

# AT THE BRINK OF FREE AGENCY: CREATING THE FOUNDATION FOR THE MESSERSMITH-McNALLY DECISION – 1968–1975

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## I. INTRODUCTION

The period between 1968 and 1975 constituted one of the most dramatic periods in the history of baseball labor relations. From the completion of baseball's first Basic Agreement<sup>1</sup> in February 1968 through an arbitration panel decision<sup>2</sup> that granted free agency in December 1975 to Dave McNally and Andy Messersmith, the events during this period completely revolutionized the relationship between owners and players. When Peter Seitz delivered the opinion for the arbitration panel in Grievance Numbers 75-27 and 75-28, he answered a fundamental contractual question of the duration of a renewed contract. Although the reserve system in baseball was long considered to be essentially perpetual in nature, Seitz ruled that because McNally and Messersmith had completed a full season under the renewed option year of their contracts, they were no longer the property of their respective teams. The decision provided the young Major League Baseball Players Association (Players Association), a group that was nearly powerless in 1968, with the key ingredient to restructure the reserve system in major league baseball.

The reserve system effectively controlled the careers of major league baseball players from the 1880s until 1975. Despite some attempts by upstart leagues,<sup>3</sup> which loosened the control temporarily, the owners had always

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1. Basic Agreement of February 19, 1968. CHARLES P. KORR, *THE END OF BASEBALL AS WE KNEW IT: THE PLAYERS UNION, 1960–81* (2002). Korr discusses the Mexico City meeting on page sixty-nine. Korr quotes a letter from American League President Joe Cronin to Marvin Miller on February 25, 1968, hoping for “mutual cooperation” on page sixty-eight.
2. Professional Baseball Clubs, 66 LAB. ARB. REP. (BNA) 101 (1975) (Seitz, Arb.).
3. Perhaps the most dramatic nineteenth century attempt was the Players League of 1890. The league was the outgrowth of the Brotherhood of Professional Base-Ball Players and included the majority of the stars of the era. In particular, John Montgomery Ward served as a leader of the group, which

prevailed in returning the highest level of the game to their advantage. During this remarkable eight year period in the late 1960s and early 1970s, a dizzying array of events all contributed to creating the foundation for a historic arbitration decision by Peter Seitz.

Major League Baseball players today largely fall into three categories when determining their salary and their employer: (1) those who enjoy the rights of free agency; (2) those who can use a system of salary arbitration to determine their salaries; and (3) those who are not yet eligible for salary arbitration and possess nearly no ability to move their salary above the negotiated minimum reached during the collective bargaining process between Major League Baseball and the Players Association. This is basically the same system produced through collective bargaining after Seitz's decision.

The ultimate change in baseball's nearly century old reserve system was established through an arbitration system created during this tumultuous eight-year period and used effectively by the Players Association. To test the "reserve clause" in this manner required a player to complete one full season under the renewed period and to carry the issue through a hearing to a decision. This process started with a decision by Al Downing in 1969 to

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was considered the first sports labor union. For a detailed biographical study of Ward, see BRYAN DiSALVATORE, *A CLEVER BASE-BALLIST: THE LIFE AND TIMES OF JOHN MONTGOMERY WARD* (1999) and DAVID STEVENS, *BASEBALL'S RADICAL FOR ALL SEASONS: A BIOGRAPHY OF JOHN MONTGOMERY WARD* (1998). For a discussion of the Players League in these two sources, see DiSALVATORE, *supra* at 269–321, and STEVENS, *supra* at 97–144. At the completion of the 1890 season, the National League merged its franchises in Brooklyn, Chicago, New York, and Pittsburgh with its Players League counterparts. The Boston and Philadelphia franchises in the Players League joined the other "major league" American Association. However, the American Association, launched in 1882 and often called the Beer and Whiskey League because of its Sunday games, sale of alcohol at American Association stadiums, and the ownership interests of brewers would only last through the 1891 season. For a detailed discussion of the American Association, see DAVID NEMEC, *THE BEER & WHISKEY LEAGUE: THE ILLUSTRATED HISTORY OF THE AMERICAN ASSOCIATION – BASEBALL'S RENEGADE MAJOR LEAGUE* (rev. ed. 2004). The reserve clause, only a bit over ten years old in 1891, was strengthened as a result with only the National League left standing as a major league for the remainder of the last decade of the nineteenth century.

The American League, under the leadership of Ban Johnson, who transformed his Western League into the American League in 1900, operated without a reserve clause and openly raided National League rosters until it forced the older league into recognizing the American League as a major league enterprise with the Peace Agreement of 1903. For a recent study of this critical period in baseball history, see WARREN N. WILBERT, *THE ARRIVAL OF THE AMERICAN LEAGUE: BAN JOHNSON AND THE 1901 CHALLENGE OF THE NATIONAL LEAGUE MONOPOLY* (2007). For an excellent biography on Johnson, see EUGENE C. MURDOCK, *BAN JOHNSON: CZAR OF BASEBALL* (1982).

The Federal League operated in 1914 and 1915 before a peace agreement resulted in the end of the league and the initial case that created baseball's antitrust exemption. For a recent study of the Federal League, see ROBERT PEYTON WIGGINS, *THE FEDERAL LEAGUE OF BASE BALL CLUBS: THE HISTORY OF AN OUTLAW MAJOR LEAGUE, 1914–1915* (2008). An earlier study of interest is MARC OKKONEN, *THE FEDERAL LEAGUE OF 1914–1915: BASEBALL'S MAJOR LEAGUE* (1989).

report to training camp without signing a new contract. Interestingly, the New York Yankees agreed to proceed with this arrangement and let Downing participate in spring training. The next major step occurred in 1972, and the protagonist was Ted Simmons. The young star of the Cardinals used a hot start to force the St. Louis management to resolve his contract dispute during the All-Star break. These two efforts were bracketed by Curt Flood's decision to contest his trade from the Cardinals to the Phillies resulting in a Supreme Court decision maintaining organized baseball's antitrust exemption.<sup>4</sup> The final stage prior to the McNally-Messersmith arbitration decision spanned from 1973 to 1975. During that three year period, more than twenty players forced owners and general managers to renew their contracts when negotiations for the upcoming season broke down. Although many of these players were using the system for personal goals and not to bring a change to free agency, their stories are an important part of understanding how the Players Association developed its winning strategy. Some players were simply released or traded as a reward for their behavior. Some were fighting injuries or diminished abilities that effectively ended their careers and in the case of Tommy John, recovering from a surgical procedure that was also revolutionary.

The purpose of this article is to explore those stories and to place them in the context of other events during this dramatic period. Major League Baseball owners could have prevented Seitz from writing and delivering the McNally-Messersmith decision by agreeing to a modification of the reserve system through collective bargaining. The owners chose not to do so. Perhaps this refusal to deal with the Players Association over this issue was simply the hubris of the team owners, a group that had nearly always defeated players in labor-management struggles in the past. Perhaps the owners felt they had created sufficient safeguards that could withstand scrutiny by an arbitration panel or the judiciary. However, the cumulative results of the many major and minor decisions made by both sides during this dramatic period provided the Players Association with the necessary components to construct a successful strategy to attack the owner's most precious system of player restraints. The creation of a limited form of free agency also reduced the restraints that protected owners from each other in the pursuit of on-field talent at significantly higher salaries.

Part I of this article will provide a brief discussion of the creation of the reserve system during the nineteenth century. Part II begins with a description of the three-year period of 1965 to 1968 that was a prelude to the main focus

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4. Flood v. Kuhn, 407 U.S. 258 (1972).

of the article. Part III describes the important contribution of Al Downing to this narrative. Part IV discusses events of 1969 to 1972 including the significance of Ted Simmons's contractual dispute with the Cardinals. Part V recounts the stories of over twenty players who began the 1973 through 1975 seasons without signing new contracts. Although all of these players, except Dave McNally and Andy Messersmith, ultimately reached an agreement or disappeared from Major League Baseball, their collective efforts added layers to the foundation that formed the Players Association's winning strategy over the owners.

## II. THE CREATION OF THE RESERVE CLAUSE

The reserve system in baseball was a creation of owners seeking to eliminate or reduce labor problems during the infancy of the professional game. James "Orator" O'Rourke, who would be inducted into the National Baseball Hall of Fame in 1945, sparked a controversy with Boston owner Arthur Soden in 1879 after the owner refused to honor his promise to pay for O'Rourke's uniform.<sup>5</sup> O'Rourke bolted to the Providence Grays, helping them to capture the National League championship.<sup>6</sup> He would return to the Boston Red Caps in 1880.<sup>7</sup> On September 29, 1879 Soden successfully convinced his fellow owners at a meeting in Buffalo, New York to create a system that secretly removed five of their players from the open market.<sup>8</sup> Harold

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5. LEE LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS* 41 (1991). HAROLD KAESE, *THE BOSTON BRAVES: 1871-1953*, 29 (1948). As described by Kaese, the Boston club "taxed" its players \$20.00 per season for their uniforms. Kaese's opinion underscores the prevailing atmosphere for so many years about the reserve clause. He ridicules "today's Lincolns" for characterizing the reserve system as "an enslavement device." "In their eyes, Arthur H. Soden fought in the Civil War to free the Negro, then turned around and sold the white man into baseball bondage." KAESE, *supra* at 29-30. He finalizes his praise in the following words: "Soden's reserve rule should be known as Soden's Stabilizer, for that is what it proved to be for organized professional baseball. It was the first of several major contributions by Boston's number-one Triumvir to the game he served so well." KAESE, *supra* at 30.
  6. KAESE, *supra* note 5, at 29.
  7. *Id.* at 30. The team was also called the Reds. The Boston Red Stockings were incorporated on January 20, 1871, by Ivers Whitney Adams for \$15,000. With the backing of Harry Wright, the founder and manager of the Cincinnati Red Stockings in 1869 (the team dissolved in 1870), the team became a charter member of the National Association of Professional Baseball Players in March. The team was National Association champions from 1872-1875 and National League champions in 1877 and 1878 before the team shake-up allowed Providence to capture the crown in 1879. See AtlantaBraves.com, *The Story of the Braves*, [http://atlanta.braves.mlb.com/at/history/story\\_of\\_the\\_braves.jsp](http://atlanta.braves.mlb.com/at/history/story_of_the_braves.jsp) (last visited Apr. 18, 2010).
  8. HAROLD SEYMOUR, *BASEBALL: THE EARLY YEARS* 108 (1960). Seymour's account does not specifically mention Soden. Al Kermisch does discuss Soden's role in his short piece that was published in the *Baseball Research Journal*, the flagship journal of the Society for American Baseball

Seymour, in his classic work *Baseball: The Early Years*, observed: “It is interesting that at first reserved players took pride in being set apart from their teammates, and President Hulbert maintained that there was no feeling against the reserve . . . [O]n the contrary, they are anxious to be reserved and their only fear is that they won’t be.”<sup>9</sup> When the American Association reached an accord with the National League in 1883 that recognized both as major leagues,<sup>10</sup> the owners agreed to abide by the reserve system and expanded the number of players covered to eleven.<sup>11</sup> By 1887 the number of reserved players had reached fourteen.<sup>12</sup> Although the reserve designation was not originally written into the contract between the player and owner, in 1887 a representative group of players led by John Montgomery Ward prevailed upon owners to memorialize the relationship in writing.<sup>13</sup>

The traces of the owners’ later claims to the perpetual nature of the reserve system also involve the year 1887. Jim McCormick, a highly successful ten year veteran, endured his worst pitching season in 1887 for the sixth-placed Pittsburg Alleghenys after being either sold or traded from the two-time pennant winning Chicago White Stockings.<sup>14</sup> After McCormick

Research. Al Kermisch, *From A Researcher’s Note Book: First Reserve Clause Enacted 100 Years Ago*, 8 *BASEBALL RESEARCH JOURNAL* 8, 9–10 (1979). The meeting at the Palace Hotel in Buffalo included William A. Hulbert, National League President, and Nicholas E. Young, National League Secretary, and owners J. Ford Evans (Cleveland), T. Gardner Earl and C. L. Deforest (Troy), Henry J. Root (Providence), John B. Sage (Buffalo), Arthur H. Soden (Boston). Hulbert represented the interests of both the Chicago and Cincinnati teams. Kermisch, *supra* at 9. Kermisch is cited by Stew Thornley, *The Demise of the Reserve Clause: The Players’ Path to Freedom*, 35 *BASEBALL RESEARCH JOURNAL* 115, 123 n.1 (2006). ANDREW ZIMBALIST, *BASEBALL AND BILLIONS: A PROBING LOOK INSIDE THE BIG BUSINESS OF OUR NATIONAL PASTIME* 4 (1992) (citing Lowenfish concerning the Buffalo meeting). See LOWENFISH, *supra* note 5, at 18.

9. SEYMOUR, *supra* note 8, at 108.

10. ZIMBALIST, *supra* note 8; C. Paul Rogers III, *Judicial Reinterpretation of Statutes: The Example of Baseball and the Antitrust Laws*, 14 *HOUS. L. REV.* 611, 613 (1977).

11. SEYMOUR, *supra* note 8, at 108–09; MICHAEL CANES, *THE SOCIAL BENEFIT OF TEAM QUALITY, GOVERNMENT AND THE SPORTS BUSINESS* 84 (Roger Noll ed., Brookings Institution 1974):

The reserve system was secretly adopted in 1879 and first used in sports by the National League in 1880. At the time the system applied to the contracts of five players per team; in 1883, the number was raised to eleven, in 1885 to twelve, and in 1887 to fourteen.

12. Seymour stated in his chapter on the reserve clause that the number of reserved players was increased to twelve in 1886 and to fourteen in 1887. SEYMOUR, *supra* note 8, at 109.

13. *Id.*

14. Jim McCormick was born in Glasgow, Scotland, and was the first Scottish-born player to appear in the major leagues. McCormick started thirty-six games for Pittsburgh, his lowest total since his rookie year with Indianapolis Blues in 1878. McCormick led the National League in wins twice for Cleveland (forty-eight in 1880 and thirty-six in 1882). After a nineteen and twenty-two season (19–22) season for Cleveland in 1884, he moved to Cincinnati in the Union League and won twenty-one of twenty-four decisions. He moved back to Providence briefly at the beginning of the 1885 season before moving to Chicago where he was twenty and four (20–4). In 1886, McCormick was

refused to sign his contract for the following year hoping to regain his productiveness for a different team, Pittsburg prevented the move by reserving him in 1888 and for years thereafter.<sup>15</sup> Providence was able to keep catcher Michael Hines out of the game for multiple years before he relented.<sup>16</sup> Thomas “Pat” Deasley attempted an innovative technique with St. Louis of the American Association. In 1884, he signed on the condition that he not be reserved for 1885.<sup>17</sup> When he attempted to enforce the agreement, the American Association declared that it was “not legal.”<sup>18</sup>

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thirty and eleven (31–11) for Cap Anson’s Chicago White Stockings. Chicago was ninety and thirty-four (90–34) before losing in the World Series to Charlie Comiskey’s St. Louis Browns of the American Association, four to two (4–2). Robert Burk observed “[a]s noted earlier, the sales of star Mike Kelly and teammate Jim McCormick resulted directly from the owner’s conviction that their and other players’ failure to uphold NL prestige in losing to the American Association Browns resulted from their dissipation.” ROBERT F. BURK, NEVER JUST A GAME: PLAYERS, OWNERS, AND AMERICAN BASEBALL TO 1920 90 (1994). The campaign against drinking is also covered in BENJAMIN G. RADER, BASEBALL: A HISTORY OF AMERICA’S GAME 66 (2002): “Whether driven by anger over player drinking or by lucrative deals offered by other clubs, Spalding proceeded to sell or trade away his entire outfield, which included [King] Kelly, as well as his star pitchers, Jim McCormick and John Clarkson.” According to Baseball-Reference.com, McCormick was traded on April 21, 1887, for George Van Haltren and \$2,000. Baseball-Reference.com, Jim McCormick Statistics and History, <http://www.baseball-reference.com/players/m/mccorji01.shtml> (last visited Apr. 18, 2010).

15. SEYMOUR, *supra* note 8, at 109. BURK, *supra* note 14, at 100 (citing WARREN GOLDSTEIN, PLAYING FOR KEEPS: A HISTORY OF EARLY BASE BALL 115–119 (1991)).
16. SEYMOUR, *supra* note 8, at 109. Mike Hines was born in Ireland in 1862. Seymour stated that he was kept out of the major leagues for two seasons. A check of Baseball-Reference.com shows that he did not play in the major leagues for three consecutive seasons (1886–1888). He hit only .225 and .174 for Boston (NL) in 1883 and 1884, respectively. He split the 1885 season between Boston (fourteen games), Brooklyn in the American Association (three games), and Providence (NL - one game). He finally reappeared in four games for Boston (NL) in 1888, and Hines completed his career with a .202 batting average. Baseball-Reference.com, Pat Deasley Statistics and History, <http://www.baseball-reference.com/players/d/deaslpa01.shtml> (last visited Apr. 12, 2010).
17. SEYMOUR, *supra* note 8, at 109.
18. *Id.* Thomas H. “Pat” Deasley, another native of Ireland, was born in 1857. Deasley Played in the National League and the American Association from 1881–1888. His stops included Boston (NL), St. Louis (AA), the New York Giants (NL), and Washington (NL). He shared catching duties with Connie Mack for the Senators in 1888. One of their teammates was the hitting star for Washington Dummy Hoy. In St. Louis Deasley quarreled with another catcher, Thomas Dolan, who was miffed that Deasley received a higher salary. Dolan went to the press to attack Deasley. Deasley published a retort in an article in *Sporting Life* claiming that Dolan’s “assertions concerning Deasley’s drinking and their salary dispute [were] a pack of lies.” J. THOMAS HETRICK, CHRIS VON DER AHE AND THE ST. LOUIS BROWNS 31 (1999). Deasley’s colorful times in St. Louis were numbered. In 1884, Von der Ahe and captain Comiskey made some crucial adjustments to revamp the Browns. Among them was the release of deadwood. Catcher Pat Deasley, whom Von der Ahe viewed as a troublemaker, was dispatched to New York for \$400. *Id.* at 34. However, Deasley moved to a better team in New York where he played with Jim O’Rourke, Buck Ewing (Hall of Fame - 1939), Roger Connor (Hall of Fame - 1976), 300-game winner Tim Keefe (Hall of Fame - 1964), John Montgomery Ward (Hall of Fame - 1964), and 300-game winner Smiling Mickey Welch (Hall of Fame - 1973) on the 1885 team. Baseball-Reference.com lists Deasley as being released by St. Louis on December 16, 1884,

The unrest over the reserve clause prompted John Montgomery Ward, who received his law degree from Columbia University in 1887, to write *Is the Base-Ball Player a Chattel?* for *Lippincott's Magazine* during the same year.<sup>19</sup> In his introductory paragraph, Ward observed:

I will show that there has been a complete departure from its original intent, and in consequence a total change in its effect; that abuse after abuse has been fastened upon it, until, instead of being used to the ends for which it was formed, it has become a mere pretence for the practice of wrong.<sup>20</sup>

Ward's power of persuasion worked well with his fellow players who launched the Players League later that decade.<sup>21</sup> By 1891, however, the National League stood triumphant after beating back the challenges of the American Association, Union League, and Players League.<sup>22</sup> The reserve clause was solidified. Despite attacks by the American League and Federal League in the early twentieth century, the system of player constraints that embodied the reserve system effectively controlled player movement and salaries for the next seventy-five years.

### III. THE PRELUDE: THE HIRING OF MARVIN MILLER HIGHLIGHTS 1965 TO 1968

Near the end of 1965 three prominent major league baseball players, Jim Bunning, Harvey Kuenn, and Robin Roberts interviewed Marvin Miller, a sixteen year veteran labor man who was the assistant to the president and chief economist of the Steelworkers Union, for the position of Executive Director

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and he was signed by New York on the same day. Pat Deasley Statistics and History, *supra* note 16.

The American Association and the National League were consolidated at a joint meeting in Indianapolis on December 18, 1891. An attempt to fashion a new National Agreement was stymied by King Kelly's decision on August 25, 1891, to jump from the AA Cincinnati franchise to the NL Boston Beaneaters. See LEONARD KOPPETT, *KOPPETT'S CONCISE HISTORY OF MAJOR LEAGUE BASEBALL* 65 (1998); NEMEC, *supra* note 3, at 9; BENJAMIN G. RADER, *BASEBALL: A HISTORY OF AMERICA'S GAME* 69 (2008).

19. John Montgomery Ward, *Is the Base-Ball Player a Chattel?*, *LIPPINCOTT'S MAGAZINE*, Aug. 1887, at 310, reprinted in DEAN A. SULLIVAN, *EARLY INNINGS: A DOCUMENTARY HISTORY OF BASEBALL, 1825-1908*, 161 (1995).

20. SULLIVAN, *supra* note 19, at 162.

21. See DI SALVATORE, *supra* note 3, at 269-94; DAVID STEVENS, *BASEBALL'S RADICAL FOR ALL SEASONS: A BIOGRAPHY OF JOHN MONTGOMERY WARD* 97-115 (1998).

22. SEYMOUR, *supra* note 8, at 265-66.

of the Players Association.<sup>23</sup> After three hours of talking with the trio, Miller left the meeting certain that he would not be hired because Roberts declared that Richard Nixon was in line to become general counsel.<sup>24</sup> The committee initially settled on Milwaukee circuit court judge Robert Cannon.<sup>25</sup> Cannon pushed for additional concessions, however, which aggravated a number of player representatives; the committee, therefore, returned to Miller.<sup>26</sup> Ultimately, Miller agreed to allow the Players Association to submit his name to the membership for a vote; but first, he needed to hustle down to spring training to meet the players.<sup>27</sup> One event during spring training that year generated a good bit of attention from the media and presumably some players: the holdout of Dodgers pitching greats Don Drysdale and Sandy Koufax.<sup>28</sup> The holdout created enough of a stir among owners that it would play a role in the creation of salary arbitration and collusion language during this period.<sup>29</sup> After a successful election, Miller assumed his position with the Players Association on July 1, 1966.<sup>30</sup>

One of Miller's first challenges was to find a method to fund the Players Association while waiting for a dues system to be implemented. Miller negotiated a licensing deal with Coca-Cola, which netted the fledgling organization a two-year, \$60,000 deal that provided enough revenue to carry the Players Association through the 1966/1967 off-season.<sup>31</sup>

In November 1967 the owners met in Mexico City for the winter meetings.<sup>32</sup> When the Players Association arrived seeking an increase in the minimum salary from \$7000 to \$12,000 the owners did not treat the players well, and the contentious relationship established at that meeting still exists

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23. MARVIN MILLER, *A WHOLE DIFFERENT BALLGAME: THE SPORT AND BUSINESS OF BASEBALL* 3–4, 11 (1991). The fourth member of the screening committee was Bob Friend. He was not at the Cleveland interview. *Id.* at 7.

24. *Id.* at 3–10.

25. Miller paraphrased Will Rogers in his book as describing Cannon as a man who “never met an owner he didn’t like.” *Id.* at 6.

26. *Id.* at 34.

27. *Id.* at 35.

28. See Ed Edmonds, *The Great Dodgers Pitching Tandem Strikes a Blow for Salaries: The 1966 Drysdale-Koufax Holdout and Its Impact on the Game*, in *THE COOPERSTOWN SYMPOSIUM ON BASEBALL AND AMERICAN CULTURE 2007–2008*, 248 (William M. Simons ed., 2009). See also MILLER, *supra* note 23, at 47–48.

29. ROGER ABRAMS, *THE MONEY PITCH: BASEBALL FREE AGENCY AND SALARY ARBITRATION* 28 (2000).

30. MILLER, *supra* note 23, at 143.

31. *Id.* at 147–48.

32. KORR, *supra* note 1, at 69.

today.<sup>33</sup> Probably the most significant outcome of the 1967/1968 off-season was the establishment of the Players Association as the recognized bargaining representative.<sup>34</sup> The second major gain for the players was a grievance procedure established in Article IV of the Basic Agreement.<sup>35</sup> Although the procedure maintained a place for baseball's commissioner, it introduced a neutral arbitrator into the process.<sup>36</sup> New language was "incorporated into the uniform player contract" altering the previous statement: "In case of dispute between the Player and the Club, the same shall be referred to the Commissioner *as an arbitrator, and his decision shall be accepted by all parties as final.*"<sup>37</sup> This alteration in the basic structure of the relationship between players and ownership would be critical in laying the foundation for testing the longstanding use of the reserve system.<sup>38</sup>

#### IV. AL DOWNING CHARTS A NEW COURSE IN 1969<sup>39</sup>

Against this backdrop of emerging union activism, individual players began to test the limits of owners and the reserve clause. A group of star players seeking approximately \$100,000 or more were brief holdouts. Frank

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33. *Id.* at 70. For the twenty year period prior to 1967, the minimum salary had moved from its 1947 figure of \$5,000 to \$6,000 by a rule change implemented by the owners. MILLER, *supra* note 23, at 95. Although the Players Association failed to hit their target in Mexico City, they were able to move the minimum for 1968–1969 to \$10,000. By 1970, it was pushed to \$12,000. In 1971, it was \$12,750; in 1972 it increased to \$13,500; it was \$15,000 in both 1973 and 1974. It rose another \$1,000 in 1975 to \$16,000 and jumped to \$19,000 in 1976 and 1977. See Ronald Blum, *Salaries Soared According to Annual Survey*, USA TODAY, Dec. 21, 2000.
34. Basic Agreement of February 19, 1968. KORR, *supra* note 1, at 69. Korr quotes a letter from American League President Joe Cronin to Marvin Miller on February 25, 1968, hoping for "mutual cooperation." *Id.* at 68. When Joe Torre expressed his displeasure to Paul Richards, his general manager with the Atlanta Braves, he was traded to the St. Louis Cardinals. Korr provides a list of the components of the agreement. *Id.* at 71.
35. KORR, *supra* note 1, at 71. "The parties have adopted a Grievance Procedure, the purpose of which is to set forth an orderly and expeditious system for the handling and resolving of grievances." *Id.* at n.11 (citing Basic Agreement Feb. 19, 1968 at 3 and Schedule C, 18–19 at 276). In the 1970 Basic Agreement, the procedure would be moved to Article X. The preface reads: "For the purpose of providing an orderly and expeditious procedure for the handling and resolving of grievances and complaints, as hereinafter provided, the following shall apply as the exclusive remedy of the Parties."
36. The initial arbitrator was Lewis Gill of Philadelphia (1970–1972), and he was followed by Gabriel Alexander (1972–1974). The third, and perhaps most significant, was Peter Seitz of New York. LOWENFISH, *supra* note 5, at 211. Lee Lowenfisch classifies Seitz as "the most historic arbitrator." *Id.*
37. KORR, *supra* note 1, at 72 (citing Basic Agreement of Feb. 19, 1968, at 18) (emphasis added).
38. *Id.* at 73.
39. Al Downing is probably best known to current fans as the hurler who surrendered to Hank Aaron a blast into the Atlanta Braves' bullpen to pass Babe Ruth's career home run record of 714. LOWENFISH, *supra* note 5, at 218–19.

Howard and Juan Marichal were successful in their negotiations, but Curt Flood, Willie Horton, and Pete Rose settled for less.<sup>40</sup> Joe Torre's holdout with the Atlanta Braves was based upon General Manager Paul Richards's desire to impose the maximum twenty percent cut.<sup>41</sup> Torre wanted to keep his \$65,000 salary.<sup>42</sup> This impasse netted a typical response from the general manager. Richards traded Torre to the Cardinals for Orlando Cepeda.<sup>43</sup>

Al Downing began his major league career with the New York Yankees with two late-season stints in 1961 and 1962.<sup>44</sup> His first serious contribution came during an impressive 1963 season.<sup>45</sup> Over the next four seasons, Downing turned in 200 or more innings pitched per year with a win-loss record of forty-nine wins and forty-three losses (49–43), a .533 winning percentage.<sup>46</sup> Normally such a record for the Yankees would not be cause for

40. Dick Couch, *Stray Redbirds Return*, Ocala Star-Banner, Mar. 4, 1969, at 5. *It's Roundup Time for the Cardinals*, Toledo Blade, Mar. 3, 1969, at 29. *Mays Signs A Giant Pact*, St. Petersburg Times, Mar. 1, 1969, at 2-C. (Howard was supposedly seeking a three-year deal at \$100,000 per year). *Howard of Senators Signs for \$100,000; Howard Accepts Pact for \$100,000*, N.Y. Times, March 16, 1969, at S1. (Putting Howard's request at \$330,000 for three years before reducing the request to \$125,000 for the 1969 season). Rose reached a deal on March 6 for an estimated \$85,000 pushing the point that he wanted to be the first "singles hitter" to earn \$100,000. *Reds Sign Rose For Record Pact, Batting Champion's Salary Highest Paid By Club*, N.Y. Times, Mar. 7, 1969, at 40. (This article puts Rose's request at \$85,000–\$90,000). Horton settled for \$60,000 instead of his asking price of \$100,000. Vito Stellino, *Williams' Nats Lose First Exhibition Tilt*, Bryan Times (Ohio), Mar. 7, 1969, at 8. *Marichal Signs for \$115,000*, N.Y. Times, Mar. 16, 1969, at S3. *Horton Still Holds Out*, N.Y. Times, Mar. 4, 1969, at 49. *Flood Short of Goal*, N.Y. Times, Mar. 4, 1969, at 49. (Flood listed in article as signing for approximately \$88,000. The figure was actually \$90,000).
41. Torre missed part of the 1968 season when he was hit in the face by a pitch. Chuck Hartenstein of the Chicago Cubs hit Joe Torre in the eighth inning of a five to three (5–3) Atlanta victory over Chicago on April 18. Torre did not play again until May 19. Richard Dozer, *Braves Beat Cubs; Score Three in Ninth For 5–3 Victory; F. Alou Blast 2 Home Runs*, CHI. TRIB., Apr. 19, 1968, at C1. *Didn't Want to Injure Torre–Hartenstein*, CHI. TRIB., Apr. 19, 1968, at C2. Tim Kukjian, *Who's On First, Joe? The Cardinals' Joe Torre, Like Other Managers, Finds Replacement Players to Be Excess Baggage*, SPORTS ILLUSTRATED, Mar. 6, 1995.
42. *Holdout Torre Traded to Cards for Cepeda; Braves Consummate Deal Because of Impasse Over Salary, Feud With General Manager Paul Richards*, L.A. TIMES, Mar. 18, 1969, at E1. ("Torre was reported seeking \$65,000 from the Braves—and an apology from Richards. The club had offered \$58,000 originally and came up to \$60,000, but there was never an indication that Richards would apologize."). Joseph Durso, *Braves Send Torre to Cardinals in Exchange for Cepeda; Atlanta Catcher in Feud With Club*, N.Y. TIMES, Mar. 18, 1969, at 52. ("Richards further offered to cut Torre's pay from \$65,000 and the use of a Cadillac to \$60,000 and no Cadillac. Torre refused, insisted on an apology and no cut in pay, and the trade talk sprouted.")
43. Durso, *supra* note 42.
44. Baseball-Reference.com, Al Downing Statistics and History, <http://www.baseball-reference.com/players/d/downial01.shtml> (last visited Apr. 12, 2010).
45. Downing started 22 games with a solid 2.56 ERA, a thirteen and five (13–5) won-lost record, and 171 strikeouts in 175 2/3 innings. *Id.*
46. *Id.*

celebration but after the 1963 and 1964 World Series losses to the Dodgers and Cardinals, the Yankees finished above .500 only once from 1965 to 1969.<sup>47</sup>

Downing's 1968 season, however, was marred by injuries, and Downing pitched in only fifteen games (twelve starts) with a three and three (3–3) record and a 3.52 ERA.<sup>48</sup> Throughout his career Downing had willingly signed each contract the Yankees offered him.<sup>49</sup> Under baseball's long-established penalty-reward system, a great season by a player would produce a modest salary increase offer from the team.<sup>50</sup> After any season where performance dipped even slightly, however, the owner would significantly reduce the salary offer to the player.<sup>51</sup> Lee MacPhail and the Yankees responded in the traditional manner by cutting Downing's salary in the contract offer for 1969.<sup>52</sup> The displeased pitcher telephoned Miller before spring training opened in early March to seek advice about any possible option beyond simply accepting his financial fate.<sup>53</sup> Miller argued in his book, *A Whole Different Ballgame*, that the interplay between Downing and MacPhail "told [him] that the owners were not quite so confident of their interpretation of the reserve clause as they made it seem. If nothing else, the owners were wary of testing Paragraph 10(a)."<sup>54</sup> Paragraphs 10(a) and 3(c)(1) of the standard player contract were the two main features of the reserve system, and the entire system was considered by owners to be an iron-clad method of perpetual control of players.<sup>55</sup> The first move towards changing this view was

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47. Baseball Reference.com, New York Yankees Team History and Encyclopedia, <http://www.baseball-reference.com/teams/NYY/> (last visited Apr. 12, 2010).

48. Al Downing Statistics and History, *supra* note 44.

49. KORR, *supra* note 1, at 132.

50. STEPHEN R. FOX, *BIG MONEY: PROFESSIONAL BASEBALL, FOOTBALL, AND BASKETBALL IN NATIONAL MEMORY* 419–20 (1994).

51. *Id.*

52. *Downing Spurs Yankees Offer: Club Threatens to Reduce Pitcher's Pay Further*, N.Y. TIMES, Mar. 5, 1969, at 52.

53. Korrr quotes Downing from an interview on March 26, 1961: "stars would protect the little guys [and] Miller looked like he had credibility. KORR, *supra* note 1, at 132.

54. MILLER, *supra* note 23, at 240. *See also* statement in KORR, *supra* note 1, at 132–33.

55. Baseball's reserve clause has long been considered perpetual in nature due to the requirement that a player could not appear in a Major League spring training camp or regular season game without signing a new contract with a new renewal clause. Most authors address the nature of the perpetual argument without specific reference to paragraphs 10(a) and 3(c)(1). For a discussion of the concept of the perpetual nature of the reserve system, see LOWENFISH, *supra* note 5, at 15–16, 219–20; JOHN HELYAR, *LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL* 34–36 (1994) (Helyar relates the reaction of Marvin Miller, John Gaherin, chief negotiator for the Player Relations Committee, and National League counsel Lou Carroll when they read Rule 10(a). None of the three accepted the conventional wisdom about the perpetual nature of the reserve clause); KORR, *supra* note 1, at 133 (citing Helyar's discussion). *See also* LEE LOWENFISH, *BRANCH RICKEY: BASEBALL'S FEROCIOUS*

struck by Downing, who decided to head to Florida without signing a deal that would cut his compensation.<sup>56</sup>

As Miller remembered in *A Whole Different Ballgame*:

Downing became the first to play in spring training without a newly signed contract. When he arrived in camp, GM Lee MacPhail told Downing he couldn't play unless he signed a new contract—even though Downing readily acknowledged that he was already under contract for one additional season because the Yankees had renewed his contract from the prior year.<sup>57</sup>

Downing ended a brief holdout on March 17, 1969 and reported to the Yankees' Fort Lauderdale spring training complex.<sup>58</sup> In arriving four weeks late, Downing stated that he "might play all season without signing a contract."<sup>59</sup> George Vecsey, a writer for the *New York Times*, pointed out that such "a practice has not been admitted to in the major leagues."<sup>60</sup> At issue was Major League Rule 3(c)(1) which read: "No player shall participate in any championship game until he has signed a Uniform Contract for service during the current season."<sup>61</sup> MacPhail acknowledged that the team had invoked the reserve clause by the required March 10 deadline although he curiously acknowledged to Vecsey "that other players in the past had actually played a season without signing contracts" although he refused to "be too specific."<sup>62</sup> For his part, Downing told Vecsey that "[l]egally I'm signed[,] . . . I'm no rebel. I'm no guinea pig. I'm not playing out my option. I can't. All I can do is get ready and pitch."<sup>63</sup> When pressed by Vecsey, Downing specifically stated that he was not seeking to become a free agent.<sup>64</sup> Although Downing claimed that his move was not radical, the response by the Yankees was. Not enforcing Rule 3(c)(1) was critical to establishing the ability of a player to come to spring training and play into, and ultimately throughout, the season. If the owners and general managers had not altered

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GENTLEMAN 547 (2007); ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* 54 (1998); ABRAMS, *supra* note 29, at 29–30; JAMES P. QUIRK & RODNEY D. FORT, *PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS* 192–93 (1992).

56. George Vecsey, *Yankees to Let Downing Pitch Without Signing '69 Contract*, N.Y. TIMES, Mar. 18, 1969, at 52.

57. MILLER, *supra* note 20, at 240.

58. Vecsey, *supra* note 56.

59. *Id.*

60. *Id.*

61. HELYAR, *supra* note 55, at 123. ("It forbade players to suit up if they hadn't signed a contract.")

62. Vecsey, *supra* note 56.

63. *Id.*

64. *Id.*

their customary practice, the possibility of testing the reserve system through the arbitration process that Miller would win through tough negotiation would have required a player to actually not play during the second (or renewed) season of the contract. To forego the salary and the opportunity to play in exchange for the possibility of changing the reserve system was not a truly appealing option to any player.

Downing was further quoted in Vecsey's article as stating that he received a letter from the Yankees noting the possibility of a twenty-five percent cut under section 10.<sup>65</sup> Vecsey correctly wrote that the rule would allow only a twenty percent reduction meaning that the Yankees' offer of a \$3000 cut exceeded the maximum allowable if Downing played throughout the season without signing.<sup>66</sup>

After pitching only three innings in spring training while still refusing to budge regarding the Yankees' offer, New York dispatched Downing to their AAA farm team Syracuse on March 31.<sup>67</sup> Syracuse was scheduled to break camp from the minor league facility in Hollywood, Florida on April 13, play three exhibition games in Lakeland, and then proceed to Richmond, Virginia to open the season on April 18.<sup>68</sup>

Downing finally agreed to sign a conditional contract with the Yankees on April 20.<sup>69</sup> The pitcher was allowed to work out with the major league team while still on the Syracuse roster.<sup>70</sup> If the Yankees were satisfied with his performance, they could promote him to their roster and pay him the same

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65. *Id.*

66. \$26,000 is eighty percent of \$32,500.

67. Steve Cady, *Yanks' Downing Sent To Syracuse; Roster Reduced to 26 Men as 10 Players Are Cut*, N.Y. TIMES, Apr. 1, 1969, at 56, col. 6.

68. *Id.*

69. *Downing Signs Contract Based on Arm Condition*, N.Y. TIMES, Apr. 21, 1969, at 60. The *New York Times* article is at odds slightly with Helyar's statement in *Lords of the Realm*: "Given that bleak analysis, and the fact that he needed to get in shape, Downing signed and reported." HELYAR, *supra*, note 55, at 124. Korr discussed Downing's lack of leverage:

Downing was not important enough to the New York pitching staff to warrant any special attention. The Yankees would do what was best for them. Downing had to look out for himself. Near the end of spring training, he and his agent came to an agreement with the Yankees that was supposed to satisfy both sides, but in his words, 'I was in the dog house the rest of the year.'

KORR, *supra* note 1, at 133. Joseph G. Preston discussed Downing, Simmons, and Lyle in chapter 15, "Messersmith and McNally: The Guys Who Fought the Law and Won." JOSEPH G. PRESTON, MAJOR LEAGUE BASEBALL AND THE 1970S: A MODERN GAME EMERGES 123 (2004). "Downing signed a slightly enhanced deal a few days later and was traded at season's end." *Id.* at 340 n.4.

70. Cady, *supra* note 67.

amount as 1968.<sup>71</sup> If he stayed in the minors his salary would drop twelve percent.<sup>72</sup>

The Yankees opened the season on April 7 against the Washington Senators with Mel Stottlemyre defeating Camilo Pascual.<sup>73</sup> Nearly three weeks later, Downing made his first appearance of the season against the Baltimore Orioles surrendering three runs on five hits in two innings of relief for Stan Bahnsen, a player who will figure prominently in this saga but not until a few years later.<sup>74</sup> Downing pitched in relief in five more games before starting for the first time on May 12 against the Seattle Pilots.<sup>75</sup> Despite pitching with an early two run lead, Downing could not find the strike zone, and he failed to retire the five batters he faced in Seattle's seven-run first inning.<sup>76</sup> Downing would not pitch again until May 28 against the White Sox when he came in to relieve in the fifth inning of a two-to-two (2-2) game.<sup>77</sup> Again, he was ineffective.<sup>78</sup> He picked up his second loss for his efforts.<sup>79</sup> He

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71. *Id.*

72. *Id.* (Cady's article states that the Yankees' cut was ten percent).

73. Over 45,000 fans witnessed the Bronx Bombers score eight runs in the first four innings. Retrosheet.org, Retrosheet Boxscore: New York Yankees 8, Washington Senators 4, <http://www.retrosheet.org/boxesetc/1969/B04070WS21969.htm> (last visited Apr. 12, 2010).

74. On April 27, Baltimore's Brooks Robinson greeted Downing in the Orioles fifth with a double. Mark Belanger followed with a double to right field that scored Brooks. After Mike Cueller popped up to shortstop, Don Buford lifted a fly ball to left field that was caught by Roy White for the second out. Frank Robinson singled to right driving in Blair, but Robinson was thrown out trying to stretch the hit into a double when right fielder Bill Robinson pegged the ball to shortstop Tom Tresh for the tag. The three runs increased the Orioles lead to 6-0, and the scoring was finished for the day. The Orioles seventh went much smoother for Downing. He was able to get Boog Powell to grounded out second to first, and Elrod Hendricks flew out to right. After Dave Johnson singled to left, Brooks Robinson flied out to right field to end the inning. Bobby Cox pinch hit for Downing, and Fred Talbot finished the game for the Yankees. Loser Bahnsen dropped to 0-5 as a result of the Yankees loss to Mike Cueller and the Birds. *Id.*

75. Baseball-Reference.com, Al Downing 1969 Pitching Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=downial01&t=p&year=1969> (last visited April 12, 2010). Baseball-Reference.com, May 12, 1969 New York Yankees at Seattle Pilots Box Score and Play by Play, <http://www.baseball-reference.com/boxes/SE1/SE1196905120.shtml> (last visited Apr. 12, 2010). See also Retrosheet.org, Retrosheet Boxscore: Seattle Pilots 8, New York Yankees - 4, <http://www.retrosheet.org/boxesetc/1969/B05120SE11969.htm> (last visited Apr. 12, 2010).

76. After a walk to Tommy Harper and a stolen base, Downing walked both Mike Hegan and Wayne Comer to load the bases. Tommy Davis knocked all of them home with a double to center field. Mike Kekich relieved Downing, but he was not effective either in finishing the inning. May 12, 1969 New York Yankees at Seattle Pilots Box Score, *supra* note 75.

77. Baseball Reference.com, May 28, 1969 New York Yankees at Chicago White Sox Box Score and Play by Play, <http://www.baseball-reference.com/boxes/CHA/CHA196905280.shtml> (last visited Apr. 12, 2010); Retrosheet.org, Retrosheet Boxscore: Chicago White Sox 7, New York Yankees 6, <http://www.retrosheet.org/boxesetc/1969/B05280CHA1969.htm> (last visited Apr. 12, 2010).

78. Downing allowed a single to Luis Aparicio, a walk to Carlos May, and a home run to Pete Ward before retiring three in a row. Ward's home run was the eighth consecutive man to reach base against Downing. May 28, 1969 New York Yankees at Chicago White Sox Box Score, *supra* note 77;

gained his first win of the season by hurling five innings of relief against the Kansas City Royals on June 1.<sup>80</sup> After six more relief efforts, he started again on July 13 in the second game of a doubleheader against the Washington Senators.<sup>81</sup> He lasted only three innings in a ten-to-one (10–1) loss.<sup>82</sup>

During August, however, Downing regained his form. He won four of five decisions in six starts including a shutout against Oakland on August 8.<sup>83</sup> Downing made eight more starts in September, winning two and losing one.<sup>84</sup> The final effort was not enough to make amends for Downing's earlier behavior. The Yankees responded in a time-honored way: they traded him to Oakland on December 5, 1969.<sup>85</sup>

As noted by author Charles Korr, “[a]fter the trade he resurrected his career. A test case on Rule 10(a) would have to wait for a player as determined as Downing; what was needed was a player who was either in the prime of an established career or on the verge of stardom.”<sup>86</sup> That resurrection did not come immediately, however. In 1970, Downing was a combined five and thirteen (5–13) for Oakland and the Milwaukee Brewers, after a trade on June 1.<sup>87</sup> After the season, Downing was traded to the Los Angeles Dodgers where he would have a career year posting a twenty and nine (20–9) campaign in 1971.<sup>88</sup> He pitched six more years for the Dodgers before being released on July 21, 1977.<sup>89</sup>

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Retrosheet Boxscore: Chicago White Sox 7, New York Yankees 6, *supra* note 77.

79. May 28, 1969 New York Yankees at Chicago White Sox Box Score, *supra* note 77; Retrosheet Boxscore: Chicago White Sox 7, New York Yankees 6, *supra* note 77.
80. Baseball Reference.com, June 1, 1969 New York Yankees at Kansas City Royals Box Score and Play by Play, <http://www.baseball-reference.com/boxes/KCA/KCA196906010.shtml> (last visited Apr. 12, 2010); Retrosheet.org, Retrosheet Boxscore: New York Yankees 8, Kansas City Royals 5, <http://www.retrosheet.org/boxesetc/1969/B06010KCA1969.htm> (last visited Apr. 12, 2010).
81. Al Downing 1969 Pitching Gamelogs, *supra* note 75.
82. Baseball Reference.com, July 13, 1969 New York Yankees at Washington Senators Box Score and Play by Play, <http://www.baseball-reference.com/boxes/WS2/WS2196907132.shtml> (last visited Apr. 12, 2010); Retrosheet.org, Retrosheet Boxscore: Washington Senators 10, New York Yankees 1, <http://www.retrosheet.org/boxesetc/1969/B07132WS21969.htm> (last visited Apr. 12, 2010).
83. In forty-eight innings, he was touched for only five earned runs lowering his ERA to 2.82. Al Downing 1969 Pitching Gamelogs, *supra* note 75.
84. *Id.*
85. Downing and Frank Fernandez were sent to the Oakland Athletics for Danny Cater and Ossie Chavarria. *Yanks Acquire Cater in Deal With Oakland*, L.A. TIMES, Dec. 6, 1969.
86. Korr, *supra* note 1, at 133.
87. Downing and Tito Francona were traded to the Brewers for Steve Hovley.
88. Paul Dickson quotes Tom Verducci as defining a “career year” as one that “far exceeds his well-established statistical norms.” PAUL DICKSON, THE DICKSON BASEBALL DICTIONARY 163 (2009) (citing Tom Verducci, SPORTS ILLUSTRATED, Sept. 9, 1996).
89. Al Downing Statistics and History, *supra* note 44.

## V. THE CARDINALS–SIMMONS NEGOTIATIONS HIGHLIGHT 1969 TO 1972

### A. Curt Flood's Path to the Supreme Court Begins in 1969

At the end of the 1969 season, after the Cardinals finished a disappointing fourth in the National League East Division, Curt Flood was traded to the Philadelphia Phillies.<sup>90</sup> Flood refused to accept the deal, and, with the backing of the Players Association, sued Commissioner Bowie Kuhn.<sup>91</sup> Although Flood would eventually lose his case before the United States Supreme Court in 1972, in part because no current players would testify on his behalf at his 1970 trial in the Southern District of New York,<sup>92</sup> his stance, even more than the one taken by Downing, helped embolden other players.<sup>93</sup> In recent years, numerous authors have taken a critical look at Flood's life, his case, and his baseball and legal legacy.<sup>94</sup>

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90. Flood was traded on October 7, 1969, with Byron Browne, Joe Hoerner, and Tim McCarver for Dick Allen, Jerry Johnson, and Cookie Rojas. *Phils Trade Allen to Cardinals for McCarver and Flood in 7-Player Deal; St. Louis Obtains Rojas, Johnson*, N.Y. TIMES, Oct. 9, 1969, at 59. An analysis of the 1969 National League standings in the first year of divisional play reveals that eight teams finished above .500, and the Houston Astros finished right at .500 (81–81). Only three teams finished below .500, the Phillies (63–99, .389), the Expos (52–110, .321), and the Padres (52–110, .321). The Cardinals finished 87–75, but they were thirteen games behind “The Miracle Mets.” Baseball-Reference.com, 1969 National League Season Summary, <http://www.baseball-reference.com/leagues/NL/1969.shtml> (last visited Apr. 13, 2010). For a detailed view of the 1969 New York Mets season, see MATTHEW SILVERMAN & KEN SAMELSON, *THE MIRACLE HAS LANDED: THE AMAZIN’ STORY OF HOW THE 1969 METS SHOCKED THE WORLD* (Matthew Silverman, Ken Samelson, Len Levin, eds, 2009); STEVEN TRAVERS, *THE 1969 MIRACLE METS: THE IMPROBABLE STORY OF THE WORLD’S GREATEST UNDERDOG TEAM* (2009).
91. *Flood v. Kuhn*, 316 F. Supp. 271 (S.D. N.Y. 1970), *aff’d*, 443 F.2d 264 (2d Cir. 1971), *aff’d*, 407 U.S. 258 (1972); CURT FLOOD & RICHARD CARTER, *THE WAY IT IS*, 190–95 (1971); MILLER, *supra* note 23, at 170–202; BRAD SNYDER, *A WELL-PAID SLAVE: CURT FLOOD’S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS* 69–81 (2007).
92. For an extensive analysis of Flood’s trial, see NEIL F. FLYNN, *BASEBALL’S RESERVE SYSTEM: THE CASE AND TRIAL OF CURT FLOOD V. MAJOR LEAGUE BASEBALL* (2005).
93. MILLER, *supra* note 23, at 196–97; SNYDER, *supra* note 91, at 175–76.
94. ALEX BELTH, *STEPPING UP: THE STORY OF ALL-STAR CURT FLOOD AND HIS FIGHT FOR BASEBALL PLAYERS’ RIGHTS* (2006); ROBERT GOLDMAN, *ONE MAN OUT: CURT FLOOD VERSUS BASEBALL* (2008); SNYDER, *supra* note 91; STUART L. WEISS, *THE CURT FLOOD STORY: THE MAN BEHIND THE MYTH* (2007). The importance of Curt Flood’s lawsuit cannot be understated. A full analysis of his case and its relationship to the narrative in this article is beyond the scope of this article.

## B. Second Collective Bargaining Agreement

The second Basic Agreement was dated May 21, 1970.<sup>95</sup> Miller secured an enormously important concession when a new arbitration procedure with an independent arbitrator was included in the Agreement.<sup>96</sup> The importance of the new procedure which included an arbitrator from beyond baseball would be critical to the Player Association's ultimate strategy. With an emerging alternative to the Flood litigation beginning to evolve, Miller would spend time at each spring training stop in 1971 explicitly explaining section 10(a) of the agreement to the players and offering his opinion that the plain language did not establish a perpetual renewal.<sup>97</sup> Organized Baseball's management still persisted in their belief that the system was impervious from attack.<sup>98</sup> However, another important step in the path towards the 1975 arbitration decision was about to be taken.

## C. 1972: Vida Blue, the Strike, and Ted Simmons<sup>99</sup>

After the 1971 season when Vida Blue was both Most Valuable Player and Cy Young Award winner in his first full season in Oakland, he demanded a substantial salary increase from the \$14,500 he received from A's owner Charles Finley for his efforts. Trying to apply leverage to force Finley's hand, Blue "threatened to retire" at a news conference to accept a public relations position with Dura Steel Products in Los Angeles that offered more than Finley's final offer of \$50,000.<sup>100</sup> Maintaining his best efforts at seriousness, Blue and his attorney Robert Gerst offered either to play for Finley's figure if the contract would not bind him to Oakland for another season, to submit to arbitration established by Bowie Kuhn, or to accept a retroactive bonus for the previous season.<sup>101</sup> Harkening back to the days of Drysdale and Koufax, Blue next signed a deal with Metro-Goldwyn-Mayer to play a role in the

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95. The term of the Basic Agreement was from January 1, 1970, through December 31, 1972. Article XVI, p. 16 (a copy of the Basic Agreement is on file with the author).

96. HELYAR, *supra* note 55, at 124.

97. *Id.*

98. See Leonard Koppett, *Baseball Chiefs Attack Flood Suit*, N.Y. TIMES, Jan. 18, 1970, at S5; SNYDER, *supra* note 91, at 2.

99. Steve Treder stated that there were five players who did not sign prior to the beginning of the 1973 season, seven in 1974, and six in 1975. Steve Treder, *1972: The Year That Changed Everything*, 13 NINE: A JOURNAL OF BASEBALL HISTORY AND CULTURE 1, 4-5 (2005).

100. *Vida Blue Retires From Baseball To Accept Job in Steel Business*, N.Y. TIMES, Mar. 17, 1972, at 49.

101. *Id.*; Red Smith, *But What Have You Done Lately, Vida?* N.Y. TIMES, Mar. 27, 1972, at 47.

“Shaft” movie sequel, “Shaft’s Big Score.”<sup>102</sup> In reading from his prepared statement at a press conference, Blue acknowledged “[a]lthough I would’ve been happy to sign a contract to play baseball, I’m happy to sign a contract that doesn’t have a reserve clause in it.”<sup>103</sup> Gerst pressed the point of Paragraph 10(a) in the Standard Player Contract as described by Red Smith:

On the basis of this provision, Gerst argues that if Vida sat out a year, he would then become a free agent, as Rick Barry did in basketball. It’s debatable. A court might decide that the same terms included the club’s right to renew the contract year-by-year into eternity<sup>104</sup>

The drama was not quite over. Negotiations moved to the Drake Hotel in Chicago with Gerst, Blue, and Finley, joined by Finley’s counsel, William Myers, and Commissioner Bowie Kuhn, and baseball’s General Counsel Sandy Hadden.<sup>105</sup> With Kuhn willing to use his “Best Interests of Baseball” powers to force an agreement, the two parties finally signed an accord on May 2.<sup>106</sup> Blue received a \$50,000 salary, a \$5000 bonus for his 1971 effort, and an \$8000 scholarship fund for his education.<sup>107</sup> Blue’s first appearance was on May 24 in the A’s thirtieth game of the season.<sup>108</sup> With an ERA that jumped nearly a run-per-game, he was only able to post a modest six and ten (6–10) record.<sup>109</sup> Beginning with his 1973 return to form (twenty and nine record), Blue would post fourteen or more wins for eight consecutive seasons with the A’s and Giants.<sup>110</sup>

While the Finley-Blue negotiations were playing out, spring training started in a tense atmosphere. The players met on March 31 in Dallas to discuss the possibility of a strike over the refusal of ownership to increase the payment into the pension and medical benefits plan.<sup>111</sup> Miller had requested a seventeen percent increase to cover the cost of inflation over the past three

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102. Dave Anderson, *Vida Blue Signs Film Pact Without a Reserve Clause*, N.Y. TIMES, Apr. 4, 1972, at 49. Red Smith, *The Charley and Vida Story (Cont. 'd)*,” N.Y. TIMES, Apr. 10, 1972, at 49.

103. Anderson, *supra* note 102.

104. Smith, *supra* note 102.

105. *Finley-Blue Pact Is Almost Signed; But A’s Owner Says Hurler Balked at 2 Concessions*, N.Y. TIMES, Apr. 29, 1972, at 22.

106. *Blue Will Sign Contract With A’s in Boston Today*,” N.Y. TIMES, May 2, 1972, at 52; *Blue Finally Signs One-Year Contract, Says He Is Happy*,” N.Y. TIMES, May 3, 1972, at 57.

107. *Blue Finally Signs One-Year Contract*, *supra* note 106.

108. Baseball-Reference.com, *Vida Blue 1972 Pitching Gamelogs*, <http://www.baseball-reference.com/players/gl.cgi?n1=bluevi01&t=p&year=1972> (last visited Apr. 13, 2010).

109. Baseball-Reference.com, *Vida Blue Statistics and History*, <http://www.baseball-reference.com/players/b/bluevi01.shtml> (last visited Apr. 13, 2010).

110. *Id.*

111. HELYAR, *supra* note 55, at 114; LOWENFISH, *supra* note 5, at 215.

years.<sup>112</sup> After hours of heated conversation, forty-seven player and alternate player representatives voted in favor of an immediate strike.<sup>113</sup> The strike began on April 1 and would become the first labor stoppage in modern baseball history.<sup>114</sup> Soon owners agreed that Miller's proposal to use surpluses in the fund's securities could satisfy the union and players' demands.<sup>115</sup> By April 11, a compromise was reached to pull \$500,000 from the surplus to supplement the owners' payment.<sup>116</sup> It took an additional two days of wrangling over the status of eighty-six cancelled games that were never rescheduled to end the thirteen-day strike.<sup>117</sup>

#### D. Ted Simmons Squares Off Against the Cardinals

St. Louis Cardinals catcher Ted Simmons reported to spring training prior to the strike without signing a new contract.<sup>118</sup> Simmons was such a stand-out high school athlete in Highland Park, Michigan that he was offered and accepted a football scholarship from the University of Michigan.<sup>119</sup> However, the Cardinals thought enough of his skills to make him the tenth overall pick in the 1967 draft, and the offer of a \$50,000 bonus persuaded him to adopt a different athletic future.<sup>120</sup> Simmons spent time with the Cardinals' Gulf Coast team and at Cedar Rapids in the Midwest League that season while

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112. HELYAR, *supra* note 55, at 110.

113. LOWENFISH, *supra* note 5, at 215. Only Wes Parker of the Los Angeles Dodgers voted to abstain. Helyar puts the discussion at three hours. HELYAR, *supra* note 55, at 116. Lowenfisch has it lasting six hours. LOWENFISH, *supra* note 5, at 215. Miller put the length of the meeting at four hours. PRESTON, *supra* note 69, at 55.

114. LOWENFISH, *supra* note 5, at 215.

115. *Id.* at 216.

116. HELYAR, *supra* note 55, at 122.

117. *Id.*; *See also* LOWENFISH, *supra* note 5, at 216.

118. LOWENFISH, *supra* note 5, at 219.

119. HELYAR, *supra* note 55, at 124. *See also* ROBERT F. BURK, *MUCH MORE THAN A GAME: PLAYERS, OWNERS, AND AMERICAN BASEBALL SINCE 1921*, 180 (2000).

120. The draft was initiated in 1965 when the Kansas City Athletics drafted Rick Monday from Arizona State as the top overall selection. Future stars Joe Coleman, Billy Conigliaro, Ray Fosse, and Bernie Carbo were also selected in the first round. In the 1967 draft, the Yankees selected Ron Blomberg as the first overall selection. Excellent major league players selected prior to Simmons were Jon Matlack (Mets - fourth), John Mayberry (Astros - sixth), Wayne Simpson (Reds - eighth). Two catchers were taken before Simmons: John Jones of St. Joseph, Tennessee, by the Senators at number five and Mike Nunn of Greensboro, North Carolina, by the Angels at number nine. Later in the first round, the San Francisco Giants selected another catching prospect, Dave Rader, with the 18th pick. *See* MLB.com, First-Year Player Draft, <http://mlb.mlb.com/mlb/history/draft/index.jsp?feature=decade1960s> (last visited Apr. 13, 2010). Rader's debut in the major leagues was on September 5, 1971. Rader played for ten years for the Giants, St. Louis Cardinals, Chicago Cubs, Philadelphia Phillies, and the Boston Red Sox. Baseball-Reference.com, Dave Rader Statistics and History, <http://www.baseball-reference.com/players/r/raderda01.shtml> (last visited Apr. 13, 2010).

continuing his education in the off-season at the University of Michigan and Wayne State University.<sup>121</sup> Simmons quickly progressed through his minor league stops while receiving late season call ups by the Cardinals in 1968 and 1969.<sup>122</sup> Simmons had outstanding seasons for Modesto in the California League in 1968<sup>123</sup> as well as for the Tulsa Oilers in the American Association in 1969.<sup>124</sup> After playing in fifteen games for Tulsa in 1970, Simmons was promoted to the Cardinals in May.<sup>125</sup> Although he struggled at the plate for the remainder of the 1970 campaign, the Cardinals were impressed enough in his play to move recently acquired Joe Torre from behind the plate to the infield permanently.<sup>126</sup> Torre described his young teammate as a “flower child.”<sup>127</sup> Simmons’s hitting prowess was unmistakable during the 1971 season, but the strike and his modest \$14,000 salary had a significant impact on Simmons’s view of the game.<sup>128</sup> Simmons felt that he should be given \$30,000 for the 1972 season.<sup>129</sup> Cardinals general manager Bing Devine countered with a modest increase into the low twenties.<sup>130</sup> Simmons responded: “[w]hen someone representing the establishment said, ‘[t]his is

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121. See Ron Fimrite, *He's Some Piece of Work*, SPORTS ILLUSTRATED, June 5, 1978; Baseball-Reference.com, Ted Simmons Minor League Statistics and History, <http://www.baseball-reference.com/minors/player.cgi?id=simmon001ted> (last visited Apr. 13, 2010).
  122. Bob Hertz, *Simmons Won't Join Three-piece-suit Set as Pirate GM*, HOUS. CHRON., Feb. 16, 1992, at 4. *Rebel With a Cause, Pirates GM Simmons Joins, But He Won't Conform to Three-piece-suit Set*, PITT. POST-GAZETTE, Feb. 9, 1992, at D3. Fimrite, *supra* note 121. Baseball-Reference.com, Ted Simmons Statistics and History, <http://www.baseball-reference.com/players/s/simmote01.shtml> (last visited, Apr. 13, 2010); Baseball-Reference.com, Ted Simmons 1968 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=simmote01&t=b&year=1968> (last visited Apr. 13, 2010); Baseball-Reference.com, Ted Simmons 1969 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=simmote01&t=b&year=1969> (last visited Apr. 13, 2010).
  123. Simmons played in 136 games for the Modesto Reds under Joe Cunningham, and he hit twenty-eight home runs with a .331 batting average. Ted Simmons Minor League Statistics, *supra* note 121.
  124. Simmons played for manager Warren Spahn with the Oilers and hit .317 with sixteen home runs and eighty-eight RBIs. The Oilers finished six games behind the Omaha Royals despite a lineup that included Byron Browne (.340, 16 HR, 79 RBI), Elio Chacon, Jerry DaVanon, Bill Davis, Boots Day, Joe Hague (.332, 16 HR, 53 RBI), Leron Lee (.303, 17 HR, 96 RBI), Willie Montanez, Joe Nossek (.338 BA), Reggie Cleveland, Sal Campisi, Tom Hilgendorf, Jerry Reuss, Dennis Ribant, Dan Schneider, Chuck Taylor, Ron Willis, Aurelio Monteagudo. The team hit .282. Ted Simmons Minor League Statistics, *supra* note 121.
  125. *Id.* Baseball-Reference.com, Ted Simmons 1970 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=simmote01&t=b&year=1970> (last visited Apr. 13, 2010).
  126. Ted Simmons Statistics, *supra* note 122. Baseball-Reference.com, Joe Torre Statistics & History, <http://www.baseball-reference.com/players/t/torrejo01.shtml> (last visited Apr. 13, 2010).
  127. HELYAR, *supra* note 55, at 125.
  128. *Id.*
  129. *Id.*
  130. *Id.*

what you'll do,' I was just bulletproof enough, naive enough, and political enough to say, 'I'm not going to.'"<sup>131</sup>

Against the backdrop of football and basketball court decisions holding that the reserve clause in those professional sports did not bind a player in perpetuity, Simmons was allowed to start the season under the option clause of his 1971 contract after National League President Chub Feeney decided to approve the arrangement.<sup>132</sup> Feeney's decision was not unprecedented, but over the next three years this move would cause numerous other players to receive the same treatment. By not enforcing Rule 3(c), organized baseball was opening the door just slightly to a player completing the season without signing a new deal. John Gaherin, the Director of the Players Relations Committee and Major League Baseball's chief negotiator, pressed Bing Devine to work out a deal with Simmons.<sup>133</sup> When the *Flood* decision was announced on June 19, Simmons offered that although he was not seeking to become a free agent like Flood, he did not intend to sign a contract for an amount he felt was unfair.<sup>134</sup> Furthermore, he was also willing to seek the assistance of the Players Association.<sup>135</sup> The Cardinals player reiterated: "I want to sign my contract . . . Being a free agent is not my intention right now. If my contract is renewed again, I'd have reason to take action."<sup>136</sup> The difference between Simmons's request (\$30,000) and the Cardinals' offer (\$25,000) was \$5000.<sup>137</sup>

In the aftermath of the *Flood* decision, Chicago Cubs player representative Milt Pappas showed both disinterest in the Supreme Court's position in the *Flood* ruling while signaling the future negotiating position:

The ruling doesn't make a lot of difference and the players were not looking to make utter chaos, which complete elimination of the reserve clause would do. However, some owners now have an idea how the players feel. What we are going to seek at the meeting table is an agreement that will give some veteran players some freedom in negotiating. After a certain time with a club, say five years or eight years, a player should be able to sit down and negotiate

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131. *Id.*

132. See HELYAR, *supra* note 55, at 124 for a discussion of Rick Barry's case. Wash. Capitals Basketball Club, Inc. v. Barry, 304 F. Supp. 1193 (N.D. Cal.), *aff'd*, 419 F.2d 472 (9th Cir. 1972). *Simmons Option: A Baseball First*, N.Y. TIMES, May 31, 1972, at 46.

133. HELYAR, *supra* note 55, at 126.

134. *High Court's Opinion on Antitrust, Pro Baseball's Immune*, ELLENSBURG DAILY RECORD (Wash.), June 20, 1972, at 6.

135. *Id.*

136. *Id.*

137. *Id.*

on whether he can get more money if he's worth it, or be free to bargain with another club.<sup>138</sup>

Pappas's classification of veteran players would not have benefitted Simmons or Vida Blue in their contract negotiations, but it would have helped Downing.

Despite the Supreme Court victory, Gaherin did not like the chances of taking on the reserve clause before an arbitrator.<sup>139</sup> The All-Star Game was scheduled for July 25 at Atlanta-Fulton County Stadium, and Simmons was on the National League team with Manny Sanguillen of the Pirates as back-up catchers to Johnny Bench.<sup>140</sup> Bing Devine called him at his hotel room on the morning of the game and asked him to come up to discuss his contract.<sup>141</sup> Devine offered a two-year deal: \$30,000 for 1972 and \$45,000 for 1973.<sup>142</sup> Devine's hand was forced, and he offered both the amount that Simmons wanted for 1972 plus a sizeable increase for 1973.<sup>143</sup> Simmons returned to his room and called his wife.<sup>144</sup> "Maryanne, Jesus Christ, here's what happened," he said. He laid out the terms. "I've got to do this."<sup>145</sup>

Reflecting back on the events of the summer of 1972 on the eve of labor strife again in 1980, Simmons offered the following:

He smiles today at the memory of his pioneering, one-man crusade. The timing then wasn't what it is now. . . . The times have changed. They had just disposed of Flood, and if I confronted them, I guess they'd have disposed of me, too. . . . It was a scary time for me. . . . I was hitting about .370, so people paid attention to my situation. . . . But if I was hitting .220, I'd have been in serious trouble.<sup>146</sup>

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138. *Does Baseball's Future Offer Another Strike; Players to Seek Relief From the Reserve Clause*, ROME NEWS-TRIB. (Ga.), June 20, 1972, at 6. *Court Fans Flood*, FREE-LANCE STAR (Fredericksburg, Va.), June 20, 1972, at 6.

139. HELYAR, *supra* note 55, at 126.

140. Baseball-Reference.com, July 25, 1972 All-Star Game Play-By-Play and Box Score, <http://www.baseball-reference.com/boxes/NLS/NLS197207250.shtml> (last visited Apr. 13, 2010). Simmons did not play in the 1972 game. Simmons was also an All Star in 1973–1974, 1977–1979, 1981, and 1983. Ted Simmons Statistics, *supra* note 122.

141. HELYAR, *supra* note 55, at 126.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* BURK, *supra* note 119, at 188 (internal citations omitted); KORR, *supra* note 1, at 137 (stating the signing was during the second week of August).

146. Hal Bock, *Simmons 'The Paul Revere' of Baseball Revolution*, VIRGIN ISLANDS DAILY NEWS, Mar. 31, 1980, at 30. *Ted Simmons Was Baseball's First Rebel, Just Too Early*, KINGMAN DAILY MINER (Ariz.), Mar. 28, 1980, at A-12. *Simmons Rocked Status Quo Ship*, ROME NEWS-TRIBUNE (Ga.), Mar. 30, 1980, at 8-C. See also Arthur Daley, *Young, Eager, and Good*, N.Y. TIMES, Mar. 18, 1973, at S5.

Simmons enjoyed an extremely productive twenty-one year career in the Major Leagues, playing in over 2400 games with St. Louis, the Milwaukee Brewers, and the Atlanta Braves.<sup>147</sup> He served in the front office of the Pittsburgh Pirates where, as general manager on June 8, 1993, he suffered a heart attack.<sup>148</sup> Simmons is currently a bench coach for the San Diego Padres.<sup>149</sup>

## VI. THE TRICKLE OF CONTRACT RENEWALS BECOMES A STEADY STREAM – 1973 TO 1975

The path charted by Downing in 1969 and Simmons in 1972 produced a significant change in the behavior of players towards the owners prior to spring training in the three years beginning in 1973. Although the majority of these players were simply seeking to improve their own salary, their relationship with their current team, or force a trade or release, the trend of not signing a new contract prior to spring training established a pattern that would be key to the strategy that the Players Association was using in 1975 against the owners. In 1973, at least nine players can be identified as participating in spring training under a renewed contract.<sup>150</sup>

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147. Ted Simmons Statistics, *supra* note 122.

148. Rick Braun, *Simmons Will Join Brewers as Bench Coach*, MILWAUKEE JOURNAL-SENTINEL, Oct. 31, 2007, at 2C, col. 1. Rob Rains covers Ted Simmons and his heart attack in his 2005 book about former fan favorites of the St. Louis Cardinals. ROB RAINS, *CARDINALS: WHERE HAVE YOU GONE* 128–32 (2005).

149. *Lefebvre, Simmons Join Padres Coaching Staff*, USA TODAY, Nov 3, 2008, available at [http://www.usatoday.com/sports/baseball/2008-11-03-89211540\\_x.htm](http://www.usatoday.com/sports/baseball/2008-11-03-89211540_x.htm); MLB.com, Padres Managers and Coaches, [http://sandiego.padres.mlb.com/team/coaches.jsp?c\\_id=sd](http://sandiego.padres.mlb.com/team/coaches.jsp?c_id=sd) (last visited Apr. 13, 2010); MLB.com, Padres Managers and Coaches, [http://sandiego.padres.mlb.com/team/coach\\_staff\\_bio.jsp?c\\_id=sd&coachorstaffid=122247](http://sandiego.padres.mlb.com/team/coach_staff_bio.jsp?c_id=sd&coachorstaffid=122247) (last visited Apr. 13, 2010).

150. Jerome Holtzman listed seven players as beginning the 1973 season playing under the “renewal clause:” Mike Andrews (Chicago White Sox), Stan Bahnsen (Chicago White Sox), Dick Billings (Texas Rangers), Jim Kaat (Minnesota Twins), Jerry Kenney (Cleveland Indians), Fritz Peterson (New York Yankees), and Rick Reichardt (Chicago White Sox). Jerome Holtzman, *Review of 1973, in OFFICIAL 1974 BASEBALL GUIDE* 266–67 (1975). Lou Chapman, a writer for the *Milwaukee Sentinel* provided a list of seven players that included Vida Blue and Dave Duncan as well as Andrews, Bahnsen, Kenney, Peterson, and Reichardt but not Billings or Kaat. Chapman quoted Marvin Miller as stating that when a player “plays out the year, he becomes a free agent at the end of that season, although we anticipate the clubs will resist.” Lou Chapman, *Free Agent Status for Blue, 6 Others?*, MILWAUKEE SENTINEL, Mar. 27, 1973, at Part 2. Murray Chass listed both Peterson and Sparky Lyle on the Yankees as players with renewed contracts. Murray Chass, *Yanks Call Lyle, Peterson to Camp, Renewal Option Is Invoked Against Pair of Holdouts–Rangers Beaten, 7–4*, N.Y. TIMES, Mar. 10, 1973, at 24.

Dick Moss testified during the McNally-Messersmith arbitration proceedings that five players (Andrews, Bahnsen, Billings, Kenney, and Reichardt) played under a renewed contract. Twelve Clubs Comprising the Nat’l League of Professional Baseball Clubs & Twelve Clubs Comprising the

### A. The White Sox Trio

The most significant dissatisfaction in 1973 existed in Chicago where three members of the White Sox were unhappy with their offers from general manager Stu Holcomb.<sup>151</sup> The resulting discord contributed to Holcomb losing his job while two of the three players, Mike Andrews and player representative Rick Reichardt, were let go.<sup>152</sup> The third player, pitcher Stan Bahnsen, would not sign until June and the next season would opt to allow an arbitrator to determine his salary.<sup>153</sup> As a member of baseball's first salary arbitration class, Bahnsen would lose his hearing.<sup>154</sup>

When the White Sox stated their position that all players could continue to be reserved under Rule 3(c)(1) without the club actually renewing the contract, Bahnsen went to the Players Association seeking advice.<sup>155</sup> After the Players Association pressed the point, the White Sox renewed the contracts of Andrews, Bahnsen, and Reichardt and all three began the season under renewed contracts.<sup>156</sup> Holcomb apparently offered Bahnsen a fifty to sixty percent raise, but the general manager wanted to cut the salaries of Andrews and Reichardt.<sup>157</sup> Holcomb also resorted to two previously successful methods

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Am. League of Professional Baseball Clubs v. Major League Baseball Players Ass'n, Decision No.29 58, Grievances Nos. 75-27, 75-28 (Dec. 23, 1975) (Seitz, Arb.) [hereinafter *Arbitration Proceedings*].

151. See Richard Dozer, *1973 Season Will Be Gamble for Andrews*, CHI. TRIB., Mar. 23, 1973; *Bahnsen, Sox Still 'Not Close,'* CHI. TRIB., Mar. 15, 1973, at C2.
152. See John Husar, *Stan Got \$\$, Rick Got Gate, Stu Got the Heat*, CHI. TRIB., July 7, 1973, at A1; George Langford, *Most of Sox Players Like Stu's 'Decision,'* CHI. TRIB., July 28, 1973, at A4; George Langford, *Reichardt, Andrews Regret Departure From Sox*, CHI. TRIB., July 29, 1973, at B4; *Royals Get Rick Reichardt*, CHI. TRIB., July 12, 1973, at C2; *Allyn Names Hemond Sox GM*, CHI. TRIB., July 31, 1973, at C2.
153. See *Bahnsen Signs With Sox*, CHI. TRIB., June 20, 1973, at C4; *Sox Await Decision on Bahnsen*, CHI. TRIB., Feb. 23, 1974, at 5; Richard Dozer, *Three Unsigned Sox to Seek Arbitration*, CHI. TRIB., Feb. 13, 1974, at C5.
154. See George Langford, *Bahnsen Is Not Unhappy Over Losing Arbitration*, CHI. TRIB., Mar. 1, 1974, at C1. See also *Arbitration: 29 Wins And 16 Loses*, LAKELAND LEDGER (Fla.), Mar. 4, 1974, at 3B, col. 4.
155. During the McNally-Messersmith arbitration proceedings, Dick Moss testified that the White Sox were the last team to argue with respect to Rule 3C(1) that "you had to sign a contract of you just couldn't play." When Bahnsen called the Players Association, they discussed this point with Gaherin. The White Sox changed their position the following day under the threat of a grievance. *Arbitration Proceedings*, *supra* note 150, at 57.
156. *Id.*
157. Bahnsen's raise would have increased his salary beyond \$60,000, but the cuts to Andrews and Reichardt would have pushed both players below \$50,000. Richard Dozer, *Sox Holdouts Hit With Fine Threat*, CHI. TRIB., Mar. 9, 1973, at C2.

for dealing with recalcitrant players: he threatened to trade and fine all three of them.<sup>158</sup>

The White Sox opened the season with a three to one (3–1) win against the Texas Rangers and proceeded to post a fifteen and five (15–5) record in the first twenty games of the season.<sup>159</sup> In May, Bob Hunter of the *Los Angeles Examiner* claimed the threesome intended to band together to challenge the reserve clause; Reichardt insisted the story was inaccurate.<sup>160</sup> Specifically, Reichardt stated:

[t]he story is without foundation. . . . There has been no mutual accord and I can assure you that we have not formed any kind of group. . . . I wouldn't dream of challenging the reserve clause. This game has been too good to me for me to slap it in the face.<sup>161</sup>

If the players were not considering free agency, however, Marvin Miller was certainly thinking about it. When discussing the situation of Oakland/Cleveland catcher Dave Duncan, the Player Association's executive director stated the foundation of their position: “[a]t the end of the year, the club has no contractual rights to him.”<sup>162</sup> While referencing Rick Barry's NBA-ABA case and the possibility of collusion or a group boycott as the foundation for legal action, Miller even suggested that the owners might “recognize that the player's contention is valid and that they'd give him his free agency.”<sup>163</sup>

The White Sox failed to extend their hot start into June.<sup>164</sup> They won only one of eight games between June 10 and June 19, and fell out of first place for the first time since April 29.<sup>165</sup> Because of Bahnsen's importance to their pitching rotation, Holcomb finally approached the hurler with a deal that he was willing to accept.<sup>166</sup> Bahnsen signed a contract on June 19 for an estimated \$60,000 making him the second highest paid hurler on the Chicago

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158. *Id.*

159. The White Sox won thirteen of their fourteen games from April 15 to May 6. After dropping their May 7th game to the Red Sox, the Pale Hose strung together three more consecutive wins. Baseball-Reference.com, 1973 Chicago White Sox Schedule, Box Scores and Splits, <http://www.baseball-reference.com/teams/CHW/1973-schedule-scores.shtml> (last visited Apr. 14, 2010).

160. *3 Chisox Deny Playing Minus Contracts; Paper Charges Challenges to Reserve Clause*, PITT. POST-GAZETTE, May 9, 1973, at 30.

161. *Id.*

162. Chapman, *supra* note 150.

163. *Id.*

164. The Chisox lost their first five games before winning four in a row. 1973 Chicago White Sox Schedule, Box Scores and Splits, *supra* note 159.

165. *Id.*

166. Husar, *supra* note 152.

White Sox.<sup>167</sup> At the time, he was seven and six (7–6) with a 3.43 ERA.<sup>168</sup> Bahnsen won his next two games including a four to three (4–3) win over Oakland on June 29 that left Chicago tied for first place with a thirty-eight and thirty-two (38–32) record.<sup>169</sup> With a loss by Wilbur Wood the next day to the Athletics, the White Sox dropped out of first place for the final time.<sup>170</sup> By the time Bahnsen took the loss in his team’s 100th game of the season, the Sox stood at an even fifty wins and fifty loses.<sup>171</sup> They would hover around .500 through early September.<sup>172</sup> Over the last twenty games of the season, though they would reverse their early season start (five and fifteen (5–15)), the Sox fell to fifth place at seventy-seven and eighty-five (77–85).<sup>173</sup> Bahnsen started forty-two games and grabbed the dubious honor of leading the league with twenty-one losses despite winning eighteen.<sup>174</sup> Wilbur Wood, the team’s mound ace, was twenty-four and twenty (24–20).<sup>175</sup> Bahnsen was a signing problem in 1974 when he went to arbitration, and the following year he negotiated his own deal with the White Sox.<sup>176</sup> On June 15, 1975, he was traded just minutes before a midnight deadline to the Oakland A’s with Skip Pitlock for Dave Hamilton and minor leaguer Chet “The Jet” Lemon.<sup>177</sup>

Although used sparingly at the beginning of season, former bonus baby Rick Reichardt was finding his stroke in May.<sup>178</sup> By May 19, Reichardt was

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167. *Bahnsen Signs With Sox*, *supra* note 153.

168. Baseball-Reference.com, Stan Bahnsen 1973 Pitching Page and Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=bahnsst01&t=p&year=1973> (last visited Apr. 14, 2010).

169. *Id.* 1973 Chicago White Sox Schedule, Box Scores and Splits, *supra* note 159.

170. 1973 Chicago White Sox Schedule, Box Scores and Splits, *supra* note 159.

171. *Id.*

172. *Id.*

173. *Id.*

174. Stan Bahnsen 1973 Pitching Page and Gamelogs, *supra* note 168.

175. Baseball-Reference.com, 1973 Chicago White Sox Batting, Pitching, & Fielding Statistics, <http://www.baseball-reference.com/teams/CHW/1973.shtml> (last visited Apr. 14, 2010).

176. Bahnsen went to arbitration in 1974, *see supra* text accompanying notes 153–54. *Sox Sign Bahnsen; 9 More To Go*, CHI. TRIB., Feb. 18, 1975.

177. *Clint Courtney Dead at 48*, EUGENE REGISTER-GUARD, June 16, 1975, at 3B. Bahnsen was traded on the same day that Andy Etchebarren (1974 and 1975 group) was sold to the California Angels. “Bahnsen was delighted with the trade. ‘It’s a break for me. I felt I was getting bogged down here.’” Richard Dozer, *White Sox Trade Bahnsen, Muser*, CHI. TRIB., June 17, 1975, at C1; *A’s Obtain Bahnsen on Deadline*, N.Y. TIMES, June 17, 1975, at 28.

178. Baseball-Reference.com, Rick Reichardt 1973 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=reichri01&t=b&year=1973> (last visited Apr. 14, 2010). Reichardt, from Stevens Point, Wisconsin, and a graduate of the University of Wisconsin, was a bonus baby signed by the California Angels in 1964 for between \$175,000 and \$225,000. At the time, that was a record. “Fred (Rick) Reichardt, \$175,000 Big Ten bonus baby from the University of Wisconsin made his major league debut in center-field for the Angels.” Braven Dyer, *The Yanks Are Coming! They’re 2 Back, Downing Topples Angels*, L.A. TIMES, Sept. 2, 1964, at E1. A separate article by Braven Dyer further explained:

hitting .360.<sup>179</sup> However, by June 8, his average had dipped to .257.<sup>180</sup> On June 26, Reichardt left the bench and the clubhouse before the completion of a game between the White Sox and the Twins because he was “disgusted at the lack of progress in his efforts to sign a 1973 contract.”<sup>181</sup> Reichardt and Holcomb had talked for about twenty minutes prior to the game without any progress on a deal.<sup>182</sup> At least one unnamed teammate offered mock support: “I have to give him credit. He made a half million dollars out the game [sic] and bluffed his way thru eight years.”<sup>183</sup> Reichardt was released via irrevocable waivers by the White Sox on June 28 with a .275 batting average, three home runs, and sixteen RBIs.<sup>184</sup> Holcomb had felt forced to retain

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An Angel official told The Times that the \$175,000 figure ‘is about right.’ That was the amount given Bob Bailey of Long Beach by the Pittsburgh Pirates a few years ago and at that time was the record bonus payment. From other sources it was learned that Reichardt will receive additional money. It is believed that the Angels agreed to pay for his education at Wisconsin during the two semesters necessary for him to graduate. In Madison, the Milwaukee Journal said it had learned that Reichardt would receive \$225,000 in the package deal.

Braven Dyer, *Angels Net Reichardt for \$175,000, Badger Star Says He Prefers ‘Young Club’*, L.A. TIMES, June 25, 1964, at B1. Sid Ziff, *Bath For Promoter; The Pressure on Angel Bonus Baby*, L.A. TIMES, June 26, 1964, at B3. In discussing the merits of Willie Crawford of the Dodgers and Reichardt, John Hall noted “[b]oth are obviously fine prospects, but I lean toward the Angel views. However, the little voice keeps whispering that before either Rick or Willie arrive—if ever—some overlooked \$5 unknown from nowhere will emerge as a new hero and then have a rough time getting a \$1,000 raise.” John Hall, *Willie or Rick?*, L.A. TIMES, June 27, 1964, at A3. “The switch from college baseball to the minor leagues has caused former University of Wisconsin star Rick Reichardt problems, but the highest paid bonus player in the history of baseball appears to have them licked. Reichardt who was paid about \$200,000 to sign with the Los Angeles Angels . . .” *Shakes Slump: Reichardt Works Out Variety of Problems*, L.A. TIMES, July 30, 1964, at B2. An article by Tracy Ringolsby described the rapid inflation of signing bonuses, including a large bonus for Rick Reichardt:

It also was in 1964 that baseball management was shocked by what at that time was a runaway inflation in signing bonuses. That was the summer that the California Angels, desperate for respect in their fourth year of existence, paid what at the time was a record \$205,000 bonus to win the bidding war for Wisconsin outfielder Rick Reichardt.

Tracy Ringolsby, *Draft Hasn’t Exactly Ended the Days of the Bonus Baby*, CHI. TRIB., May 10, 1992, available at 1992 WLNR 4155821. TT Howard-Coopertimes, *The Daze of Bonuses for Babies in an Era Before the Amateur Draft*, L.A. TIMES, July 10, 1990, available at 1990 WLNR 3630370.

179. Rick Reichardt 1973 Batting Gamelogs, *supra* note 178.

180. *Id.*

181. *Reichardt Walks Out On Sox Over ‘73 Pact*, CHI. TRIB., June 27, 1973, at E1.

182. *Id.*

183. Richard Dozer, *Ken Eyes Sox Return; Rick Still Missing*, CHI. TRIB., June 28, 1973, at C1.

184. Richard Dozer wrote about the growing rift between manager Chuck Tanner and Personnel Director Roland Hemond and GM Stu Holcomb. “Tanner plainly did not want to lose Reichardt. Reichardt’s unsigned contract was estimated to be \$48,000 – the full 20 per cent pay cut from the reported \$60,000 he was earning last year.” Tanner noted that Reichardt was upset about taunts from fans and

Bahnsen, but he felt quite differently towards Reichardt: “[w]hen Bahnsen came to us it was at a time that we were very desperate. Since I tried to help Chuck [Tanner] by giving him what he needs, I gave in. But I don’t think you can put Reichardt in that same class.”<sup>185</sup> Reichardt signed with Kansas City on July 11, but he hit only .220 in forty-one games for the Royals.<sup>186</sup> After one appearance for Kansas City on April 9, 1974, he was released on April 11.<sup>187</sup> Reichardt completed his eleven year major league career with a .261 batting average and 116 home runs in 997 games.<sup>188</sup> He played only 188 minor league games.<sup>189</sup>

The third member of the White Sox trio, Mike Andrews, finished the 1972 season with a meager .220 batting average in his second year with the White Sox after turning in five seasons with the Boston Red Sox.<sup>190</sup> Andrews, who started his career at second base, was primarily used by the White Sox as a designated hitter because his arm was too erratic to risk him in the infield.<sup>191</sup>

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criticism from the radio booth. In commenting on the pressure to live up to comparisons to Mickey Mantle, the White Sox skipper mentioned the removal of one of Reichardt’s kidneys in 1966 as a potential factor in his career. Richard Dozer, *Sox Release Reichardt*, CHI. TRIB., June 29, 1973, at C3. Husar mentioned that Reichardt’s attorney was former Wisconsin teammate Charlie Adler. “Every year since he came from Washington in 1971, the Sox have tried to cut his pay, estimated around \$60,000. In the past, they would back down. This time—to Rick’s amazement—they stuck to their guns when he was having a fairly good year.” John Husar, *Issue Was Purely Money: Reichardt*, CHI. TRIB., June 30, 1973, at A3.

185. Husar, *supra* note 152.

186. *Royals Get Rick Reichardt*, CHI. TRIB., July 12, 1973, at C2.

187. Baseball-Reference.com, Rick Reichardt Statistics & History, <http://www.baseball-reference.com/players/r/reichri01.shtml> (last visited Apr. 14, 2010).

188. *Id.* Despite his noted speed when he signed, during his career he was only successful in forty of his eighty-one base stealing attempts.

189. Baseball-Reference.com, Rick Reichardt Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=reicha001fre> (last visited Apr. 14, 2010).

190. Baseball-Reference.com, Mike Andrews Statistics & History, <http://www.baseball-reference.com/players/a/andremi01.shtml> (last visited Apr. 14, 2010).

191. Richard Dozer, *A’s Defeat Sox 7–1; Andrews Shaky at Third*, CHI. TRIB., June 23, 1973, at A1. In a game with the Oakland Athletics on June 22, Richard Dozer blamed management for forcing Tanner’s hand to try to use Andrews at the hot corner in a game where Oakland “exposed Mike Andrews’ inability to play third base . . . . With Bill Melton out for an undetermined period, Andrews agreed to fill the job even though in the occasional trial he demonstrated this spring he can’t throw to first base.” *Id.* Bert Campaneris started the game with a bunt towards Andrews and beat it out. *Id.* The article went on to criticize Andrews’ inability to handle the position:

Andrews’ ugliest moment came in the third, when with two out and Bando on second with his second single, Deron Johnson bounced the ball crisply to third.

Andrews came up with the call cleanly and the ‘professional’ play in passing up a chance to tag Bando. He threw toward first, but the ball fell to the ground just beyond the mound and bounced high and late to Allen.

*Id.* According to Baseball-Reference, Andrews played nine games at first base, six games at second base, and five games at third base for the White Sox in 1973. He was the designated hitter in thirty of his total fifty-two games. Mike Andrews Statistics & History, *supra* note 190.

Despite his weak efforts in 1972, Andrews refused to accept a pay cut for 1973.

Andrews started the season on a hitting tear, and he finished the month of April with a .356 batting average and a .453 on-base percentage.<sup>192</sup> Although he finished May 13 batting .300, he still had not worked out an agreement with Holcomb.<sup>193</sup> A stretch of three hits in forty-two at-bats over the remainder of the month reduced his average to .214.<sup>194</sup> Andrews recorded just seven hits in fifteen games in June.<sup>195</sup> When he got only one hit in ten at-bats in five games in July, his frustration was simply too great.<sup>196</sup> Andrews requested his release on July 10, a day when Bahnsen was pitching Chicago past the Yankees, two to one (2–1).<sup>197</sup> Although praising manager Chuck Tanner and director of player personnel Roland Hemond, he was not as kind towards Holcomb, noting that he was not “in agreement with the man since I’ve been here.”<sup>198</sup> On July 31 Andrews signed with the Oakland Athletics.<sup>199</sup> He played in only eighteen games for the A’s with twenty-four plate appearances.<sup>200</sup> On November 1, he was released, ending his major league playing career.<sup>201</sup>

Holcomb had managed to move Andrews and Reichardt from Chicago and created a long-standing poor relationship with Bahnsen.<sup>202</sup> Although the reserve clause was no longer in danger in 1973 from White Sox players, Holcomb was removed as general manager.<sup>203</sup>

## B. Jim Kaat and Calvin Griffith

Jim Kaat entered the 1973 season as a fourteen year veteran with eleven straight seasons of ten or more wins for the Minnesota Twins.<sup>204</sup> The Zeeland,

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192. Baseball-Reference.com, Mike Andrews 1973 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=andremi01&t=b&year=1973> (last visited Apr. 14, 2010).

193. *Id.*

194. Mike Andrews 1973 Batting Gamelogs, *supra* note 192.

195. *Id.*

196. *Id.*

197. Richard Dozer, *Sox Release Andrews*, CHIC. TRIB., July 11, 1973, at E1. Richard Dozer, *Bahnsen, Bradford, Sox Nip Yanks 2–1*, CHIC. TRIB., July 11, 1973, at E1.

198. Dozer, *Sox Release Andrews*, *supra* note 197.

199. Mike Andrews Statistics & History, *supra* note 190.

200. *Id.*

201. *Id.*

202. This is my own observation based on what I wrote.

203. See *supra* text accompanying note 152.

204. Baseball-Reference.com, Jim Kaat Statistics & History, <http://www.baseball-reference.com/players/k/kaatji01.shtml> (last visited Apr. 15, 2010).

Michigan native was looking to sign a three-year deal for \$60,000 a season.<sup>205</sup> He was again in a battle with Twins owner Calvin Griffith, a situation Kaat did not enjoy.<sup>206</sup> After winning twenty-five games in 1966, Kaat was able to negotiate a \$60,000 contract from Calvin Griffith for the 1967 season.<sup>207</sup> However, after the 1968 season when Kaat was fourteen and twelve (14–12), Griffith cut his salary.<sup>208</sup> The Twins' owner proceeded to cut Kaat's salary after each of the next three campaigns.<sup>209</sup> Kaat had worked hard during the off-season on conditioning, and at the beginning of the 1972 season he started the season with a ten and two (10–2) record and a 2.07 ERA before breaking his wrist.<sup>210</sup> When Griffith countered with the same salary of \$46,000 for 1973, Kaat prepared for war with the owner that he described as being "as penurious as they come."<sup>211</sup> Kaat described the negotiations:

Calvin and I went at it pretty good. It got personal. Both of us refused to budge. I held out and refused to report to spring training. . . . Griffith sent his son, Clark, to my house to get me to sign. They upped their offer to \$51,000, then to \$54,000, but I was adamant. I wanted \$60,000. I agreed to report to camp without a contract and work out with the team. On the day before the opener, Howard Fox, the Twins' traveling secretary, told me 'the boss wants to see you. He has your contract.' I went to Calvin's hotel room and he threw the contract on the table. It was for \$60,000.<sup>212</sup>

However, Griffith was not the least bit happy.<sup>213</sup> He refused to shake hands with Kaat, a gesture that he had always extended previously.<sup>214</sup> Kaat told his roommate Phil Roof that he knew it would be his last season in Minnesota.<sup>215</sup> Kaat started off the season with three wins.<sup>216</sup> On May 28, the lefty won his sixth decision against two losses.<sup>217</sup> By August 1, the Twins were only two games over .500, and Kaat's record was eleven and ten

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205. *People in Sports: Twins Give Killebrew \$110,000*, N.Y. TIMES, Mar. 9, 1973, at 32.

206. JIM KAAT & PHIL PEPE, *STILL PITCHING: MUSINGS FROM THE MOUND AND THE MICROPHONE* 98–99 (2003).

207. *Id.* at 98.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.* at 98–99.

213. *Id.* at 99.

214. *Id.*

215. *Id.*

216. Baseball Reference.com, *Jim Kaat 1973 Pitching Gamelog*, <http://www.baseball-reference.com/players/gl.cgi?n1=kaatj01&t=p&year=1973> (last visited Apr. 15, 2010).

217. *Id.*

(11–10).<sup>218</sup> After two more losses, the Twins decided to drop their longtime star hurler.<sup>219</sup> On August 15, Kaat was selected off of waivers by the Chicago White Sox for the price of \$20,000.<sup>220</sup> *Chicago Tribune* writer George Langford claimed that the White Sox felt the Twins were retooling through a youth movement as the reason for Kaat’s availability, but the writer felt that “it is also likely that Calvin Griffith, the economy-minded owner of the Twins, was looking for an opportunity to unload another high-priced player who has given him constant hassles at contract time.”<sup>221</sup>

Kaat finished up the season with a four and one (4–1) record for the White Sox.<sup>222</sup> The Twins finished the season with an eighty-one and eighty-one (81–81) record for third place in the West Division (thirteen games behind the Oakland A’s) with the White Sox in fifth, three games behind the Twins.<sup>223</sup>

### C. Fritz Peterson, Mike Kekich, Sparky Lyle, and the New York Yankees

In one of the most bizarre off-the-field stories in the history of the New York Yankees, one that law professor Michael Flannery describes as the “most scandalous of the Yankee ‘sex’ stories,” pitchers Fritz Peterson and Mike Kekich agreed during the off-season to exchange families.<sup>224</sup> After an initial discussion in July 1972, the families agreed to the change in October 1972.<sup>225</sup> Peterson, Susanne Kekich and her two daughters Kristen and Reagan were living together with plans for a wedding as soon as a divorce could be finalized.<sup>226</sup> Kekich initially lived with Marilyn (Chip) Peterson and her two sons Gregg and Eric.<sup>227</sup> However, the relationship was already showing signs

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218. *Id.*; Baseball Reference.com, 1973 Minnesota Twins Schedule, Boxscores and Splits, <http://www.baseball-reference.com/teams/MIN/1973-schedule-scores.shtml> (last visited Apr. 15, 2010).

219. George Langford, *Sox Purchase Kaat For Waiver Price*, CHI. TRIB., Aug. 16, 1973, at C2.

220. *Id.*

221. *Id.*

222. Jim Kaat 1973 Pitching Gamelog, *supra* note 216.

223. Baseball-Reference.com, 1973 American League Season Summary, <http://www.baseball-reference.com/leagues/AL/1973.shtml> (last visited Apr. 15, 2010).

224. Michael T. Flannery, *Affairs of the Heart*, in *COURTING THE YANKEES: LEGAL ESSAYS ON THE BRONX BOMBERS 183–84* (Ettie Ward ed., 2003). The article was later reprinted with some editorial changes. Michael T. Flannery, *Affairs of the Heart*, 10 VILL. SPORTS & ENT. L.J. 211 (2003). Michael Flannery is currently a law professor at the University of Arkansas at Little Rock. See Murray Chass, 2 *Yankees Disclose Family Exchange, Peterson and Kekich Give Details of Arrangement*, N.Y. TIMES, Mar. 6, 1973, at 51.

225. Chass, *supra* note 224.

226. *Id.*

227. *Id.*

of strain.<sup>228</sup> It should not come as a surprise that Lee MacPhail thought about trading one of the two pitchers when he found out about the situation in January.<sup>229</sup> Adding to the drama was MacPhail's inability to agree to terms with Peterson and reliever Sparky Lyle.<sup>230</sup>

On March 9, general manager Lee MacPhail renewed the contracts of both Peterson and Sparky Lyle.<sup>231</sup> Lyle's 1973 holdout proved mild compared to what would happen the following year. Seventeen days into spring training amid the third meeting of the day, Lyle agreed to a \$75,000 deal and a \$30,000 raise just after midnight.<sup>232</sup> After an initial offering of \$60,000, Lyle dropped the idea of negotiating by himself and brought Harold Meizler into the dispute.<sup>233</sup> At Lyle's request, owner Gabe Paul joined the band of negotiators and played a role in concluding the late night session.<sup>234</sup> Although Lyle failed to match his excellent 1972 season, he still won five of fourteen decisions, saved twenty-seven games, and posted a 2.51 ERA.<sup>235</sup>

Peterson's contract was renewed at the same contractual amount as 1972, approximately \$67,500.<sup>236</sup> MacPhail said the team was forced into the renewal because if the Yankees had not acted within ten days after camp opened for the spring, the players "might be in a position to claim free agency."<sup>237</sup> Peterson brought Chuck Barnes, O. J. Simpson's attorney, into the negotiations.<sup>238</sup> With all of the publicity surrounding his off-field marital situation, the Yankees finally increased their offer to \$75,000, and Peterson signed the deal in mid-June after agreeing to terms in either late-May or early-June.<sup>239</sup> Murray Chass, of the *New York Times*, finally reported the signing on July 15 because the "Yankees . . . didn't announce Peterson's signing at the

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228. *Id.*

229. *Id.*

230. Murray Chass, *Yanks Call Lyle, Peterson to Camp, Renewal Option Is Invoked Against Pair of Holdouts—Rangers Beaten, 7–4*, N.Y. TIMES, Mar. 10, 1973, at 24.

231. *Id.* For a discussion of the negotiations, see Murray Chass, *Lyle and Yankees Are Still Far Apart*, N.Y. TIMES, Mar. 8, 1973, at 47.

232. Murray Chass, *In Wee Small Hours, Yanks Sign Lyle*, N.Y. TIMES, Mar. 17, 1973, at 23. *Lyle and Yanks Come to Terms*, CHI. TRIB., Mar. 17, 1973, at A4.

233. *Id.*

234. *Id.*

235. Baseball-Reference.com, Sparky Lyle Statistics & History, <http://www.baseball-reference.com/players/l/lylesp01.shtml> (last visited Apr. 15, 2010).

236. Chass, *supra* note 230.

237. *Id.*

238. *Los Angeles Times* writer Shav Glick described Chuck Barnes as "the first president of Ontario Motor Speedway and the man who packaged O. J. Simpson's million dollar contracts." Shav Glick, *Cook Stages Revival: Era of Extravagance Ends at Ontario Motor Speedway*, L.A. TIMES, Aug. 19, 1973, at C1.

239. Murray Chass, *M'Daniel Remembers Chicago*, N.Y. TIMES, July 15, 1973, at S5.

time. In fact, it was not disclosed until last Sunday when it came out as an ‘oh, by the way’ sort of thing. Not even Bob Fishel, the Yankees public relations director, knew about it until then.”<sup>240</sup>

Peterson struggled to a three and six (3–6) start before winning three straight games, but he lost his next four decisions before beating the Chicago White Sox on July 11.<sup>241</sup> He finished the season with an eight and fifteen (8–15) record.<sup>242</sup> After pitching in three games in 1974, Peterson was traded with Fred Beene, Tom Buskey, and Steve Kline to the Cleveland Indians on April 26 for Chris Chambliss, Dick Tidrow, and Cecil Upshaw.<sup>243</sup> Peterson finished his eleven year career in 1976 with 133 wins and 131 losses.<sup>244</sup>

#### D. Charles Finley Against Vida Blue and Dave Duncan

Vida Blue and Dave Duncan both tested Oakland Athletics owner Charles Finley prior to the beginning of the 1973 season despite their struggles on the field for Oakland the previous year. After Blue’s 1972 holdout, the pitcher’s win-loss record dropped to six and ten (6–10) in only twenty-five pitching appearances.<sup>245</sup> Blue’s ERA increased nearly one run per game to 2.80.<sup>246</sup> Duncan hit only .218 in 121 games for the World Series champions although he did contribute nineteen home runs.<sup>247</sup> Finley renewed the contracts of both players.<sup>248</sup> Duncan was reportedly offered a 33.5 percent raise, but he was still smarting over his late-season replacement, Gene Tenace, who proceeded to win the 1972 World Series MVP Award when Oakland

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240. *Id.*

241. Baseball-Reference.com, Fritz Peterson, 1973 Pitching Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=peterfr01&t=p&year=1973> (last visited Apr. 15, 2010).

242. *Id.*

243. Baseball-Reference.com, Fritz Peterson, 1974 Pitching Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=peterfr01&t=p&year=1974> (last visited Apr. 15, 2010). Talks between the Yankees and Indians started over moving Peterson a few weeks before the trade. Michael Strauss, *Yanks Win, Trade 4 Pitchers*, N.Y. TIMES, Apr. 27, 1974, at 19. See also Murray Chass, *Yankee-Indian Trade Brings Confusion, Anger and Leaves 2d-Base Question*, N.Y. TIMES, Apr. 28, 1974, at S5; *Yankees Send Peterson to Tribe*, CHI. TRIB., Apr. 27, 1974.

244. Baseball-Reference.com, Fritz Peterson Statistics & History, <http://www.baseball-reference.com/players/p/peterfr01.shtml> (last visited Apr. 15, 2010).

245. Baseball-Reference.com, Vida Blue Statistics & History, <http://www.baseball-reference.com/players/b/bluevi01.shtml> (last visited Apr. 15, 2010).

246. *Id.*

247. Baseball-Reference.com, Dave Duncan Statistics & History, <http://www.baseball-reference.com/players/d/duncada01.shtml> (last visited Apr. 15, 2010).

248. Ron Rapoport, *Finley’s Success Formula: Crisis, Suspicion, Intrigue*, L.A. TIMES, Mar. 22, 1973, at E1; *Finley Holds Cards; Knows How to Deal*, LAKELAND LEDGER (Fla.), Mar. 28, 1973, at 3B.

defeated the Cincinnati Reds in the Fall Classic.<sup>249</sup> Duncan demanded to be traded as his holdout dragged into spring training.<sup>250</sup> Finley responded

by issuing instructions to play outfielder Joe Rudi at first base, a new position, thus moving Gene Tenace behind the plate. That Rudi played first not at all in 1972, and doesn't want to play there in 1973, and that Tenace probably belongs in the outfield does not matter. It is simply Finley's way of telling Duncan where to go.<sup>251</sup>

Finley obliged Duncan by trading him together with George Hendrick for Ray Fosse and Jack Heidemann of the Cleveland Indians on March 24.<sup>252</sup>

Texas Rangers catcher Dick Billings was mentioned in mid-March as part of a package that the *Oakland Tribune* reported as part of a trade to Oakland for Vida Blue.<sup>253</sup> Billings also began 1973 without signing a new deal.<sup>254</sup> Although the trade was denied by Bob Short, the Rangers owner did mention discussions involving Blue, Dave Duncan, Pete Broberg and possibly catcher Dick Billings.<sup>255</sup> When Dick Bosman was dealt by Short in May, Billings and Mike Epstein remained as the two Rangers who moved to Texas from Washington.<sup>256</sup> Billings went on the fifteen day disabled list in early May.<sup>257</sup> Billings had one of his poorest hitting performances of his 400-game, eight season career in 1973 when he hit .179.<sup>258</sup> When his average dipped below .200 on June 17, he was unable to get above the "Mendoza Line" despite playing in fifty-six more games.<sup>259</sup> Billings reached an accord at some point during the season, and his decision to begin the season with a new contract represents one of a number of instances in this story involving minor

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249. David Condon, *A's Better Than 1972, Says Manager*, CHI. TRIB., Mar. 8, 1973, at C3.

250. *A's Reported Trading Blue to Rangers*, N.Y. TIMES, Mar. 18, 1973, at S5; Condon, *supra* note 249.

251. Rapoport, *supra* note 248.

252. *A's Land Fosse in a Trade*, N.Y. TIMES, Mar. 25, 1973, at S5.

253. *See A's Reported Trading Blue to Rangers*, N.Y. TIMES, Mar. 18, 1973, at S5; *Short Denies Blue in Hand*, WASH. POST, Mar. 18, 1973, at D2.

254. *See supra* text accompanying note 150.

255. *See A's Reported Trading Blue to Rangers*, *supra* note 253; *Short Denies Blue in Hand*, *supra* note 253.

256. *Bosman Dealt to Indians*, WASH. POST, May 1, 1973, at D1.

257. Sam Goldaper, *People In Sports: Nets Lose Another One to the NBA*, N.Y. TIMES, May 5, 1973, at 28.

258. Baseball-Reference.com, Dick Billings Statistics & History, <http://www.baseball-reference.com/players/b/billidi01.shtml> (last visited Apr. 15, 2010).

259. For a discussion of the origin of the phrase "Mendoza Line," named for Mario Mendoza, *see* DICKSON, *supra* note 88, at 540-41. Baseball-Reference.com, Dick Billings 1973 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=billidi01&t=b&year=1973> (last visited Apr. 15, 2010).

players.<sup>260</sup> His career was already on the downturn heading into the 1974 season.<sup>261</sup> Billings lasted with the Rangers until August 12, 1974, when he was sold to the St. Louis Cardinals.<sup>262</sup> The 1975 season was his last in the major leagues although he did play in forty-four games for the Tulsa Oilers, the Cardinals' AAA minor league team in the American Association.<sup>263</sup> The Cardinals released him on September 29.<sup>264</sup>

Another marginal player who refused to sign his 1973 contract prior to spring training was Jerry Kenney.<sup>265</sup> Kenney echoed Rick Reichardt's feelings in disclaiming an interest in becoming a free agent when asked about his plans by writer Lou Chapman: "I'd contact the other [twenty-three] clubs, send out flyers. But it's not going to happen. I'm for whatever (Cleveland general manager) Phil Seghi and my agent work out."<sup>266</sup> Apparently Segui was not particularly interested in working out a deal with Kenney or his agent. After Kenney played in only five games for Cleveland, the Indians released him on May 4.<sup>267</sup> Although Kenney was able to sign a deal with the New York Yankees on July 30, he never played again in the major leagues.<sup>268</sup>

#### E. 1974: The Arrival of Salary Arbitration and Another Round of Renewed Contracts

In the spring of 1974 baseball entered the era of salary arbitration when twenty-nine of the fifty-three eligible players who filed for the new procedure with their teams went to a hearing where the arbitrator was charged with a

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260. Billings is such a minor figure in this tale that no published report of his signing could be located by the author. However, Billings completed the 1973 season as a member of the Rangers, and he started 1974 with the team. Therefore, the two sides must have reached an agreement during the season. Dick Billings Statistics & History, *supra* note 258.

261. *Id.*

262. *Id.*

263. *Id.* Baseball-Reference.com, Dick Billings Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=billin001ric> (last visited Apr. 15, 2010). Baseball-Reference.com, 1975 Tulsa Oilers Statistics - Minor Leagues, <http://www.baseball-reference.com/minors/team.cgi?id=35786> (last visited Apr. 15, 2010).

264. Dick Billings Statistics & History, *supra* note 258.

265. *See supra* note 150.

266. Chapman, *supra* note 150.

267. Kenney's final game was on April 19. Baseball-Reference.com, Jerry Kenney 1973 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=kenneje01&t=b&year=1973> (last visited Apr. 15, 2010).

268. Baseball-Reference.com, Jerry Kenney Statistics & History, <http://www.baseball-reference.com/players/k/kenneje01.shtml> (last visited Apr. 15, 2010). Kenney did play from 1973–1975 for the Syracuse Chiefs, the Yankees' AAA farm team in the International League. Baseball-Reference.com, Jerry Kenney Minor League History & Statistics, <http://www.baseball-reference.com/minors/player.cgi?id=kenney001ger> (last visited Apr. 15, 2010).

simple task—choose between the team’s offer or the player’s demand.<sup>269</sup> The veteran arbitrators selected for the initial round of hearings could not select the midpoint nor any figure between the two numbers.<sup>270</sup> Although salary arbitration would eventually become a critical factor in increasing players’ salaries, a number of eligible players chose to bypass the new method and instead refused to sign their contracts prior to starting the new season prompting their teams to renew their contracts to preserve their rights to the player’s services.<sup>271</sup>

In 1974 at least nine players started the season playing under their renewed contracts. The players were Doyle Alexander (Baltimore Orioles), Horace Clarke (New York Yankees), Andy Etchebarren (Baltimore Orioles), Phil Garner (Oakland Athletics), Sparky Lyle (New York Yankees), Bob Reynolds (Baltimore Orioles), Dave Roberts (San Diego Padres), Royle Stillman (Baltimore Orioles), and Bobby Tolan (San Diego Padres).<sup>272</sup>

#### F. A Trio of Orioles

On March 8, 1974 Baltimore Orioles General Manager Frank Cashen announced the renewal of four unsigned players, Doyle Alexander, Andy Etchebarren, Bob Reynolds, and Royle Stillman.<sup>273</sup> Cashen remarked that “[t]his is something this ballclub has never had to do before, but today I find

269. Jerome Holtzman, *Review of 1974*, in OFFICIAL 1975 BASEBALL GUIDE, 301–02 (1975).

270. *Id.*

271. For one article noting that Doyle Alexander refused arbitration, see Gordon Beard, *Birds’ Battery Dies In Early Innings*, FREE LANCE-STAR (Fredericksburg, Va.), June 4, 1974, at 6.

272. *Arbitration Proceedings*, *supra* note 150, at 58. The status of those particular players was described as follows:

Bobby Tolan and Dave Roberts, two San Diego Padres regulars, are entering the 1974 season unsigned, and have been notified by the club that their 1973 contracts are being renewed. Two days before the start of the season, four other major leaguers are unsigned: Doyle Alexander and Bob Reynolds of Baltimore, Sparky Lyle of the New York Yankees, and Mike Marshall of Los Angeles.

*Roberts Unsigned*, EUGENE REGISTER-GUARD (Ore.), Apr. 3, 1974, at 4D. On April 2, Ross Newhan of the *Los Angeles Times*, published an article focusing on Mike Marshall, and he listed all of the same players as the article in the *Eugene Register-Guard* except Phil Garner as a player “expected to enter the 1974 season unsigned.” The other players covered in this section of the article were added from the list in the *Arbitration Proceedings* and additional research. Ross Newhan, *Marshall Unsigned for 1974; Pitcher May Be Test Case*, L.A. TIMES, Apr. 2, 1974, at B5. Newhan noted:

It is not unprecedented for a player to start the season without a contract but none has played an entire year without one. It has been theorized that were a player to do so, he would become a free agent and eligible to negotiate with any of the 24 teams but the theory has never been tested.

*Id.*

273. *Orioles Invoke Reserve Clause on 4*, WASH. POST, Mar. 9, 1974, at C3. *Sports News Briefs - Orioles Invoke Renewal Clause for 4*, N.Y. TIMES, Mar. 9, 1974, at 21.

myself forced to do it.”<sup>274</sup> “I feel that the line has to be drawn somewhere . . . I’ve gone as far as I can go.”<sup>275</sup> In 1973, Alexander won twelve games as the fourth starter behind Jim Palmer, Mike Cueller, and Dave McNally, and Reynolds shared time in an excellent bullpen with Grant Jackson and Eddie Watt.<sup>276</sup> The two pitchers must have felt that they deserved raises for the upcoming season.

Alexander’s lack of a contract lasted for two-thirds of the season. In early June, Alexander told Associated Press writer Gordon Beard “I guess there’s nothing anyone can say now . . . Surprisingly, we’re not that far apart, and I don’t consider it an insurmountable difference. My demands are not outrageous at all. But I’m not thinking about a contract now, just trying to do a job.”<sup>277</sup> Beard also noted:

[t]he salary dispute was not taken to arbitration . . . Alexander is believed to be seeking about \$30,000 after making from \$22,000 to \$25,000 a year ago. . . . If Alexander fails to sign this season, the dispute could wind up as a court case to test baseball’s reserve clause.<sup>278</sup>

Later in the month, negotiations began to move slightly. Discussing a meeting between Cashen and Alexander in a June 24 article, Alexander stated to Beard that

we came a little closer moneywise, in an indirect way. Alexander explained that whereas he had been offered a conditional contract previously, Cashen now has switched tactics and offered a flat sum. We’re only about \$3000 apart . . . . He declined to discuss offers, but he is believed to be seeking about \$30,000. . . . He is being paid at a rate slightly above the estimated \$23,000 he received last year.<sup>279</sup>

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274. *Rookie is Baseball Hero*, EVENING HERALD (Rock Hill, S.C.), Mar. 8, 1974, at 7; *Exhibition Games Begin: White Sox First Winners*, THE BULLETIN (Bend, Or.), Mar. 8, 1974, at 10. The articles incorrectly identify Stillman as Tillman.

275. *See Oliva, Griffith Talk; Disagree*, ST. PETERSBURG TIMES, Mar. 9, 1974, at 3-C; *Orioles to Invoke Reserve Clause*, STAR-NEWS (Wilmington, N.C.), Mar. 9, 1974, at 20.

276. Baseball-Reference.com, 1973 Baltimore Orioles Batting, Pitching, & Fielding Statistics, <http://www.baseball-reference.com/teams/BAL/1973.shtml> (last visited Apr. 15, 2010).

277. Beard, *supra* note 271.

278. *Id.*

279. Gordon Beard, *Alexander Helps Bargaining Power*, DAILY MAIL (Hagerstown, Md.), June 25, 1974, at 16.

Alexander finally agreed to a contract on July 30.<sup>280</sup> With the addition of Ross Grimsley to a starting staff that included Mike Cueller, Dave McNally, and Jim Palmer, Alexander was used mostly as a reliever until an elbow injury to Palmer pushed Alexander and Wayne Garland into sharing starting assignments during the middle of the season.<sup>281</sup> Alexander finished the year with twelve starts while Palmer was limited to just twenty-six games and a seven and twelve (7–12) record.<sup>282</sup> On August 30, the Orioles' record was sixty-five and sixty-five (65–65).<sup>283</sup> The Orioles proceeded to capture the East Division title while surging to a final record of ninety-one and seventy-one (91–71) by winning sixteen of their final eighteen games.<sup>284</sup> Bob Reynolds contributed another solid season by appearing in fifty-four games, finishing thirty and matching his 1973 totals of seven wins and five losses (7–5).<sup>285</sup> At some point during the season, his dispute with the Orioles was resolved.<sup>286</sup>

Andy Etchebarren had not been pleased for years about his role sharing catching duties. After two years as the primary catcher, Elrod Hendricks supplanted Etchebarren as the dominant catcher in 1968 when the Birds replaced Hank Bauer with Earl Weaver at mid-season.<sup>287</sup> When Hendricks

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280. *Alexander Inks Pact*, AMARILLO GLOBE-TIMES, July 31, 1974, at 11.

281. Baseball-Reference.com, 1974 Baltimore Orioles Batting, Pitching, & Fielding Statistics, <http://www.baseball-reference.com/teams/BAL/1974.shtml> (last visited Apr. 15, 2010). Thomas Rogers, *Palmer's Nightmare of '74 Continues As White Sox Trounce Orioles by 9–1*, N.Y. TIMES, June 17, 1974, at 40. Palmer did not pitch from June 16 through August 13, 1974. Baseball-Reference.com, Jim Palmer 1974 Pitching Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=palmeji01&t=p&year=1974> (last visited Apr. 15, 2010).

282. 1974 Baltimore Orioles Batting, Pitching, & Fielding Statistics, *supra* note 281.

283. Baseball-Reference.com, 1974 Baltimore Orioles Schedule, Box Scores and Splits, <http://www.baseball-reference.com/teams/BAL/1974-schedule-scores.shtml> (last visited Apr. 15, 2010).

284. *Id.*

285. Baseball-Reference.com, Bob Reynolds Statistics & History, <http://www.baseball-reference.com/players/r/reynobo01.shtml> (last visited Apr. 15, 2010).

286. Reynolds played the entire 1974 season with the Orioles, and started the 1975 season in Baltimore. He was traded on May 29, 1975, to the Detroit Tigers for Fred Holdsworth. *Id.*

287. Hendricks was traded to the Chicago Cubs for Tommy Davis on August 18, 1972, and he was returned to the Orioles on October 27 of that year for Frank Estrada. In 1976, he was part of a large multi-player deal with Doyle Alexander that sent five players to the Yankees for five players. Baseball-Reference.com, Elrod Hendricks Statistics & History, <http://www.baseball-reference.com/players/h/hendrel01.shtml> (last visited Apr. 15, 2010). Baseball-Reference.com, Andy Etchebarren Statistics & History, <http://www.baseball-reference.com/players/e/etchean01.shtml> (last visited Apr. 15, 2010). Bauer's Orioles were forty-three and thirty-seven (43–37) when he was replaced by Weaver. Weaver would manage the Orioles through 1982. Baseball-Reference.com, Baltimore Orioles Team Franchise, <http://www.baseball-reference.com/teams/BAL/> (last visited Apr. 15, 2010).

was traded in 1972, Johnny Oates moved into the starting role.<sup>288</sup> In 1973, the Orioles acquired Earl Williams from Atlanta in a deal involving Oates, and Etchebarren's appearances slid down to only fifty-four games.<sup>289</sup> Etchebarren told Cashen that he did not intend to report for spring training unless he was traded to the California Angels, a team close to his off-season home, or granted a no-trade contract.<sup>290</sup> The holdout, however, was short-lived. Etchebarren signed on March 12 declaring to Cashen: "I've been thinking it over. I miss baseball. I'm miserable."<sup>291</sup> Etchebarren received a slight salary increase above the \$33,000 that he was paid for his 1973 effort.<sup>292</sup> Etchebarren was limited to sixty-two games in 1974 while Williams caught in seventy-five games and played first base in forty-seven.<sup>293</sup> Although Etchebarren claimed to be "miserable" outside of the game, he was hardly happier about another season with the Orioles.<sup>294</sup> His displeasure would spill over into the off-season again. However, Baltimore's management dealt with his holdout and trade demands in an usual manner. A slight salary increase was the most the veteran receiver could extract from his employer because he lacked leverage due to the reserve system.<sup>295</sup>

Royle Stillman had been involved in the same trade with Alexander that sent Frank Robinson to the Dodgers in 1971.<sup>296</sup> Stillman had still not appeared in a major league game.<sup>297</sup> He spent the 1973 season in AAA Rochester.<sup>298</sup> His situation was easily resolved by sending him back to Rochester where he spent most of next three years with the Red Wings under

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288. Baseball-Reference.com, Johnny Oates Statistics & History, <http://www.baseball-reference.com/players/o/oatesjo01.shtml> (last visited Apr. 15, 2010). Andy Etchebarren Statistics & History, *supra* note 287.

289. Andy Etchebarren Statistics & History, *supra* note 287; Baseball-Reference.com, Earl Williams Statistics & History, <http://www.baseball-reference.com/players/w/williea02.shtml> (last visited Apr. 15, 2010).

290. *Orioles Invoke Reserve Clause on 4*, WASH. POST, Mar. 9, 1974, at C3. Etchebarren was preparing to retire if he was unsuccessful in his negotiations. *Al Bumby Signs for \$30,000*, FREE-LANCE STAR (Fredericksburg, Va.), Mar. 6, 1974, at 12.

291. *Etchebarren Signs 1974 Oriole Pact*, CUMBERLAND NEWS (Md.), Mar. 13, 1974, at 13. *Mark for Dodgers— Maybe*, CHI. TRIB., Mar. 25, 1974, at C2.

292. *Etchebarren Signs*, *supra* note 291.

293. Etchebarren Statistics & History, *supra* note 287; Williams Statistics & History, *supra* note 289.

294. Etchebarren would refuse to sign again before the 1975 season. See *supra* text accompanying notes 364–73.

295. This my own observation based on the theme of this article.

296. Baseball-Reference.com, Royle Stillman Statistics & History, <http://www.baseball-reference.com/players/s/stillro02.shtml> (last visited Apr. 15, 2010).

297. Baseball-Reference.com, Royle Stillman Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=stillm001roy> (last visited Apr. 15, 2010).

298. *Id.*

the tutelage of Joe Altobelli.<sup>299</sup> He would only play in a total of 33 games with 40 plate appearances for the Orioles in 1975 and 1976.<sup>300</sup>

#### G. The Athletics and Phil Garner

Phil Garner was drafted by the Oakland Athletics in the first round (third overall pick) of the secondary phase in 1971.<sup>301</sup> Garner was not eligible for salary arbitration prior to 1974, so his only recourse against A's owner Charles Finley to improve his salary was to force the owner to renew his contract.<sup>302</sup> The Athletics largely avoided their contractual problem with Garner by sending him to the minors at the beginning of the season and shuffling him back and forth from Tucson to Oakland.<sup>303</sup> During the course of the year, Garner played outstanding ball for the Toros batting .330 with a .410 on-base percentage in ninety-six games.<sup>304</sup> He started the year in Arizona but was recalled on May 21 when the A's found themselves in need of an infielder because they had four players on the disabled list.<sup>305</sup> After playing in six consecutive games, Garner was sent back down to Tucson in late May when Dick Green was ready to return from the disabled list.<sup>306</sup> Garner did not return until late July, and he had only eight plate appearances in thirteen games before being sent down again in late August.<sup>307</sup> He played in eleven games in September and October.<sup>308</sup> The following season, Garner played in

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299. Baseball-Reference.com, Joe Altobelli Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=altobe001jos> (last visited Apr. 15, 2010).

300. Royle Stillman Statistics & History, *supra* note 296.

301. Baseball-Reference.com, Phil Garner Statistics & History, <http://www.baseball-reference.com/players/g/garneph01.shtml> (last visited Apr. 15, 2010). Garner spent the 1971 season at Burlington in the Midwest League before splitting time in 1972 between Birmingham and Iowa. He had played in 138 games for Tucson in 1973, and he was a September call-up playing in nine games between September 10 (his ML debut) and September 29. Baseball-Reference.com, Phil Garner Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=garner001phi> (last visited Apr. 15, 2010).

302. Garner had played only a total of thirty-nine games in 1973–74. Thus, with less than two years of credited service, Garner was not eligible for salary arbitration.

303. Phil Garner Statistics & History, *supra* note 301; Phil Garner Minor League Statistics & History, *supra* note 301.

304. Phil Garner Minor League Statistics & History, *supra* note 301; Baseball-Reference.com, Phil Garner 1974 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=garneph01&t=b&year=1974> (last visited Apr. 15, 2010).

305. Sal Bando, Dick Green, Dal Maxvill, and Manny Trillo were all injured. *A's Farm Out Abbott; Phil Garner Recalled*, BRIDGEPORT POST (Conn.), May 22, 1974, at 57.

306. Charles Tonelli, *Rudi's Return Routs Brewers*, ARGUS (Fremont-Newark, Cal.), June 1, 1974, at 17.

307. Phil Garner 1974 Batting Gamelogs, *supra* note 304.

308. *Id.*

160 games for the Athletics.<sup>309</sup> He stayed with Oakland until a large multi-player trade on March 15, 1977 sent him to the Pirates.<sup>310</sup>

#### H. The Yankees and Horace Clarke and Sparky Lyle

Horace Clarke first appeared in a Yankees uniform in 1965.<sup>311</sup> By 1974, the thirty-three year-old infielder who replaced the popular and productive Bobby Richardson at second base upon his retirement in 1966, was a constant source of fan frustration and trade talks.<sup>312</sup> When Clarke held out in 1974, feeling that his average of .263 merited an increase,<sup>313</sup> the Yankees invoked the renewal option clause by letter on March 4.<sup>314</sup> The letter apparently renewed Clarke at his 1973 salary of \$50,000.<sup>315</sup> Clarke's act of defiance did not sit well with the Yankees' management.<sup>316</sup> After playing in twenty-four games for New York, Clarke was sold to the San Diego Padres on May 31, 1974.<sup>317</sup> Murray Chass of the *New York Times* did not appear surprised by the move and described Clarke as "the most senior and most maligned player in the organization . . . ending a [seventeen] year tenure in the Yankees' employ."<sup>318</sup> His last game for New York was on May 28, and he pinch hit for Dave Roberts in the eighth inning for the Padres on May 31 in his first game

309. Phil Garner Statistics & History, *supra* note 301.

310. *Id.*

311. Baseball-Reference.com, Horace Clarke Statistics & History, <http://www.baseball-reference.com/players/c/clarkho01.shtml> (last visited Apr. 15, 2010).

312. Murray Chass, *Yanks Put Pressure on Clarke*, N.Y. TIMES, Mar. 5, 1974, at 39. Writer Herschel Nissenson described the attitude towards Horace Clarke:

Horace Clarke is . . . among the leading all-time Yankees in being booed . . . He's become the target of the fans' frustrations even though he's lead American League second basemen in assists six times in seven years as a regular, a mark surpassed only by Charley Gehringer, Detroit's Hall of Fame (sic).

Herschel Nissenson, *Horace's Records Don't Impress Fans*, VIRGIN ISLAND DAILY NEWS, May 7, 1974, at 20.

313. It was his highest batting average since 1969 when he hit .285. However, his on-base percentage was consistent with his 1971 and 1972 performance. Chass frequently referred to his defensive liabilities in his stories about Clarke and the Yankees.

314. *Id.*

315. *Id.*

316. This observation of mine is based on the trade on May 31, 1974.

317. Murray Chass, *Yanks Sell Clarke to Padres, Then Lose; Astros Rout Koosman, Down Mets, 7-1; Seasoned Infielder 10th to Depart-Twins Win, 5-2*, N.Y. TIMES, June 1, 1974, at 21.

318. *Id.* Clarke started his career in Kearney in the Nebraska State League in 1958. His other minor league stops were in St. Petersburg, Fargo-Moorhead, Binghamton, Amarillo, Richmond, and Toledo. Baseball-Reference.com, Horace Clarke Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=clarke001hor> (last visited Apr. 15, 2010).

for San Diego.<sup>319</sup> Clarke hit barely over .200 for the season for both clubs.<sup>320</sup> That effort earned Clarke a release on October 3.<sup>321</sup> It was the end of his ten-season major league career.<sup>322</sup>

Reliever Sparky Lyle was no more satisfied with his 1974 offer than the previous one that forced his brief holdout in 1973. Although Lyle could have opted for salary arbitration, he decided against joining the fifty-three players who chose that option.<sup>323</sup> Instead, Lyle pitched for nearly the entire season under the renewal clause of his contract.<sup>324</sup> This put Lyle in position to possibly test the reserve clause, and George Steinbrenner barely averted a potential showdown with the reliever and the Players Association when he rewarded Lyle with a multiyear deal on the final day of the season.<sup>325</sup> Lyle accepted an increase from his 1973 contract of \$80,000 to \$87,500 for the nearly completed 1974 season and a \$5000 raise for 1975 to \$92,500.<sup>326</sup>

#### I. Dave Roberts and Bobby Tolan Battle the Padres

Two days before the season began, the Padres had not reached an agreement with either Dave Roberts or Bobby Tolan.<sup>327</sup> Roberts noted that “I’m happy here, but they aren’t offering me what I consider a decent raise. . . . For the time being, I want to put this out of my mind, get ready physically and have a big season.”<sup>328</sup> Roberts was coming off a solid 1973 campaign when he hit .286 with twenty-one home runs.<sup>329</sup> Roberts signed in

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319. Baseball-Reference.com, Horace Clarke 1974 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?t=clarkho01&t=b&year=1974> (last visited Apr. 15, 2010). Baseball-Reference.com, May 31, 1974, San Diego Padres at St. Louis Cardinals Play by Play and Box Score, <http://www.baseball-reference.com/boxes/SLN/SLN197405310.shtml> (last visited Apr. 15, 2010).

320. Horace Clarke Statistics & History, *supra* note 311.

321. *Id.*

322. *Id.*

323. Holtzman, *supra* note 269.

324. *Id.* at 303.

325. Thornley, *supra* note 8 (citing *Lyle Signs With Yanks for 1975—And 1974*, CHI. TRIB., Oct. 3, 1974, and Holtzman, *supra* note 269, at 302–03). See also Joseph Durso, *Lingering Doubts and Irony Mark Yanks’ Fall in Dramatic Finish*, N.Y. TIMES, Oct. 3, 1974, at 55, col. 1.

326. See Holtzman, *supra* note 163, at 303; Thornley, *supra* note 8 (citing *Lyle Signs With Yanks for 1975—and 1974*, CHI. TRIB., Oct. 3, 1974, at n.30). The *Chicago Tribune* article differs from Holtzman’s summary by stating that Lyle was renewed at his 1973 contract price of \$75,000 with a \$7,500 bonus for the new deal signed the day before the end of the season, in addition to a \$95,000 deal for 1975. Thornley does not discuss the difference between the two sources.

327. *Roberts Unsigned*, EUGENE REGISTER-GUARD (Or.), Apr. 3, 1974, at 4D.

328. *Id.*

329. Baseball-Reference.com, Dave Roberts Statistics and History, <http://www.baseball-reference.com/players/r/roberda06.shtml> (last visited Apr. 15, 2010).

early May.<sup>330</sup> However, the former star for the University of Oregon mentioned that a chance to play in Portland for the new World Baseball Association would be attractive.<sup>331</sup>

Bobby Tolan was a strong contributor to the Cincinnati Reds in 1969 and the early 1970's. However, by 1973 a bitter dispute nearly two years in the making was beginning to wear on Reds president Bob Howsam. After hitting .305 in 1969 and .316 in 1970, Tolan ruptured his Achilles tendon playing basketball during the off-season, which cost the outfielder the entire 1971 season.<sup>332</sup> Because Tolan was playing basketball against the team's wishes, Howsam was extremely displeased and wanted to change the contracts of his players to prevent such activity.<sup>333</sup> Tolan returned to the lineup in 1972 and turned in a credible year by hitting .283 and winning the Comeback Player of the Year Award.<sup>334</sup> However, 1973 was a season of both on- and off-field misadventures. Tolan's hitting tailed off substantially while a two-day disappearance during the season, a violation of the team's rules against facial hair, and his refusal to participate in batting and fielding practice prompted Howsam to suspend Tolan in late September for the remainder of the season and the playoffs.<sup>335</sup> In a typical move customary of management's response to disgruntled players, the Reds traded Tolan on November 9, 1973 to the San Diego Padres with pitcher Dave Tomlin for pitcher Clay Kirby.<sup>336</sup>

When the two sides could not reach an agreement for the 1974 season, San Diego exercised their right to renew.<sup>337</sup> Tolan argued that he would "play as if they gave me the salary I wanted . . . . I think I'm asking for less than I'm worth. I've come down from what I originally asked for, but they don't want

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330. *Roberts Gets Offer From New League*, EUGENE-REGISTER-GUARD (Or.), May 14, 1974, at 1C.

331. *Id.*

332. Baseball-Reference.com, Bobby Tolan Statistics & History, <http://www.baseball-reference.com/players/t/tolanbo01.shtml> (last visited Apr. 15, 2010). *Bobby Tolan Has Surgery on Tendon*, GETTYSBURG TIMES (Pa.), Jan. 8, 1971, at 10.

333. *Basketball Ban May Come For Baseballers*, READING EAGLE (Pa.), Feb. 14, 1971, at 72.

334. Bobby Tolan Statistics & History, *supra* note 332.

335. Paul Daugherty, *Reds Keeping Stiff Upper Lip*, TOLEDO BLADE, Mar. 10, 1992, at 15. Hal McCoy, *Cincinnati Organization Shifts Views About Facial Hair*, OCALA STAR-BANNER (Fla.), Feb. 17, 1999, at 7D. *See also* MILLER, *supra* note 23, at 241. *Reds Suspend Tolan*, LAKELAND LEDGER (Fla.), Sept. 28, 1973, at 3B. *Tolan Suspended For Rest of Year – Bad Attitude*, L.A. TIMES, Sept. 28, 1973, at D1.

336. Bobby Tolan Statistics & History, *supra* note 332. Kirby had pitched moderately well for the Padres in 1971 and 1972, but he slipped to eight and eighteen (8–18) in 1973. His pitching improved for the Reds in 1974, but the Reds traded him on December 12, 1975, to the Montreal Expos for Bob Bailey. The 1976 season was his last in the major leagues. After a one and eight (1–8) season, he was released on December 2. Baseball-Reference.com, Clay Kirby Statistics & History, <http://www.baseball-reference.com/players/k/kirbycl01.shtml> (last visited Apr. 15, 2010).

337. *Roberts Unsigned*, *supra* note 327.

to talk anymore.”<sup>338</sup> Like Sparky Lyle, Tolan played without signing a new contract until the very last day of the season.<sup>339</sup> Padres general manager Buzie Bavasi offered a sizeable salary increase covering both the 1974 and 1975 seasons, and owner Ray Kroc agreed to a loan to allow Tolan to buy a house.<sup>340</sup> Although Tolan accepted the deal, the Players Association filed a grievance on October 17, 1974.<sup>341</sup> As a result of the Players Association’s support, Tolan asked Commissioner Bowie Kuhn to “declare him a free agent,” but in keeping with his treatment of Curt Flood, Kuhn declined the request.<sup>342</sup> The grievance was scheduled to be heard on January 1, 1975.<sup>343</sup> However, “on January 9, 1975, the Players Association withdrew the Tolan grievance without prejudice to the merits of subsequent cases.”<sup>344</sup>

Both Sparky Lyle and Bobby Tolan presented the Players Association an excellent opportunity to launch their arbitration strategy one year before the Dave McNally and Andy Messersmith hearings and decision. Steinbrenner successfully persuaded Lyle to accept the new deal, while the Padres dodged a potential arbitration hearing when Tolan accepted a new contract and the Players Association withdrew their grievance.<sup>345</sup> The owners did not accept that they were really in a precarious position as they prepared for the upcoming season.

#### J. World Baseball Association

Another minor distraction for Major League Baseball during 1974 was the possibility of a rival league, the World Baseball Association.<sup>346</sup> The founder of the league was Washington Morton Downey, Jr.<sup>347</sup> Downey

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338. *Id.*

339. MILLER, *supra* note 23, at 241.

340. *Id.*

341. *Arbitration Proceedings*, *supra* note 150, at 20.

342. Red Smith, *Dred Scott and Some Other Guys*, N.Y. TIMES, Dec. 27, 1974, at 41.

343. *Arbitration Proceedings*, *supra* note 150, at 21.

344. *Id.*

345. *Miller Withdraws Tolan Grievance*, SARASOTA JOURNAL (Fla.), Jan. 14, 1975, at 2-C. Don Pierson, *Ali-Wepner March 24 in Cleveland*, CHI. TRIB., Jan. 15, 1975, at C3.

346. The league was also called the World Baseball League. *May, Briggs Approached by World Baseball League*, HERALD TIMES REPORTER (Wis.), May 15, 1974, at 22.

347. The founder was identified as an attorney and lobbyist Sean Downey, Jr. *Roberts Gets Offer From New League*, EUGENE-REGISTER-GUARD (Or.), May 14, 1974, at 1C. *May, Briggs Approached by World Baseball League*, *supra* note 346. Downey also tried to launch World Team Boxing. *Sports News Briefs, World Team Boxing Starts Jan. 16*, N.Y. TIMES, Dec. 27, 1974, at 45. After one match between the Portland (Maine) Nor'easters and the Montreal 76'ers, the enterprise folded. Downey also served a stint as President of the New Orleans Buccaneers. TERRY PLUTO, *LOOSE BALLS: THE SHORT, WILD LIFE OF THE AMERICAN BASKETBALL ASSOCIATION AS TOLD BY THE PLAYERS*,

contacted agent Jerry Kapstein.<sup>348</sup> Kapstein explained that before the new league could proceed

the reserve clause issue has to be adjudicated this year and secondly, the new league has got to show us it has some substance behind it. If the reserve system exists, you can't form a new league because it could only attract Little Leaguers, high school or college players. . . . On the other hand, we are interested in seeing the league get off the ground since, naturally, it would be beneficial to the players.<sup>349</sup>

Plans for the league called for a January 1975 launch with teams in the United States, Mexico, Central America, South America, and Asia.<sup>350</sup> Franchises were awarded to Columbus (Ohio), Jersey City, Birmingham, Memphis, Tampa/St. Petersburg, Washington, D.C., and Mexico City.<sup>351</sup> The WBA was going to be centrally run.<sup>352</sup> Downey wanted a total of thirty-two teams split into four divisions with a seventy-two to eighty-four game schedule.<sup>353</sup> Fortunately for Major League Baseball, the idea quickly dissolved preventing players from enjoying the leverage always provided by a new league.<sup>354</sup>

#### K. Free Agency and Jim "Catfish" Hunter<sup>355</sup>

A much more significant challenge than the World Baseball Association was an arbitration decision involving Jim "Catfish" Hunter. Hunter won twenty-one games for three straight seasons from 1971 to 1973 and increased his total to twenty-five wins for the 1974 World Series champion A's.<sup>356</sup>

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COACHES, AND MOVERS AND SHAKERS WHO MADE IT HAPPEN 76 (2007).

348. *Roberts Gets Offer From New League*, *supra* note 330 (The article references an interview by Lou Chapman of Kapstein for the *Milwaukee Sentinel*. Kapstein had been given a long list of players to contact including many who were playing under their renewed contract or players who had difficulty reaching an agreement for the 1974 season).

349. *Id.*

350. See BirminghamProSports.Com, Will Birmingham Join the World Baseball Association?, <http://birminghamprosports.com/otherteamswba.htm> (last visited Apr. 15, 2010).

351. *Id.*

352. *Id.*

353. *Id.*

354. *Id.*

355. This author previously addressed the Hunter-Finley saga. Ed Edmonds, *Cornering the Market: The Yankees and the Interplay of Labor and Antitrust Laws*, in *COURTING THE YANKEES: LEGAL ESSAYS ON THE BRONX BOMBERS*, (Ettie Ward ed., 2003).

356. Baseball-Reference.com, Catfish Hunter Statistics & History, <http://www.baseball-reference.com/players/h/hunteca01.shtml> (last visited Apr. 15, 2010).

Hunter was promoted to the Athletics when still a teenager and although the team now had a true star on an extremely strong roster, Finley dealt with the hurler in the same manner as most of his players. After throwing a perfect game in 1968, Finley upped Hunter's salary by \$5000.<sup>357</sup> In 1969, Finley offered Hunter a loan to buy a farm in Hunter's native North Carolina.<sup>358</sup> When Finley encountered cash flow problems, he forced the pitcher to repay the loan in full forcing Hunter to sell nearly all of the land that he acquired with the money.<sup>359</sup> When Hunter signed a new two year contract before the 1974 season, he arranged to have one-half of his salary paid as an insurance annuity.<sup>360</sup> Finley, however, did not make timely payments despite numerous requests by Hunter's attorney, J. Carlton Cherry.<sup>361</sup> The Players Association filed a grievance arguing that Finley violated section 7(a) of the Uniform Playing Contract.<sup>362</sup> The arbitration was heard by the same panel that would hear the McNally-Messersmith arbitration the following year.<sup>363</sup> Finley argued at the hearing that Cherry had failed to submit the proper paperwork, but Seitz was not persuaded and rendered a decision on December 13 granting Hunter free agent status.<sup>364</sup> Finley turned to state court to overturn the arbitration decision, but both the Alameda County Superior Court and the California Appellate Court ruled against him.<sup>365</sup> Hunter's free agency status prompted an aggressive bidding war ultimately won by the New York

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357. *Finley Gifts Hunter With \$5,000 For Perfect Game*, L.A. TIMES, May 9, 1968, at E1. *Finley Rewards 'Catfish Hunter*, HARTFORD COURANT, May 12, 1968, at 11C.

358. Marvin Miller lists the amount of the loan as \$120,000. MILLER, *supra* note 23, at 227. Robert Burk lists the amount as \$150,000. BURK, MUCH MORE THAN A GAME, *supra* note 119, at 189.

359. MILLER, *supra* note 23, at 227. BURK, *supra* note 119, at 189.

360. MILLER, *supra* note 23, at 227. BURK, *supra* note 119, at 189.

361. BURK, *supra* note 119. Dave Anderson, *Catfish and His Country Lawyer*, N.Y. TIMES, Dec. 19, 1974, at 63.

362. Section 7(a) of the Uniform Player Contract in effect from 1973 to 1975 read:

The player may terminate this contract upon written notice to the Club, if the Club shall default in the payments to the Player provide for in paragraph 2 hereof or shall fail to perform any other obligation agreed to be performed by the Club hereunder and if the Club shall fail to remedy such a default within ten (10) days after the receipt by the Club of written notice of such default.

James B. Gessford, Note, *Arbitration of Professional Athletes' Contracts: An Effective System of Dispute Resolution In Professional Sports*, 55 NEB. L. REV. 362, 368-69 n.28 (1976). Gessford's note discusses the Seitz arbitration decision and the Alameda County Superior Court decision.

363. The panel was chaired by arbitrator Peter Seitz with Marvin Miller representing the Players Association and John Gaherin representing Major League Baseball's Player Relations Committee. BURK, *supra* note 119, at 190-91.

364. *Finley Accused of Perjury*, N.Y. TIMES, Dec. 24, 1974, at 13.

365. *Am. & Nat'l Leagues of Prof'l Baseball Clubs v. Major League Baseball Players Ass'n*, 130 Cal. Rptr. 626 (Cal. Ct. App. 1976). Leonard Koppett, *A's Plan Suit Today Over Hunter*, N.Y. TIMES, Dec. 18, 1974, at 59; Leonard Koppett, *Backing of Hunter Arbitration Decision Called Prelude to Changing Pro Sports*, N.Y. TIMES, Jan. 5, 1975, at S4.

Yankees.<sup>366</sup> Hunter won twenty-three games against fourteen losses (23–14) for the Yankees in 1975.<sup>367</sup>

#### L. The Final Year on the Brink-1975

Seven players began the 1975 season playing under a renewed contract. Dave McNally and Andy Messersmith would complete the season playing under their renewed clauses and agree to test the reserve system in arbitration. Tommy John's involvement in this story would be greatly overshadowed by the surgical procedure that bears his name.<sup>368</sup> Andy Etchebarren (Baltimore Orioles), Gary Gentry (Atlanta Braves), Mike Marshall (Los Angeles Dodgers), and Richie Zisk (Pittsburgh Pirates) all contributed fascinating stories in this final chapter.<sup>369</sup>

#### M. Andy Etchebarren Finally Wins His War with the Orioles

Andy Etchebarren began his twelfth season for the Orioles in 1975, but after playing in three of the first five games of the season, he was sidelined by multiple injuries.<sup>370</sup> He did not appear again in the lineup until May 21.<sup>371</sup> By that time, Dave Duncan had become the starter.<sup>372</sup> Etchebarren decided once again to retire and gave the Orioles a midnight deadline on Sunday, June 15, to send him to a team in California.<sup>373</sup> He boarded a plane in Minnesota bound for Los Angeles.<sup>374</sup> When his wife, Aggie, met him at the Los Angeles Airport, the couple spent the forty-five minute drive to their home in Hacienda

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366. New York's package of \$3,750,000 included a signing bonus of \$1,000,000, a \$1,000,000 life insurance policy, \$200,000 per year for five years in base salary, \$50,000 per year for ten years in deferred compensation, \$50,000 in life insurance policies for Hunter's children, and \$200,000 to cover Cherry's fees supporting Hunter. Hunter accepted the terms on the last day of the year. Gerald Eskenazi, *Millionaire Pitcher: James Augustus Hunter*, N.Y. TIMES, Jan. 1, 1975, at 25 (listing deal as \$3,750,000); Murray Chass, *Yankees Sign Up Catfish Hunter In Estimated \$3.75-Million Deal*, N.Y. TIMES, Jan. 1, 1975, at 1.

367. Catfish Hunter Statistics & History, *supra* note 356.

368. For a discussion of "Tommy John surgery," see DICKSON, *supra* note 88, at 879. The surgery was performed on September 25, 1975, by doctor Frank Jobe. Jobe and his colleague Robert Kerlan have worked together to improve the procedure that involves repairing the ulnar collateral ligament in the pitching elbow. *Id.*

369. *Arbitration Proceedings*, *supra* note 150, at 59.

370. Baseball-Reference.com, Andy Etchebarren 1975 Batting Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=etchean01&t=b&year=1975> (last visited Apr. 16, 2010).

371. *Id.*

372. *Andy Etchebarren Is Sold to Angels*, N.Y. TIMES, June 16, 1975, at 35.

373. *Id.*

374. Ross Newhan, *It's A Happy Wake For Etchebarren*, L.A. TIMES, June 17, 1975, at D2.

Heights talking about life after baseball.<sup>375</sup> Only after their arrival did Aggie spring the surprise on her husband that the Orioles had agreed to sell him to the Angels during his flight and fifty of his friends were waiting to greet him.<sup>376</sup> Etchebarren told *Los Angeles Times* writer Ross Newhan, “[w]ell, I want to tell you, when I opened the door and saw all my friends, and then when Aggie told me about the Angels, there wasn’t a happier man in the world.”<sup>377</sup> Newhan’s account also included Etchebarren’s reflection on his time with the Orioles:

Now four days short of his [thirty-second] birthday, Etchebarren said his unhappiness with the Orioles began to fester when the team dealt for Earl Williams in the winter of ‘72. Initially . . . I played regularly. Then I started to platoon with Ellie Hendricks. I wasn’t real happy with that, but at least I knew I’d be playing against left-handers and that I’d be playing half the time. But when Williams came, I realized that no matter what he did, he would be the catcher. It didn’t completely turn out that way, but it cut into my playing time to the extent that all I felt I was doing was sitting, waiting.<sup>378</sup>

Etchebarren had used the only leverage available to players for most of the twentieth century.<sup>379</sup> He had been willing to retire rather than continue to play for the Orioles.<sup>380</sup> His refusal to sign before the March 10 deadline in both 1974 and 1975 was not addressed in the reserve clause but instead at his own interest in both who he would play for and where he would play.<sup>381</sup> In this manner, he took the same position as Curt Flood.

#### N. Gary Gentry and a Tragic End to His Career

Gary Gentry arrived on the major league scene in 1969 after being drafted four different times before finally accepting an offer from the New York Mets.<sup>382</sup> The former Arizona State pitcher won the third game of the

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375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. This sentence is really my own observation. It is a commonly held position, but I am not sure there is a good source for that.

380. See comment *supra* note 379.

381. See comment *supra* note 379.

382. Baseball-Reference.com, Gary Gentry Statistics & History, <http://www.baseball-reference.com/players/g/gentrga01.shtml#trans> (last visited Apr. 16, 2010).

1969 World Series, but he had an otherwise modest four years in New York.<sup>383</sup> On November 2, 1972, he was traded with Danny Frisella to the Atlanta Braves for Felix Millan and George Stone.<sup>384</sup> Throughout his career in Atlanta, he was plagued with arm problems.<sup>385</sup> On July 20, 1973, after pitching in Atlanta's 100th game of the season, Gentry was finished for the season.<sup>386</sup> His 1974 pitching ledger included one game in April and two games in May.<sup>387</sup> He needed major reconstructive surgery to remove bone chips from his elbow.<sup>388</sup>

Prior to the 1975 season the Braves offered arbitration to Gentry when General Manager Eddie Robinson stated that "the jury will be out on whether Gary can pitch this year until we see him in spring training."<sup>389</sup> Gentry declined arbitration, but he would only pitch in seven games for the 1975 Braves.<sup>390</sup> After giving up five hits and three runs in the final inning of a seven to one (7-1) loss to the Giants on May 6, he was released two days later, thus, avoiding the problem of resolving his contractual differences.<sup>391</sup> General Manager Eddie Robinson told the press that Gentry "has not lived up to expectations. We prefer to give a younger player a chance to pitch."<sup>392</sup> When Atlanta signed Ray Sadecki (thirty-four years old) and Blue Moon Odom (thirty years old on May 29), the twenty-eight year old Gentry questioned their motives.<sup>393</sup> Three weeks later, Gentry resigned with the Mets as a free agent.<sup>394</sup> He was sent to the Texas League to pitch for the Jackson Mets and earn his way back to the major leagues.<sup>395</sup> In a game in Little Rock, he heard

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383. *Id.*; Joe Gergen, *Gentry's Heartbreaking Sound*, L.A. TIMES, July 18, 1975, at OC, A13. Baseball-Reference.com, Oct. 14, 1969 World Series Game Three, Orioles at Mets, <http://www.baseball-reference.com/boxes/NYN/NYN196910140.shtml> (last visited Apr. 16, 2010).

384. Gary Gentry Statistics & History, *supra* note 382.

385. Gergen, *supra* note 383.

386. Baseball-Reference.com, Gary Gentry 1973 Pitching Gamelogs, <http://www.baseballreference.com/players/gl.cgi?n1=gentrga01&t=p&year=1973> (last visited Apr. 16, 2010).

387. Baseball-Reference.com, Gary Gentry 1974 Pitching Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=gentrga01&t=p&year=1974> (last visited Apr. 16, 2010).

388. *Braves Sideline Gentry*, N.Y. TIMES, May 19, 1974, at S6. *Knife for Gentry*, ELLENSBURG DAILY RECORD (Wash.), June 3, 1974, at 6.

389. *Niekro and Capra Sign Pacts, Four Braves Want Arbitrations*, ATLANTA DAILY WORLD, Feb. 18, 1975, at 2. *A's Holtzman Leads Arbitration Parade*, ST. PETERSBURG TIMES, Feb. 12, 1975, at 1-C.

390. Gary Gentry Statistics & History, *supra* note 382.

391. *Braves Cut Pitcher Gary Gentry*, ATLANTA DAILY WORLD, May 15, 1975, at 9.

392. *Id.*

393. Gergen, *supra* note 383.

394. *Id.*

395. *Id.*

his arm tear after delivering his second pitch.<sup>396</sup> The result was a hot pain that Gentry described as a sound of

someone . . . tearing a towel right beside your ear. It was a sickening sound. I knew what had happened but I just wanted to be sure. So I would (sic) up and threw a third pitch and heard it rip again. My arm just turned over and the ball wound up behind the batter. Had I looked down at the elbow after the second pitch, I wouldn't have thrown a third. There was a baseball-sized knot on it.<sup>397</sup>

The injury ended Gentry's career.<sup>398</sup>

#### O. Tommy John and the Future of Arm Injuries

Tommy John was enjoying a great season for the Dodgers in 1974 by winning thirteen of his sixteen decisions before taking the mound against the Montreal Expos on July 17.<sup>399</sup> On his first pitch to Hal Breeden, John "heard a pop from inside [his] arm, and the ball just blooped up to the plate." On the next pitch John said he "heard a slamming sound, like a collision coming from inside my elbow. It felt as if my arm had come off."<sup>400</sup>

On September 13, John announced that he was out for the season and expecting surgery.<sup>401</sup>

I want to pitch but if I can't pitch to the ballclub's advantage, I want to go ahead and get the surgery done. . . . This isn't August anymore. I have to think about the time I'll need to get in shape for next year.<sup>402</sup> I'm hesitant to

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396. *Id.*

397. *Id.* "I went down to the minors, but it rained for 10 straight days. I was really anxious to pitch, and threw too hard too soon. My elbow popped – and that was it." *Gary Gentry: From Fame to Obscurity*, WILMINGTON STAR NEWS (N.C.), Aug. 7, 1977, at 5-C.

398. Gary Gentry Statistics & History, *supra* note 382. Baseball-Reference.com, Gary Gentry Minor League Statistics & History, <http://www.baseball-reference.com/minors/player.cgi?id=gentry002gar> (last visited Apr. 16, 2010).

399. Baseball-Reference.com, Tommy John Statistics & History, <http://www.baseball-reference.com/players/j/johnto01.shtml> (last visited Apr. 16, 2010). Baseball-Reference.com, Tommy John Pitching Gamelogs, <http://www.baseball-reference.com/players/gl.cgi?n1=johnto01&t=p&year=1974> (last visited Apr. 16, 2010).

400. TOMMY JOHN & DAN VALENTI, TJ: MY TWENTY-SIX YEARS IN BASEBALL 143 (1991).

401. *Dodgers Lose Tommy John*, ELLENSBURG DAILY RECORD (Wash.), Sept. 14, 1974, at 4; *John Says He's Done Pitching for Season*, L.A. TIMES, Sept. 14, 1974, at C6, col. 5; *Surgery for LA's John*, FREE-LANCE STAR (Fredericksburg, Va.), Sept. 14, 1974, at 8.

402. *Dodgers Lose Tommy John*, *supra* note 401; *John Says He's Done Pitching for Season*, *supra* note 401; *Surgery for LA's John*, *supra* note 401.

try it with \$25,000 at stake. I don't want to be the one who takes \$25,000 from Jimmy Wynn's or Steve Garvey's pocket.<sup>403</sup>

John's wife Sally was expecting a baby in two weeks.<sup>404</sup> John was disappointed because the Dodgers were making a run at the World Series.<sup>405</sup>

Dr. Frank Jobe performed an experimental surgical procedure to replace the ligament with a tendon from John's right forearm.<sup>406</sup> John came to camp without signing a contract.<sup>407</sup> Bill Shirley noted in an article for the *Los Angeles Times* that "[i]n fact, the players were invited to participate in workouts here, a departure from Dodger policy. Players once were not allowed to take part in drills if they had not signed."<sup>408</sup> With the prospect of spending all of 1975 in a difficult rehabilitation, John reached a deal with the Dodgers on March 26.<sup>409</sup> John later recalled

the Dodgers had to sign me or release me, but I talked them into a raise to \$88,000 from \$77,000 with the argument that if I hadn't been 13-3 when I got hurt, the Dodgers wouldn't have been in the World Series that year. . . . And after my year on the disabled list, I got a contract based on a bonus for how many games I started. I got the same \$80,000 base salary but I made another \$37,500 in bonuses.<sup>410</sup>

#### P. Mike Marshall

Marshall was coming off his record-setting 106-game performance for the Dodgers in 1974 when he won the Cy Young Award.<sup>411</sup> He won fifteen games and saved twenty-one.<sup>412</sup> Marshall also had his contract renewed by Los Angeles before he signed a two year deal with \$130,000 promised for 1975 and a 1976 salary that would not be lower than \$130,000 with a

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403. *John Says He's Done Pitching for Season*, *supra* note 401.

404. *Further Play For Tommy John Said Unlikely*, SPOKESMAN-REVIEW, Sept. 14, 1974, at 16.

405. John was quoted in the article as stating "[a]s much as I'd really hate to miss it – a ballplayer's dream is the World Series – some things just aren't meant to be." *Surgery for LA's John*, *supra* note 401.

406. Jeff Prugh, *Braves Delay L.A. Flag-Raising, 5-2; Atlanta Hits 2 Home Runs Off Marshall in 7th; Dodger Notes*, L.A. TIMES, Sept. 26, 1974, at E1.

407. Bill Shirley, *Baseball Bargaining Time*, L.A. TIMES, Mar. 3, 1975, at E1.

408. *Id.*

409. Jeff Prugh, *Getting the Jump: Dodgers and Reds Plan to Work a Fast Break*, L.A. TIMES, Mar. 27, 1975.

410. Dave Anderson, *Yankee Egos and Tommy John*, N.Y. TIMES, Oct. 15, 1977.

411. Baseball-Reference.com, Mike Marshall Statistics & History, <http://www.baseball-reference.com/players/m/marshmi01.shtml> (last visited Apr. 16, 2010).

412. *Id.*

minimum cost-of-living raise.<sup>413</sup> The contract provided Marshall with a record salary for a relief pitcher and a \$45,000 raise.<sup>414</sup> The prior year, Marshall had signed for \$85,000 and an assurance that his 1975 contract would be at least \$115,000.<sup>415</sup> Marshall also received a \$5000 credit card allowance to use on rental cars and food instead of the traditional twenty-three dollar meal allowance while on the road.<sup>416</sup> The suddenly magnanimous Dodgers also threw in a suite on the road and a water bed when available.<sup>417</sup> Marshall pitched in fifty-seven games in 1975.<sup>418</sup> He was traded on June 23, 1976, to the Atlanta Braves for Lee Lacy and Elias Sosa.<sup>419</sup>

#### Q. Richie Zisk - 1975

Perhaps the most interesting of the 1975 renewed players was Pittsburgh Pirates outfielder Richie Zisk because he played the entire regular season without signing his contract.<sup>420</sup> Zisk also claimed to be disinterested in testing the reserve clause and declined salary arbitration because he felt that a compromise was imminent in March.<sup>421</sup> Zisk had established himself as a star with the Pirates by hitting over .300 in both 1973 and 1974 while slamming seventeen home runs and knocking in 100 runs in the latter year.<sup>422</sup> Zisk did not sign a contract at the beginning of the season, and Pittsburgh General Manager Joe Brown renewed his contract by the deadline.<sup>423</sup> Declaring that he was physically strong but mentally weak and needed a family conversation after one session with Brown, a headline in the March 4 edition of the *Pittsburgh Post-Gazette* declared that the deal was in the “hands of wife” Barbara.<sup>424</sup> Teammate Richie Hebner’s brief holdout concluded the following

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413. Ross Newhan, *Dodgers Give Marshall Some Extra-Long Relief*, L.A. TIMES, Feb. 22, 1975, at E1, col. 5.

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. Mike Marshall Statistics & History, *supra* note 411.

419. *Id.*

420. Zisk was able to play through the entire season before signing a new deal. The Pirates’ player could easily have become the player at the heart of the arbitration process that created free agency if he had not signed a deal between the end of the regular season and the playoffs.

421. *Japanese Stop LA, White Sox*, ST. PETERSBURG TIMES, Mar. 8, 1975, at 7-C.

422. Baseball-Reference.com, Richie Zisk Statistics & History, <http://www.baseball-reference.com/players/z/ziskri01.shtml> (last visited Apr. 16, 2010).

423. Charley Feeney, *Robinson, Howe Look Over Shoulder, See Zisk and Hebner – Also Bench*, PITT. POST-GAZETTE, May 30, 1975, at 14, col. 1.

424. *Zisk Pact In Hands of Wife*, PITT. POST-GAZETTE, Mar. 4, 1975, at 15.

day when the third baseman signed for \$65,000.<sup>425</sup> Hebner declined to go to arbitration and refused to hire an attorney because the two parties “were never far apart in the negotiation and I’d rather do my own talking.”<sup>426</sup> On the same day that Hebner signed, Zisk signaled no progress on his deal by declaring that he and Brown had “reached an honest difference of opinion.”<sup>427</sup> Zisk was interested in more than doubling his 1974 salary of \$35,000, but attorney Jerry Kapstein, who was heavily involved with numerous players in salary squabbles and in arbitration, declared “I am Zisk’s advisor and close friend and will advise him to continue negotiating in good faith with the Pirates.”<sup>428</sup> More importantly, Kapstein discounted his client’s claimed interest in testing the reserve clause.<sup>429</sup> Brown’s offer was reported as around \$60,000 by May, but Zisk still had not signed while reiterating his hope that a deal would be reached during the season and that he did not intend to test the reserve clause.<sup>430</sup>

By July, the deal was still not completed. Zisk thought that he and Brown could conclude negotiations before the All-Star Game but “nothing developed.”<sup>431</sup> The national press was not completely ignoring Zisk as one of the unsigned at mid-season.<sup>432</sup> *New York Times* writer Joseph Durso noted, amid all of the post-All-Star Game discussion by the owners of the economic issues largely faced by weak franchises, that the unsigned contracts of Andy Messersmith, Mike Marshall, and Richie Zisk, which brought attention to the reserve clause, were important because “[i]f any of them winds up in court or Congress, the face of the game may change forever.”<sup>433</sup>

By the end of the season Zisk’s batting average had dropped below his average in the two previous seasons to .290, although he did increase his home run output to twenty while driving in seventy-five runs in 147 games.<sup>434</sup> The day before the beginning of the Pirates’ playoff series with the Cincinnati

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425. Charley Feeney, *Potential Problem: Stennett’s Knee*, PITT. POST-GAZETTE, Mar. 6, 1975, at 17.

426. *Id.*

427. *Id.*

428. Vince Leonard, *Zisk Attorney: No Challenge*, PITT. POST-GAZETTE, Feb. 14, 1975, at 14.

429. *Id.*

430. Zisk’s wife Barbara was again mentioned in the Post-Gazette but this time because of a “knee injury sustained when she was pinned between two cars outside Three Rivers Stadium” while holding their four-month-old son. The player was there and had to scream at the driver to move his car forward to release his wife. Feeney, *supra* note 227.

431. Charley Feeney, *Stargell Home Run Delivers Pirate Sweep*, PITT. POST-GAZETTE, July 28, 1975, at 20.

432. Joseph Durso, *Beyond the Stars: Trouble*, N.Y. TIMES, July 16, 1975, at 27, col. 4.

433. *Id.*

434. Richie Zisk History & Statistics, *supra* note 422.

Reds on October 3, Zisk signed a deal for \$65,000.<sup>435</sup> Brown was upbeat declaring that “[w]hile we don’t like any player to be a holdout, I am very pleased with the way these negotiations went. . . . There was not animosity on either side. We negotiated in good faith all the way.”<sup>436</sup> Apparently Brown took Zisk at his word that he was not interested in testing free agency and was able to sign his contract for a figure that reflected Zisk’s entire regular season effort.<sup>437</sup> Zisk provided a great effort in the playoffs against Cincinnati by going five-for-ten in the series, but his efforts could not prevent a three-game sweep by the eventual World Series Champion Reds.<sup>438</sup>

After the signing of Zisk by the Pirates only Andy Messersmith and Dave McNally, who did not actually intend to play another season, remained as viable candidates to file a grievance in 1975.<sup>439</sup> When they did, the Players Association triumphed before both the arbitration panel and two federal courts.<sup>440</sup> As Joseph Durso predicted, the game did change forever although it was not a court or Congress but an arbitration panel that rendered the decisive decision.<sup>441</sup> Although it was ultimately McNally and Messersmith that provided Marvin Miller and the Players Association with the opportunity to take their grievance before the arbitration panel, the historic decision rested on a sequence of events that began to unfold in earnest in 1968.<sup>442</sup>

## VII. CONCLUSION

When Marvin Miller and the Players Association completed the negotiations creating baseball’s first collective bargaining agreement in 1968, it would have been difficult to predict that seven years later the nearly century-old stranglehold of the reserve system would be altered by an arbitration panel decision. The grievance filed on behalf of Dave McNally and Andy Messersmith rested atop a number of intertwined events that supported the panel’s decision. Miller’s hiring in 1966 and the dismissive treatment of the players prior to the first collective bargaining agreement

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435. *Zisk Ends Holdout*, N.Y. TIMES, Oct. 4, 1975, at 23. Jerome Holtzman, *Review of 1975*, in OFFICIAL BASEBALL GUIDE 1976, 285 (1976). Thomley, *supra* note 8, at n.38 (internal citations omitted).

436. *Sports at a Glance: Friendly Frazier to Guide Mets*, THE LEDGER (Fla.), Oct. 4, 1975, at 3B.

437. This is my personal observation, hence my use of “apparently.”

438. Richie Zisk History & Statistics, *supra* note 422.

439. MILLER, *supra* note 23, at 240–44.

440. Professional Baseball Clubs, 66 Lab. Arb. Rep. (BNA) 101 (1975) (Seitz, Arb.); *Kansas City Royals v. Major League Baseball Players Assn.*, 409 F. Supp. 233 (W.D. Mo.), *aff’d* 532 F.2d 615 (8th Cir. 1976).

441. Durso, *supra* note 432.

442. For Marvin Miller’s summary of the events outlined in this article, see MILLER, *supra* note 23, at 240–44.

provided a bond between the union's primary representative and the players. Al Downing's decision not to sign the Yankees' contract offer in 1969 and Lee MacPhail's acquiescence in allowing Downing to participate in spring training without signing a new contract provided the first key alteration in long-standing baseball policy that would prove to be essential to the ultimately successful arbitration strategy. An arbitration process won at the bargaining table in 1970 provided the next key ingredient. Ted Simmons's refusal to agree to terms with the Cardinals until the 1972 All Star break provided the union with an alternative strategy after the United States Supreme Court turned aside Curt Flood's efforts to establish free agency. Beginning in 1973, numerous players followed the path that Downing and Simmons blazed by forcing management to renew their contracts. Except for McNally and Messersmith, these players signed a new deal, forced a trade, or lost their place on a major league roster. Most of these players declared no interest in using their time working under a renewed contract as preparation for launching an assault on free agency. Most of these players were seeking to simply better their own position in the professional baseball industry. However, they contributed to establishing a strategy that ultimately proved successful in producing a decision that the reserve clause was not perpetual. With the aid of this ruling the Players Association returned to the bargaining table to fashion a system that created free agency for players with six years of credited service with a complimentary new system of salary arbitration that provided significantly more economic leverage for all but the most junior members on major league rosters. The result was greater freedom and flexibility for players and a substantial increase in salaries. The period between 1968 and 1975 permanently altered baseball. Despite predictions that the demise of the reserve system would destroy the game, baseball, as always, survived.

