

2012

Arthur Soden's Legacy: The Origins and Early History of Baseball's Reserve System

Edmund P. Edmonds

Notre Dame Law School, edmonds.7@nd.edu

Follow this and additional works at: https://scholarship.law.nd.edu/law_faculty_scholarship



Part of the [Entertainment, Arts, and Sports Law Commons](#), and the [Other Law Commons](#)

Recommended Citation

Edmund P. Edmonds, *Arthur Soden's Legacy: The Origins and Early History of Baseball's Reserve System*, 5 Alb. Gov't L. Rev. 38 (2012).
Available at: https://scholarship.law.nd.edu/law_faculty_scholarship/390

This Article is brought to you for free and open access by the Publications at NDLScholarship. It has been accepted for inclusion in Journal Articles by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

ARTHUR SODEN'S LEGACY: THE ORIGINS AND EARLY HISTORY OF BASEBALL'S RESERVE SYSTEM

*Ed Edmonds**

INTRODUCTION	39
I. BASEBALL BECOMES OPENLY PROFESSIONAL.....	40
A. <i>The National Association of Professional Base Ball Players</i>	40
B. <i>William Hulbert and the Creation of the National League</i>	43
II. THE SODEN/O'ROURKE - GEORGE WRIGHT CONTROVERSY AND THE ESTABLISHMENT OF THE RESERVE SYSTEM.....	45
III. NEW COMPETITION: THE AMERICAN ASSOCIATION AND THE UNION LEAGUE	51
IV. WARD ATTACKS THE RESERVE CLAUSE	66
A. <i>The November 1887 League Meetings</i>	70
B. <i>Richter's Millennium Plan and Salary Classification</i>	71
C. <i>Brush Classification Plan</i>	72
D. <i>The Players' League</i>	74
V. METROPOLITAN EXHIBITION COMPANY SEEKS INJUNCTION AGAINST WARD	75
VI. TWO PHILADELPHIA TEAMS FIGHT OVER BILL HALLMAN	79
VII. ROUND TWO FOR THE GIANTS	81
VIII. OTHER PLAYERS' LEAGUE CASES.....	84
IX. THE NATIONAL LEAGUE STANDS ALONE	86
CONCLUSION	89

*Associate Dean for Library and Information Technology and Professor of Law, Notre Dame Law School. A.B., University of Notre Dame 1973; M.L.S., University of Maryland 1974; J.D., University of Toledo 1978. This article is based upon a presentation that was made at the Seventeenth Annual Spring Training Conference on the Historical and Sociological Impact of Baseball, sponsored by NINE: A Journal of Baseball History and Culture, on March 10-13, 2010, in Phoenix, Arizona. I would like to express my appreciation to research assistant David Humen.

INTRODUCTION

For nearly one hundred years from its creation by an ownership group in 1879 until a decision in 1975 by an arbitration panel concerning the contractual status of pitchers Dave McNally and Andy Messersmith, baseball's reserve system was the foundation of organized baseball's relationship with its players.¹ The interlocking combination of agreements in a player's contract that constituted the reserve system effectively tied that particular athlete to one team unless that team decided to trade or release the player. The system worked to both depress salaries and discipline players who might otherwise abandon their contracts seeking higher salaries from a different team.

This article concentrates on the nineteenth century evolution of the reserve system. An examination of the early history of the reserve clause is still warranted because it established a relationship that is at the core of current collective bargaining agreements in major team sports in the United States. While the National Basketball Association and National Football League recently locked out its players precipitating divisive and acrimonious negotiations, Major League Baseball expected a less contentious path towards signing a new agreement in advance of the expiration of the recent collective bargaining agreement on December 11, 2011.²

The basic structure of baseball's reserve system owes much to an 1879 dispute between Boston owner Arthur Soden and future Hall of Fame players James "Orator" O'Rourke and George Wright.³ In the aftermath of O'Rourke and Wright's defection from Boston to play for the Providence Grays, Soden and his fellow National League owners agreed to a new system that

¹ Professional Baseball Clubs, 66 Lab. Arb. Rep. (BNA) 101 (1975) (Seitz, Arb.); Al Kermisch, *From a Researcher's Note Book: First Reserve Clause Enacted 100 Years Ago*, 8 BASEBALL RES. J. 9, 9 (1979), available at <http://research.sabr.org/journals/from-a-researchers-note-book>.

² See Alden Gonzalez, *Selig Optimistic About CBA Talks*, MLB.COM (Mar. 30, 2011, 4:14 PM), http://mlb.mlb.com/news/article.jsp?ymd=20110330&content_id=17204070&vkey=news_mlb&c_id=mlb&partnerId=rss_mlb.

³ This article is a further development of this topic first addressed by this author in Ed Edmonds, *At The Brink of Free Agency: Creating the Foundation for the Messersmith-McNally Decision—1968–1975*, 34 S. ILL. U. L.J. 565, 568–71 (2010). In that article, the focal point was on O'Rourke. In this article, the involvement of George Wright is added. For more information on the fascinating career and life of O'Rourke, see MIKE ROER, *ORATOR O'ROURKE: THE LIFE OF A BASEBALL RADICAL* (2005).

allowed each owner to protect five players from the open market.⁴ Although the National League agreement is the genesis of the reserve system, it was a response to baseball's tumultuous history of labor relations that began with the first professional team, the Cincinnati Red Stockings.

I. BASEBALL BECOMES OPENLY PROFESSIONAL

In 1869, brothers Harry and George Wright organized the first professional baseball team, the Cincinnati Red Stockings.⁵ Harry served as the primary organizer of the team, while George was the best player. They played their first major game on May 4, 1869, against the Great Westerns of Cincinnati.⁶ The starting nine were paid between \$800 and \$1,400 each for eight months.⁷ At that time, skilled workers made between \$525 and \$750 per year.⁸

A. The National Association of Professional Base Ball Players

The success of the Cincinnati Red Stockings prompted the founding of the first league of professional baseball teams, the National Association of Professional Base Ball Players (N.A.P.B.B.P.), on March 17, 1871.⁹ The league, however, lacked stability.¹⁰ During its five years of existence, the N.A.P.B.B.P.

⁴ Stew Thornley, *The Demise of the Reserve Clause: The Players' Path to Freedom*, 35 *BASEBALL RES. J.* 115, 123 n.1 (2007); Kermisch, *supra* note 1, at 10.

⁵ LEE ALLEN, *THE CINCINNATI REDS* 3–5 (1948); WARREN GOLDSTEIN, *PLAYING FOR KEEPS* 44 (1989). For a complete discussion of the Red Stockings, see STEPHEN D. GUSCHOV, *THE RED STOCKINGS OF CINCINNATI* (1998). See also CHRISTOPHER DEVINE, *HARRY WRIGHT: THE FATHER OF PROFESSIONAL BASE BALL* (2003) (providing biographical information on George and Harry Wright).

⁶ The Red Stockings won 45-9. DEVINE, *supra* note 5, at 45. The Red Stockings defeated two hand-picked opponents on April 17 and April 24, but the first major game took place against Great Western. ALFRED H. SPINK, *THE NATIONAL GAME* 9 (2d ed. 1911). See also JOHN THORN, *BASEBALL IN THE GARDEN OF EDEN* 145 (2011).

⁷ George Wright's salary was \$1,400 and Harry Wright was paid \$1,200. ALLEN, *supra* note 5, at 4; GOLDSTEIN, *supra* note 5, at 114; DAVID QUENTIN VOIGT, *AMERICAN BASEBALL: FROM GENTLEMAN'S SPORT TO THE COMMISSIONER SYSTEM* 27 (1966). But see PRESTON D. OREM, *BASEBALL (1845–1881); FROM THE NEWSPAPER ACCOUNTS* 102–03 (1961) (analyzing two different sets of the salary figures); DAVID PIETRUSZA, *MAJOR LEAGUES* 2 (1991).

⁸ GOLDSTEIN, *supra* note 5, at 114.

⁹ *Id.* at 134; VOIGT, *supra* note 7, at 36 n.3; LEONARD KOPPETT, *KOPPETT'S CONCISE HISTORY OF MAJOR LEAGUE BASEBALL* 17 (1998).

¹⁰ See JOHN HELYAR, *LORDS OF THE REALM* 3 (1994).

fielded twenty-five teams.¹¹ Further compounding league problems was the action of many players known as “revolvers,” players who jumped from team to team depending upon who made the best offer.¹² The actions of one these revolvers, a diminutive infielder from Pittsburg, Kansas, would be significant in establishing the foundation of a new league, in solidifying the rise of a critical figure in the creation of that league, and in ultimately leading to the creation of the reserve system.¹³

Davy Force, a five-foot, four-inch player nicknamed “Wee Davy” and “Tom Thumb” started his fifteen-year professional career in 1871 with Washington Olympics.¹⁴ After splitting time with the Troy Haymakers and the Baltimore Canaries in 1872, Force spent 1873 with Baltimore before moving to the Chicago White Stockings for the 1874 season.¹⁵ Although Force was under contract for the 1875 season with the Chicago club, he signed a new deal prior to the beginning of the season with the Philadelphia Athletics.¹⁶ After an initial decision by a specially constituted committee to consider the matter ruled in favor of Chicago, Charles Spering, the president of both the N.A.P.B.B.P. and the Athletics, put together another committee that reversed the decision in favor of Spering’s team.¹⁷ The *Chicago Tribune* provided the perspective that would prove to be the ownership’s

¹¹ *Id.*

¹² *Id.* Revolving is defined by Paul Dickson as the process of “[m]oving from one league or team to another without regard to one’s contract or club agreement, in search of better positions, better salaries, better teams, or changes of scenery.” PAUL DICKSON, *THE DICKSON BASEBALL DICTIONARY* 704 (2009).

¹³ See *Davy Force Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/f/forceda01.shtml> (last visited Oct. 24, 2011).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *The White Stockings Gathering for the Fray: What Will be Done with Force—The Spring Programme*, CHI. TRIB., MAR. 14, 1875 [hereinafter *White Stockings Gathering for the Fray*], reprinted in *EARLY INNINGS: A DOCUMENTARY HISTORY OF BASEBALL, 1825–1908*, at 90, 90–91 (Dean A. Sullivan ed., 1995) [hereinafter *EARLY INNINGS*]. Force signed with Chicago on November 2, 1874, and later with Philadelphia on December 5. JON DAVID CASH, *BEFORE THEY WERE CARDINALS* 28 (2002). A similar case involved Tom Miller, a catcher for the St. Louis Brown Stockings, who jumped to Hartford and back to St. Louis. *Id.* While the initial contract was voided due to the lack of a proper witness, Hartford agreed to sell the rights to Miller back to St. Louis. *Id.*; see also WILLIAM J. RYCZEK, *BLACKGUARDS AND RED STOCKINGS* 183–91 (1992) (discussing the Force case).

¹⁷ RYCZEK, *supra* note 16, at 189.

refrain when it noted that:

If a player has a right to enter into a contract with one club while already under engagement to another, it is justly thought that it will increase the unreliability of players, and make it impossible for any management to anticipate an approaching ball season in the engagement of its players.¹⁸

The *Tribune* article went further to describe Force as a “hack” who was “intemperate, a constant kicker, a grumbler, and a constant source of trouble to any club that employs him.”¹⁹ Despite a claim by the Boston Red Stockings, the Hartford Dark Blues, and the New York Mutuals that they would boycott their games with the Athletics, the season started with Force playing for Philadelphia.²⁰ Despite the contemporary account of Force’s ability in the *Chicago Tribune*, baseball historian David Nemec described Wee Davy as “one of game’s finest middle infielders.”²¹ Nemec nicely summarized the impact of the Force matter on an emerging figure in baseball, White Stockings major stockholder and president William Hulbert: “Hulbert inwardly vowed that the power in professional baseball would soon be shifted from east to the west and from players such as Force—who for the moment could revolve almost totally unrestrained from team to team—to men like himself who handled the pursestrings.”²²

Although the Athletics put together a fine season in 1875 to finish in second place, the Boston Red Stockings, managed by Harry Wright, won 71 of their 79 National Association games behind the outstanding performances of pitcher Albert Spalding, second baseman Ross Barnes, first baseman Cal McVey, catcher Deacon Jim White, outfielder Andy Leonard, and shortstop George Wright.²³ For his part, Force put together a fine year as a shortstop including finishing the season with a batting average of

¹⁸ *White Stockings Gathering for the Fray*, *supra* note 16, at 91.

¹⁹ *Id.* at 91–92.

²⁰ *See id.* at 92.

²¹ DAVID NEMEC, *THE GREAT ENCYCLOPEDIA OF 19TH-CENTURY MAJOR LEAGUE BASEBALL* 65, 67 (2d ed. 2006).

²² *Id.* at 67.

²³ *1875 Boston Red Stockings Batting, Pitching, & Fielding Statistics*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/BOS/1875.shtml> (last visited Oct. 24, 2011); NEMEC, *supra* note 21, at 73 (reviewing Nemec’s statistics shows a total of 82 games played but a 71-8 win-loss record. The Baseball-Reference.com statistics also show the same record. McVey played in a total of 82 games as noted in both Nemec and Baseball-Reference.com); DAVID L. FLEITZ, *THE IRISH IN BASEBALL* 9 (2009) [hereinafter *THE IRISH IN BASEBALL*].

.311.²⁴*B. William Hulbert and the Creation of the National League*

Although Chicago White Stockings president William Hulbert was infuriated over the decision allowing Force to play with the Athletics, he used a similar strategy to secretly lure Boston's star players Barnes, McVey, Spalding, and White to Chicago, as well as Adrian "Cap" Anson from Force's Philadelphia team, for the upcoming season.²⁵ But putting together an on-field juggernaut was only part of Hulbert's grand plan. Under a ruse of discussing needed reforms to the N.A.P.B.B.P., Hulbert sprung his design for a new league, the National League, to the assembled group of primary team representatives at a meeting on February 2, 1876, held at the Central Hotel on Broadway in New York.²⁶ In part, Hulbert was launching a preemptive strike because he faced expulsion from the N.A.P.B.B.P. for his actions in amassing his new playing talent.²⁷ A constitution for the new National League was drafted by Campbell Orrick Bishop, the managing director of the St. Louis Brown Stockings, based upon Hulbert's draft.²⁸ One of the main features of the new league was the "League Alliance" that included protection of each team's territorial rights, the mutual enforcement of punitive acts, and adherence to restraints on player movements primarily through the blacklist.²⁹ The

²⁴ *Davy Force Statistics and History*, *supra* note 13. Force played for seven years from 1879–1885 for the Buffalo Bisons in Hulbert's grand new adventure—the National League. *Id.* He retired after playing the 1886 season for the Washington Nationals. *See id.*

²⁵ CASH, *supra* note 16, at 27; ROBERT P. GELZHEISER, *LABOR AND CAPITAL IN 19TH CENTURY BASEBALL* 20 (2006); GOLDSTEIN, *supra* note 5, at 147; KOPPETT, *supra* note 9, at 27; LEE LOWENFISH, *THE IMPERFECT DIAMOND* 32 (2010); NEMEC, *supra* note 21, at 107; HAROLD SEYMOUR, *1 BASEBALL* 78 (1960); STEPHAN SZYMANSKI & ANDREW ZIMBALIST, *NATIONAL PASTIME* 28 (2005); VOIGT, *supra* note 7, at 51–52; *see also* "National League of Professional Clubs": A Startling Coup d'Etat, N.Y. CLIPPER, Feb. 12, 1876, reprinted in *EARLY INNINGS*, *supra* note 16, at 96, 96–98 (discussing the organization of the National League of Professional Clubs). For complete coverage of the birth of the National League, *see* NEIL W. MACDONALD, *THE LEAGUE THAT LASTED* (2004).

²⁶ KOPPETT, *supra* note 9, at 29; OREM, *supra* note 7, at 244; PIETRUSZA, *supra* note 7, at 28; SEYMOUR, *supra* note 25, at 80; VOIGT, *supra* note 7, at 63.

²⁷ DAVID L. FLEITZ, *GHOSTS IN THE GALLERY AT COOPERSTOWN* 9 (2004) [hereinafter *GHOSTS IN THE GALLERY AT COOPERSTOWN*].

²⁸ CASH, *supra* note 16, at 30; PIETRUSZA, *supra* note 7, at 29; SEYMOUR, *supra* note 25, at 79.

²⁹ KOPPETT, *supra* note 9, at 28; SEYMOUR, *supra* note 25, at 82; VOIGT, *supra* note 7, at 64, 73. "Although no reserve clause was added yet, a strong effort was

membership fee was a modest ten dollars.³⁰ The eight charter member franchises of the National League were Boston, Chicago, Cincinnati, Hartford, Louisville, New York, Philadelphia, and St. Louis.³¹ In a move to maintain good will with the eastern teams, Morgan Bulkeley, a descendent of two passengers on the *Mayflower*, an executive with Aetna Life Insurance Company, and a Hartford, Connecticut, politician, was chosen as the first president of the new league.³² Bulkeley was a primary backer of the Hartford Dark Blues.³³ As a result of Bulkeley's selection as

made to curb revolving by forbidding players to negotiate with another club until the playing season was over." VOIGT, *supra* note 7, at 64.

³⁰ VOIGT, *supra* note 7, at 73.

³¹ KOPPETT, *supra* note 9, at 29.

³² GHOSTS IN THE GALLERY AT COOPERSTOWN, *supra* note 27, at 6–7; GLENN STOUT, *THE CUBS* 18 (2007); VOIGT, *supra* note 7, at 66. Bulkeley would later serve as governor and U.S. senator for his native state. ANDREW ZIMBALIST, *IN THE BEST INTERESTS OF BASEBALL?* 17 (2006). For a recent biographical treatment of Bulkeley, see KEVIN MURPHY, *CROWBAR GOVERNOR: THE LIFE AND TIMES OF MORGAN GARDNER BULKELEY* 57–58 (2010). Harold Seymour stated in his classic first volume on this history of baseball that:

The president and board were selected by a drawing: the names of the clubs were written on identical cards, and the first five drawn received the honors. . . . Hartford's card was the first drawn, so to Morgan G. Bulkeley fell the honor of being the National League's first president.

SEYMOUR, *supra* note 25, at 84. Voigt, whose relationship with Seymour was not good, does not mention this episode. William M. Simons lists the two men as "rivals" in his introduction to the 2009–2010 *Cooperstown Symposium* anthology, but many have noted to this author that the dislike between the two men was intense. *THE COOPERSTOWN SYMPOSIUM ON BASEBALL AND AMERICAN CULTURE, 2009–2010*, at 10 (William Simons ed., 2011). Another version supposedly based upon contemporary newspaper accounts supports Seymour's story. Preston Orem stated that "[t]he directors, five in number, were chosen by lot. The first director, as agreed, was to become president. In this manner Morgan G. Bulkeley was chosen the first president of the National League." OREM, *supra* note 7, at 245. David Pietrusza also recounts to selection by lot story. PIETRUSZA, *supra* note 7, at 30. David Fleitz disputed Seymour's story: "Some reports state that Bulkeley became president because Hulbert pulled his name out of a hat, but that scenario seems unlikely. Hulbert needed Eastern support in order for the National League to succeed, and Bulkeley's assumption of the presidency was an important element of Hulbert's overall plan." GHOSTS IN THE GALLERY AT COOPERSTOWN, *supra* note 27, at 10. In Murphy's new biography of Bulkeley, he noted the importance of Bulkeley as an easterner and stated that Hulbert approached Bulkeley who agreed to a one-year term. MURPHY, *supra*.

³³ See MURPHY, *supra* note 32, at 58. For a short article on the Hartford Dark Blues, see David Arcidiacono, *The Hartford Dark Blues*, HOG RIVER J., Spring 2003, at 26, available at http://connecticutexplored.org/issues/v01n03/dark_blues.pdf. For a longer treatment of Connecticut and major league baseball, see DAVID ARCIDIACONO, *MAJOR LEAGUE BASEBALL IN GILDED AGE*

president, he was elected to the Baseball Hall of Fame by the Centennial Commission in 1937 although many contemporary historians argue that he did not deserve this honor.³⁴

Three of Hulbert's goals were to eliminate players from any positions of power in team or league financial matters, to curb player's drunkenness, and to curb the influence of gambling.³⁵ Although baseball has struggled with both gambling and drug abuse throughout its history, the National League would ultimately prove to be far more successful in destroying the practice of revolving and substantially reducing the power of players over their sports. One of Hulbert's team owners, Arthur Soden, would soon help establish the reserve system and the National League would successfully withstand rival leagues, including one started by John Montgomery Ward and the National Brotherhood of Professional Base Ball Players.

II. THE SODEN/O'ROURKE-GEORGE WRIGHT CONTROVERSY AND THE ESTABLISHMENT OF THE RESERVE SYSTEM

Hulbert's maneuvering to build the strongest team on the field was indeed successful, and the Chicago White Stockings finished first in the initial National League campaign in 1876 with a record of 52-14 with key contributions from the former Boston players and Anson.³⁶ Although the Chicago team could not

CONNECTICUT (2010).

³⁴ See BILL JAMES, *THE POLITICS OF GLORY: HOW BASEBALL'S HALL OF FAME REALLY WORKS* 38-39 (1994); MURPHY, *supra* note 32, at 196; SEYMOUR, *supra* note 25, at 84. As Orem recounts:

Bulkeley soon dropped out of baseball, but the fortuitous circumstance of his selection as the first president of the new league caused his selection as a member of the Baseball Hall of Fame. William A. Hulbert has received no such recognition. As president, Bulkeley did little but secretary Nick Young . . . did the work.

OREM, *supra* note 7, at 245. Bulkeley was joined in the Hall of Fame by only one other member of the Hartford Dark Blues, pitcher Arthur "Candy" Cummings. MURPHY, *supra* note 32, at 58.

³⁵ ROGER I. ABRAMS, *THE DARK SIDE OF THE DIAMOND* 79 (2007); GELZHEISER, *supra* note 25, at 22; KOPPETT, *supra* note 9, at 32; ROBERT F. MARTIN, *HERO OF THE HEARTLAND* 28 (2002) (discussing Billy Sunday's connections to baseball and its public image); NEMEC, *supra* note 21, at 107; SEYMOUR, *supra* note 25, at 87; VOIGT, *supra* note 7, at 64.

³⁶ JOHN FREYER & MARK RUCKER, *CHICAGO SLUGGERS* 7 (2005); KOPPETT, *supra* note 9, at 30; VOIGT, *supra* note 7, at 69; *1876 Chicago White Stockings Batting, Pitching & Fielding Statistics*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/CHC/1876.shtml> (last visited Oct. 14, 2011) (listing the 1876 Chicago White Stockings' team statistics).

reproduce that finish during the final years of the decade, the White Stockings finished first in five of the seven seasons from 1880 to 1886 to establish the National League's first dynasty.³⁷ In 1877 and 1878, manager Harry Wright led the Boston Red Caps to the pennant behind the strong pitching of Tommy Bond.³⁸ One of Boston's stars was future Hall of Fame outfielder James "Orator" O'Rourke.³⁹ However, O'Rourke jumped to the Providence Grays in 1879 when Boston owner Arthur Soden, in a measure to cut costs, became embroiled with the player over charges for his uniform.⁴⁰ Although the fans collected money to cover the expense, O'Rourke, stung by what he considered an insult, opted for a new team.⁴¹

Joining O'Rourke in a move to Rhode Island was George Wright, the younger half of the famous brothers who had founded the Cincinnati Red Stockings before leaving together for Boston.⁴² George was angling for a chance to manage like his brother while also joining Albert Spalding as a budding sporting goods business

³⁷ FREYER & RUCKER, *supra* note 36, at 7.

³⁸ THE IRISH IN BASEBALL, *supra* note 23, at 13; BILL JAMES & ROB NEYER, THE NEYER/JAMES GUIDE TO PITCHERS 63 (2004) (Neyer contributed four pages of this excellent study on Bond's career).

³⁹ Arthur Daley, *Sports of the Times: Short Shots in Sundry Directions*, N.Y. TIMES, Apr. 27, 1945, at 25; James P. Dawson, *Old Timers' Committee Selects Ten for Baseball Hall of Fame; Bresnahan, Brouthers, Clarke, Jim Collins, Delehanty, Duffy, Jennings, King Kelly, James O'Rourke and Robinson Named*, N.Y. TIMES, Apr. 26, 1945, at 18.

⁴⁰ HAROLD KAESE, THE BOSTON BRAVES, 1871–1953, at 29 (2004). Kaese describes the event:

[R]efusing to sign with Boston because the club taxed its players twenty dollars a season for uniforms, and fifty cents a day for travel maintenance. When neither club nor players would give in, the fans took up a collection and paid the bill, but Jim O'Rourke was not satisfied and jumped to Providence.

Id. LOWENFISH, *supra* note 25, at 41 ("In 1879 O'Rourke had left Arthur Soden in Boston because the owner had reneged on a promise to pay for his uniform. O'Rourke's action had so enraged Soden that it precipitated his introduction of the first reserve clause."). Roer also recounts that Soden:

[D]emanded each player pay \$20 per year to cover the cost of uniform cleaning while on the road. The players were already paying \$30 per year for their uniforms; and were required to keep them clean when the team was at home.

O'Rourke balked. . . . [I]t was a personal insult. He always kept his uniform immaculate, even on the road. He knew he'd catch heck from his mother if he didn't.

ROER, *supra* note 3, at 71.

⁴¹ KAESE, *supra* note 40, at 29; ROER, *supra* note 3, at 71.

⁴² VOIGT, *supra* note 7, at 78.

entrepreneur.⁴³ In fact, soon after moving to Providence, George and friend Henry Ditson launched their business on Dorrance Street, a major downtown location.⁴⁴ While O'Rourke and George Wright contributed to the Grays winning the 1879 National League championship, Soden searched for an answer to keeping his key players and restricting their mobility.⁴⁵

Born on April 23, 1843, Soden was a native of Framingham, Massachusetts, and a veteran who served as a hospital steward with the Twenty-Second Massachusetts Infantry in the Civil War.⁴⁶ He became a druggist after the war, but his fortune was primarily made in roofing.⁴⁷ His financial interests expanded to include positions on several banks as a director and as a "part owner of a railway, a supply company, a hardware firm, and a manufacturing company. Baseball was a financial investment to him, not merely a hobby."⁴⁸ He was joined in directing the team by James B. Billings and William H. Conant.⁴⁹ After mulling over a solution with George's brother, Harry Wright,⁵⁰ and one of his team's stockholders N. T. Appolonio, Soden decided that the answer was in identifying five players that could be taken off the market to avoid raids by his fellow team owners.⁵¹ Soden presented his plan at the National League meeting in Buffalo, New York, on September 29, 1879, and his fellow owners agreed to implement the five-player restraint.⁵² Thus, baseball's reserve

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ THE IRISH IN BASEBALL, *supra* note 23, at 13; KAESE, *supra* note 40, at 29.

⁴⁶ KAESE, *supra* note 40, at 23.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 22. Kaese provides a brief description of Billings later in the book. *Id.* at 110.

⁵⁰ In commenting on the relationship between George and Harry Wright, David Quentin Voigt stated that "[a]t times the sibling rivalry was bitter." VOIGT, *supra* note 7, at 78. Voigt described events during the 1879 pennant race between the Boston Red Caps and the Providence Grays including George Wright scoring the winning run in a clinching victory when the Grays took two of three games from the Red Caps. *Id.* at 78–79.

⁵¹ THE IRISH IN BASEBALL, *supra* note 23, at 13.

⁵² GELZHEISER, *supra* note 25, at 36–37; *see also* OREM, *supra* note 7, at 313 ("The year 1879 saw the adoption of the first reserve rule in the shape of a signed agreement, by the terms of which, each club was permitted to reserve the services of five players for 1880."). Preston Orem listed the meeting date as September 28, but otherwise agreed with the location of the meeting and provided a list of "delegates." *Id.* Harold Seymour notes that National League teams were allowed to reserve eleven players each by 1883. SEYMOUR, *supra* note 25, at 108–09.

system was created. For the 1880 season, Boston reserved Tommy Bond, Jack Burdock, O'Rourke, Pop Snyder, and Ezra Sutton.⁵³

The 1879 season was important in the history of baseball's reserve system beyond the O'Rourke-Soden-Wright controversy and the agreement by National League owners to institute the five-player reserve system. One of O'Rourke's teammates with the Grays and a member of the Providence five-player list was a young nineteen-year-old pitcher from Bellefonte, Pennsylvania, who led the league with 47 wins.⁵⁴ The youngster was already a veteran of one National League season, Providence's 1878 initial year in the league after replacing the Hartford franchise.⁵⁵ The 1878 Grays were dealt a substantial blow when pitcher Tricky Nichols and potential hurler Fred Corey fell victim to illness and injury, requiring Providence to find a new pitcher.⁵⁶ The Grays turned the position over to the prodigy, a former member of the Binghamton Crickets, an International League team that folded on July 9, 1878, for lack of support.⁵⁷ Six days later the pitcher made his initial starting appearance against Cincinnati, losing an error-filled game to the Reds, 13-9.⁵⁸ He completed the season with 22 wins, 13 losses, the league's lowest earned run average and opponents' batting average for full-time pitchers as well as the fewest hits per game.⁵⁹ It was not shocking, therefore, when the National League owners agreed to reserve five players for the 1880 season, that Providence selected their young pitcher as well as outfielder Paul Hines,⁶⁰ second baseman Mike McGeary, first

⁵³ THE IRISH IN BASEBALL, *supra* note 23, at 13; GELZHEISER, *supra* note 25, app. 2 at 176 (reprinting *The First Reserve Agreement: Secret and Unpublished*, information provided by the Society of American Baseball Research). Snyder did not play for Boston in 1880, but he returned for the 1881 season before moving to Cincinnati in the American Association in 1882. *Pop Snyder Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/s/snydepo01.shtml> (last visited Oct. 14, 2011).

⁵⁴ See BRYAN DI SALVATORE, A CLEVER BASE-BALLIST: THE LIFE AND TIMES OF JOHN MONTGOMERY WARD 4, 120 (1999).

⁵⁵ *Id.* at 119.

⁵⁶ *Id.* at 119-20.

⁵⁷ See *id.* at 105, 108-09.

⁵⁸ See *id.* at 108, 117-18 (explaining that the two teams committed a total of 42 errors combined).

⁵⁹ *Id.* at 119.

⁶⁰ GELZHEISER, *supra* note 25, app. 2, at 176. Hines was hearing impaired. ROER, *supra* note 3, at 74. He worked with Jim O'Rourke, and Mike Roer noted that "[i]t would be for the benefit of players like Hines that hand signals became an integral part of baseball." *Id.*

baseman Joe Start, and shortstop George Wright.⁶¹ What Providence likely did not realize was that their young star, John Montgomery Ward, would become the most important figure in baseball's nineteenth century labor wars fighting against the reserve clause.⁶²

In Mike Roer's biography *Orator O'Rourke*,⁶³ the author described George Wright as "an early victim of the reserve rule."⁶⁴ Despite producing a pennant winner in Providence in 1879, the Grays were not financially successful.⁶⁵ Thus, George Wright received notice that his salary would be "slashed."⁶⁶ When Wright "refused to play in Providence in 1880" at a reduced salary, Providence imposed the reserve clause to prevent him from playing elsewhere.⁶⁷ Roer provided the following quotation from the *Boston Herald*:

The object of the famous Buffalo agreement was . . . to prevent players from "auctioning" their services . . . but its use and abuse were not intended in the way to which the Providence management has put it in the case of George Wright. Wright will not, under any circumstances, play in Providence the coming season, and thus he has been driven from the league by the selfish and arbitrary action of one of its members.⁶⁸

In response, during the fall of 1879, Wright went to Britain to play cricket, but unfortunately he broke a number of bones in his hand when struck "by a fast-bowled ball."⁶⁹ Wright returned to the United States and turned his attention to his sporting goods business.⁷⁰ Wright's position was reinforced on December 20, 1879, in an article in the *New York Clipper* that noted that Wright would not play for Providence in 1880 at a lower salary.⁷¹ In a press release, the Providence owners reinforced their

⁶¹ GELZHEISER, *supra* note 25, app. 2 at 176; Eric Miklich, *First Players Reserve List: 1880*, 19TH CENTURY BASEBALL, <http://www.19cbaseball.com/players-first-players-reserve-list.html> (last visited Oct. 16, 2011).

⁶² VOIGT, *supra* note 7, at 78, 157. For lengthy treatments of Ward, see generally DI SALVATORE, *supra* note 54, and DAVID STEVENS, *BASEBALL'S RADICAL FOR ALL SEASONS: A BIOGRAPHY OF JOHN MONTGOMERY WARD* (1998).

⁶³ ROER, *supra* note 3.

⁶⁴ *Id.* at 80.

⁶⁵ VOIGT, *supra* note 7, at 78–79.

⁶⁶ ROER, *supra* note 3, at 80.

⁶⁷ *Id.*

⁶⁸ *Id.* (footnote omitted).

⁶⁹ *Id.* (footnote omitted).

⁷⁰ *Id.*

⁷¹ *Id.* at 81.

intention to enforce the reserve clause.⁷² Wright continued to balk at playing for a lesser salary and, by the time Providence agreed to pay him the same 1879 salary, Wright maintained his position that he had turned his attention to business.⁷³ The *New York Clipper* weighed in on the subject by forecasting that Providence had made a mistake in not retaining Wright as their shortstop and manager.⁷⁴ By using the reserve clause, Providence prevented Wright from rejoining his brother Harry in Boston either to play for Arthur Soden's team or to manage his Boston store.⁷⁵ After Harry Wright was fired by Soden as manager in 1882, at the end of his second consecutive losing season, Harry was hired by Providence to manage the Grays.⁷⁶ The adoption of the reserve clause did help Soden in three ways: it provided control over the players, reduced salaries, and helped the Boston club financially.⁷⁷

⁷² See *id.* at 81–82.

⁷³ *Id.* at 82.

⁷⁴ *Id.* George Wright is the only manager in Major League history to manage for just one season and capture the pennant. *Id.* The 1879 season turned out to be Wright's last full-time playing season as the introduction of overhand pitching and the curve ball worked to Wright's disadvantage as a hitter. GARY CARUSO, *THE BRAVES ENCYCLOPEDIA* 11–12 (1995). Preston Orem provided the following quotation: "George Wright did not display his usual skill and was at times rather slack." . . . George Wright played only 7 games for the Reds. When he did not leave on the western trip, not wishing to leave his business in Boston, Ross Barnes was engaged." OREM, *supra* note 7, at 345 (referring to the 1881 National League season). Certainly the off-season injury did not help Wright's playing career. George Wright did manage to play in 8 games for Boston in 1880 and 1881 according to the statistics in Baseball-Reference.com. George played in 46 games for Providence in 1882, but his hitting was by far the worst of his career. *George Wright Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/w/wrighge01.shtml> (last visited Oct. 16, 2011). Thus, Roer's reserve clause discussion regarding George Wright deserves a modest prologue.

⁷⁵ See ROER, *supra* note 3, at 82. George opened a store in Boston that was located at 580 Washington Street. *Id.* at 81. His brother Harry had started his "Porting [sic] Goods Store" at 765 Washington Street. *Id.*

⁷⁶ *Id.* at 82; see also KAESE, *supra* note 40, at 30–31 (discussing Harry Wright's change in managerial positions).

⁷⁷ THE IRISH IN BASEBALL, *supra* note 23, at 14. Fleitz noted in his book on the impact of Irish players on baseball, that:

It is probably no coincidence that the Boston club began turning a profit after the reserve clause went into effect. By 1885, the league had increased the number of reserved players per team to 11, virtually ending player movement by tying each performer to his club for the duration of his career. The reserve clause put a lid on salaries, as Soden had predicted, but elicited hard feelings between players and owners that would flare into open revolt before the end of the decade.

III. NEW COMPETITION: THE AMERICAN ASSOCIATION AND THE UNION LEAGUE

The National League, however, could not maintain its labor restraint for long before it faced a new challenge—the creation of the American Association on November 3, 1881, led by the Cincinnati Red Stockings, a team expelled from the National League for playing on Sundays and for selling beer.⁷⁸ To help lure players to its new league, the American Association offered players contracts without a reserve clause.⁷⁹

The creation of the new league quickly prompted a brisk round of revolving. Samuel Washington Wise⁸⁰ signed with both the Cincinnati Red Stockings of the American Association and the Boston Red Stockings of the National League.⁸¹ The *Boston Daily Globe* published an article on January 22, 1882, stating that Wise was ready to play for Cincinnati until he received offers from both Providence and Boston.⁸² Because the Boston offer was “most liberal,” Wise opted to head to Boston and ignore the Cincinnati deal.⁸³ The resulting litigation against Wise was labeled by

Id.

⁷⁸ KOPPETT, *supra* note 9, at 39–40; BORN, *And its Name is the American Association of Base-Ball Clubs—A Constitution Adopted, Which is Favorable in its Policy to the Old League and the Player—Six Clubs Enter, and the Chances are that Eight Will Come In*, CINCINNATI ENQUIRER, Nov. 3, 1881, reprinted in EARLY INNINGS, *supra* note 16, at 119, 119. Harold Seymour offers a slightly different version: “Records differ in minor detail, but the evidence points to Horace B. Phillips, manager of the Philadelphias, as the man responsible for instigating the meeting at Pittsburgh, October 10, 1881, which led to the formation of the American Association.” SEYMOUR, *supra* note 25, at 137. See also DAVID NEMEC, *THE BEER AND WHISKEY LEAGUE* (2004) [hereinafter BEER AND WHISKEY] (providing a complete analysis of the American Association).

⁷⁹ JEROLD J. DUQUETTE, *REGULATING THE NATIONAL PASTIME* 6 (1999); KOPPETT, *supra* note 9, at 40.

⁸⁰ For a biographical summary of Samuel Washington “Sam” Wise, see Frederick Ivor-Campbell, *WISE, Samuel Washington “Sam,” Modoc*, in *BIOGRAPHICAL DICTIONARY OF AMERICAN SPORTS: BASEBALL, Q-Z*, at 1707 (David L. Porter ed., rev. & expanded ed. 2000). See also *Sam Wise Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseballreference.com/players/w/wisesa01.shtml> (last visited Oct. 17, 2011) (providing Sam Wise’s complete statistical history).

⁸¹ See ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* 20 (1998); SEYMOUR, *supra* note 25, at 140.

⁸² *Sam Wise Deserts Cincinnati for Boston*, BOS. DAILY GLOBE, Jan. 22, 1882 (quoting an article in the ST. LOUIS GLOBE-DEMOCRAT). *Sam Wise Statistics and History*, *supra* note 80 (indicating that Wise played one game with the Detroit Wolverines in 1881).

⁸³ *Sam Wise Deserts Cincinnati for Boston*, *supra* note 82 (“He will pay no attention whatever to the contract he made with Cincinnati. The Cincinnati

Richard McBane as a landmark event:

Marking the first time professional baseball went into the civil courts to settle a dispute, the Cincinnati club applied for an injunction in Massachusetts to restrain Wise from playing with Boston and compelling him to return to the Reds. The judge refused to grant the injunction, and Wise remained with Boston for seven successful seasons.⁸⁴

Wise's displeasure with the reserve clause, however, was still evident after the 1883 pennant-winning season in Boston when he offered the following observation: "I should like to play in Cleveland, but the reserve rule holds me solid. There is lots of kicking against the rule . . . because it protects associations and not players. This is not fair, and the kicking will go on until a change comes."⁸⁵

At the same time that Wise was working out his 1882 contract, John "Dasher" Troy⁸⁶ signed with Philadelphia of the American Association before accepting a deal with the National League Detroit Wolverines.⁸⁷ Troy played 11 games for the Wolverines in 1881, but was not initially offered a deal by Detroit.⁸⁸ When Detroit failed to reach a new deal with their 1881 shortstop Sadie Houck, the Wolverines extended a contract to Troy.⁸⁹ Troy was nearly left with no team while the Detroit and Philadelphia

club has decided that Wise's contract with them will stand law and will enjoin him from playing").

⁸⁴ RICHARD L. MCBANE, A FINE-LOOKING LOT OF BALL-TOSSERS 68 (2005) (footnote omitted). David Porter quoted David Pietrusza's statement that the case was "the first instance in which the courts became involved in baseball." Ivor-Campbell, *supra* note 80, at 1707-08 (citing PIETRUSZA, *supra* note 7, at 84). "Wise . . . was involved in a landmark court case when he jumped his contract with Cincinnati of the newly formed American Association in 1882 to go to the Boston club . . ." DANIEL E. GINSBURG, THE FIX IS IN: A HISTORY OF BASEBALL GAMBLING AND GAME FIXING SCANDALS 57 (1995).

⁸⁵ MCBANE, *supra* note 84, at 68 (footnote omitted). Wise was born in Akron, Ohio. Ivor-Campbell, *supra* note 80, at 1707.

⁸⁶ James Hardy described Troy as "an infielder of modest abilities." JAMES D. HARDY, JR., THE NEW YORK GIANTS BASE BALL CLUB 33 (1996). After his playing career ended, Troy was a bartender at the Polo Grounds. *Id.*; see also *Dasher Troy Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/t/troyda01.shtml> (last visited Oct. 4, 2011) (displaying Troy's statistical information).

⁸⁷ See JOHN SHIFFERT, BASE BALL IN PHILADELPHIA 102 (2006) (discussing Detroit's claim to Troy).

⁸⁸ *Sporting Matters: John Troy, and the History of His Recent Base Ball Troubles*, DETROIT FREE PRESS, Apr. 26, 1882, at 1 [hereinafter *Sporting Matters: John Troy*]; SHIFFERT, *supra* note 87, at 102.

⁸⁹ *Sporting Matters: John Troy*, *supra* note 88, at 1.

teams sorted out the situation.⁹⁰ Detroit owner W. G. Thompson fired off a note to Athletics co-owner Simmons—"I do not know anything about your association, or your claim that Mr. Troy has previously signed with you; if he wronged you in any respect, of course, as you say, you may expel him, and have the courts open to you for redress."⁹¹ Troy played with both Detroit and Providence in 1882.⁹²

Another case has also been identified as "baseball's first instance of contract litigation," and this action, like the situation involving Dasher Troy pitted the National League's Detroit Wolverines against an American Association team.⁹³ This time the team was the Pittsburgh Alleghenys. Charlie Bennett,⁹⁴ "an excellent catcher who wielded a decent bat for sixteen years in the major leagues," signed a contract on August 1882 to jump from Detroit to Pittsburgh.⁹⁵ When Bennett reconsidered his move and decided to remain in Detroit, the Alleghenys brought a bill in equity in the Circuit Court for the Western District of Pennsylvania to force compliance with the agreement by demanding that Bennett "execute a formal contract."⁹⁶ For an advance of \$100, Bennett had agreed to "sign a regular contract" with Pittsburgh between October 15 and 31 for the 1883 season.⁹⁷ Pittsburgh, on their part, agreed to pay Bennett \$1,700 for the

⁹⁰ *Id.*

⁹¹ PIETRUSZA, *supra* note 7, at 72. There was some dispute reported in the *Detroit Free Press* regarding whether or not Troy repaid the Athletics for his advance. See *Sporting Matters: Base Ball*, DETROIT FREE PRESS, Feb. 17, 1882, at 6.

⁹² *Dasher Troy Statistics and History*, *supra* note 86.

⁹³ DI SALVATORE, *supra* note 54, at 294. Bill James provided the following version: "Bennett was the subject of the first big court test of baseball's reserve clause. . . . Bennett won, the judge ruling that the reserve clause was not a contract in and of itself, but merely an agreement to execute a contract at some later date." BILL JAMES, THE NEW BILL JAMES HISTORICAL BASEBALL ABSTRACT 402-03 (2001). As noted in the discussion of the case *infra*, the "reserve clause" was not contained in the agreement that was litigated.

⁹⁴ Fred Lieb spelled Bennett's nickname "Charley." FREDERICK G. LIEB, THE DETROIT TIGERS 5 (1946).

⁹⁵ DI SALVATORE, *supra* note 54, at 294. Bill James stated that Bennett "was among the outstanding defensive catchers of that era, perhaps the best." JAMES, *supra* note 93, at 403. See also *Charlie Bennett Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/b/bennec h01.shtml> (last visited Oct. 15, 2011) (listing Bennett's superior fielding statistics at the catcher position).

⁹⁶ *Allegheny Base-Ball Club v. Bennett*, 14 F. 257, 257 (C.C.W.D. Pa. 1882).

⁹⁷ *Id.*

season.⁹⁸

The Allegheny Base-Ball Club was not only concerned about Bennett, but also about Ned Williamson⁹⁹ and Pud Galvin¹⁰⁰ who had also refused to sign a “regular contract” placing Pittsburgh in the difficult position of not being able to “secure other players of equal skill” as the threesome.¹⁰¹

The club filed for a preliminary injunction, and the court denied the motion.¹⁰² After the denial, Bennett’s attorney responded by filing a general demurrer.¹⁰³ The argument was based on the reasoning that “the contract is a mere preliminary arrangement, and not a final agreement.”¹⁰⁴ The attorneys argued that mutuality between the parties was required and that specific performance could not be granted unless it was “clear that the minds of the parties have come together.”¹⁰⁵ Bennett’s attorneys also argued that the team had an adequate legal remedy even if it required paying another player a higher salary. They continued their attack claiming that the contract was “unreasonable and void on public policy grounds” and noted the

⁹⁸ *Id.* (the agreement printed in the case contained the wording of the “written instrument”). See also DI SALVATORE, *supra* note 54, at 294 (describing the same circumstances as set forth in the court’s opinion).

⁹⁹ See *Ned Williamson Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/w/willine01.shtml> (last visited Oct. 15, 2011). Williamson ultimately remained with the Chicago White Stockings. *Id.*

¹⁰⁰ See *Pud Galvin Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/g/galvipu01.shtml> (last visited Oct. 15, 2011). Galvin, who was elected to the Hall of Fame by the Veterans Committee in 1965, remained with the Buffalo Bisons for the 1883 season. *Id.*

¹⁰¹ *Bennett*, 14 F. at 258. See also PIETRUSZA, *supra* note 7, at 74 (explaining that Pittsburgh’s grievances included an allegation that Bennett’s actions encouraged Williamson and Galvin to forego their options and play in the National League).

¹⁰² *Bennett*, 14 F. at 258 (James Bakewell argued the motion against A. Tausig).

¹⁰³ *Id.* The grounds for the demurrer were:

(1) That the bill was prematurely brought; (2) that the agreement was a mere preliminary arrangement, anticipating the making of a final contract, and that, therefore, there was no contract before the court capable of specific enforcement; (3) that the agreement was unlimited as to place, and was, therefore, unreasonable and void as against public policy, as covenants in restraint of trade; (4) that the complainant had an adequate remedy at law.

Id. A. Tausig was joined by A. W. Duff and Marshall Brown in arguing for the demurrer. *Id.*

¹⁰⁴ *Id.* at 259.

¹⁰⁵ *Id.* (citation omitted).

unlimited duration as a restraint of trade.¹⁰⁶ After pressing the issue that specific performance for a personal service contract was inappropriate when the requirement was continual instead of singular, the attorneys claimed that the action was premature because the 1883 season had not yet started.¹⁰⁷ District Court Judge Marcus W. Acheson sustained the request for a demurrer, and he dismissed the bill.¹⁰⁸

Bennett is more than a footnote in baseball's labor history. He is listed as the originator of the chest protector when his wife Alice created a shield with cork and bedticking.¹⁰⁹ He was seriously injured in a railroad accident when he fell under a moving train in Wellsville, Kansas, in January 1894, losing parts of both legs.¹¹⁰ Bennett ran a popular shop in Detroit for many

¹⁰⁶ *Id.* at 259–60.

¹⁰⁷ *Id.* at 260; see DI SALVATORE, *supra* note 54, at 294.

¹⁰⁸ *Bennett*, 14 F. at 261; see also VOIGT, *supra* note 7, at 155 (discussing the *Bennett* case). Marcus Wilson Acheson served as a judge of the Western District of Pennsylvania from 1880 to 1891. *Judges of the United States Courts*, Acheson, Marcus Wilson, FED. JUDICIAL CTR., <http://www.fjc.gov/public/home.nsf/hisj> (last visited Oct. 29, 2011). He was elevated to the U.S. Circuit Court for the Third Circuit in 1891 and moved onto the U.S. Court of Appeals for the Third Circuit that same year as the federal judiciary adopted a new structure. *Id.* Acheson died on June 21, 1906. *Id.*

¹⁰⁹ JOANNE C. GERSTNER, DETROIT TIGERS 10–11 (2011) (displaying an illustration of Bennett); PETER MORRIS, CATCHER: HOW THE MAN BEHIND THE PLATE BECAME AN AMERICAN FOLK HERO 135 (2009); MARK PATTISON & DAVID RAGLIN, DETROIT TIGERS: LISTS AND MORE 174 (2002); VINCE STATEN, WHY IS THE FOUL POLE FAIR? 263 (2003).

¹¹⁰ RICHARD BAK, A PLACE FOR SUMMER: A NARRATIVE HISTORY OF TIGER STADIUM 45–46 (1998) (explaining that Bennett lost his left foot and his right leg was amputated at the knee); DI SALVATORE, *supra* note 54, at 295; JIM HAWKINS & DAN EWALD, THE DETROIT TIGERS ENCYCLOPEDIA 36 (2003); GEORGE R. MATTHEWS, WHEN THE CUBS WON IT ALL 188 (2009). Golenbock's account of the incident focused on John Clarkson as well as Bennett. PETER GOLENBOCK, WRIGLEYVILLE: A MAGICAL HISTORY TOUR OF THE CHICAGO CUBS 88 (1999). As Golenbock retold the story: "[T]he terrified Bennett waited for the medics to arrive, a horrified Clarkson cradled him in his arms . . . [Clarkson] suffered a mental breakdown, was declared insane, and spent most of the rest of his life in a mental hospital." *Id.* Golenbock listed the city where the accident occurred as Wellsville, Kansas. *Id.* David Fleitz offered a different version of the story, stating, "Clarkson may not have seen the accident, but he certainly dealt with the immediate aftermath, and some say that Clarkson's personality was never the same afterward." GHOSTS IN THE GALLERY AT COOPERSTOWN, *supra* note 27, at 120. Fred Lieb listed the date of the accident as January 9, 1894. LIEB, *supra* note 94, at 5. He also listed the city where the accident occurred as Wellesville, Kansas. *Id.* Wellsville is a city in Franklin County in eastern Kansas, about twenty miles south of Kansas City. See WELLSVILLE, KANSAS, <http://www.cityofwellsvilleks.org> (last visited Oct. 29, 2011).

years.¹¹¹ The Detroit fans held a day to honor Bennett, and he was presented with a wheelbarrow filled with 520 silver dollars.¹¹² Bennett Park in Detroit was named for the popular player.¹¹³ That field later became Navin Field, Briggs Stadium, and Tiger Stadium.¹¹⁴ For many years he was a mainstay during opening day in Detroit.¹¹⁵

The Red Stockings captured the 1882 championship,¹¹⁶ but the stress of both leagues fighting over players was too destabilizing. On March 12, 1883, the National League, the American Association, and the minor league Northwestern League reached an accord known variously as the National Agreement, the Tripartite Agreement, or the Tri-Partite Pact.¹¹⁷ The three

¹¹¹ See BIOGRAPHICAL DICTIONARY OF AMERICAN SPORTS, BASEBALL A–F, at 96–97 (David L. Porter ed., 2000) [hereinafter BIOGRAPHICAL DICTIONARY A–F] (indicating that the shop was a cigar and newspaper store that “[f]ans and friends went out of their way to patronize”). Di Salvatore indicated that the shop was a tobacco/newspaper store. DI SALVATORE, *supra* note 54, at 295. Golenbock indicated that the shop was a pottery business. GOLENBOCK, *supra* note 110, at 88. Hawkins and Ewald indicated that the shop was “a downtown Detroit shop” with “cigars and painted china.” HAWKINS & EWALD, *supra* note 110. James indicated that the shop was a tobacco store/newsstand. JAMES, *supra* note 93, at 403. Lieb indicated that the shop was a cigar store. LIEB, *supra* note 94.

¹¹² BIOGRAPHICAL DICTIONARY A–F, *supra* note 111, at 97; JAMES, *supra* note 93, at 403; see also LIEB, *supra* note 94, at 15 (“With the whole crowd cheering him on, Charley wheeled his barrow of dollars gaily around the base lines.”).

¹¹³ IRWIN J. COHEN, *TIGER STADIUM* 9 (2003); HAWKINS & EWALD, *supra* note 110.

¹¹⁴ See BAK, *supra* note 110, at 115, 181, 291 (explaining that Bennett Park was torn down after the 1911 season and replaced by a new stadium renamed Navin Field for owner Frank Navin which was subsequently renamed Briggs Stadium in 1938, and Tiger Stadium in 1961); COHEN, *supra* note 113, at 21, 39, 65; HAWKINS & EWALD, *supra* note 110; LIEB, *supra* note 94, at 144; PATTISON & RAGLIN, *supra* note 109, at 322–23.

¹¹⁵ BAK, *supra* note 110, at 46, 59, 114 (showing a picture of elderly Bennett and explaining: “The crippled former catcher caught the ceremonial first pitch at every home opener from 1895 to 1926, hobbling out to home plate on two artificial legs.”). DAVID FINOLI & BILL RANIER, *WHEN COBB MET WAGNER* 150 (2011) (explaining that it was a tradition for Bennett to throw out the first pitch on Opening Day for the Tigers, and that the image on the cover of the book is of Bennett Park as indicated on the copyright page). HAWKINS & EWALD, *supra* note 110 (“Each spring, with the aid of a cane, Bennett would hobble up to home plate on his two artificial limbs to catch the ceremonial first pitch on Opening Day in the ballpark that bore his name.”).

¹¹⁶ *1882 Cincinnati Red Stockings Batting, Pitching, & Fielding Statistics*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/CIN/1882.shtml> (last visited Oct. 29, 2011) [hereinafter *1882 Cincinnati Red Stockings*].

¹¹⁷ ROBERT F. BURK, *NEVER JUST A GAME: PLAYERS, OWNERS, AND AMERICAN BASEBALL TO 1920*, at 73 (1994); KOPPETT, *supra* note 9, at 45.

leagues agreed to respect each other's contracts, blacklist players outside of the system, maintain a minimum salary of \$1,000, and have an eleven-man reserve list.¹¹⁸ The resulting agreement obviously strengthened the young reserve system.

The 1880s continued to be fertile ground for new leagues when St. Louis millionaire and railroad magnate, Henry V. Lucas launched the Union Association six months after the signing of the National Agreement at a meeting in Pittsburgh.¹¹⁹ Lucas, looking for entertainment to boost use of his trolley line, put together a group of similar businessmen including Adolphus Busch, who was just beginning to build Anheuser-Busch into a brewing giant with the shipment of his pasteurized Budweiser beer in refrigerated railcars to markets far beyond St. Louis.¹²⁰ Lucas, seizing on the critical point that the American Association originally pursued, did not institute a reserve system.¹²¹

In reflecting on the 1884 season, Leonard Koppett summarized the results that would establish the basic ground rules in Major League Baseball for the next sixty years into six points.¹²² Four of Koppett's points were that two leagues *really* cooperating with the potential for a "world's championship" could be sustainable while overexposure through an abundance of teams would damage everyone's ability to compete and a persistent challenger could be absorbed into the remaining leagues.¹²³ Koppett's first and last points, however, became the foundation of baseball owners' accepted views about labor relations for the remainder of the nineteenth century and the majority of the twentieth century:

1. The reserve system *must* be maintained. . . .
6. Top players—but only top players—must be satisfied one way or another; the rest can be ruled with an iron hand.¹²⁴

The Union Association began the 1884 season without a reserve clause.¹²⁵ Seeking star power, the new league offered future hall-of-famer Charles "Old Hoss" Radbourn \$2,000 to leave

¹¹⁸ See BURK, *supra* note 117.

¹¹⁹ KAESE, *supra* note 40, at 38; KOPPETT, *supra* note 9, at 45.

¹²⁰ KOPPETT, *supra* note 9, at 46; History of Anheuser Busch, ANHEUSER-BUSCH.COM, <http://www.anheuser-busch.com/s/index.php/our-heritage/history> (last visited on Oct. 29, 2011).

¹²¹ See KOPPETT, *supra* note 9, at 46.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ CASH, *supra* note 16, at 76; *The New Association Formed at Pittsburg—The Eastern League*, SPORTING LIFE, Sept. 17, 1883, reprinted in EARLY INNINGS, *supra* note 16, at 130, 131–32; GELZHEISER, *supra* note 25, at 31.

the Providence Grays of the National League¹²⁶ after he lead the circuit with 48 wins in 1883.¹²⁷ Radbourn was aided by the new rule changing the pitching motion from underhand to overhand.¹²⁸ The rule change also related to increasing the distance between the pitcher and the batter.¹²⁹ Radbourn possessed an “irascible temper” that created a manager’s nightmare.¹³⁰ Radbourn declined the Union’s offer, but his difficulty with new manager Frank (F.C.) Bancroft did provide the new league with a pitcher during the season.¹³¹ Early in 1884, Bancroft and Radbourn quarreled after the hurler became angry during a game on July 16, when weak fielding support and calls by the umpire, that Radbourn judged to be unfair, led Old Hoss to simply lob the ball in to the hitters without any effort to retire the batters.¹³² Bancroft responded by suspending Radbourn.¹³³ The manager turned to Charles Sweeney, the Grays other pitcher in 1883, to become the Grays’ regular starter.¹³⁴ Sweeney, the fastest pitcher of his era, won 17 of 25 decisions for the eventual National League champions.¹³⁵ Despite Sweeney’s efforts, however, Bancroft could not abide the drinking problems of his new ace. After a verbal confrontation between the two after the pitcher’s all-day drinking binge, Lucas saw an opening to help both the Union Association and his St. Louis Maroons. Lucas signed

¹²⁶ VOIGT, *supra* note 7, at 108. Two spellings are prevalent for “Old Hoss”—Radbourn and Radbourne. EDWARD ACHORN, FIFTY-NINE IN ‘84, at xiv (2010). Edward Achorn used the version without an “e” in his recent book and discussing the spelling in his preface. *Id.*

¹²⁷ See *Old Hoss Radbourn Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/r/radboch01.shtml> (last visited Oct. 29, 2011).

¹²⁸ See VOIGT, *supra* note 7, at 206.

¹²⁹ *Id.* at 205.

¹³⁰ *Id.* at 107.

¹³¹ *Id.* at 108.

¹³² See Thomas Carson, *Baseball’s First World Champions: The Providence Grays*, in 1 BASE PATHS: THE BEST OF THE MINNEAPOLIS REVIEW OF BASEBALL, 1981–1987, at 161, 164 (Ken LaZebnik & Steve Lehman eds., 1991), available at <http://orion.it.luc.edu/~tcarson/greeys.pdf> [hereinafter BASE PATHS].

¹³³ *Id.*

¹³⁴ *Id.*; see also VOIGT, *supra* note 7, at 108 (spelling the pitcher’s name as “Sweeny”).

¹³⁵ BASE PATHS, *supra* note 132 (Sweeney struck out 19 Boston hitters on June 7, 1884, to establish a record that was tied in 1969 by Steve Carlton and 1970 by Tom Seaver. The record was finally broken in 1986 by Roger Clemens when he struck out 20 Seattle Mariners in 1986); see also *Charlie Sweeney Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/s/sweench01.shtml> (last visited Oct. 15, 2011) (showing 18 wins and 7 losses in 1884).

Sweeney to a deal that moved him from Providence to St. Louis for the balance of the season.¹³⁶ Sweeney was 24-7 for the Maroons on a staff that also included Billy Taylor with a 25-4 win-loss ledger and three other pitchers with 12 or more wins.¹³⁷ The dominant Maroons finished the season with a 94-19 record that helped to shut down the league after only one year.¹³⁸ Radbourn had a 59-12 record for Providence in 1884, including an incredible September streak.¹³⁹ Using a “baffling curve ball” from the new overhand style, Radbourn pitched all but two of the final thirty-seven games of the 1884 season.¹⁴⁰ Old Hoss was “rewarded with a bonus” and pitched the Grays to the first official World Series championship over the New York Mets of the

¹³⁶ See Carson, *supra* note 132. Robert Smith provided a slightly different version of Sweeney's departure from the Grays. Smith wrote that Bancroft ordered Sweeney to move to right field in a game against Philadelphia where the Grays held a big lead. Robert Smith, *Of Kings and Commoners*, in THE COMPLETE ARMCHAIR BOOK OF BASEBALL: AN ALL-STAR LINEUP CELEBRATES AMERICA'S NATIONAL PASTIME 755, 767 (John Thorn, ed., 1997). Bancroft needed a back-up pitcher due to his suspension of Radbourn, and the manager wanted to see how Cyclone Joe Miller could perform. *Id.* Sweeney considered this a “public humiliation,” and after “damn[ing] the whole notion to hell,” jumped on a train for Boston to play for St. Louis. *Id.* For a complete record of Sweeney's career, see *Charlie Sweeney Statistics & History*, *supra* note 135. Cyclone Miller pitched in a total of 27 major league games. *Cyclone Miller Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/millecy01.shtml> (last visited Oct. 15, 2011). The game in question is apparently the only game that he did not start in his career.

¹³⁷ 1884 *St. Louis Maroons Batting, Pitching, & Fielding Statistics*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/SLM/1884.shtml> (last visited Oct. 15, 2011).

¹³⁸ *Id.*; BEER AND WHISKEY, *supra* note 78, at 77–78, 87; see also KOPPETT, *supra* note 9, at 47 (discussing how the lack of competition hurt the inception of the Union Association). For an additional source of the Union Association's single season standings, see 1884 *Union Association Team Statistics and Standings*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/UA/1884.shtml> (last visited Oct. 15, 2011).

¹³⁹ VOIGT, *supra* note 7, at 108. Leonard Koppett discussed the impact that Radbourn's pitching had on his career and concluded that a pitcher cannot work 679 innings and “survive.” KOPPETT, *supra* note 9, at 48. Current history has changed the number of wins from 60 to 59, but Koppett listed the long-used figure of 60. *Id.*; *Old Hoss Radbourn Statistics and History*, *supra* note 127. Koppett listed Radbourn's win-loss total as 166-68 at the end of the 1884 season, and he pointed out that for the remainder of his career spanning seven more seasons Radbourn was 143-129. KOPPETT, *supra* note 9, at 48. Koppett also noted that Radbourn turned thirty that year. *Id.* Radbourn's birthday was December 11, 1854. *Old Hoss Radbourn Statistics and History*, *supra* note 127. Perhaps this was early proof of a commonly held current belief that pitchers are “old” once they pass thirty.

¹⁴⁰ VOIGT, *supra* note 7, at 107–08.

American Association.¹⁴¹ Sweeney, whose temper was a match for Radbourn's, was later an inmate at San Quentin for killing a man during a brawl in the 1890s in a San Francisco saloon.¹⁴²

The experience of three leagues would only survive 1884. Fourteen different cities fielded teams for the Union Association during the year, although never more than eight locations at one time.¹⁴³ The St. Louis Maroons and the Cincinnati Outlaw Reds, who finished with a record of 69-36, far outplayed all of the other teams.¹⁴⁴ The Union Association dissolved although Lucas and his St. Louis Maroons were allowed to enter into the National League and replace the Cleveland Blues after Lucas agreed to pay St. Louis Browns owner Von der Ahe \$2,500 in damages and adopt the National League's fifty cent minimum admission price.¹⁴⁵ When the National League tried to blacklist all of the revolvers who had moved to the Union Association, Lucas supported them by paying large fines for their violations of the reserve clause, and he forced the League to reinstate the players.¹⁴⁶ Cleveland had lost three of its best players to the Cincinnati Outlaw Reds of the Union Association during the 1884 season, and the remaining Blues players were assigned to Brooklyn of the American Association.¹⁴⁷ Thus, revolving did rid the National League of a vulnerable and weak Cleveland franchise that was replaced by a wealthy St. Louis owner who had pulled Sweeney away from the champion Providence Grays. The 1884 American Association included a total of thirteen teams.¹⁴⁸ Before the 1885 season started, the league had scaled

¹⁴¹ *Id.* at 109; see also BEER AND WHISKEY, *supra* note 78, at 91 (stating "the New York Mets were routed by Providence in the 1884 World's Series").

¹⁴² BASE PATHS, *supra* note 132; Peter Keating, *Lifers: There Is a Murderer on the Mound, a Three-Time Loser at Short and a Shank or Two Buried in the Outfield. The San Quentin Giants Are No Ordinary Baseball Team*, ESPN MAG. (July 2, 2007), <http://sports.espn.go.com/espnmag/story?id=3788130>. David Stevens offered the following conclusion on Sweeney's life: "At 32, he was sentenced to 10 years for killing a man in a saloon. Sweeney died shortly after his release from prison." STEVENS, *supra* note 62, at 37. Sweeney's date of death is listed in Baseball-Reference.com as April 4, 1902. *Charlie Sweeney Statistics and History*, *supra* note 135.

¹⁴³ See BEER AND WHISKEY, *supra* note 78, at 83.

¹⁴⁴ *Id.* at 87.

¹⁴⁵ *Id.* at 85.

¹⁴⁶ *Id.*

¹⁴⁷ BEER AND WHISKEY, *supra* note 78, at 81; KOPPETT, *supra* note 9, at 48.

¹⁴⁸ 1884 American Association Team Statistics and Standings, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/AA/1884.shtml> (last visited Oct. 15, 2011). The 1884 American Association consisted of the

back to eight teams by dropping franchises in Columbus, Indianapolis, Richmond, Toledo, and Washington.¹⁴⁹ The National League, now clearly superior, also fielded eight teams in 1885.¹⁵⁰ Lucas's St. Louis team finished last despite preseason promise of contending for the pennant, and the magnate was gone from baseball after the 1886 season with "his fortune gone and his ego shattered."¹⁵¹

While the leagues were sorting out the end of the 1884 season and the beginning of the 1885 season, the *New York Times* provided a complete snapshot of the reserve system by publishing a list of eleven players reserved for the upcoming 1885 season by the twenty teams that submitted their lists to the league offices on October 27, 1884.¹⁵² The article also revealed an interesting

Baltimore Orioles, Brooklyn Atlantics, Cincinnati Red Stockings, Columbus Buckeyes, Indianapolis Hoosiers, Louisville Eclipse, New York Metropolitans, Philadelphia Athletics, Pittsburgh Alleghenys, Richmond Virginians, St. Louis Browns, Toledo Blue Stockings, and Washington Nationals. *Id.* For variations on four team nicknames, see *Year in Review: 1884 American Association*, BASEBALL-ALMANAC.COM, <http://www.baseball-almanac.com/yearly/yr1884a.shtml> (last visited Oct. 23, 2011). Baseball-Almanac lists the Brooklyn franchise as the Trolley Dodgers, the Columbus franchise as the Colts, the Louisville franchise as the Eclipse, and the Indianapolis franchise as the Blues. *Id.* For a different set of variations on nicknames from Baseball-Reference provided by David Nemec, see BEER AND WHISKEY, *supra* note 78, at 73. Nemec lists the Cincinnati franchise as the Reds, the Brooklyn franchise as the Grays, and the Washington franchise as the Statesmen. *Id.* The Richmond franchise is simply listed as Virginia. *Id.*

¹⁴⁹ *1885 American Association Team Statistics and Standings*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/AA/1885.shtml> (last visited Oct. 15, 2011) (displaying the 1885 American Association League's final standings and St. Louis's record). The 1885 American Association consisted of the Baltimore Orioles, Brooklyn Grays, Cincinnati Red Stockings, Louisville Colonels, New York Metropolitans, Philadelphia Athletics, Pittsburgh Alleghenys, and the St. Louis Browns. *Id.*

¹⁵⁰ *1885 National League Team Statistics and Standings*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/NL/1885.shtml> (last visited Oct. 15, 2011) [hereinafter *1885 National League Statistics*]. The 1885 National League consisted of the Boston Beaneaters, Buffalo Bisons, Chicago White Stockings, Detroit Wolverines, New York Giants, Philadelphia Phillies, Providence Grays, and St. Louis Maroons. See *Year in Review: 1885 National League*, BASEBALL-ALMANAC.COM, <http://www.baseball-almanac.com/yearly/yr1885n.shtml> (last visited Nov. 1, 2011).

¹⁵¹ BEER AND WHISKEY, *supra* note 78, at 86; see also *1885 National League Statistics*, *supra* note 150 (listing the St. Louis Maroons in last place with a record of 36-72).

¹⁵² *The Baseball Arena: The Reserved Lists of the League and American Association*, N.Y. TIMES, Oct. 27, 1884, available at <http://query.nytimes.com/mem/archive-free/pdf?res=9C04E5DA1038E033A25754C2A9669D94659FD7CF> [hereinafter *The Baseball Arena*].

glimpse into the struggles of the championship Providence franchise. Manager Frank Bancroft first fielded questions about either a possible transfer of the team to Brooklyn or the folding of the team by assuring his fans in Rhode Island's capital city that the Grays would field a National League team in 1885. When the reporter queried Bancroft about the absence of first baseman Joe Start from the reserve list, the manager smiled and stated, "But all the same he will cover the first bag for the Providence next year. Joe's word is his bond, and I will take it any time in preference to a contract with half the other ball players."¹⁵³ Start was over forty years old and nearing the end of a sixteen-year career.¹⁵⁴ Of the eleven reserved players listed by Providence, eight were starters on the 1884 squad,¹⁵⁵ two were back-up players,¹⁵⁶ and the other was Tom Lovett, who did not play in 1884.¹⁵⁷ Start did indeed play for the Grays in 1885 as well as the eight returning starters who were reserved.¹⁵⁸ With Radbourn

¹⁵³ *Id.*

¹⁵⁴ See *Joe Start Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/s/startjo01.shtml> (last visited Oct. 15, 2011) (listing Joe Start at age forty-one during the 1884 season).

¹⁵⁵ *The Baseball Arena*, *supra* note 152. The list only offers last names, but quick research on Baseball-Reference.com completed the analysis. The listed players were Charley Bassett, Cliff Carroll, Jerry Denny, Jack Farrell, Barney Gilligan, Paul Hines, Arthur Irwin, Tom Lovett, Miah Murray, Old Hoss Radbourn ("Radbourne" spelling used in the published list), and Paul Radford with Bassett as back-up infielder, Carroll as an outfielder, Denny as the third baseman, Farrell as the second baseman, Gilligan as the primary catcher, Hines as an outfielder, Irwin as the shortstop, Radbourn as the pitcher, and Radford as an outfielder. *1884 Providence Grays Batting, Pitching, & Fielding Statistics*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/PRO/1884.shtml> (last visited Oct. 15, 2011); *1885 Providence Grays Batting, Pitching, & Fielding Statistics*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/teams/PRO/1885.shtml> (last visited Oct. 15, 2011) [hereinafter *1885 Providence Grays*].

¹⁵⁶ Charley Bassett and Miah Murray were backups. Bassett played in 27 games while Murray played in only 8 games for Providence in 1884. *Charley Bassett Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/b/bassech01.shtml> (last visited Oct. 15, 2011); *Miah Murray Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/murrami01.shtml> (last visited Oct. 15, 2011). Murray played in 12 games for Louisville in the American Association in 1885. *Miah Murray Statistics and History*, *supra*.

¹⁵⁷ Tom Lovett played for the Philadelphia Athletics in the American Association in 1885. *Tom Lovett Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/l/lovetto01.shtml> (last visited Oct. 15, 2011).

¹⁵⁸ *1885 Providence Grays*, *supra* note 155 (including Carroll, Denny, Farrell, Gilligan, Hines, Irwin, Radbourn, and Radford).

only winning 28 and losing 21, the Grays dropped to 53-57 and fourth place.¹⁵⁹ Financial difficulty plagued owner Henry Root who suspended many of the best players including Radbourn without pay for the remainder of the season.¹⁶⁰ The Grays would not return as a National League entry in 1886 along with the Buffalo Bisons, both casualties of poor attendance.¹⁶¹

The *New York Times* article noted the obvious ownership philosophy that “[i]n the [National] League the best players, with three or four exceptions, have been reserved by the different clubs. O’Rourke, who leads the League batsmen for 1884, is not held in Buffalo for 1885.”¹⁶² Thus, Orator O’Rourke, whose revolving prompted Soden to create the reserve clause in 1879, was allowed to move from the Buffalo Bisons to the New York Giants when the Buffalo management decided not to reserve him.¹⁶³

The loss of twelve teams between 1884 and 1885 obviously reduced significantly the number of roster spots and the restoration of the reserve system dramatically reduced the leverage for players with jobs in the American Association and the National League. Mike Hines, a little-used catcher, was prevented from playing in both 1886 and 1887 when Providence

¹⁵⁹ *Id.*

¹⁶⁰ BASE PATHS, *supra* note 132, at 165.

¹⁶¹ See *id.* Compare 1886 National League Team Statistics and Standings, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/NL/1886.shtml> (last visited Oct. 12, 2011) [hereinafter 1886 National League Team Statistics] (displaying neither the Buffalo Bisons nor the Providence Grays fielding 1886 National League teams), with 1885 National League Statistics, *supra* note 150 (displaying both the Buffalo Bisons and Providence Grays fielding teams in 1885). After the season, the Grays were sold to the Boston Beaneaters. Carson, *supra* note 133, at 165. Boston kept catcher Cornelius “Con” Daily, who was a twenty-year old rookie, and Radbourn. *Id.*; *Con Daily Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/d/dailyco01.shtml> (last visited Oct. 12, 2011). Long-time regulars Carroll, Farrell, Gilligan, Hines, and Start, with Dupee Shaw, a more recent arrival as a pitcher, were sold to the Washington Nationals. Carson, *supra* note 132, at 165. The Nationals did not play well finishing a dismal 28-92. 1886 National League Team Statistics and Standing, *supra*. Shortstop Arthur Irwin was sold to the Philadelphia Phillies, a team that finished in fourth place despite a 71-43 record. Carson, *supra* note 132, at 165; 1886 National League Team Statistics and Standing, *supra*.

¹⁶² *The Baseball Arena*, *supra* note 152.

¹⁶³ ROER, *supra* note 3, at 117. O’Rourke played the next five seasons in New York for the Giants. *Jim O’Rourke Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/o/o%27rouji01.shtml> (last visited Oct. 12, 2011). He would move to the Players’ League in 1890 before returning to the Giants for 1891–1892. *Id.*

of the National League maintained control through the use of the reserve system.¹⁶⁴ Thomas “Pat” Deasley signed a contract in 1884 with St. Louis in the American Association that contained a provision that he not be reserved for 1885.¹⁶⁵ When Deasley tried to enforce the agreement, the American Association responded that the provision was illegal.¹⁶⁶

To solidify the impact of the reserve system on salaries, the American Association and the National League signed a new National Agreement on October 18, 1885, that restricted salaries to between \$1,000 and \$2,000 per season and expanded the reserve list to twelve players per club.¹⁶⁷ Displeasure over the new mandate finally pushed a group of National League players, led by John Montgomery Ward, to form the National Brotherhood of Professional Base Ball Players (Brotherhood), just four days later on October 22, 1885. Baseball’s first union was born.¹⁶⁸ They agreed to keep the union secret for the first year.¹⁶⁹ By 1887, the reserve list had expanded to cover fourteen players.¹⁷⁰

Prior to the 1887 season, an important transaction between Chicago’s Spalding and Boston’s Triumvirs of Billings, Conant, and Soden highlighted the economic value of a star player. The Boston group approached Spalding about selling his star King Kelly for \$5,000.¹⁷¹ Spalding responded that he wanted \$10,000, but he had to convince Kelly to accept the sale.¹⁷² Kelly did not immediately warm to the idea because he felt that ballplayers should not be sold like horses or dogs.¹⁷³ Due to the changes in salary structure as owners fought weak attendance, Kelly saw his salary drop as low as \$1,300 in 1881 before rebounding to

¹⁶⁴ SEYMOUR, *supra* note 25, at 109; *Mike Hines Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/h/hinesmi01.shtml> (last visited Oct. 12, 2011).

¹⁶⁵ SEYMOUR, *supra* note 25, at 109.

¹⁶⁶ *Id.*

¹⁶⁷ *The Baseball Convention: A Treaty of Peace Between the League and the National Association*, N.Y. TIMES, Oct. 18, 1885, reprinted in EARLY INNINGS, *supra* note 16, at 139, 139–40.

¹⁶⁸ GELZHEISER, *supra* note 25, at 85.

¹⁶⁹ *Id.*

¹⁷⁰ ANDREW ZIMBALIST, *BASEBALL AND BILLIONS* 4 (1992); see also SEYMOUR, *supra* note 25, at 109 (noting that the number of reserved players was increased to twelve in 1886 and to fourteen in 1887).

¹⁷¹ KAESE, *supra* note 40, at 46; see also MARTY APPEL, SLIDE, KELLY, SLIDE: THE WILD LIFE AND TIMES OF MIKE “KING” KELLY, *BASEBALL’S FIRST SUPERSTAR* 102–03 (1996) (discussing Kelly’s move to Boston).

¹⁷² APPEL, *supra* note 171, at 103; KAESE, *supra* note 40, at 46.

¹⁷³ KAESE, *supra* note 40, at 46.

\$2,500.¹⁷⁴ He would settle for any deal that would move his salary to \$5,000.¹⁷⁵ If Boston would give him that figure, he told Spalding that the Chicago magnate could sell him for “a hundred thousand.”¹⁷⁶ The Boston group agreed to the sale for Spalding’s asking price, and Kelly received a package deal at the stated annual maximum salary of \$2,000 plus an additional \$3,000 for a picture of himself.¹⁷⁷ Of additional importance to Spalding, he was able to rid his team of a highly renowned drinker.¹⁷⁸ John Montgomery Ward reacted angrily to the sale claiming that Kelly got none of the money; Spalding received the entire amount; and because of the reserve clause, the amount was inflated.¹⁷⁹ Furthermore, the player had no control over his destiny or his destination. If he wanted to play, he had to accept the transfer.¹⁸⁰

In 1887, the owners desire to establish the perpetual nature of the reserve system became evident in a contractual squabble involving Jim McCormick.¹⁸¹ McCormick had moved from the Chicago White Stockings to the Pittsburgh Alleghenys for the 1887 season.¹⁸² When McCormick refused to sign for 1888 with

¹⁷⁴ *King Kelly Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/k/kellyki01.shtml> (last visited Oct. 12, 2011) (recapping data of Kelly’s salary gathered from a number of sources).

¹⁷⁵ KAESE, *supra* note 40, at 46–47.

¹⁷⁶ *Id.* at 46.

¹⁷⁷ *Id.* at 47. The sale has often been described in superlative terms. For instance, as “stupendous” by James D. Hardy, Jr. in HARDY, *supra* note 86, at 95; as “astounding” by Daniel M. Pearson in DANIEL MERLE PEARSON, *BASEBALL IN 1889*, at 11 (1993); as “an astonishing sum at the time” by David Stevens in STEVENS, *supra* note 62, at 48; as “unprecedented” by both Alan Foulds in ALAN E. FOULDS, *BOSTON’S BALLPARKS & ARENAS 13* (2005) and Ralph Wilcox in Ralph Wilcox, *Irish Americans in Sports: The Nineteenth Century*, in *MAKING THE IRISH AMERICAN: HISTORY AND HERITAGE OF THE IRISH IN THE UNITED STATES* 443, 447 (J. J. Lee & Marion R. Casey eds., 2006); and quite recently as an “amazing figure” by John Thorn in THORN, *supra* note 6, at 203. For a slight variation on the money involved, see BENJAMIN G. RADER, *BASEBALL: A HISTORY OF AMERICA’S GAME* 67 (2d ed. 2002) (“[I]n addition to paying King Kelly \$2,500, Boston apparently proffered their star an additional \$5,000 for his photograph.”).

¹⁷⁸ STEVENS, *supra* note 62, at 48; DENNIS PURDY, *KISS ‘EM GOODBYE: AN ESPN TREASURY OF FAILED, FORGOTTEN, AND DEPARTED TEAMS* 84–85 (2010).

¹⁷⁹ See HARDY, *supra* note 86, at 95.

¹⁸⁰ *Id.*

¹⁸¹ See Edmonds, *supra* note 3, at 569–70.

¹⁸² *Jim McCormick Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/mccorji01.shtml> (last visited Oct. 12, 2011). In 1884, McCormick started the season with the Cleveland Blues before jumping during the season to the Cincinnati Outlaw Reds. *Id.* With Cincinnati, McCormick won 21 of 24 decisions with a league-best 1.54 ERA. *Id.* McCormick, now identified as a revolver, returned to the National League for the 1885 season, splitting time with the Providence Grays and the Chicago

Pittsburgh, the Alleghenys locked the 265-game winner on their reserve list for years, thus, effectively terminating his career.¹⁸³

IV. WARD ATTACKS THE RESERVE CLAUSE

John Montgomery Ward had long supported the need for a reserve system, but he was soon provoked to attack practices that he considered abuses of the system. When National League President Nick Young would not meet with Ward,¹⁸⁴ he turned a letter to Young into a celebrated article in the August 1887 issue of *Lippincott's Magazine* provocatively entitled *Is the Ballplayer a Chattel?*¹⁸⁵ The sale of King Kelly was particularly targeted and characterized by Ward as "the present odious system of buying and selling players" because it changed the practice of allowing the player to collect part of the sale price and also to have some control over the transfer.¹⁸⁶ Ward also pressed the point that the

White Stockings. *Id.* After winning 20 and losing 4, McCormick was 31-11 in 1886 before his drinking prompted Albert Spalding to trade McCormick to Pittsburgh. *Id.* McCormick pitched poorly for the sixth place Alleghenys, who were led in pitching by Pud Galvin, a 1965 Veteran's Committee's selection to the Hall of Fame. See *Pud Galvin Statistics and History*, *supra* note 100.

¹⁸³ BURK, *supra* note 117, at 100; SEYMOUR, *supra* note 25, at 109; *Jim McCormick Statistics and History*, *supra* note 182.

¹⁸⁴ STEVENS, *supra* note, 62, at 48. Young became president of the National League in 1884 after serving as secretary under previous presidents Bulkeley, Hulbert, and A. G. Mills. *Nick Young, Once League Head, Dies; Was Pioneer in Professional Ball and President of Older Circuit for 22 Years*, N.Y. TIMES, Nov. 1, 1916 [hereinafter *Nick Young, Once League Head, Dies*]. Young was replaced as president in 1903 when a "peace agreement" ended the American League-National League controversy. KOPPETT, *supra* note 9, at 95-96; SEYMOUR, *supra* note 25, at 320-21. Young was generally considered an ineffective president who was easily manipulated by team owners. See BURK, *supra* note 117, at 96; KOPPETT, *supra* note 9, at 30, 56, 59, 75; SEYMOUR, *supra* note 25, at 299 (using the phrase "cat paw" for the owners). David Voigt offers a stronger opinion of Young as an administrator. See VOIGT, *supra* note 7, at 66. Young died in 1916. *Nick Young, Once League Head, Dies*, *supra*.

¹⁸⁵ STEVENS, *supra* note at 62, at 48. Di Salvatore described the article's title as "inflammatory and pugnacious" and the article itself as Ward's "most scathing and volatile denunciation of baseball labor practice to date." DI SALVATORE, *supra* note 54, at 192. For the full text of the letter, see John M. Ward, "Is the Base-Ball Player a Chattel?," LIPPINCOTT'S MAG., Aug. 1887, at 40, reprinted in *EARLY INNINGS*, *supra* note 16, at 161, 161-70.

¹⁸⁶ Ward, *supra* note 185, at 166-67; see also STEVENS, *supra* note 62, at 48-49 (describing the sale of King to Chicago). As Ward noted:

[W]hen the Chicago Club sells Kelly for ten thousand dollars it simply makes the sum out of Kelly, for which it has never given him the slightest consideration. Kelly received his salary from Chicago (or such part as was not taken out in fines), and earned every dollar of it

sale price of nearly all players was inflated because the reserve rule increased the value of the deal and instead of being a key part of the "conservation" of the game, shifted value from the player to the club.¹⁸⁷

At the beginning of the article, Ward provided a roadmap and a thesis:

I will show that there has been a complete departure from [the reserve clause's] 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.¹⁸⁸

Ward recapped the creation of the "reserve agreement," and noted that "[t]he club thus appropriated to itself an absolute control over the labor of five of its men, and this number has since been enlarged to eleven, so that now the club controls practically its entire team."¹⁸⁹ Ward, who graduated with an LL.B. degree from Columbia University in 1885, next argued that because the contract failed to specify the terms of the reservation the agreement constituted an *ex post facto* rule and "therefore a positive wrong in its inception."¹⁹⁰

In a paragraph that established the foundation for much of the rhetoric about the reserve system for most of both the nineteenth and the twentieth century, Ward argued that owners shifted the blame to players for "demanding extortionate salaries" when the root of the problem "lay in the extravagant and unbusiness-like methods of certain managers and in the lack of good faith between the clubs themselves."¹⁹¹ Ward pressed further that the clubs offered the enticing salary yet, instead of blaming themselves for the escalating salaries, the teams placed the blame on the player for accepting the higher remuneration.¹⁹²

Ward next noted that "[i]n the enactment of the reserve-rule the clubs were probably influenced by three considerations: they wished to make the business of base-ball more permanent, they

several times over, and yet the Chicago Club takes ten thousand dollars for releasing Kelly from a claim for which it never paid him a dollar, but which it acquired by seizure some years ago.

Ward, *supra* note 185, at 166–67.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 162.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*; DI SALVATORE, *supra* note 54, at 182.

¹⁹¹ Ward, *supra* note 185, at 162.

¹⁹² *Id.* at 162–63.

meant to reduce salaries, and they sought to secure a monopoly of the game.”¹⁹³ The new method could force the average salary amount downward and keep teams from overpaying for a few key players.¹⁹⁴ Ward dealt with the monopoly consideration by arguing the business of baseball was becoming lucrative because of reserving players, but maintenance of a monopoly became more difficult when rival leagues were started.¹⁹⁵ With the signing of the “National Agreement” in 1883, the reserve system was reinstated and Ward wrote that:

[T]here is now no escape for the player. If he attempts to elude the operation of the rule, he becomes at once a professional outlaw, and the hand of every club is against him. . . . Like a fugitive-slave law, the reserve-rule denies him a harbor or a livelihood, and carries him back, bound and shackled, to the club from which he attempted to escape. We have, then, the curious result of a contract which on its face is for seven months being binding for life, and when the player’s name is once attached thereto his professional liberty is gone forever.¹⁹⁶

Ward described the required contract, the forerunner of the standard player contract that is still in existence today, as “the most unique unilateral document extant.”¹⁹⁷ Ward later was successful in forcing the owners to write into each contract specific language regarding the reserve clause, replacing a reference to the “Constitution of the National League and the Articles and Covenants of the National Agreement.”¹⁹⁸ Ward increased his rhetoric by describing a “species of serfdom” and “a life-estate in the labor of another” before summarizing that:

Instead of an institution for good, it has become one for evil; instead of a measure of protection, it has been used as a handle for the manipulation of a traffic in players, a sort of speculation in live stock, by which they are bought, sold, and transferred like so many sheep.¹⁹⁹

Paul Hines, one of Ward’s former teammates who spent eight of his twenty big league seasons in Providence, was the writer’s next example of an abuse of the reserve system.²⁰⁰ When Hines stated

¹⁹³ *Id.* at 163.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 164.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 164–65.

²⁰⁰ See *Paul Hines Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/f/foleycu01.shtml> (last visited Oct.

that he would sit out rather than submit to “the unaccustomed yoke,” Ward returned to his legal background and noted that “the life-estate was indefeasible.”²⁰¹ Ward then moved to a discussion of the plight of Charlie “Curry” Foley, who sat out the 1883 season because of an ailment, and the Buffalo Bisons would neither sign him nor release him but maintained its reservation.²⁰² Mike Roer, in a recent biography of Orator O’Rourke, disputed this story.²⁰³

Ward also targeted the treatment of Kansas City Cowboys’ first baseman Mox McQuerry, a victim of his team’s elimination from the National League after a 30-91 season and a seventh place finish in the eight-team league.²⁰⁴ The Cowboys’ owners were paid to fold the franchise, and McQuerry was reserved by the league and shopped to teams at \$1,000, a figure that was reduced

18, 2011).

²⁰¹ Ward, *supra* note 185, at 165.

²⁰² *Id.* According to James Egan, Foley wrote for the *Sporting Times*. JAMES M. EGAN, JR., *BASE BALL ON THE WESTERN RESERVE* 119 (2008). David Stevens in his biography of Ward noted that Foley did not accept offers from three independent league teams due to Buffalo’s actions and that players organized a benefit to help Foley and his family with their financial challenges. STEVENS, *supra* note 62, at 37. Lee Lowenfisch offered the following summary: “Buffalo had suspended a sick player, Charlie Foley, and then reserved him without pay for two years, effectively terminating his career at the age of twenty-seven.” LOWENFISCH, *supra* note 25, at 31. See *Curry Foley Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/f/foleycu01.shtml> (last visited Oct. 18, 2011) (showing Charlie “Curry” Foley’s career statistics; Foley played only 23 games in 1883, after playing in 80 or more games from 1880–1882). Foley holds the distinction of being the first big league player to hit for the cycle. *Charlton’s Baseball Chronology—1882*, BASEBALL LIBRARY.COM, <http://www.baseballlibrary.com/chronology/byyear.php?year=1882> (last visited October 29, 2011). Foley became a newspaper man after leaving baseball, but after contracting rheumatism, he was relegated to an asylum. GEORGE V. TUOHEY, *A HISTORY OF THE BOSTON BASE BALL CLUB* 206 (1897).

²⁰³ Mike Roer quoted from the *Sporting Life* of September 24, 1883, in support of Orator O’Rourke’s feeling that Foley was malingering because he was looking for a better offer. ROER, *supra* note 3, at 110. However, Roer noted that “it does not appear Foley was faking. In a letter written several years later . . . he describes himself as ‘a man who can hardly walk from the effects of rheumatism.’” *Id.* (footnote omitted). Roer disputed Ward’s story stating that Foley was not reserved after the 1884 season based on the official reservation list published in the October 29, 1884, issue of *Sporting Life*, at page 3. *Id.* at 11.

²⁰⁴ STEVENS, *supra* note 62, at 49; Ward, *supra* note 185, at 167; 1886 *National League Team Statistics*, *supra* note 161; see also *Mox McQuerry Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/mcquemo01.shtml> (last visited Oct. 18, 2011) (showing McQuerry’s career statistics).

to \$750 when there were no offers.²⁰⁵ McQuery was subsequently forced to play in the International League after locked up through mid-April, and he did not return to major league baseball until 1890 with the American Association Syracuse Stars.²⁰⁶ He had his best season hitting with a .308 average, but after a reduced role with the Washington Statesman in 1891, he forever departed from the major league scene.²⁰⁷ The St. Louis Maroons, who finished with a 43-79 record and a sixth place finish also exited the National League after the 1886 season.²⁰⁸

Ward concluded his onslaught by complaining about the "practice of 'loaning' players" and he described the practice as "much the same as a horse is put out to work for his feed."²⁰⁹ Ward offered suggestions on how the game could be improved by allowing multiyear deals and creating leagues with cities of similar drawing power.²¹⁰ He felt that these changes would force the disappearance of revolving and dissipation, and, thus, promote the game to its rightful position as the "greatest of outdoor sports."²¹¹ The key need, Ward argued, was a game based on the rule of law.²¹²

A. The November 1887 League Meetings

After participating in a barnstorming tour after the 1887 season, Ward headed to New York for League meetings at the Madison Square Garden's Fifth Avenue Hotel in New York during the middle of November.²¹³ Ward was joined by a trio of his fellow Brotherhood leaders, Dan Brouthers, Ned Hanlon, and John Morrill.²¹⁴ The group wanted a chance to participate fully in the meetings, but the owners forced them to wait until most business was concluded.²¹⁵ Finally, a committee of National League owners led by Albert Spalding met with the foursome who, on behalf of the Brotherhood, refused to admit the union's

²⁰⁵ Ward, *supra* note 185, at 167.

²⁰⁶ See *id.*; Mox McQuery *Statistics*, *supra* note 204.

²⁰⁷ STEVENS, *supra* note 62, at 49; Mox McQuery *Statistics and History*, *supra* note 204.

²⁰⁸ 1886 *National League Team Statistics and History*, *supra* note 161.

²⁰⁹ Ward, *supra* note 185, at 168.

²¹⁰ *Id.* at 169.

²¹¹ *Id.* at 170.

²¹² See *id.*

²¹³ DI SALVATORE, *supra* note 54, at 215-16.

²¹⁴ *Id.* at 216.

²¹⁵ *Id.*

goals publicly without express recognition of the union by the National League.²¹⁶ Later in November, Spalding and the other National League owners finally agreed to recognize the Brotherhood.²¹⁷ The most significant factor regarding the reserve system, however, was the agreement that Ward had pressed so hard to win, the incorporation of specific language of the reservation into the contract in place of a reference to the National Agreement.²¹⁸ Additional changes in the standard player contract included an agreement not to reserve a player for a salary that was less than \$1,000; to remove a salary limit; to stop charging players fifty cents per day for travel or the annual \$30 uniform fee, and, importantly, from an image standpoint, a prohibition against consuming alcohol in-season.²¹⁹

B. Richter's Millennium Plan and Salary Classification

Francis Richter, the editor of the *Sporting Life*, offered a revision of baseball's economic model when he described his "Millennium Plan" in his publication on December 7, 1887, a system that would include an eleven-player reserve system for the minor leagues.²²⁰ Richter argued that the reserve system was needed for self-preservation and to drive down salaries in the minors, salaries that often approached that of major league players.²²¹ Richter's system also envisioned a draft to equalize competition in the top leagues.²²² Richter also suggested the use of an arbitration commission to oversee the system, thus,

²¹⁶ GELZHEISER, *supra* note 25, at 92 (citing SPORTING LIFE, Dec. 21, 1887; SPORTING LIFE, Dec. 14, 1887; SPORTING NEWS, Dec. 16, 1887). Ward was interviewed after the meetings by Harry Clay Palmer of the *Sporting Life*. DI SALVATORE, *supra* note 54, at 216.

²¹⁷ GELZHEISER, *supra* note 25, at 93 (citing SPORTING LIFE, Dec. 21, 1887; SPORTING LIFE, Dec. 14, 1887; SPORTING LIFE, Nov. 23, 1887; SPORTING LIFE, Aug. 15, 1886; SPORTING NEWS, Dec. 16, 1887); DI SALVATORE, *supra* note 54, at 216.

²¹⁸ GELZHEISER, *supra* note 25, at 93. In Benjamin Rader's account of the meeting, the author argued that "Spalding, who represented the owners, outfinessed the players on every count." RADER, *supra* note 177, at 66.

²¹⁹ GELZHEISER, *supra* note 25, at 93.

²²⁰ BURK, *supra* note 117, at 100–01; Francis Richter, *Complete Reservation by Minor Leagues: Permitting Each Minor League Club Under National Agreement Protection to Reserve at Least Eleven Men—A Full Team—From Season to Season*, SPORTING LIFE, Dec. 7, 1887, reprinted in EARLY INNINGS, *supra* note 16, at 170, 170; see also GELZHEISER, *supra* note 25, at 133 (describing Richter as an opponent of the reserve system).

²²¹ Richter, *supra* note 220, at 170–71.

²²² BURK, *supra* note 117, at 100; DI SALVATORE, *supra* note 54, at 217.

predicting one of the most central aspects of the current game of baseball.²²³ Interestingly, Richter argued that players were refusing offers from the National League and the American Association because of the easier life in the minors, but such an argument seems specious in hindsight.²²⁴ Richter wanted to reduce the reserve system to one player, use a lottery to allocate talent, and implement a salary structure where pitchers and catchers would receive top pay and infielders and outfielders would receive somewhat less.²²⁵ Both the impact and the acceptance of either all or parts of the plan have been debated by scholars, but, it was certainly provocative and underscored the dynamic and fluid nature of the evolution of the professional game.²²⁶ Albert Spalding was actually interested in parts of the plan, and he pushed for what would become the twentieth century's dominant farm system model: major league teams' control of all the minor league players.²²⁷

C. Brush Classification Plan

Richter was not the only person in search of a model that would stabilize the economic structure of the game. The following year, Indianapolis owner John T. Brush convinced the National League to adopt a salary classification scheme on December 15, 1888.²²⁸

²²³ BURK, *supra* note 117, at 100.

²²⁴ Richter, *supra* note 220, at 171.

²²⁵ BURK, *supra* note 117, at 100–01.

²²⁶ Dean Sullivan in his introduction to his reprint of Richter's article stated that "the following year Richter's suggestion was officially endorsed by the NL and the AA." Richter, *supra* note 220, at 170. Robert Burk offered the exactly opposite conclusion: "NL and AA owners rejected the Richter plan, with its pooled profits and laborers, as too socialistic. But some new form of salary limits was clearly on the way." BURK, *supra* note 117, at 101. Richter and three other authors offered the following contemporaneous statement: "This scheme, aside from the question of its practicability, is a marvel of ingenuity. Several of its features have been already adopted by the major leagues, and others probably will be." HARRY CLAY PALMER ET AL., *ATHLETIC SPORTS IN AMERICA, ENGLAND AND AUSTRALIA* 602 (1889).

²²⁷ SEYMOUR, *supra* note 25, at 316; *see also* BURK, *supra* note 117, at 101 (describing Spalding's "blueprint" which was presented to league president Nick Young).

²²⁸ BURK, *supra* note 117, at 101; GELZHEISER, *supra* note 25, at 44–45 (citing *SPORTING LIFE*, Nov. 28, 1888) ("The plan was adopted by a vote of six to two with the New York Giants' John B. Day and Boston Beaneaters' Arthur Soden casting the only dissenting votes."); KOPPETT, *supra* note 9, at 58; John T. Brush, *The Brush Salary Classification Plan*, N.Y. CLIPPER, Dec. 1, 1888, *reprinted in* *EARLY INNINGS*, *supra* note 16, at 171, 173 (listing the plan's December 15, 1888, filing date).

Players were separated into five categories, A–E.²²⁹ Each category provided for a specific salary: \$2,500 for class A, \$2,250 for class B, \$2,000 for class C, \$1,750 for class D, and \$1,500 for class E.²³⁰ On-field and off-field performance were both taken into account in determining the classification.²³¹ The penalty for a player violating the new norm was placement on the blacklist; for a team the sanction was a \$2,000 fine, the release of the player's reservation, and the assignment of that player's reservation to another club at the league's discretion.²³² As urged by one of Ward's biographers, Bryan Di Salvatore, the Brotherhood leadership considered the "classification scheme . . . as a method of self-discipline, farcical—at least for the immediate future."²³³

Further compounding the adoption of the plan was the timing. Ward and a number of members of the Brotherhood leadership were outside of the country when the plan was accepted and put into effect.²³⁴ In fact, Ward was with Albert Spalding who had brought together an all-star team to play against his Chicago team throughout the United States and the world.²³⁵ Furthermore, Spalding would not meet with Ward after the group's return to the United States.²³⁶ The concern of the players was the different impact that the scheme would have on veteran and younger players. A number of veterans were playing on multiyear contracts, but the newer players were tied to single

²²⁹ BURK, *supra* note 117, at 101; GELZHEISER, *supra* note 25, at 44; KOPPETT, *supra* note 9, at 58; Brush, *supra* note 228, at 171, 172.

²³⁰ Brush, *supra* note 228, at 172; *see* LOWENFISH, *supra* note 25, at 30 (indicating that an "E" player "would be assigned menial tasks like sweeping up the ball park after the game").

²³¹ Brush, *supra* note 228, at 172; BURK, *supra* note 117, at 101; GELZHEISER, *supra* note 25, at 44; KOPPETT, *supra* note 9, at 58.

²³² Brush, *supra* note 228, at 172.

²³³ DI SALVATORE, *supra* note 54, at 261. Benjamin Rader argued: "Had the Brush classification plan been effectively enforced, it would have drastically reduced salaries across the board, but in fact many players surreptitiously received far more than the figure called for by the plan." RADER, *supra* note 177, at 67.

²³⁴ BURK, *supra* note 117, at 102; ROBERT ELIAS, *THE EMPIRE STRIKES OUT* 24 (2010); LOWENFISH, *supra* note 25, at 29; RADER, *supra* note 177, at 66; THORN, *supra* note 6, at 12.

²³⁵ BURK, *supra* note 117, at 102; ELIAS, *supra* note 234, at 24. *See generally* MARK LAMSTER, *SPALDING'S WORLD TOUR* (2006) (chronicling Spalding's world tour and attempts at introducing baseball to foreign lands); THOMAS W. ZEILER, *AMBASSADORS IN PINSTripES* (2006) (describing Spalding's world travels as a vehicle for American globalization).

²³⁶ BURK, *supra* note 117, at 102.

year deals.²³⁷ The two different groups would be divided, placing a stress on the solidarity that the Brotherhood's leadership was trying to maintain.²³⁸

*D. The Players' League*²³⁹

Ward and representatives from each of the different Brotherhood chapters met during the 1889 season on July 14, at the Fifth Avenue Hotel in New York.²⁴⁰ The assembled group agreed that the time had finally come to assert control over their destiny and each representative was tasked with finding backers for a new league to begin play the following year.²⁴¹ After the end of the season, on November 5, 1889, the Brotherhood established the Players' League.²⁴² The key features included profit sharing among teams, no reserve rule, no player classification or blacklist, and players could not be traded or sold without consent.²⁴³ The

²³⁷ See *id.* at 101.

²³⁸ *Id.* at 101–02.

²³⁹ Historians and scholars differ on a fundamental question: Should the name of the league have an apostrophe or not, Players' League or Players League? Compare BURK, *supra* note 117, at 105; DI SALVATORE, *supra* note 54, at 14; *The Ball Players Meet: A Large Gathering in the Fifth-Avenue Hotel: The Men Assured of Their Salaries by the Adoption of a Guaranteed Plan Yesterday*, N.Y. TIMES, Dec. 17, 1889 [hereinafter *The Ball Players Meet*], reprinted in EARLY INNINGS, *supra* note 16, at 193, 195; GELZHEISER, *supra* note 25, at 36; GOLDSTEIN, *supra* note 5, at 150; LAMSTER, *supra* note 235, at 256; ROER, *supra* note 3, at 152; SEYMOUR, *supra* note 25, at 228; and THORN, *supra* note 6, at 12 (displaying examples of the ball player's association's name *with* the apostrophe), with KOPPETT, *supra* note 9, at 59; ED KOSZAREK, THE PLAYERS LEAGUE 9 (2006); LOWENFISH, *supra* note 25, at 35; VOIGT, *supra* note 7, at 120; DAVID QUENTIN VOIGT, BASEBALL: AN ILLUSTRATED HISTORY 69 (1987) (displaying examples *without* the apostrophe). But cf. J. THOMAS HETRICK, CHRIS VON DER AHE AND THE ST. LOUIS BROWNS 118 (1999) (referring to the association's name as the "Player's League").

²⁴⁰ LAMSTER, *supra* note 235, at 255–56; ROER, *supra* note 3, at 152; PLAYERS' NATIONAL LEAGUE OFFICIAL BASE BALL GUIDE 4 (1890).

²⁴¹ GELZHEISER, *supra* note 25, at 119.

²⁴² BURK, *supra* note 117, at 105; SEYMOUR, *supra* note 25, at 228; ZIMBALIST, *supra* note 170, at 5. For complete coverage of the Players League, see CHARLES C. ALEXANDER, TURBULENT SEASONS: BASEBALL IN 1890–1891 (2011); KOSZAREK, *supra* note 239; LOWENFISH, *supra* note 25, at 35 (analyzing the Brotherhood meeting and the establishment of the Players' League); DAVID QUENTIN VOIGT, THE LEAGUE THAT FAILED (1998); *The Ball Players Meet*, *supra* note 239, at 193–95.

²⁴³ BURK, *supra* note 117, at 106–07; BURTON ALAN BOXERMAN & BENITA W. BOXERMAN, 1 JEWS AND BASEBALL 6 (2007); HETRICK, *supra* note 239, at 118; David Q. Voight, *Serfs Versus Magnates: A Century of Labor Strife in Major League Baseball*, in THE BUSINESS OF PROFESSIONAL SPORTS 95, 102 (Paul D. Staudohar & James A. Mangan eds., 1991).

challenge was substantial because “[b]y 1890 ten leagues and more than 100 teams were controlled by the National Agreement, and eight other leagues had . . . temporary protection under it.”²⁴⁴ Unsurprisingly, the two established leagues headed into court to stop players from revolving to the new upstart circuit.

V. METROPOLITAN EXHIBITION COMPANY SEEKS INJUNCTION AGAINST WARD

The first of the three significant decisions involving Players' League ballplayers in 1890, appropriately, involved John Montgomery Ward and the New York Giants (Metropolitan Exhibition Company).²⁴⁵ Papers were served on Ward on December 23, 1889, by the Giants who were seeking a temporary injunction to bar Ward from playing for anyone but the Giants.²⁴⁶ The hearing in the New York Supreme Court for New York County (First District, First Department) was held on January 16, 1890.²⁴⁷ The presiding judge was Morgan J. O'Brien.²⁴⁸ The Giants were represented by George F. Duysters of Evarts, Choate & Beaman.²⁴⁹ Ward's attorneys were Henry E. Howland and George Welwood Murray.²⁵⁰ The Giants' primary arguments were that the contract signed between the Giants and Ward on April

²⁴⁴ GELZHEISER, *supra* note 25, at 50.

²⁴⁵ See Metro. Exhibition Co. v. Ward, 9 N.Y.S. 779 (Sup. Ct. 1890). The version of *Ward* in *Abbott's New Cases* contains material that is not reprinted in volume nine of *New York Supplement*. In particular, the entire contract is reprinted within. See Metro. Exhibition Co. v. Ward, 24 Abb. N.C. 393, 395–400 (N.Y. Sup. Ct. 1890). Also, the arguments advanced by counsel are also summarized. *Id.* at 400–07. Hereafter the author has chosen to provide citations to materials in *Abbott's New Cases* instead of *New York Supplement* where necessary.

²⁴⁶ DI SALVATORE, *supra* note 54, at 295.

²⁴⁷ *Ward*, 9 N.Y.S. at 779; DI SALVATORE, *supra* note 54, at 295.

²⁴⁸ For variations on O'Brien's name, see BURK, *supra* note 117, at 110 (J. Morgan Joseph O'Brien); DI SALVATORE, *supra* note 54, at 295 (Morgan J. O'Brien); LOWENFISH, *supra* note 25, at 41 (Morgan Joseph O'Brien); PIETRUSZA, *supra* note 7, at 116 (Morgan Joseph O'Brien).

²⁴⁹ *Ward*, 24 Abb. N. C. at 400; BURK, *supra* note 117, at 110 (“[T]he league's law firm, Evarts, Choate & Beman (sic), earlier had refused to represent an Irish bakery woman on the grounds that whether she worked ten hours a day or more was a matter exclusively between her and her employer, and not a matter for public regulation.”).

²⁵⁰ *Ward*, 24 Abb. N.C. at 403. Barbara Aronstein Black is the George Welwood Murray Professor Emerita of Legal History, and Dean Emerita at Columbia Law School. See *Faculty Profiles—Barbara Aronstein Black*, COLUMBIA LAW SCHOOL, http://www.law.columbia.edu/law_school/communications/reports/winter2003/b_black (last visited Oct. 22, 2011).

23, 1889,²⁵¹ was “clear and unambiguous” as to paragraph 18, the paragraph that contained the reservation, and that the definition of reserve was “to hold, to keep for future use.”²⁵² Because Ward drafted the contract, “[i]t should be construed most strongly against him.”²⁵³ Further, because paragraph 5 established the right for injunctive relief, “[t]he defendant cannot be permitted to stultify himself by objecting to the enforcement of a right which he has expressly granted.”²⁵⁴ Finally, the Giants’ attorneys claimed that Ward’s argument that there were “twenty or thirty men’ in the country who could play short stop as well as Mr. Ward does” should not preclude the Giants from receiving injunctive relief.²⁵⁵

In response to Ward’s assertion that the contract was “hard and without equity” the Giants stressed that Ward had signed an agreement to play for seven months in 1890 for a salary of \$5,250 and that there was “no want of mutuality in this contract, and that amount of money for a ball player cannot be considered unfair.”²⁵⁶ Interestingly, the stated salary amount in the contract was \$2,000, and a supplemental agreement specified that Ward would not be paid less than \$3,000 for 1890.²⁵⁷

In response to the definition and practice of the reserve system, Howland and Murray argued that:

The word “reserve” as used in the contract, referred only to the right and practice of “reservation” previously exercised under the National Agreement, and did not prohibit a player from contracting with or playing for any club outside the purview of the National Agreement. The sole object of the reserve rule is, and has always been, that no club having a well known player in its ranks during a certain season, and with him and his associates gaining the championship, shall have to sustain the loss and mortification of seeing that player in the team of a rival club competing for the championship the ensuing season. No club has ever relied upon reservation alone as a good contract for the next year. It has been the invariable practice before the beginning of each playing season to negotiate with and contract with all the players for the club,

²⁵¹ *Ward*, 24 Abb. N.C. at 394. Even though the contract was signed on April 23, 1889, the term of the contract was from April 1, 1889, through October 31, 1889. *Id.* at 395.

²⁵² *Id.* at 401.

²⁵³ *Id.*

²⁵⁴ *Id.* at 402.

²⁵⁵ *Id.* at 403.

²⁵⁶ *Id.* at 402 (internal quotations marks omitted).

²⁵⁷ *Id.* at 394, 396 n.7.

whether reserved or not. If the club wished to keep a player in its own team it contracted with him. If it wished merely to keep him out of a rival team competing for the championship, it merely reserved him. As the championship is confined to National Agreement clubs, nothing can be plainer than that the whole operation of the reserve rule is likewise limited.²⁵⁸

Ward's counsel countered that the meaning of reservation had changed over time "becoming a deformed and abusive instrument," that Ward was pushing for a final judgment and not injunctive relief, that the "reserve clause" was an agreement between the clubs and not between him and the Giants, and, finally, that the contract was unfair.²⁵⁹

Judge O'Brien ruled in Ward's favor on January 28, 1890, and he denied the request for a temporary injunction.²⁶⁰ Judge O'Brien began his opinion by exploring both counsels' arguments regarding the meaning of "reserve" and "reservation."²⁶¹ As to clause 18 that contained the reserve clause, O'Brien felt that the language explicitly stated that the reservation covered "for the season next" so long as the salary was not "less than that mentioned in the 20th paragraph herein, except by consent of the party of the second part" and that Ward was "one of not more than fourteen players then under contract."²⁶²

Judge O'Brien dealt with the definition of "reserve" and agreed to accept the Giants characterization of the term.²⁶³ O'Brien next turned aside Ward's claim that an injunction was not appropriate for a personal services contract.²⁶⁴ O'Brien summarized his view of the current state of the law regarding negative injunctions:

Whatever doubt may have existed in the past, it is now the settled law of England and America that where a person has entered into a definite contract to render services to another of such a nature as not to be easily replaced, and the loss of his services to the employer will be a loss not to be compensated for in damages, a breach or a threatened breach of such contract may be restrained

²⁵⁸ *Id.* at 404–05.

²⁵⁹ DI SALVATORE, *supra* note 54, at 295–96.

²⁶⁰ *Metro. Exhibition Co. v. Ward*, 9 N.Y.S. 779, 785 (Sup. Ct. 1890); GELZHEISER, *supra* note 25, app. 6; *Ward Wins His Fight; An Injunction Against Him Denied; A Decision by Judge O'Brien Which Gives Great Pleasure to the Brotherhood—The Other Side*, reprinted in EARLY INNINGS, *supra* note 16, at 201, 201–04.

²⁶¹ *Ward*, 9 N.Y.S. at 779–80.

²⁶² *Id.* at 782.

²⁶³ *Id.* at 780.

²⁶⁴ *Id.*

by injunction.²⁶⁵

In discussing the law following the noted 1852 decision in *Lumley v. Wagner*,²⁶⁶ O'Brien turned to "one of the leading cases" in New York, *Daly v. Smith*,²⁶⁷ involving actress Fanny Morant Smith. O'Brien refused to accept any distinction between a baseball player and an actor.²⁶⁸

O'Brien turned to a determination of probability of success on the merits and started with an inquiry into whether or not a "definite contract" existed that was enforceable as conscionable, "wanting neither in fairness or mutuality."²⁶⁹ After reviewing clause 18 and the supplemental agreement, O'Brien determined that the "provisions, standing alone" failed to define the terms of the 1890 contract.²⁷⁰ For instance, O'Brien wondered:

What does the defendant, Ward, agree to do? What salary is to be paid him? Not only are there no terms and conditions fixed, but I do not think it is entirely clear that Ward agrees to do anything further than to accord the right to reserve him upon terms thereafter to be fixed.²⁷¹

Because only the minimum salary was mentioned in the contract and not any additional amount, O'Brien concluded that the contract lacked fairness and mutuality.²⁷² O'Brien seemed particularly disturbed about imbalance of a deal where the Giants could control Ward "for a series of years" while providing that the team could terminate the contract on ten days' notice.²⁷³ In particular, O'Brien accepted a point long argued by Ward that a reserving club could drop the player near the beginning of the second season when the chance to find a position on another team would have passed.²⁷⁴ The court relied on *Fry on Specific Performance*²⁷⁵ and *Marble Co. v. Ripley*²⁷⁶ as authority on

²⁶⁵ *Id.*

²⁶⁶ (1852) 42 Eng. Rep. 687 (Ch.), 1 De Gex, M. & G. 604.

²⁶⁷ 38 N.Y. Super. Ct. 158, 49 How. Pr. 150 (N.Y. Sup. Ct. 1874).

²⁶⁸ *Ward*, 9 N.Y.S. at 780 ("Between an actor of great histrionic ability and a professional base-ball player, of peculiar fitness and skill to fill a particular position, no substantial distinction in applying the rule laid down in the cases cited can be made.").

²⁶⁹ *Id.* at 781.

²⁷⁰ *Id.* at 781-82.

²⁷¹ *Id.* at 782.

²⁷² *Id.* at 782-83.

²⁷³ *Id.* at 783.

²⁷⁴ *See id.*

²⁷⁵ *Id.* (quoting with some inconsistency EDWARD FRY, A TREATISE ON THE SPECIFIC PERFORMANCE OF CONTRACTS, INCLUDING THOSE OF PUBLIC COMPANIES 198 (William S. Schuyler ed., 2d ed. 1871)).

mutuality.²⁷⁷ O'Brien denied the motion for a preliminary injunction while noting that the Giants and Ward had until the middle of April to try the action at Special Term and receive a judgment, and O'Brien agreed to assist the parties in obtaining a speedy trial.²⁷⁸ On March 31, Judge Lawrence dismissed the complaint finding that the contract could not be enforced by a court of equity.²⁷⁹

VI. TWO PHILADELPHIA TEAMS FIGHT OVER BILL HALLMAN

While Ward was a well-known player and leader with the Brotherhood, the case of Bill Hallman involved a player with only two years of major league experience for the Philadelphia Quakers.²⁸⁰ Hallman wanted to move to the Philadelphia Athletics of the Players' League after being offered a deal by the Athletics' owner Henry M. Love.²⁸¹ John Rogers and George Tucker Bispham sought an injunction for the Philadelphia National League team that was now known as the Phillies.²⁸² Hallman and Love were represented by John G. Johnson and J. M. Vanderslice.²⁸³ Judge M. Russell Thayer delivered the opinion of the Philadelphia County Court on March 15, 1890, starting with a strong statement about the jurisdiction of the equity court:

[A]t the present time no doubt can exist that it is a part of the

²⁷⁶ 77 U.S. (10 Wall.) 339, 359 (1870).

²⁷⁷ *Ward*, 9 N.Y.S. at 783–84.

²⁷⁸ *Id.* at 784–85.

²⁷⁹ *Metro Exhibition Co. v. Ward*, 24 Abb. N.C. 393, 419 n.* (Sup. Ct. 1890).

²⁸⁰ *Bill Hallman Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/h/hallmbi01.shtml> (last visited Nov. 1, 2011). Bill Hallman played in only 18 games in 1888 for the Quakers. *Id.* However, in 1889, Hallman played 119 games primarily as the shortstop for the Quakers. *See id.* Harold Seymour mistakenly identifies Hallman as "George" Hallman in his book. SEYMOUR, *supra* note 25, at 236. Robert Burk was off even further, identifying Hallman as "George Hallinan." BURK, *supra* note 117, at 110. David Voigt's brief treatment of the *Hallman* case includes a quotation from John Rogers. VOIGT, *supra* note 7, at 163 ("I have nothing further to say except that in Pennsylvania our 'reserve' clause will have to be rewritten, or it must disappear from all future contracts.").

²⁸¹ *See* THE NEW YORK CLIPPER ANNUAL FOR 1893, at 40 (1893), available at http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_5655288_003/pages/ldpd_5655288_003_00000058.html.

²⁸² *See* *Phila. Ball Club v. Hallman*, 8 Pa. C. 57, 58 (C.P. 1890). For Glezhiser's reprinted portion of the decision, see *Judge Thayer's Ruling on William Hallman and the Reserve Rule*, reprinted in GELZHEISER, *supra* note 25, app. 8.

²⁸³ *Hallman*, 8 Pa. C. at 58.

proper jurisdiction of every court of equity to enjoin a person who has covenanted, or agree, to render personal services of a particular kind for a definite period of time, exclusively to another party, for a valuable consideration, against a breach of his engagement in cases which will inflict a loss upon the other party for which he can have no adequate remedy at law, and inasmuch as it is practically impossible for courts, armed with even the largest authority, to compel the specific performance of such contracts, they will nevertheless compel their performance as far as lies in their power by restraining a defendant under such circumstances from giving to another the services which he has engaged to give exclusively to the party with whom he has contracted.²⁸⁴

Thayer spent some time discussing *Lumley v. Wagner* and the many cases that followed the now celebrated opinion before arguing that the twenty-five year old precedent of *Ford v. Jermon*²⁸⁵ was no longer good law.²⁸⁶ Thayer noted that if jurisdiction alone was decisive, the plaintiffs would prevail, but the court turned to an analysis of the same contractual language that O'Brien considered in *Ward*.²⁸⁷ Finding that the language of the contract did not specify the exact terms for the 1890 season, Thayer reasoned that "[t]he failure to designate the terms and conditions of the new engagement under which he is to be 'reserved' renders the contract of reservation wholly uncertain, and therefore incapable of enforcement."²⁸⁸ In noting that the Phillies could maintain article 18 in future contracts, Thayer was upset about the impact of article 17's ten days notice.²⁸⁹ The judge reasoned that Hallman "is absolutely at their mercy, and may be sent adrift at the beginning or in the middle of a season, at home or two thousand miles from it, sick or well, at the mere arbitrary discretion of the plaintiffs," and, thus "such a contract is so wanting in mutuality that no court of equity would lend its aid to compel compliance with it."²⁹⁰ Thayer further asserted that equity courts would not require performance of "hard and unconscionable bargains, or where the decree would produce

²⁸⁴ *Id.* at 58–59.

²⁸⁵ 6 Phila. 6 (1865).

²⁸⁶ *Hallman*, 8 Pa. C. at 59–60.

²⁸⁷ *Id.* at 60–61; see *Metro. Exhibition Co. v. Ward*, 9 N.Y.S. 779, 781–82 (Sup. Ct. 1890).

²⁸⁸ *Hallman*, 8 Pa. C. at 62.

²⁸⁹ *Id.* at 62–63.

²⁹⁰ *Id.* at 63.

injustice.”²⁹¹ Hallman played in 84 games for the Athletics, hitting .267.²⁹² In 1891, he led the American Association in games played (141) with the Athletics.²⁹³ Hallman would play into the next century, completing his career in 1903 with the Phillies in the National League.²⁹⁴

VII. ROUND TWO FOR THE GIANTS

While Ward was waiting to begin the season after his victory in state court, the Metropolitan Exhibition Company was preparing to stop another major member of the Brotherhood leadership from accepting a major role in the Players' League. However, this time the litigation was moving into federal Circuit Court for the Southern District of New York.²⁹⁵ The case was in front of Judge William P. Wallace,²⁹⁶ and in a similar manner as the decision in the state court, the federal jurist was persuaded to rule against the Giants in their action involving another future Hall of Famer, Buck Ewing.²⁹⁷

The Metropolitan Exhibition Company was represented in Ewing's action by George F. Duysters, the same primary attorney that the team used in the *Ward* case.²⁹⁸ Ewing was represented

²⁹¹ *Id.*

²⁹² *Bill Hallman Statistics and History*, *supra* note 280.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Metro. Exhibition Co. v. Ewing*, 42 F. 198 (C.C.S.D.N.Y. 1890).

²⁹⁶ LOWENFISH, *supra* note 25, at 42. William James Wallace served as a judge for the U.S. District Court for the Northern District of New York from 1874 until April 1882, when he became a judge on the U.S. Circuit Court for the Second Circuit. *Biographical Directory of Federal Judges: William James Wallace*, FED. JUDICIAL CTR., <http://www.fjc.gov/public/home.nsf/hisj> (last visited 10/24/11). In 1891, he transitioned to the U.S. Court of Appeals for the Second Circuit until he retired on May 8, 1907. *Id.*

²⁹⁷ LOWENFISH, *supra* note 25, at 42. Ewing was selected by the Old Times Committee for enshrinement in the National Baseball Hall of Fame in 1939. *Buck Ewing Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/e/ewingbu01.shtml> (last visited Oct. 28, 2011). For a full treatment of the inaugural enshrinement celebration in Cooperstown in 1939, see JIM REISLER, *A GREAT DAY IN COOPERSTOWN: THE IMPROBABLE BIRTH OF BASEBALL'S HALL OF FAME* 169 (2006) (mentioning Ewing's selection briefly). For Ewing's career statistics, see *Buck Ewing Statistics and History*, *supra*. See also GELZHEISER, *supra* note 25, app. 7 (citing N.Y. TIMES, Mar. 27, 1890). In his history of the New York Giants, Frank Graham described Ewing as being “still regarded by surviving patrons of the time as the greatest player baseball ever has known.” FRANK GRAHAM, *THE NEW YORK GIANTS* 5 (1952).

²⁹⁸ See discussion *supra* note 249. Joseph F. Choate and Charles C. Beaman were also listed in the reported decision as being involved in this case. *Metro.*

by Henry Bacon.²⁹⁹

Judge Wallace's initial sentence clearly established that the case involved a personal services contract action based upon "special aptitude, skill, and experience."³⁰⁰ Wallace noted the importance of the Giants' request for a preliminary injunction because Ewing would already be a member of the Players' League's New York Giants by the time a complete hearing was completed.³⁰¹ In a familiar explanation of a negative injunction case, Wallace noted the need that the plaintiff enter court "with clean hands" and a contract that was "not so oppressive as to render it unjust to the defendant to enforce it."³⁰² As with Ward's contract, the signing took place after the beginning of the term of the contract.³⁰³ Wallace considered article 18 of Ewing's contract with the Giants, the same standard clause that Hallman and Ward had signed, and determined that the right of reservation plainly involved only "the next ensuing season."³⁰⁴ In sorting out the contract language, Wallace squarely addressed whether or not the terms were definite, and he concluded that "[i]f it had been the meaning of the contract to allow the club to renew the engagement of the defendant for a second season upon the same conditions as those for the first season, that intention could have been easily and unequivocally expressed."³⁰⁵ Citing *Ward* and *Hallman*, Wallace noted that both judges found the clause "too indefinite to be enforceable."³⁰⁶ Wallace proceeded to discuss at some length the history of the transition from a reference to the Constitution and the National Agreement in the earlier contracts to the specific mention of the right of reservation after 1887.³⁰⁷ Wallace held that the reservation was definite, however:

Exhibition Co. v. Ewing, 24 Abb. N.C. 419, 420 (C.C.S.D.N.Y. 1890). Charles C. Beaman is listed in the version in *Abbott's New Cases* with Choate and Duysters. *Id.* The decision, as reported in the *Federal Reporter*, only listed Choate and Duysters. *Ewing*, 42 F. at 198. Unlike the *Ward* case, the two versions of this decision in the Circuit Court for the Southern District of New York are similar.

²⁹⁹ *Ewing*, 42 F. at 199.

³⁰⁰ *Id.*

³⁰¹ *See id.*

³⁰² *Id.* Wallace also noted that the contract must be based on mutual promises with sufficient consideration. *Id.*

³⁰³ *Id.* The contract was signed on April 29, 1889. The term of the contract was April 1, 1889, to October 31, 1889. *Id.* at 200.

³⁰⁴ *Id.*

³⁰⁵ *Id.* at 201.

³⁰⁶ *Id.*

³⁰⁷ *Id.* at 202-03.

As a coercive condition which places the player practically, or at least measurably, in a situation where he must contract with the club that has reserved him, or face the probability of losing any engagement for the ensuing season, it is operative and valuable to the club. But, as the basis for an action for damages if the player fails to contract, or for an action to enforce specific performance, it is wholly nugatory. In a legal sense, it is merely a contract to make a contract if the parties can agree.³⁰⁸

Wallace concluded that “[i]t follows that the act of the defendant in refusing to negotiate with the club for an engagement for the season of 1890, while a breach of contract, is not the breach of one which the plaintiff can enforce,” and he denied the motion for injunctive relief.³⁰⁹

Ewing played in only 14 games for the National League Giants in 1891.³¹⁰ In 1892, Ewing returned to full form, but he was traded on February 28, 1893, to the Cleveland Spiders for George Davis.³¹¹ David Fleitz offered the following recap of Ewing’s arrival and time in Cleveland:

Ewing was a founder of the players’ union . . . and managed the New York entry in the upstart league in 1890. However, by August of that year he recognized that the new circuit was doomed to failure. He met secretly with Cap Anson, Al Spalding, and other National League officials, perhaps to negotiate a peaceful surrender to the established circuit. Reportedly, the National League offered Ewing a large salary and the managing job in Cincinnati to quit the Players League. Nothing came of the negotiations, and Ewing always denied the charge that he tried to sell out his Brotherhood mates, but the accusation dogged him for the rest of his career. Though Tebeau had approved the trade that brought Ewing to Cleveland, Jack O’Connor, Jimmy McAleer, and other Players League veterans were none too happy to see Ewing

³⁰⁸ *Id.* at 204.

³⁰⁹ *Id.* at 205.

³¹⁰ *Buck Ewing Statistics and History*, *supra* note 297.

³¹¹ DAN FOST, *GIANTS PAST & PRESENT* 48 (2010); GRAHAM, *supra* note 297, at 17–18; STEVENS, *supra* note 62, at 160. For an analysis of Ewing’s trade to Cleveland, see REED BROWNING, *CY YOUNG: A BASEBALL LIFE* 40 (2000). Frank Robison:

[N]egotiated a trade with the New York Giants, giving up the youth and promise of the versatile George Davis to acquire the experience and fame of the over-the-hill Buck Ewing. It was not, as some have said, the worst trade of the 1890s. But it stands very high on that list. Ewing arrived in Cleveland with a dead arm and gave the Spiders only one year of solid batting before fading into uselessness. *Id.*

arrive.³¹²

In discussing Ward's decision to trade Ewing, Ward's biographer Bryan Di Salvatore noted that when Ward was "asked about the trade—which in pure baseball terms was a good one—he rose to the management occasion by characterizing the transaction as purely business. It is doubtful anyone believed Ward."³¹³

VIII. OTHER PLAYERS' LEAGUE CASES

The *Ewing*, *Hallman*, and *Ward* cases remain the most often discussed of the 1890 Players' League revolt, but, cases involving George Gore, Tim Keefe, and Hardy Richardson were all decided in favor of the Players' League teams.³¹⁴ However, Judge Michael Arnold of the Court of Common Pleas in Philadelphia granted an injunction for the Kansas City Cowboys of the American Association in an action involving John Pickett.³¹⁵ During the

³¹² THE IRISH IN BASEBALL, *supra* note 23, at 74.

³¹³ DI SALVATORE, *supra* note 54, at 349.

³¹⁴ George "Piano Legs" Gore and Tim Keefe, who was inducted into the National Baseball Hall of Fame in 1964, moved from the New York Giants in the National League to the New York Giants in the Players' League. See *George Gore Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/g/gorege01.shtml> (last visited Oct. 28, 2011); *Tim Keefe Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/k/keefeti01.shtml> (last visited 10/28/11). Hardy Richardson moved from Boston Beaneaters of the National League to the Boston Reds of the Players' League and led the league in runs batted. *Hardy Richardson Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/r/richaha01.shtml> (last visited Oct. 28, 2011). Voight and Burk both spelled Richardson's nickname as "Hardie." BURK, *supra* note 117, at 87; VOIGHT, *supra* note 7, at 163. George Gore holds the distinction of holding the single-game stolen base record of 7 with Sliding Billy Hamilton. See ROY KERR, SLIDING BILLY HAMILTON 97 (2010). David Fleitz devoted chapter seven of a follow-up book to the one cited often in this article to Tim Keefe's career. DAVID L. FLEITZ, MORE GHOSTS IN THE GALLERY 91–107 (2007). Rich Wescott devoted his second chapter in a book on 300-game winners to Keefe. RICH WESTCOTT, WINNINGEST PITCHERS: BASEBALL'S 300-GAME WINNERS 9–16 (2002). For a short description of Richardson's career, see JAMES, *supra* note 93, at 511, which notes that Richardson was a member of the so-called "Big Four" in Buffalo and Detroit with Dan Brouthers, Orator O'Rourke, and Deacon White.

³¹⁵ THE NEW YORK CLIPPER ANNUAL FOR 1891, at 40 (1891), available at http://www.columbia.edu/cu/lweb/digital/collections/cul/texts/ldpd_5655288_003/pages/ldpd_5655288_003_00000058.html. David Stevens listed the case as one in Kansas. STEVENS, *supra* note 62, at 121 ("As a token of good faith to the Kansas City club, Philadelphia paid Kansas City's legal costs. Pickett also returned a \$200 advance he had received."). Pickett hit only .224 for the Cowboys in 1889. In 1890, he hit .280 for the Philadelphia Athletics in the

summer while the two leagues were fighting it out on the field, Congress passed the Sherman Antitrust Act.³¹⁶ The act would become the focal point of much of reserve system legal challenges in the twentieth century. Despite the victories in court, the Players' League folded after only one season.³¹⁷

To reinforce the impact of destroying the Players' League, the victors created a new National Agreement in January 1891 that included a reserve list of fourteen players, a minimum salary of \$1,000 for the American Association and the National League, and a national board to regulate the industry with representatives from both major leagues, although in practice, it was dominated by the National League.³¹⁸

The dominance of the National League forced the American Association to resign from the National Agreement in February 1891, citing disputes over player allocation and claims that the National League was violating the spirit of the agreement with its reserve practices.³¹⁹ By the end of the season, the American Association folded after most of their teams were at or near bankruptcy.³²⁰ The four teams, in Baltimore, Louisville, St. Louis, and Washington, were purchased by the National League

Players League. In 1892, Pickett played briefly in his last major league season for the Baltimore Orioles. For Pickett's career statistics, see *John Pickett Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/p/pickejo01.shtml> (last visited Oct. 28, 2011). Robert Burk's version is: "When Kansas City's John Pickett jumped from the American Association to the Players' League, a local judge did apply the entertainment law precedent of *Lumley v. Wagner* (1852) Pickett, however, effectively avoided the ruling's injunctive impact by playing for a Philadelphia PL club outside the court's jurisdiction." BURK, *supra* note 117, at 110–11 (citing LOWENFISH, *supra* note 25, at 41–43; SEYMOUR, *supra* note 25, at 235–37). Seymour's discussion of Pickett appears at 237 (this author cannot find a mention of Pickett in Lowenfish's book). Seymour does provide two paragraphs on the Pickett situation mentioning Judge Arnold, *Lumley v. Wagner*, and the fact that Kansas City paid \$3,300 to St. Paul in 1889 for Pickett with the infielder receiving \$800 and \$340 per month despite missing playing time because of an illness. SEYMOUR, *supra* note 25, at 237. Pickett was apparently bothered by the Cowboys moving from the American Association to the Western Association. *Id.* For Pickett's minor league statistics, see *John Pickett Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=picket001joh> (last visited Oct. 28, 2011).

³¹⁶ Sherman Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C §§ 1–7 (2006)).

³¹⁷ EARLY INNINGS, *supra* note 16, at 205.

³¹⁸ GELZHEISER, *supra* note 25, at 159–60.

³¹⁹ *Id.* at 160.

³²⁰ *See id.* at 161.

for \$130,000.³²¹ Players coming over from defunct American Association clubs were allocated by the National League and had to play for the team they were assigned to or be blacklisted.³²² By December, the National League reorganized as a twelve-team league after incorporating the new American Association teams.³²³

IX. THE NATIONAL LEAGUE STANDS ALONE

After the American Association was finally dismantled by adding American Association teams of value,³²⁴ the National League launched the 1892 season with twelve teams.³²⁵ The expanded version was dubbed the “big league” by the fans.³²⁶ Feeling that two pennant races might be better than one, the National League owners decided to split the season, with a first half finishing on July 15, and the second half ending on October 15.³²⁷ If the result was two different champions, the two teams would meet in October in a play-off.³²⁸ With no other league competing at the major league level, the owners could now clamp down on the players. Rosters were established at fifteen, although the number was subsequently reduced to thirteen.³²⁹ The reserve list was reestablished at fourteen players.³³⁰ As the decade continued, teams increased the number of reserved players to at least sixteen players with the Cincinnati Reds

³²¹ *Id.*

³²² *Id.* at 163.

³²³ *Most Memorable Meeting in the History of Base-Ball is Over New Organization with a Twelve-Story Name Promulgates its Constitution—Dividing up the Players*, INDIANAPOLIS J., Dec. 19, 1891, reprinted in *EARLY INNINGS*, *supra* note 16, 213, 213–14.

³²⁴ BURK, *supra* note 117, at 121. A Peace Agreement was reached in Indianapolis on December 15, 1891, that brought Baltimore, Louisville, St. Louis, and Washington into the expanded National League. *Id.* The surviving owners spent \$131,000 to shut down the franchises in Boston, Chicago, Columbus, Milwaukee, and Philadelphia. *Id.*

³²⁵ See 1892 National League Team Statistics and Standings, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/leagues/NL/1892.shtml> (last visited Oct. 16, 2011). The 1892 season included franchises in Baltimore, Boston, Brooklyn, Chicago, Cincinnati, Cleveland, Louisville, New York, Philadelphia, Pittsburgh, St. Louis, and Washington. *Id.*

³²⁶ VOIGT, *supra* note 7, at 242.

³²⁷ KOPPETT, *supra* note 9, at 69; VOIGT, *supra* note 7, at 243.

³²⁸ See KOPPETT, *supra* note 9, at 73.

³²⁹ BURK, *supra* note 117, at 122; KOPPETT, *supra* note 9, at 73.

³³⁰ BURK, *supra* note 117, at 121.

actually managing to reserve thirty-three during one season.³³¹ The big reduction of roster spots plus the liberal use of reservation and stashing players in the minor leagues allowed teams to drive salaries downward severely.³³² When attendance faltered, straining financial resources, salaries were slashed even further and stars like King Kelly and Stovey were cut loose.³³³ Boston pushed all of their players to take pay cuts; when John Clarkson pushed back, the Beaneaters simply let Clarkson go.³³⁴

A new National Agreement was established in 1892 with minor league teams incorporated into the pact.³³⁵ Minor league players could be purchased during the off-season based upon a classification of each minor league into an "A" or "B" category.³³⁶ "A" league players were available for \$1,000 with "B" league players available for \$500.³³⁷ With the advantage of monopoly leverage, the minor league teams kept all the money; none went to the players. The effect of the agreement was to reinforce the stabilized salary structure and insure that all players were controlled

A response was the rekindling of the union concept, this time in the form of The Protective Association of Professional Ball Players.³³⁸ The initial demands were to force owners to pay for the cost of uniforms and raise the maximum deal to \$3,000.³³⁹ The union also pushed for a reservation system that could not cut salaries, the creation of a three-arbitrator panel to hear grievances, and representation for players at league meetings.³⁴⁰ Ultimately, the movement of the American League to challenge the National League prompted union recognition plus the elimination of player sales without consent, maintenance of major league salaries for players sent to the minors, and a reserve

³³¹ *Id.* at 122.

³³² *Id.*

³³³ VOIGT, *supra* note 7, at 245.

³³⁴ *Id.*

³³⁵ BURK, *supra* note 117, at 122.

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ VOIGT, *supra* note 7, at 285; *see also* FRED STEIN, AND THE SKIPPER BATS CLEANUP 61 (2002) (noting that the strained relations between the team owners and their ball players, which began in the 1890s, inspired the players to begin the process of organizing The Protective Association of Professional Ball Players, but that these unionizing efforts did not come to fruition until 1900).

³³⁹ BURK, *supra* note 117, at 144.

³⁴⁰ *Id.* at 144, 150.

system with an annual list containing an “option to renew.”³⁴¹ The following season was even harsher; the National League imposed a \$2,400 maximum salary and shortened the contract term to six months.³⁴² The new economics were working, however, and eleven of the twelve teams turned a profit.³⁴³

The success prompted an ill-fated attempt to revive the American Association in September 1894.³⁴⁴ *Sporting Life* editor Francis Richter joined Billy Barnie from Louisville and Al Buckenberger, the Pittsburgh manager, to organize the rebirth, promoting a circuit without a reserve system.³⁴⁵ But the two primary minor leagues, the Eastern and Western, held firm to their obligations under the 1892 National Agreement.³⁴⁶ When Barnie and Buckenberger were threatened with the blacklist, the entire effort fell apart without the circuit ever getting any financing, signing players to contracts, or creating a schedule.³⁴⁷

³⁴¹ *Id.* at 150.

³⁴² VOIGT, *supra* note 7, at 247.

³⁴³ KOPPETT, *supra* note 9, at 73.

³⁴⁴ *Id.*

³⁴⁵ *Id.* Franchises were awarded to Brooklyn, Chicago, Milwaukee, New York, Philadelphia, Pittsburgh, and Washington. *Id.* Billy Barnie, nicknamed “Bald Billy” managed the Baltimore Orioles in the American Association from 1883–1891. *Billy Barnie Managerial Record*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/managers/barnibi01.shtml> (last visited Oct. 24, 2011). Barnie moved on to manage the Washington Senators in the National League in 1892. *Id.* He moved to Louisville and managed the Colonels in 1893–1894. *Id.* After the failed attempt to restart the American Association, Barnie did not return to the National League as a manager until 1897 with the Brooklyn Bridegrooms. *Id.* Partway through the 1898 season, Barnie was replaced by Mike Griffin for four games before Charlie Ebbets stepped in to finish the season. See *Charlie Ebbets Managerial Record*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/managers/ebbetch99.shtml> (last visited Nov. 4, 2011); *Mike Griffin Managerial Record*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/managers/griffmi01.shtml> (last visited Nov. 4, 2011). Ned Hanlon took over for the 1899 season after his years at the helm of the Baltimore Orioles, and the Superbas finished in first with a 101-47 record. *Ned Hanlon Managerial Record*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/managers/griffmi01.shtml> (last visited Nov. 4, 2011). They also won the National League crown in 1900. *Id.* Al Buckenberger was let go by the Pirates during the 1894 season. He was the first of four managers with the 1895 St. Louis Browns. *Al Buckenberger Managerial Record*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/managers/buckeal99.shtml> (last visited Oct. 24, 2011). After departing with a 16-34 record through fifty games, Buckenberger did not manage in the major leagues again until a three-year stint with the Boston Beaneaters from 1902 to 1904. *Id.*; see also KAESE, *supra* note 40, at 110 (regarding Buckenberger’s release in 1904).

³⁴⁶ KOPPETT, *supra* note 9, at 73.

³⁴⁷ *Id.*

The hopes of players for a new league that would drive up salaries and create big league roster opportunities were quickly crushed.

After the 1899 season, with the reality of another league challenging National League supremacy, the four weakest franchises, Baltimore, Cleveland, Louisville, and Washington, were shed.³⁴⁸ The team owners were placated with opportunities to sell the contracts of their players. With four fewer franchises, Ban Johnson was well-positioned to rename his Western League as the American League and usher in the new century with another attempt to crack the monopoly that the National League had established.

CONCLUSION

The rise of professional baseball in the last quarter of the nineteenth century generated a classic struggle between management and labor. When Arthur Soden convinced his fellow National League owners to establish the reserve system, he launched a process that ultimately survived numerous attempts during the century to swing any power back towards the players. After another fight between the American League, the National League reached a peace agreement that effectively maintained absolute control over players with limited challenges during the first seventy-five years of the twentieth century. Although players won a number of court cases brought against the reserve rule, the owners withstood those challenges to rule the game and establish an economic model to propel the game into the National Pastime.

³⁴⁸ BURK, *supra* note 117, at 140.