pg. 12

benefit contributions from $36 million to $55 million a year, an increase in salary arbitration, and the topic of revenue sharing was to be addressed by a task force and reviewed during the next agreement.[24]

With the major issues not settled from the 1990 negotiations and owners complaining of economic hardships, the stage was set for a turbulent agreement in 1994. The owners wanted to initiate a salary cap in baseball to curtail the rising salaries of players, and to create a more equal playing field for large and small market teams. The players vehemently opposed a salary cap and wanted to maintain the status quo. The result was a 232-day strike that did not end until Government intervention. The owners and union finally came together in agreement in November 1996. The new collective bargaining agreement increased minimum salaries once again, but also included a major change in the form of a new luxury tax. A luxury tax was implemented that placed a tax on team's payrolls exceeding $51 million in 1997, $55 million in 1998 and $58.9 million in 1999. The tax rate was set at 35% for the 1997-1998 season and 34% for the 1999 season. "Proceeds from the tax go into a revenue-sharing pool, along with monies from a new 2.5% tax on player salaries. The pool is distributed to thirteen small-market teams to enable them to compete better financially."[25]The 2002 and 2007 collective bargaining agreements were agreed upon relatively quickly and without work stoppages.

[24] Ibid pg. 16
[25] Paul D. Staudohar, "The Baseball Strike of 1994-95," The Monthly Labor Review Mar (1997) pg. 7

MLB 2007 Collective Bargaining Agreement

The current MLB collective bargaining agreement was agreed upon at the conclusion of the 2007 season and is set to last until the completion of the 2011 season. Though MLB has a long history of contentious agreements, the 2007 agreement was reached without much disagreement from either side. The main issues I will focus on will include the current free agency system of MLB, its revenue sharing program and how it deals with team salaries without any form of salary cap.

Free Agency

A player enters into free agency following the completion of his contract, and any player with six or more years of Major League service who has not executed a contract for the next succeeding season is eligible to become a free agent.[26]The former club of a free agent is offered compensation for their player if their player is considered to be a Type A or Type B player. A type A player is defined as a player who ranks in the upper twenty percent of his respective position group. A type B player is a player who ranks in the upper forty percent but not in the upper twenty percent of his respective position group. A team receives compensation only if its free agent signs a contract prior to December 1 or its free agent signs a contract with another team after his former team has offered salary arbitration. The compensation for a type A player is a draft pick in the amateur baseball draft and an added draft pick in the Major League Rule 4 Draft. Compensation for a type B player is a draft pick in the Major League Rule 4 draft. Clubs are limited in the number of Type A and B players they are allowed to sign in a given

[26] 2007-2011 *Basic Agreement between Major League Baseball and the Major League Baseball Players Association*. Article XX pg. 70.

year. If there are fourteen or less than no team can sign more than one type A or B player. If there are between 15 and 38, no club can sign more than two type A or B players. If there are from 39 to 62 then no team can sign more than three. The quota for signing these premium free agents goes up accordingly.[27]

Competitive Balance Tax

The key element of the 1996 collective bargaining agreement was the luxury tax, which provided incentive for teams to lower their salary figures and be more efficient with money spent on player contracts. This tax is the closest thing MLB has to a salary cap, but its restraint has not limited the large market teams from spending enormous amounts on salaries. Teams are assessed a competitive balance tax on the difference between its final club payroll and the tax threshold for a given year. The tax threshold has been set as: $148 million in the 2007 season, $155 million in the 2008 season, $162 million in the 2009 season, $170 million in the 2010 season, and $178 million for the 2011 season. The tax rates are 22.5%, 30%, and 40%. “A club shall be subject to a competitive balance tax rate one level higher than the rate applicable to it in the previous contract year for each consecutive contract year in which its payroll is above the tax threshold.”[28] This means that if a club is paying a tax of 22.5% and its payroll remains above the threshold, the next year it will pay 30%, this continues until the maximum tax of 40% is reached. Teams can also go down tax levels by lowering their payroll below the tax threshold. The proceeds from the competitive tax are allocated as follows: The first $2.5 million are reallocated to teams based on whether the teams had to pay the tax from buying out a

[27] Ibid Article XX pg. 74
[28] Ibid Article XXIII pg. 84

player's contract. 75% of the remaining proceeds are used to fund benefits for players and 25% of the remaining proceeds are contributed to the industry growth fund.[29]

The Revenue Sharing Plan

The Revenue Sharing Plan was started as a means for smaller market teams to stay competitive with the larger market teams by distributing some of the extra revenue collected by large market teams with the smaller market teams in the league. The plan is constructed as a pool, where each team pays 31% of its operating revenues to a putative pool called the central fund. The money in the fund is "reallocated among the clubs based on each club's applicable performance factor. Clubs with a positive performance factor shall be contributors and clubs with negative performance factors shall be recipients under the central fund component."[30]The performance factors are included as an attachment to the collective bargaining agreement. The amount that a contributor has to contribute is calculated by multiplying their performance factor by the net transfer value of the central fund. Recipients receive the amount of their performance factor multiplied by the net transfer value of the central fund.[31]A team's performance factor may be adjusted if a "club opens a new stadium or the compound annual growth rate of the team's net local revenue lags or exceeds the CAGR of the industry's net local revenue by ten percentage points or more over any three-year period."[32]Since the purpose of the Revenue Sharing Plan is to improve the competitiveness of the game and to improve the performance of smaller market teams, the league has mandated that each club that

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[29] Ibid Article XXIII pg. 103
[30] Ibid Article XXIV pg. 111
[31] Ibid Article XXIV pg. 111
[32] Ibid Article XXIV pg. 112

receives money from the plan must report on the performance-related uses to which it put its revenue sharing receipts by April 1 of the following year.[33]

[33] Ibid Article XXIV pg. 113

IV. CHAPTER 4. NFL COLLECTIVE BARGAINING AGREEMENT

History

The beginning of NFL collective bargaining started as the other sports had, in the midst of player anguish over the amount of power wielded by the owners in the National Football League. The players began to mobilize against the owners in 1956 when players sought the assistance of Creighton Miller, the first general manager of the Cleveland Browns, in helping form a player's association. By November of 1956, a number of players had agreed to let Miller and the newly formed National Football League Players Association (NFLPA) represent their interests.[34]The players met and after their first meeting came up with a list of demands for the owners which included: a minimum $5,000 a year salary, uniform per diem pay for players, rule forcing team to pay for football equipment, and a payment plan for injured players.[35]The players submitted these proposals to the league, but they were not accepted and the league did not recognize the NFLPA as an official player's union. Though the players did not have their demands met they were encouraged by a Supreme Court ruling in 1957. Bill Radovich filed a suit against the NFL after the NFL denied his request to move from Detroit and sign with a team in California. His suit claimed that the NFL was operating in violation of anti-trust

[34] "National Football Players Association History," National Football Players Association, http://www.nflplayers.com/About-us/History/ (accessed October 18, 2010)
[35] Ibid

law. In 1957 the court ruled in *Radovich v. NFL*, that the NFL was in fact subject to anti-trust law.[36] This case was monumental for the player's since it gave them legal power to file suit against the NFL if it did not negotiate with them. It also proved detrimental for the league because it did not receive the same anti-trust exemption that baseball had received and thus exposed it to the threat of ongoing legal action if it did not comply with player demands.

In 1960 the American Football League was created to compete with the NFL, and the players tried to use the new league as leverage for higher salaries and increased benefits. The players were not able to make much progress even with the leverage from the AFL, and after the two leagues merged in 1966 the players were left even more dissatisfied with working conditions. After the failure of the NFLPA to mount opposition to the merger of the two leagues, Bernie Parrish of the Cleveland Browns sought the assistance of the Teamsters Union in negotiating with the owners. In 1968 the NFL agreed to recognize the NFLPA as an official union with the stipulation that the Teamsters Union be eliminated from partnership with the players. After the NFL recognized the NFLPA, the newly recognized union proposed a new pension plan, which was rejected by the owners. The rejection of the plan caused the first player strike. The conclusion of the strike came after the NFL and NFLPA negotiated the first collective bargaining agreement in 1968. The new agreement included: a minimum salary of $9,000 for rookies and $10,000 for veterans, exhibition pay of $50 per game, and a retirement age of 65.[37] The problem with this agreement was that the NFLPA did not have the

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[36] William Radovich v. National Football League, 352 US 445 – Supreme Court (1957)
[37] NFLPA History *op. cit.*

support of the American Football League Players Association, since despite the leagues merger there was not a merger of player associations. "The two players associations combined forces for the first time in 1970, when it was again time to bargain with the NFL owners."[38]The 1970 negotiations proved problematic, and the players went on a brief two-day strike before eventually signing a four-year agreement. The new agreement made minimal changes to the original one and included: an increase in the minimum rookie salary to $12,500 and $13,000 for the veterans, the right of players to have agents, and the right to impartial arbitration of injury grievances.[39]

Going into the next round of collective bargaining the players union became stronger and was set on challenging many of the NFL's labor institutions. The largest of these was the Rozelle Rule. The Rozelle rule says "that when any individual plays out his contract and elects to sign with another team, his new owners must send his old team a player or players from their current roster and if the team s cannot agree on an exchange, League commissioner Pete Rozelle would choose who the compensation would be."[40]Players filed a suit against the NFL claiming that the Rozelle rule violated anti-trust law since it interfered with a player's ability to freely move from one team to another after fulfilling his contractual agreement. The suit was *Mackey v. NFL* and the Supreme Court ruled that the Rozelle Rule was in violation of anti-trust law since it "constituted a restrain in trade in violation of section one of the Sherman Act."[41]The results of the suit would not be included into a CBA until 1977. The players had to continue to fight the

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[38] Ibid
[39] Ibid
[40] Time Magazine, "NFL Thrown for a Loss," Time Magazine, http://www.time.com/time/magazine/article/0,9171,912654,00.html (accessed October 17, 2010).
[41] John Mackey v. NFL 543 F.2d 606 (1976)

owners in the court room since they did not have much success in the 1974 negotiations. After the decision in *Mackey v. NFL* was reached in 1976 the players were finally able to force the owners to meet some of their demands. The 1977 CBA included: increased benefits, reforms in the waiver system, and the end of the Rozelle Rule.

Between 1977 and 1981 there was very little player movement and the players found the reason to be that owners had very little incentive to sign free agents because of the revenue sharing program occurring in the league. Teams were "sharing TV and gate revenues on nearly an equal basis."[42]The players wanted to take advantage of the revenue sharing and during the negotiations for the 1982 agreement they asked the league to pay players 55% of the league-wide revenue. The owners rejected this proposal, and the players subsequently went on strike after the second week of regular season games in 1982. After two months of strike the two sides finally came to agreement on a new CBA that would increase player salaries and benefits to a total package worth $1.28 billion.[43]This was far from the proposal that the players had made, and once again the owners escaped the bargaining process without having to drastically change the current system, which benefited them tremendously. The NFL owners were able to win most of these battles because, unlike the MLB or NBA, the NFL owners were unified and this unity was so strong because they shared revenues. They also had the advantage of dealing with athletes with relatively short career-spans, which meant they could wait-out player strikes.[44]

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[42] NFLPA History *op. cit.*
[43] Ibid
[44] Ibid

The players decided to tackle the problem of free agency during the 1987 CBA talks. The owners immediately rejected the player's demands for free agency, and once again the player's went on strike. The owners responded by hiring replacement players to play while the strike lasted. The owners never relented on the players demands and the players were forced to return to the field without free agency and without a new CBA. The players once again counted on litigation to force the owners to listen to their demands. The players filed another anti-trust suit named *Powell v. NFL*, which attacked the "first refusal/compensation" system that allowed a team the first right to sign their free agent player, and if the free agent chose to sign with another team, then his former team received first round draft choices as compensation. This rule limited a player's ability to sign with a new team since most teams felt that the compensation of a first round draft choice was too steep of a price to pay for signing a free agent. The NFLPA won the suit in Minnesota federal court, however the owners appealed the decision and the trial was taken to the Eighth Circuit Court of Appeals. The owners also enacted "Plan B" "as a precautionary measure, which freed players at the bottom of the roster from the first refusal/compensation system. Under Plan B clubs could restrict 37 players and continue to subject them to the first refusal/compensation system, while players who were not restricted could sign with other teams without restriction at the end of their contracts."[45]Finally, in 1989 the Eighth Circuit ruled in favor of the owners claiming that "as long as the union represented the players, they had no rights under anti-trust laws to

[45] Ibid

sue owners."[46]The players reacted drastically by disbanding the union and continuing to pursue legal action against the owners as individuals.

The NFLPA now stood as just a player's association rather than a union, meaning it could not negotiate for a CBA, so the players were without a new CBA since the 1982 agreement. The NFLPA still remained active in funding legal action against the owners, and a new suit was filed in 1990 under the name *McNeil v. NFL*. The McNeil suit claimed that "Plan B rules restricting free agents violated the anti-trust laws, and the players had a right to sue since they were no longer a union."[47]In 1992 the Minnesota federal court ruled in favor of the players in the McNeil case ruling that "NFL's Pan B free agency system was illegal, and that it substantially harmed the effect on competition for player's services and violated antitrust laws."[48] "By late 1992 there was leverage on both sides. Players had managed to enjoin Plan B and were proceeding to claim damages for all players damaged by that system. But the owners were appealing the McNeil decision and would have no liability if it were reversed."[49]With both sides locked in legal battle, the stage was set for a settlement and possible agreement. A settlement was reached in 1993, where both sides made significant compromises. The owners agreed to free agency, but only if the player's accepted a salary cap. In 1993 the NFLPA obtain authorization to recertify itself as an official union, and thus renew its ability to negotiate a new CBA.

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[46] Ibid
[47] Ibid
[48] Mike Freeman, "NFL Is in Violation of Antitrust Laws, Jury Decides," The Tech Online Edition http://tech.mit.edu/V112/N39/nfl.39w.html (accessed November 1, 2010)
[49] NFLPA History *op. cit.*

The 1993 CBA took months of hard bargaining between NFLPA negotiators and the league commissioner Paul Tagliabue. The final agreement included: free agency, all player's pensions where retroactively increased by 40%, the players would receive a percentage of football revenue, and there would be a salary cap. The 1993 CBA has been extended five times, including most recently in 2006 when it was extended through the 2011 season.

NFL 2006 Collective Bargaining Agreement

The current NFL collective bargaining agreement is an extension of the original 1993 agreement. The extension was approved in 2006 and was set to last six years, "but in 2008 the owners unanimously voted to truncate the deal by two years. The NFL is now heading toward a work stoppage in March 2011 when it expires."[50]Until the 2008 decision by the owners, the NFLPA and NFL had had successful negotiations, since the main tenets of the salary cap, and free agency were settled upon in 1993.

Free Agency

Any player with five or more accrued seasons, or with four or more accrued seasons in any capped year, shall, at the expiration of his player contract become an unrestricted free agent.[51]These players are free to sign with the team of their choosing, and the team that signs them can do so without penalty or compensation. A veteran player with three or more accrued seasons, but less than five becomes a restricted free agent at

[50] Alex Marvez, "Union looks at six-year CBA deal with NFL," Fox Sports http://msn.foxsports.com/nfl/story/NFL-players-union-CBA-deal-owners-6-year-deal (accessed November 1, 2010)
[51] *2006-2012 National Football Collective Bargaining Agreement* Article XIX pg. 57

the end of his player contract. A restricted free agents team has the right of first refusal and the rights to compensation if the team tenders the player an offer before the first date of restricted free agent signings.[52]The amount of compensation a team receives depends on the amount of the contract offered to the free agent. A detailed list of contract offers and their respective compensation amount is included within Article XIX Section 2 of the CBA. The NFL has a special designation for a limited number of unrestricted free agents called the "franchise tag." Each club is permitted to designate one of its players who would otherwise be an unrestricted free agent as a Franchise Player each season. The club becomes the only club that can negotiate or sign the player to a contract while he is designated as a franchise player.

Once a team has designated a player as a franchise player it must notify the league of which one of two potential required contracts it will offer the player.[53]The first option is a one year contract worth either 120% of his prior year salary or the average of the five largest salaries prior year salaries for players at the position at which the Franchise Player played the most games during the prior year, depending on which amount is highest. The second option is a one year contract for the average of the five largest salaries in the league that year, for players at the position at which the player played the most games during the prior year.[54]A team is also allowed to designate one unrestricted or restricted free agent as a Transition Player in lieu of designating a Franchise Player. A team must tender a Transition Player a one year contract worth the average of the ten largest prior year salaries for players at the position at which he played

[52] Ibid Article XIX pg. 58
[53] Ibid Article XX pg. 68
[54] Ibid Article XX pg. 69

the most games in the prior season or 120% of his prior year salary depending on which amount is greater. The offer can be withdrawn by the team at anytime but the player becomes an unrestricted free agent as soon as the tender is withdrawn.[55]

Salary Cap

The NFL is the only league included in this paper that has a hard salary cap, meaning a team cannot go above the league mandated cap and there are no exceptions to allow teams to circumvent the cap. The NFL salary cap goes into effect in any year when the total player costs for all NFL teams equals or exceeds 56.074% of total revenue. If the total player costs fall below 46.868% of total revenue in a year with a salary cap then the salary cap will be removed the following year. When the league has a salary cap there is also a league-wide salary of 50% of total league revenue. The salary caps for each year are set within the CBA and are listed as: $102 million for 2006, $109 million for 2007, 57.5% of total revenue divided by the number of teams for 2008, 57.5% of total revenue divided by the number of teams for 2009, 58% of total revenue divided by the number of teams for 2010, and 58% of total revenue divided by the number of teams for 2011.[56]The league has implemented an adjustment mechanism in case league salaries fall too far below or above the amount necessary for a salary cap. An adjustment will be triggered if during a capped year the league wide player costs exceed or fall below the trigger percentage for that year multiplied by total revenues for that year.[57] The "trigger percentage" is the percentage that player costs should fall within during each salary capped year. The trigger percentages are 59% for the 2006 and 2007 years, 59.5% for the

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[55] Ibid Article XX pg. 71
[56] Ibid Article XXIV pg. 96
[57] Ibid Article XXIV pg. 97

2008 and 2009 years and 60% for the 2010 and 2011 years. If there is a league shortfall then the amount will be reduced by any remaining league excess from previous years and a deduction from each club's team salary. If an adjustment is triggered by a league excess then a pro rata share of the excess will be applied to each club.[58]

The NFL has also included a minimum team salary to maintain the competitive balance of the league, and to increase to overall revenues of the league. The minimum team salary was set at 84% of the salary cap for the 2006 season and it increases by 1.2% each year, but cannot be greater than 90%. If any teams fall below the minimum salary in a given year then it is required to pay the difference in its team salary and the minimum by April 15 of the next year.[59]

Final Eight Plan

The final eight plan was placed in the CBA in the event that there would be a season without a salary cap, such as the current 2010 season. Since the possibility has become a reality I am compelled to include this portion of the CBA in this paper since it relates to free agency during an uncapped year. The plan states that the four teams that participated in the NFC and AFC championship games are not permitted to negotiate and sign any unrestricted free agents unless the unrestricted free agent became a free agent as a result of the waiver system, or the unrestricted free agent was under contract with that team on the date of the players most recent contract. Each of the four playoff teams that lost before the championship games are also not permitted to sign any unrestricted free agents unless that player became a free agent as a result of the waiver system, he was

[58] Ibid Article XXIV pg. 97
[59] Ibid Article XXIV pg. 102

under contract with that team, a player has a first year salary of $4,925,000 or more, or a player with a first year salary of $3,275,000 and an annual increase in future contract years of no more than 30% of the first contract year salary.[60]Each of the eight club's is allowed to sign one unrestricted free agent for each unrestricted free agent that it loses to another team as long as the new player does not have a first year salary higher than the first year salary given to the player that was lost. This plan was enacted so that when there is an uncapped year, the best teams in the league to not take advantage of the lack of salary cap by signing more top quality players. It is an insurance policy for smaller market teams who need the salary cap to stay competitive with the larger teams in the league.

[60] Ibid Article XXI pg. 77

V. CHAPTER 5. COMPARISON OF THE NFL, NBA, AND MLB COLLECTIVE BARGAINING AGREEMENTS

The labor history of each major American sports league has been filled with the constant battle between owners and players to strike a balance between competitive pay for players and profit maximization for owner. While both of the these entities battle for their own self interest, the fan is left hoping that the result of each labor agreement brings about an increase in competitive balance, and a more enjoyable entertainment experience. None of the three leagues has been able to secure a perfect agreement, and after decades of collective bargaining there is still confrontation before and during the negotiations for each CBA that the leagues enact. Despite the differences in each league there are many similarities in the elements that have been agreed upon in each CBA. The major elements that are shared by all leagues include Free Agency, Salary Caps and exceptions, and Revenue Sharing. Each league has attempted to create a unique structure for each of these items to match the ideology of the league and to best benefit the players and owners in each league. While each league has had its share of legal issues and conflicts coming to agreement on the terms of the major elements of the CBA, each league has done well for itself as popularity for sports has grown in the United States as have revenues for the major leagues. “The median NBA team had an operating income of over $9 million in

2005/06 the median NFL team had an operating income of over $35 million in 2005, and the median MLB team had an operating income of over $16 million in 2005."[61]The increased income has become both a blessing and a curse for the sports leagues however, since the increase in income calls for both players and owners to demand a higher share of the revenue. In comparing the CBA's of all three leagues I will look at how each leagues approach to collective bargaining differs and how they are similar and how each approach has merit. In doing this comparison I hope to find the basic principles that will be beneficial for the collective bargaining process going forward.

Free Agency

The basic concepts of free agency are practiced by all three leagues. All leagues adopted free agency late in their developments. The reserve clause was the pre-dominant contractual clause that dictated where a player played before free agency was adopted. The reserve clause bound a player to the team that his contract belonged to, and for most of the early history of the sports league it meant that a player played for one team throughout his career. "The reserve clause gave teams a monopsony power over their players. Monopsony, a market structure containing only one buyer, tilts bargaining power strongly in favor of team owners, as the players cannot sell their talents to other teams."[62]This practice was also problematic because it allowed teams to punish players or demote them, without the possibility of a player being able to play for another team, so players were forced to accept demotion or punishment or not be paid.

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[61]Brad Humphreys and Dennis Howard, *The Business of Sports* (Connecticut: Praeger Publishers, 2008), pg. 185

[62] Ibid pg. 183

While MLB was able to maintain its reserve system through its anti-trust exception granted to it via the 1922 decision in *Federal Baseball Club of Baltimore v. National League*, the other two leagues had to fight the reserve clause through collective bargaining. In all cases the reserve clause was extinguished leaving the system of free agency. Free agency today allows players to move freely from one team to another at the end of their contractual agreements or after a designated amount of time in the league. The major distinction in free agents today is unrestricted free agents and restricted free agents. The only league without the explicit terms restricted and unrestricted is baseball but its free agency is similar to the other leagues. In all three leagues there is a procedure reserved to a player's former team for keeping a free agent. In the NFL and MLB there is a compensation rule that allows the team that loses a restricted free agent, which occurs when a player is offered a contract by his former team but refuses it, to be compensated with a draft pick in the next occurring players draft.

The NBA does not have such a policy, but it gives a restricted free agent's former team the right of first refusal in negotiating with a player and the ability to sign a player for more than any other team in the league can offer. This agreement is known as "Bird rights" which allow a team to go over the tax to resign their own free agents. The NFL has given teams added protection in keeping their top free agents with the ability to appoint a free agent as a franchise player. With the franchise tag a team protects a player from free agency, at the cost of paying them a large one season contract. There has not been a significant amount of debate on the effectiveness on free agency, since the process has become streamlined and successful since its inception. The only question is whether each leagues free agency policy gives players adequate freedom of mobility and teams adequate means to keep key free agents. The only problem arises in baseball where large spending franchises, are able to obtain marquee free agents with the only cost being a draft pick. For most teams the loss of a draft pick is not a significant deterrent in outbidding smaller market teams for their "big name" free agents. This problem "is the expected deleterious effect free agency might have on competitive balance, since it permits a few teams to accumulate the most talented players."[63]

The results have been mixed for the effects of free agency on competitive balance and player evaluation. Economists Leeds and Kowalewski found that free agency in the NFL "only significantly affected the level of play for players in the bottom .25 quartile who could drastically increase their pay by improving their performance, while players in the top .75 who were already well paid had less incentive to play harder."[64]The study shows that free agency might not be that significant in improving the competitive balance in the league in the majority of players are not affected by the ability to gain higher salaries with different teams. Another economic take on free agency comes from an interpretation of the Coase theorem, which states "players go to the teams that value their services most highly, regardless of the contractual relationship between players and owners."[65]Both of these ideas center around the idea that free agency does little to actually affect the level of completion. This is mostly true in the NBA and NFL where salary caps do not allow teams to win a player by the shear amount of money it can pay him, but in MLB free agency has played a very large role in player movement since

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[63] Travis Lee, "Competitive Balance in the National Football League after the 1993 Collective Bargaining Agreement," Journal of Sports Economics (2009), http://jse.sagepub.com/content/11/1/77 Pg. 78

[64] Michael Leeds and Sandra Kowalewski,"Winner take all in the NFL: The Effect of the Salary Cap and Free Agency on the Compensation of Skill Position Players," Journal of Sports Economics 2:244 (2001) pg. 245

[65] Humphreys, *op. cit.* pg. 187

teams like the New York Yankees and Boston Red Sox can outbid most smaller market teams, despite there being an obvious high regard for a premium player's services.

Salary Cap

The salary cap is the most revolutionary concept that has emerged from the collective bargaining process. The idea of having a maximum amount that each team is allotted to spend on players seems like an obvious concept to adapt in the interest of fairness, but it is an idea that has been under attack by player's unions since the idea first came about. For players the salary cap is a means of keeping salaries low and disabling teams from bidding on them during free agency. For owners the salary cap is a means of limiting the amount of revenue they get from operations that they have to spend on player salaries. A salary cap allows owners to take away larger profits. For most fans the salary cap is a means of keeping the leagues competitive. Without a salary cap the larger market teams with the wealthier, more loose-spending owners are able to buy victories and outperform small market teams without the financial means to compete. The salary cap levels the playing field and curtails out-of-control spending. All sides have relevant points. MLB is the only league that does not have a salary cap; instead it has a tax for teams that go above the recommended salary limit. In MLB many teams exceed the limit and pay the tax. The NFL is the only league that has a hard salary cap. The hard salary cap means that teams are not allowed to be over the salary cap and there are no exceptions that allow a team to be over the cap, however teams in the NFL are still able to pay out salaries that amount to more than the salary because of minor loopholes in the cap. The NBA also has a salary cap, it is determined by a percentage of Basketball Related Income that a team is allowed to spend on player salaries. The NBA salary cap is not a hard cap because there are several exceptions that allow a team to go over the cap in order to keep their free agents and sign new free agents at the end of every year. “The most egregious exception to the soft salary cap was called the Bird Exception, named after Larry Bird, of the Boston Celtics. The Bird Exception allowed a team to pay any amount of money to keep one of its own players who had become a free agent, without regard to the cap.”[66]The Bird exception has now been limited, so that a team cannot spend any amount of money it wanted, but rather a team is now allowed to spend the maximum salary allowable to a player based on years of experience. The NBA does have a penalty tax that is assessed to teams whose team salaries exceed the cap. This tax has not stopped many of the top tier teams like the Los Angeles Lakers and Boston Celtics from raising their team salaries beyond the cap in order to remain competitive from year to year.

The NFL and NBA caps are very similar except for a couple important differences. The first difference is the NFL pays a higher percentage of its designated gross revenue (DGR) to players. The NFL is able to pay this higher percentage because “The NFL counts less luxury-box revenue in DGR than the NBA counts in BRI. BRI includes all luxury-box revenue while DGR includes only the ticket revenue from luxury boxes.”[67]The NFL does not share revenue from concessions in luxury-boxes which accounts for a significant amount of revenue. The second major difference is an NFL team’s reported salary does not include some player bonuses. Since football does not have guaranteed contracts, there are large amounts of money placed in signing bonuses,

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[66] Peter Goothius and Richard Hill, “The New NBA Collective Bargaining Agreement, the Median Voter Model, and a Robin Hood Rent Redistribution,” Journal of Sports Economics 2:131 (2001) pg. 133
[67] Humphreys *op. cit*. pg. 193

and performance incentive bonuses. Most of these bonuses count against the salary cap as wages that are likely to be earned, but there are some "bonuses for meeting previously unmet goals that count as not likely to be earned, which do not count against the cap."[68]

MLB has come under a great amount of criticism for not adopting a salary cap. The comparison of the development of a salary cap in NBA with the lack of one in the MLN has been summed up in economic terms by Goothius saying:

> The salary cap system employed by the NBA is an example of communitarian capitalism. The presence of a strong commissioner and a commitment by management and labor to work together to promote the common good of the sport had pulled the NBA out of a quagmire and made it a success. This contrasted with the picture of "individualistic capitalism" employed by the MLB, in which the union and owners were unable to agree on a salary cap.[69]

Though it seems that individualistic capitalism may be hindering the progress of baseball, there is basis to support the system of not having a salary cap. "One danger of payroll caps is that they may be porous and they create temptation for violating the rules. A system in which cheaters are more successful than those who play by the rules may be even less inviting than one in which teams fortunate enough to own rights to high-revenue areas are more successful"[70]This point holds strong considering both the NFL and NBA have salary caps yet a large percentage of the teams operate with player salaries above the cap. In these systems it seems teams are rewarded for their abilities to take advantage of the exceptions to the cap, or find ways to circumvent it. In fact in 2005 nine of the thirty-two NFL teams had payrolls exceeding the official 2005 salary cap, and twenty-three of the thirty NBA teams had payrolls that exceeded the 2005 salary

[68] Ibid pg. 194
[69] Goothius *op. cit*. pg. 133
[70] Allen Sanderson and John Siegfried, "Thinking about Competitive Balance," Journal of Sports Economics 4:255 (2003) pg. 267

cap.[71] The fact that the MLB does not have a salary cap makes it more susceptible to criticism from those who complain that the lack of cap makes play more uneven, even though the same criticism could easily be placed on the NFL or NBA whose enforcement of the cap is rather lax.

The difference in leagues with the salary cap and the league without one would also extend to the amount of competition amongst teams. “Comparing MLB to the NFL and the NBA, in spite of fewer available playoff spots, over the last two decades, 20 franchises have appeared in the World Series compared with 19 in the Super Bowl and 15 in the NBA finals.”[72] This shows that even without a salary cap there has been more parity in MLB than there has been in the other two leagues in regards to the amount of teams with a realistic chance to win a world championship. This statistic is surprising given that the MLB has the largest difference in salary between the team with the highest payroll and the team with the lowest payroll. The New York Yankees have the highest payroll, totaling $206,333,389 and the Pittsburgh Pirates have the lowest, totaling $34,943,000. The $171 million difference is staggering yet the New York Yankees were not in the most recent championship, instead it was played between the San Francisco Giants with a salary of $97 million and the Texas Rangers with a payroll of only $55 million.[73] Neither of these teams had ever won a World Series before, and it was the first time the Texas Rangers had played in a World Series.

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[71] Humphreys *op. cit*. pg. 191
[72] Sanderson *op. cit*. pg. 260
[73] CBS Sports “MLB Salaries” CBS Sports. http://www.cbssports.com/mlb/salaries/teams (accessed November 14, 2010

Though the teams with lower salaries on average do significantly worse than the free-spending teams there is no significant assurance that the larger teams will win it all. A large reason that there is more parity in MLB is because without a cap teams are able to lure free agents with large bids. This contrasts with the NBA system of individual player salary caps. “Individual salary caps are likely to increase competitive imbalance because they encourage players to rely more on their preference for joining a winning team than on differences between salary offers. Individual player salary caps probably help the highest revenue teams increase both their profits and their playing talent.”[74]

In analyzing the difference in the percentage of revenue that players receive from the different leagues, it has been found that even without a salary cap the players in MLB receive close to the same percentage of the leagues total revenue or less than players in the NFL or NBA. In 2007 the MLB had total revenue of over $5.6 billion and $2.8 billion of this revenue went to player compensation.[75]Player compensation represented 51% of baseball revenue. This percentage is significantly lower than the salary cap in the NFL which is set at 57.5% of total revenue and close to the NBA salary cap which is set at 51% of BRI. MLB does have to spend significantly more on its player development system but it still spends about the same amount on player salaries as the NBA despite having larger revenues. This data shows that MLB players are worse off than their counterparts in other leagues considering they get a lower percentage of the leagues revenue.

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[74] Sanderson *op. cit.* pg. 268
[75] Andrew Zimbalist, “Reflections on Salary Shares and Salary Caps,” Journal of Sports Economics 11:17 (2010) pg. 24

Revenue Sharing

Revenue sharing is a relatively new idea that has been influential in recent CBA's. Each league has a revenue sharing clause in their CBA that dictates how much revenue each team must give to the league to be split up amongst the teams. The revenue sharing plan works to help smaller market teams, by giving them a share of revenue from larger market teams. Revenue sharing allows teams to stay competitive and provides incentive for small market teams to improve by using the revenue it gains. "The NFL is the most socialist, sharing revenues from its huge television contract and merchandise sales almost equally and gate receipts 66/34 to the home and visiting teams respectively."[76]This system has allowed every team in the NFL to enjoy the fruits of the profitable business, and to keep most teams competitive from year to year. The NBA has the least pronounced revenue sharing program. Its program is based in its luxury tax, which taxes teams with high payrolls and distributes the proceeds to teams that stay below the league cap. The NBA revenue sharing program has largely helped to keep payrolls down, but does not help or force smaller teams to spend money gained from the luxury tax on players. The MLB revenue sharing plan explicitly demands that teams spend the money it gets from revenue sharing on players or utilities that help the performance of the team in subsequent years. While the NFL and NBA revenue sharing plans have worked smoothly there have been some problems with the MLB plan. The players and agents have argued that many teams that receive money from revenue sharing do not spend it on players but rather pocket the money as profits. There is reason to argue this considering in 2009 the Marlins, Pirates, Reds, Blue Jays and Royals received approximately $40 million in

[76] Sanderson *op. cit*. pg. 269

revenue sharing yet the Pirates had a payroll of only $47 million and the Marlins of only $36.8 million.[77] If these teams received so much money on revenue sharing on top of gate receipts and television rights, then it is possible to believe that some teams are not using the money in a way that improves performance but rather as a way to increase profits. The other opposition comes from owners like the late George Steinbrenner, who make a similar claim, and hold that the large market teams like the Yankees are carrying the small market teams and these small teams are not doing anything to improve themselves. The owner compared the program to a socialist state where the poor teams live off of the rich teams, while doing little to benefit the system as a whole.[78]While both sides might be right the fact is revenue sharing does help teams and makes sense especially in baseball where there is no salary cap. The problem with revenue sharing in basketball and football is that it "reduces the financial incentive of each franchise to acquire more talent, because the payoff to winning is constrained by the share paid to other franchises."[79]Therefore teams in the NFL have little incentive to pay high player salaries since they know they will only receive close to the same amount as other teams. This problem is not big in the NBA since revenue is not shared as equally, so each team has its own financial benefit in mind when pursuing top free agents.

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[77] Jayson Stark, "Pushing for a minimum payroll threshold," ESPN. http://sports.espn.go.com/mlb/columns/story?columnist=stark_jayson&page=rumblings091119 (accessed: November 20, 2010)
[78] Hal Bodley, "Revenue sharing paying off," USA Today http://www.usatoday.com/sports/baseball/columnist/bodley/2005-04-07-bodley-revenue-sharing_x.htm (accessed: November 1, 2010)
[79] Sanderson *op. cit.* pg.268

VI. CHAPTER 6. OUTLOOK FOR FUTURE COLLECTIVE BARGAINING AGREEMENTS

With each of the collective bargaining agreements for the three major American sports set to expire in 2011 it is appropriate to look at how negotiations will fare going into future CBAs. Each league has had a history of contentious battles over labor practices, and each league has had growing success in popularity, commercial ratings and revenue. The last several years however, have proven to be difficult for every American industry as the United States has faced one of the worst recessions in its history. The sports world could not escape this recession, as it affected ticket sales and decreased spending by most owners. The recent recession has exacerbated the existing problems facing the players unions and owners, and will most likely force hard negotiations from both sides.

NBA commissioner David Stern has projected that the league would lose approximately $400 million for the 2009-10 season. This figure doubles the $200 million that the NBA has lost in each of the past four seasons.[80]The players have maintained that the losses were not the result of rising salaries but rather the result of poor management decisions such as having outdated arenas or hurting attendance by dumping players in

[80] Matthew Parlow, “The NBA and the Great Recession: Implications for the Upcoming Collective Bargaining Agreement Renegotiation,” Legal Studies Research Paper Series., Marquette University Law School, 2010. Pg. 102

order to gain salary cap space for future seasons.[81] The poor economic condition of the league and some of its teams is forcing the league to demand large changes in the upcoming CBA. Commissioner Stern and the owners have already stated that they would like to reduce the amount of BRI devoted to player salaries from 57% to 40%, reduce the amount of maximum veteran and rookie contracts, and move to a hard cap. The league would like to reduce both the amount of years and the value for maximum rookie and veteran contracts. It has proposed a move from maximum contracts of six years worth more than $100 million to maximum contracts of four years and approximately $60 million dollars.[82] The move to a hard cap would eliminate the exceptions that are now included in the CBA, which would drastically reduce salaries and remove the famous Bird rights. All of these measures will be forcefully contested by the NBPA, who will want to keep player salaries where they currently are and want to keep the salary cap as it is now. The NBPA executive Billy Hunter has recently said that there is a 99% chance that there will be a lockout next summer.[83] The players hope that revenues increase this year as well as TV ratings so that they can point to these improvements as proof that the future is bright for the league. If the players are locked out it would be the first time since the 1998 lockout that occurred when owners thought that players were receiving too high of a percentage of BRI.

The NFL has faced similar problems as the owners have cited hardships from the recent economic downturn, and an excessive amount of income going toward players

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[81] ibid
[82] ibid
[83] Associated Press, “Players’ Association boss Hunter 99 percent sure NBA lockout looms,” Sports Illustrated, http://sportsillustrated.cnn.com/2010/basketball/nba/11/22/billy.hunter.lockout.ap/index.html?eref=sihp (accessed: November 22, 2010)

salaries as the reasons behind slow negotiations for a new CBA. The average NFL team dropped in value from $1.04 billion to $1.02 billion.[84]The owners want to lower salaries, lower the amount of revenue that is used for player salaries, and increase the amount of games in the NFL regular season. The players do not want to budge on demands for lower salaries, since they have made progress in each of the former CBAs to increase salaries and benefits for players. The players also believe teams might be holding back revenue collected from TV agreements and other operations that are not being shared with the players. It seems that the two sides will most likely reach an agreement even if there is a small lockout. The players have already softened its stance on the 18 game regular season if they are allowed less time in other non-game activities such as practice and pre-season.[85]

The MLB has not begun negotiations for its new CBA, but talks are expected to commence in early 2011. There is not much contention expected and talks will most likely go smoothly as the major issues at hand are drug testing, the expansion of the MLB draft and the potential of expanding the MLB playoffs.

Going forward all the sports leagues should have relatively easy negotiations since most of the major issues such as free agency and salary caps have been implemented and have been institutionalized in their respective sports. The major challenges will be faced by the NBA in this year's negotiations. The NFL and MLB look

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[84] Skip Wood, "Is trouble ahead for NFL? Labor uncertainty a dark cloud," USA Today Sports. http://www.usatoday.com/sports/football/nfl/2010-09-12-nfl-labor-talks-players-union-goodell_N.htm accessed: November 20, 2010)

[85]Jason LaCanfora, "League, union hold positive talks on proposed 18-game season," NFL News. http://www.nfl.com/news/story/09000d5d81c627ae/article/league-union-hold-positive-talks-on-proposed-18game-season?module=breaking_news (accessed: November 20, 2010)

to only make minimal changes to their agreements since they have been largely successful. The usual adjustments to player salary maximums and minimums will most likely change and revenue sharing will be talked about but not changed significantly.

Conclusion

The real story behind collective bargaining is the relentless battles that have ensued over time to secure what we now take for granted as sports fans. There has been years of litigation, lockouts, and strikes all for the purpose of producing a product that brings maximum entertainment to the fans at the lowest cost to the owners while ensuring the happiness of the players. The whole process works for the benefit of the three entities: player, owner, and fan. The history's of each sport's collective bargaining agreement mirrors the economic and social climate of the United States. The society that we live in is based on the struggle of individuals against each other for the collective good of the whole. The principle mirrors the dialectic of Hegel where there is the thesis that drives us in a certain direction and this thesis is met with antithesis of radical thought and opposition and these two forces concede a synthesis that dictates our actions into the future until the process repeats itself. The collective bargaining process can never be perfect, but it will always lead to a synthesis of new and revolutionary ideas in the labor and sports industry.

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