

Curtis C. Flood

v.

70 Civ 202

Bowie K. Kuhn, et al

New York, June 5, 1970

10:00 a.m.

(Trial resumed.)

- - -

THE COURT: Good morning.

Mr. Hadden, are you starting off today?

MR. HADDEN: With the Court's permission, your Honor.

THE COURT: Glad to have you.

MR. HADDEN: Thank you. The defendants call Mr. John Gaherin, please.

J O H N J. G A H E R I N, called as a witness by the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HADDEN:

Q Mr. Gaherin, where do you reside?

A Westport, Connecticut.

Q What is your age?

A I am fifty-four years of age.

Q Will you tell the Court, please, what your education was?

A I was graduated from St. Ann's Academy in New York,

attended Pratt Institute, took some courses at Cornell School of Industrial Relations.

Q Keep your voice up, please.

Do you have any present relationship with major league baseball, and if so, will you tell us what it is?

A I am consultant to the Player Relations Committee of the Major League Baseball Clubs.

Q How long have you served in that capacity?

A Since August 1, 1967.

Q And will you describe briefly what your duties are in that connection?

A I give advice to the Player Relations Committee with respect to player relations matters and act as spokesman in cooperation with the negotiating committee in our relationship with the Players Association, and the advice I give is subject, of course, to advice of counsel of both leagues.

Q Do you maintain an office in the City of New York?

A Yes, in the Lincoln Building.

Q Would you give the Court a brief resume of your employment experience and background following the completion of your education and until the time that you were retained as a consultant to the Player Relations Committee?

A That's a long time.



Well, I worked in a family enterprise in the Town of Saugerties, New York. I worked for a brokerage firm in Wall Street. I did some time with the FBI and --

Q You were working with them and not doing time.

A Working with them.

THE COURT: That is a dangerous phrase "did some time."

A And I became active in labor relations in 1946 when I was appointed to a position as an assistant in the Labor Relations Department of the Pennsylvania Railroad in New York. I was charged basically with the handling of grievances in what is known in the railroad industry as the non-operating group, that is, clerks, signalmen, towermen, nine crafts or nine at that time, and in about 1948 I was given an assignment to assist the general manager of the Jersey City Stockyard Company which was a wholly owned subsidiary of the Pennsylvania Railroad, in negotiating an agreement with the United Packinghouse Workers of America, and then I was given additional responsibilities in the handling of marine labor relations matters for the Pennsylvania Railroad operations in New York.

In 1949 I was given the option of taking an assignment with the Pennsylvania Railroad in Philadelphia or transferring to the Long Island Railroad, which was on the brink of bankruptcy. I elected to go to the Long Island Railroad.

I went there as assistant to the manager of personnel.

I subsequently became assistant manager of personnel and finally manager of personnel in 1953, and I served in that capacity until September 1st of 1957 when I accepted a position with the New York, New Haven & Hartford Railroad as director of labor relations and personnel.

In February of 1958 I was elected vice-president of personnel for the New York, New Haven & Hartford, director of labor relations for the Connecticut Company, its bus subsidiary, and director of labor relations for the New England Transportation Company, an over-the-road trucking operation of the railroad.

And at the same time I was appointed by the so-called New York Marine Railroads -- there were seven of them -- as Chairman of the New York Harbor Marine Committee and the principal negotiator for those railroads in the handling of all marine matters in New York harbor.

I was the chairman of the committee during the 1960 and '61 harbor strike, which was mediated principally by the newly appointed Secretary of Labor at that time, and after that I went with American Airlines, and I was director of labor relations with responsibility for the handling of labor relations matters with both the flight personnel and ground organized personnel.

1 And then 53 eastern railroads organized the  
2 Eastern Carriers Conference Committee for the purpose of  
3 conducting their concerted negotiations with the unions,  
4 and they appointed me chairman of that committee and I served  
5 in that capacity during the negotiations in the Diesel Firemen  
6 case, in the so-called Work Rules case, and in 1967 I was  
7 offered the position of president of the Publishers Associ-  
8 ation of New York City, a multi-employer bargaining organi-  
9 zation representing the then-existing general news newspapers  
10 in New York City with responsibility for negotiations with  
11 all of the graphic art crafts, the service crafts, which is  
12 the IBEW and the IAM, with the mail deliverers and  
13 drivers unions, and to assist the individual negotiations,  
14 and with the Newspaper Guild, and I stayed there until I  
15 was offered my present assignment, and that's it.

17 Q When were you retained by the Player Relations  
18 Committee?

19 A On August 1, 1967.

20 Q Since that time have you had responsibility for  
21 counseling or advising with regard to employee relations of  
22 any employers other than major league baseball?

23 A No, I am retained exclusively by the 24 clubs.

24 Q What is the Player Relations Committee, Mr. Gaherin?

25 A The Player Relations Committee is a group appointed



by the two major leagues with responsibility for conducting the relationship of the clubs with the Players Association and its membership at present consists of the presidents of the two major leagues, two representatives from each of the leagues, and that is the group.

Q Who are the individuals involved at the present time?

A Mr. Hoffberger of the Baltimore Orioles and Mr. O'Connell of the Red Sox represent the American League. The National League is represented by Mr. Meyer of the St. Louis Cardinals and Mr. Dale of Cincinnati.

Q And in addition, I take it, also Mr. Cronin and Mr. Feeney, the two league presidents.

A Yes.

Q Would you describe the operations briefly of the Player Relations Committee?

A Well, the Player Relations Committee has the responsibility for the conduct of the negotiations with the Players Association, the formulation of proposals, recommendations to the 24 clubs as to the way the thing should be handled, the particular method of pursuing a particular course of action and bringing back to the 24 clubs their recommendations in those areas.

Q What is the Major League Baseball Players Associ-



ation?

A The Major League Baseball Players Association is a bona fide labor organization representing the overwhelming majority -- well, all, all of the major league baseball players.

Q That would be the 600 players?

A 600 players on the major leagues, on the 24 major league rosters.

Q If you know, would you tell the Court, please, how the Association's activities are financed?

A Well, Mr. Hadden, I am not very familiar with the financial situation of the Association but, of course, basically one of their sources of income is the dues of the players, which I believe is \$344 per player per playing season. That would produce an income of something over \$200,000.

2 Q And are those dues deducted and paid to the  
3 Association under the terms of any agreement?

4 A Yes. There was a checkoff agreement negotiated  
5 between the parties, as I recall, in late 1966, by the  
6 terms of which a player may voluntarily authorize the  
7 deduction of his dues and transmittal of it to the Associa-  
8 tion, and he also has the right once in each year, April,  
9 by following the prescribed procedure, to recall that  
10 authorization.

11 Q Have you brought a copy of that agreement  
12 with you at my request?

13 A Yes, I have a working copy here (handing to  
14 Mr. Hadden.)

15 MR. HADDEN: Mark that, please.

xxx

16 (Defendant Feeney et al Exhibit L marked  
17 for identification.)

18 Q I will hand you what has been marked for identi-  
19 fication Defendant Feeney Exhibit L and ask you if that is  
20 the checkoff agreement to which you referred?

21 A It is, sir.

22 MR. HADDEN: I offer the exhibit in evidence,  
23 your Honor.

24 THE COURT: Be good enough to show it to  
25 counsel.

1  
2 MR. HADDEN: I beg your pardon. Yes.

3 (Document handed to Mr. Topkis.)

4 MR. TOPKIS: No objection, your Honor, except  
5 that I believe that this exhibit as offered has a number  
6 of underlinings and checks and so forth, and I should  
7 imagine that it would be preferable that they be deemed  
8 deleted.

9 THE COURT: They are deemed deleted and I will  
10 rely on counsel to give the clerk a substitute copy before  
11 the close of the taking of evidence.

12 MR. HADDEN: Very well, your Honor.

xxx

13 (Defendant Feeney et al Exhibit L received in  
14 evidence.)

15 Q Mr. Gaherin, what is your understanding with  
16 reference to the rights of either party, that is, the  
17 Association or the major league clubs, to revoke or cancel  
18 that agreement?

19 MR. TOPKIS: If I may, your Honor, I take it  
20 the agreement has something to that effect. Has a termina-  
21 tion clause, yes. It speaks for itself.

22 THE COURT: Except I would like, without stopping  
23 to read it myself, I can get the answer and if that answer  
24 accords with your understanding, I have been enlightened  
25 and there is no harm.

1  
2 MR. TOPKIS: Quite so.

3 THE COURT: Overruled.

4 A There is a termination clause in the agreement  
5 which provides that the agreement may be terminated if notice  
6 is given in accordance within the prescribed time limit.

7 Q And it remains in effect from year to year  
8 unless such notice is given?

9 A It does.

10 Q Is it a fact the agreement has remained in  
11 effect since 1966, when it was negotiated?

12 A It is.

13 Q Did you participate in negotiation of that  
14 agreement?

15 A I did not.

16 Q It was prior to your association with major league  
17 baseball?

18 A Yes.

19 Q Would you describe in a general way, please,  
20 the organization of the Players Association to the extent  
21 of your knowledge of it?

22 A Well, to the extent of my knowledge of it, Mr.  
23 Miller is the executive director and chief administrative  
24 officer of the Association, Mr. Moss is its counsel, and  
25 they are assisted by a rather charming staff; and in their



1 negotiation with us Mr. Miller and Mr. Moss act as the  
2 principal spokesmen and are associated with various player  
3 representatives who participate from time to time.  
4

5 Q You have used the phrase "player representatives."  
6 Would you tell the Court what that means?

7 A Yes. Each of the 24 clubs, the players of the 24  
8 clubs, elect a player representative, and I understand those  
9 player representatives then in each league elect a so-called  
10 league representative, and those 26 individuals constitute  
11 the player representatives and if my understanding is cor-  
12 rect also what is tantamount to the board of directors of  
13 the Association.

14 Q Does that board have a formal name?

15 A It is termed the executive board.

16 Q Who is responsible for the conduct of negotia-  
17 tions on the clubs' side of the bargaining?

18 A Well, I act as spokesman associated with counsel  
19 for the leagues, and generally the two league presidents  
20 are present and sometimes other officers and officials  
21 of the clubs.

22 Q During your years of association with major  
23 league baseball, have you had responsibility to conduct  
24 negotiations on important matters with the Players  
25 Association?

2 A Yes.

3 Q How many would you say important or vital  
4 negotiations have been conducted in that space of time?

5 A I would say there were three, Mr. Hadden.

6 Q And have you been, during the course of those  
7 negotiations, in daily contact with Mr. Miller and Mr. Moss  
8 and the Players Association through them?

9 A Oh, yes.

10 Q And as a result of that experience, have you  
11 formed an opinion as to the effectiveness of Mr. Miller  
12 and Mr. Moss as representatives of players?

13 A Yes, I have.

14 Q What is your opinion?

15 A I think they are exceptionally well qualified  
16 and extremely 'able in their present occupation.

17 Q Have you also formed an opinion as to the rela-  
18 tive bargaining position or positions of bargaining strength  
19 of the clubs on the one hand and the players on the other?

20 MR. TOPKIS: I object, your Honor. I don't  
21 believe that is a subject on which opinion evidence is  
22 proper.

23 MR. HADDEN: Mr. Topkis, would you do me the  
24 favor and let me hear what you are saying?

25 MR. TOPKIS: I beg your pardon. I thought I

1 was not suffering from inaudibility. It is perhaps  
2 early in the morning. May the reporter read my remark  
3 back, your Honor?  
4

5 THE COURT: Yes, please.

6 (Record read.)

7 MR. HADDEN: I think that the witness, your  
8 Honor, has demonstrated beyond possibility of misunderstand-  
9 ing his qualification as an expert in the labor field and  
10 I think it is an appropriate question.

11 THE COURT: Objection overruled.

12 Will you read the pending question, please?

13 (Question read.)

14 A Yes, sir, I have.

15 Q Will you tell the Court what your opinion is,  
16 please.

17 A I believe the relative strengths are about as  
18 equal as any situation can produce.

19 Q You have referred to three principal negotiations?

20 A Well, the first of those negotiations, Mr.  
21 Hadden, was what we have referred to as the first basic  
22 agreement between the Players Association and the 24 major  
23 league clubs. It began August of 1967.

24 MR. HADDEN: Excuse me a moment, your Honor.

25 THE COURT: Surely.

1  
2 Q The first basic agreement, Mr. Gaherin, is  
3 that the document which is in evidence as Defendant Feeney  
4 Exhibit F, the brown pamphlet?

5 A Yes.

6 Q Can you tell the Court, please, over what approx-  
7 imate period of time that agreement was negotiated?

8 A Approximately, Mr. Hadden, from the latter  
9 part of September, 1967, until, if my memory serves me  
10 correct, until about the middle of February of 1968.

11 Q And were negotiating meetings with the Players  
12 Association held frequently in that connection?

13 A Yes, they were.

14 Q Mr. Gaherin, were you in court several days ago  
15 when Commissioner Kuhn testified?

16 A I was.

17 Q Did you hear the questions and answers which he  
18 gave in which he defined what he understood to be the  
19 reserve system in organized baseball?

20 A I did.

21 Q Do you agree with his answers as given to those  
22 questions?

23 A I do.

24 Q All right. Now I would like to refer again to  
25 the first basic agreement negotiated and with the exception



1 of the discussions which may have taken place with regard  
2 to the reserve system in that negotiation, would you  
3 describe for the Court, please, the principal changes in  
4 employee benefits, and working conditions which resulted  
5 from the adoption of the first basic agreement? If  
6 necessary, would you refer to whatever notes you may have?  
7

8 A Well, the first basic agreement, I would say  
9 that the principal changes that occurred as a result of that  
10 agreement was an increase in the minimum salary from \$7,000  
11 per season to \$10,000 per season. That is number one.

12 Number 2, the maximum salary cut was reduced  
13 from 25 per cent of the previous season's salary. The  
14 spring training meal allowance was increased from \$8 per  
15 day to \$12 per day, and the spring training miscellaneous  
16 allowance, sometimes referred to as Murphy money, was  
17 increased from \$25 a week to \$40 a week, and the in-season  
18 meal money was increased from \$12 per day to \$15 per day.

19 The next area I think of significant improvement  
20 is in the grievance procedure. Now, while the players  
21 always had access to the Commissioner of Baseball as the  
22 final adjudication of disputes except those involving  
23 individual salaries, there was no formal procedure except  
24 that promulgated by the Commissioner himself for the conduct  
25 of such matters. We negotiated with the Association a

1 formal grievance procedure providing for a terminal of  
2 handling grievances with a final and binding arbitration  
3 by the Commissioner of Baseball.  
4

5 Q And is that grievance procedure what is included  
6 in the brown booklet, Exhibit F, as Schedule C?

7 A Yes, sir, it is.

8 Q Included in which is an appendix which contains  
9 rules of procedure negotiated between the parties?

10 A Yes, sir.

11 Q What was the next negotiation which the clubs  
12 undertook with the Players Association?

13 A The next negotiation was the players' benefit  
14 plan, and that was the next one.

15 Q When did those negotiations take place?

16 A They took place during the latter part of  
17 1968, the formal negotiations, and the early part of 1969.

18 Q Again, were many negotiating sessions held with  
19 the Players Association in that connection?

20 A Yes, there were a great many sessions held.

21 Q Did those negotiations conclude in an agreement?

22 A Yes, sir, it did.

23 Q Have you a copy of the agreement there with you?

24 A Yes, sir, I have.

25 MR. HADDEN: Mark this, please.

xxx

(Defendant Feeney et al Exhibit M marked for identification.)

Q I hand you what has been marked Defendant Feeney Exhibit M and ask you if that embodies the agreement which was negotiated to a satisfactory conclusion in early 1969.

A Yes, except for an insert of some additional changes which has not yet been placed in these copies; but that is the basic benefit plan.

Q Does that agreement represent a new benefit plan or was that a continuation of a former benefit plan which had previously been in existence?

A This is the former plan upgraded.

Q When was the major league baseball players' retirement or benefit plan started?

A As I recall, about 1947 was the first effort at a pension plan.

Q And was it amended from time to time during the interim prior to the form in which it now exists in Exhibit M?

A Yes, sir.

THE COURT: For identification.

MR. HADDEN: For identification. I offer the exhibit in evidence, your Honor.

MR. TOPKIS: No objection, your Honor.



THE COURT: No objection. Received.

(Defendant Feeney et al Exhibit M received  
in evidence.)

Q Immediately prior to the effective date of  
the present benefit plan, Exhibit M, what was the level  
or amount of club contributions which were required under  
the prior agreement?

A \$4,100,000 per year.

Q And was that payment made on behalf of all  
24 major league clubs or 20 at the time it was?

A Yes.

Q For the benefit of active and inactive players?

A Yes.

Q Would you describe briefly for the Court what  
the principal changes in benefits were which resulted  
from the adoption of Exhibit M and also tell the Court,  
if you would, please, what the new level of contributions  
was which was negotiated at that time.

A Well, I suppose the most significant improvement  
was the level of contribution itself. The contribution  
was increased to \$5,450,000 a year, which I think equates  
to about a 33 per cent increase in the contribution.

The next improvement would be the reduction of



1 the required time in which a member can vest from five  
2 years to four years. That brought into the plan a whole  
3 new group of people who had previously not shared in its  
4 benefits, and I suppose the next feature --

5  
6 Q You said people who had not shared in the  
7 benefits. By that do you mean retirement benefits?

8 A Retirement benefits. They were not vested. Then  
9 the next step I suppose was the provision for so-called early  
10 retirement at age 45 on an actuarially reduced basis. I  
11 would say those are the significant ones. And, if I may,  
12 I refer to the descriptive material in the agreement itself  
13 and at the very last page of the agreement is a computation  
14 of the money pension benefits.

15 MR. HADDEN: Would you like to see a copy of  
16 this, your Honor?

17 THE COURT: Thank you.

18 (Document handed to the Court.)

19 Q Continue your answer.

20 A All right. And using, just for the purpose of  
21 illustration, a member with five years of credited service  
22 and who at age 50 would elect to retire, under the terms  
23 of the new agreement he would receive \$300 per month.  
24 Under the agreement previously in effect it would have been  
25 \$250. If that same individual retired with ten years

Our health care benefits, I guess you would call that so-called hospitalization benefits, was increased from \$15,000 to \$25,000 maximum. The maternity benefits were increased from \$500 to a maximum of \$750.

We established for the first time a dental plan. I would say, Mr. Hadden, in brief, those are the significant changes in the plan.

Q Mr. Gaherin, would it be a correct assumption that a major league baseball player with as little as four years of service in major leagues becomes entitled as a matter of right to receive a retirement pension under the terms of the plan which he may elect to receive as early as 45 years of age?

A That is correct.

Q On what date was the agreement with reference to the benefit plan reached, Mr. Gaherin?

A Well, the actual agreement was reached, as I recall it, February 25, 1969. I may be off a day or so.

Q Prior to that time, what instructions or suggestions, if any, had been issued, to your knowledge, by the Players Association to the individual ballplayers?

A Well, during the negotiations, as part of the bargaining tactic, they encouraged the players to withhold signing their 1969 season contracts.

1  
2 Q When was spring training scheduled to commence,  
3 Mr. Gaherin?

4 A In March.

5 Q 1st of March?

6 A 1st of March.

7 Q And what was the club's experience in reference  
8 to significant numbers of players actually withholding  
9 their signatures from their contracts?

10 A There were a significant number of players who  
11 had not signed their contracts approaching spring training.

12 Q And was that among the circumstances which  
13 the clubs took into account in its negotiations with the  
14 players?

15 A Yes.

16 Q Now, Mr. Gaherin, there has been reference in  
17 the testimony here to the fact that the parties have again  
18 been in negotiations currently or recently with respect  
19 to the negotiation of an extension of the basic agreement.  
20 Is that true?

21 A That is true.

22 Q Would you describe, please, for the Court what  
23 the course of those negotiations has been?

24 A I think, Mr. Hadden, that for all intents --

25 Q Excuse me a second. Would you leave out of



May 1, 1970, and which we orally amended thereafter, yes.

Q You referred to certain amendments, certain oral amendments, Mr. Gaherin. Would you tell the Court when and how those amendments became effective?

A About May 4 -- I am talking from memory now, without my notes -- about May 4, after several meetings with the Association following a rejection of the proposal first presented to the players, the club --

Q By whom?

A By the players, major league baseball players.

MR. TOPKIS: Excuse me. I rise merely in the interests of clarification. Does the witness mean Exhibit N for identification?

THE COURT: Is that what you mean?

THE WITNESS: Yes, Mr. Topkis, that is what I was referring to.

Q In other words, if I understand you, Exhibit N unamended, the document of May 1, was submitted to the Players Association on May 1 and was rejected by them?

A That is correct.

Q How was that rejection evidenced?

A It was evidenced by a vote of the players in each of the 24 clubs and transmitted -- and that information transmitted to us by Mr. Miller.

Q Did Mr. Miller transmit information as to the number of votes by which the proposal failed of being adopted?

A He orally advised us of the vote in each of the clubs, yes.

Q If you recall, what was the approximate total votes of ayes and nays to that proposal?

A I don't recall it in those terms. I recall that only one club voted for it.

Q 23 voted to reject it?

A Yes.

Q What negotiations took place thereafter which resulted in the amendments which you referred to?

A We had several additional meetings and agreed to improve that offer in three areas.

Q Would you describe those?

A Yes. There is a provision in the original proposal which provided for the elimination of -- excuse me -- of the deduction of 10 per cent of the receipts of the first three games of the divisional playoffs as club expenses.

Q So the Court understands what that means, Mr. Gaherin, what are the divisional playoffs?

A That is the contest held in each of the leagues to determine the champion of each league.

Q At the end of the season?

A At the end of the season.

Q And that championship then goes on in the World's Series to play --

A Goes on in the World's Series to play the opposing league.

Q So there was a deduction of 10 per cent from what?

A From the gate receipts of the first three games which was eliminated -- that proposal was eliminated in our amendment.

Q Are the players entitled under the proposal before and after the amendment to share in the proceeds of those first three games?

A Yes, 60 per cent.

Q And, as I understand it, that expense deduction, that 10 per cent deduction, was eliminated as a result of the further negotiations?

A Yes.

Q What were the other two changes?

A We changed the proposal with respect to the allowances that would apply to players who are unconditionally



1 released both in spring training and in the season. Prior  
2 to the present season, there was no provision for any  
3 allowance to a player who was unconditionally released  
4 during spring training. We have now established a 30-day  
5 payment. In-season for the year 1970 a player who is  
6 unconditionally released would received 60 days. Our orig-  
7 inal proposal was 40 days -- 45 days termination pay. In  
8 1971, he will also receive 60 days termination pay.  
9

10 In 1972 he will receive 60 days if he is terminate  
11 before May 15. On and after that he would receive the  
12 balance of the payments due under the terms of his original  
13 contract.

14 There are also some restrictions so that this  
15 termination allowance is a make whole, so that he can not  
16 profit by the receipt of termination allowances.

17 Q What was the third change?

18 A The third change, the clubs agreed that in the  
19 event, in 1972, the Association press a proposal for a  
20 reduction in the number of games that will be played in the  
21 1973 season and thereafter, we will not, as a defense, rely  
22 upon the fact that there may be existing radio or television  
23 contracts which provide for a specified number of games to  
24 be televised or broadcast, all other defenses remain intact,  
25 whatever they may be.

t3/1

Q If you can, Mr. Gaherin, and basing your estimate upon last year's figures, can you give the Court an estimate of the approximate value of the clubs' agreement to forego the 10 per cent expense money from the playoffs?

A Round figure?

Q Round figure.

A About 250,000, 260,000 dollars.

Q Well, is that the 10 per cent or is that the gross?

A That would be the 10 per cent.

Q That would be the 10 per cent?

A Yes.

MR.TOPKIS: What?

MR. HADDEN: Let us check that.

I now offer Exhibit N in evidence, your Honor.

MR. TOPKIS: No objection, your Honor.

(Defendant Feeney et al Exhibit N received in evidence.)

Q Now, Mr. Gaherin, would you for the moment withdraw from consideration whatever agreements may have been reached by the parties with reference to the reserve system and tell the Court the principal changes in working conditions and benefits which the players will now receive under the new agreement?

A All right. Again starting with the minimum salary,

that has been raised for this season from \$10,000 to \$12,000 per year.

In the 1971 season to \$12,750 per year and finally in 1972 to \$13,500 per year.

Now, the World Series pool and divisional playoff compensation has been changed and improved. First, there is now a single pool. 60 per cent of the gate receipts of the first four games of the World Series, after deducting 15 per cent for the Commissioner's office, are applicable to players and that does not represent a change.

60 per cent of the gate receipts from the first three divisional games are paid to the players. Previously it was a division of 50 per cent of the total gate receipts for the first three games less the actual expenses incurred by the club.

The maximum salary cut permissible under the contract has been reduced from 20 per cent of the previous season's salary to 20 per cent in any one year and a maximum cut of 30 per cent over two consecutive years.

The spring training meal allowance has been raised from \$12 per day to \$13 per day this year, and in 1971 to \$14 per day, plus any applicable cost of living adjustment. And in 1972, \$14 a day plus the applicable cost of living adjustment.



The spring training and miscellaneous allowance has been moved upward from \$40 per week to \$50 per week this year, and in the subsequent years it remains at that level but is backed up by applicable cost of living adjustment.

The in-season money, meal money, has been raised from \$15 per day to \$16 per day this year, \$17 per day in 1971 plus any applicable cost of living adjustment and \$17 a day in 1972 plus any cost of living adjustment.

The termination pay has been improved from 30 days for players released in-season without any consideration for the man released during spring training to 60 days for the man released in 1970. Similarly in 1971 and in '72, 60 days if released prior to May 1st, and the --

Q May 15th?

A May 15th, excuse me, and the balance due under the contract if released thereafter, and 30 days for the man released during spring training.

The grievance procedure has been dramatically overhauled. We have provided for a grievance procedure --

MR. HADDEN: One moment, the Court is occupied.

THE COURT: Excuse me.

(Pause.)

THE COURT: Sorry.

A We provided for a grievance procedure which sends

jkbr 4

Gaherin-direct

1  
2 to the Commissioner all matters which involve the integrity  
3 of the game or maintenance of public confidence in the game,  
4 and his decision in all such matters is final and binding  
5 upon the parties with the same authority as any arbitrator's  
6 decision.

7 The second part of the grievance procedure provides  
8 for grievances arising out of the interpretation or the appli-  
9 cation of the basic agreement being ultimately referred to  
10 a panel of arbitrators, each of the parties to select a party  
11 and probably those two to try to select upon a third. We  
12 have some more talking to do but the principle is it goes  
13 to a panel of arbitration and the neutral man will not be the  
14 Commissioner in this case.

15 Q Based upon the statements made to you by Association  
16 representatives in the course of the bargaining, what is your  
17 understanding as to the importance placed by the Association  
18 on the changes which you have just described?

19 MR. TOPKIS: Objection, your Honor. Those would  
20 be hearsay, I should think.

21 MR. HADDEN: I am not asking him to repeat any-  
22 body's statement. I have asked him what his understanding  
23 is, your Honor.

24 MR. TOPKIS: Based on the hearsay.

25 THE COURT: Yes, I know it is, but the frequency,

1 jkbr 5 Gaherin-direct

2 the constancy of this witness's participation in all these  
3 matters warrants my taking it, not as the final piece of  
4 proof on that issue, but it is admissible. I will take it.

5 Objection overruled.

6 THE WITNESS: May I have the question?

7 THE COURT: Yes. Will you please read it, Mr.  
8 Court Reporter.

9 (Question read.)

10 A The most important single issue involved in the  
11 bargaining.

12 Q Mr. Gaherin, have you had responsibility for the  
13 handling on behalf of the clubs of grievances filed during the  
14 past two years under the first basic agreement?

15 A Yes, sir.

16 Q And can you tell the Court, please, in whatever terms  
17 you can, what approximate percentage or number of grievances  
18 previously processed by the clubs and the Player Association  
19 would have gone to outside arbitration under the new system?

20 A Most, if not all.

21 Q Thank you. Now, have you completed your review  
22 of the principal changes?

23 A I think probably there are two others that are  
24 significant, in the area of rules changes, which would af-  
25 fect the benefits of the players or an obligation of the play-

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ers. The previous agreement required only that we discuss and notify the Association in advance of making these changes. In effect, we are now obligated to negotiate with them concerning such changes.

Another change is that we have perhaps formalized a right that really existed and that was the player may be represented in his individual salary negotiations by a person of his own choosing.

I would say that's about it.

MR. KRAMER: Could I have that last answer read, your Honor?

THE COURT: Ofcourse. Would you be good enough to do that, Mr. Court Reporter?

(Answer read.)

MR. TOPKIS: If I may, your Honor, the answer was so long that with Mr. Kramer I was not certain of all of its contents, but I would move to strike so much of it as speaks of a right which was already in existence. I don't know how the witness could know about that right, and the testimony of the club owners and executives has been unanimously to the contrary.

MR. HADDEN: I concede that it may be stricken, your Honor.

THE COURT: Strike it.

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2 MR. TOPKIS: Thank you.

3 Q Now, Mr. Gaherin, was there also inserted into the  
4 agreement for the first time a recognition clause?

5 A Yes.

6 Q What is the nature of that change?

7 A If I may summarize it, the clubs recognized the  
8 Players Association as the exclusive bargaining agent except  
9 for salaries above the minimum and certain special covenants.

10 Q Do the clubs recognize the Players Association as  
11 the official bargaining agent for the players as a group?

12 A Yes.

13 Q Turning to the subject of the reserve system, Mr.  
14 Gaherin, do the clubs recognize that the reserve system is  
15 a mandatory subject of bargaining upon which the clubs are  
16 legally obligated to bargain with the Association?

17 A Yes.

18 Q Now, referring once again to the --

19 THE COURT: Would you mind, Mr. Hadden? How long  
20 has that been so?

21 MR. HADDEN: Would you answer that question, Mr.  
22 Gaherin?

23 THE WITNESS: The National Labor Relations Board,  
24 having asserted its jurisdiction over baseball, and the clubs  
25 having acquiesced in that action, we recognized that we had

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2 an obligation of bargaining.

3 THE COURT: When was that?

4 THE WITNESS: The assertion of jurisdiction was --

5 THE COURT: Approximately.

6 THE WITNESS: Sometime last year.

7 THE COURT: Thank you.

8 Q And before the beginning of this lawsuit?

9 A Yes, before the beginning of this lawsuit.

10 Q And did the clubs undertake any negotiations with  
11 the Players Association with reference to the reserve system  
12 in the course of the negotiations leading to the first basic  
13 agreement?

14 A Yes, sir.

15 Q Would you describe what the course of those negotiations  
16 was?

17 A Yes. The proposals of the Association which were  
18 served August 1st, I think, of 1967, contained, among other  
19 things, a rather vague statement concerning the reserve  
20 clause.

21 MR.TOPKIS: If your Honor please, if the witness  
22 has concluded his answer to the question, I would suggest  
23 that these proposals, which I take it were in writing, are  
24 the best evidence of their contents, and since we are in  
25 a rather delicate area I would think it appropriate that



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2 the writing rather than the witness' testimony be the evidence  
3 to which we refer.

4 THE COURT: I should think so.

5 MR.HADDEN: I am prepared to suit your pleasure,  
6 Mr. Topkis.

7 Q Have you brought with you, Mr. Gaherin, a copy of  
8 the proposals submitted by the Players Association at the  
9 commencement of the first basic agreement negotiations?

10 A Yes.

11 (Defendant Feeney et al. Exhibit O marked for  
12 identification.)

13 Q And is this document entitled Major League Baseball  
14 Players Association Statement of Policy, July 28, 1967,  
15 which has been marked for identification Defendant Feeney  
16 Exhibit O, the proposals to which you have referred?

17 A Yes.

xx

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Q And at what page does the material appear with regard to the reserve system?

A At Page 5 under the heading "Reserve Clause."

MR. HADDEN: Your Honor, so the record may reflect what that language is, I will read it into the record.

THE COURT: It is not in evidence yet.

MR. TOPKIS: I think it is improper until it is in evidence. I will tell my friend I have no objection to its being received in evidence.

THE COURT: He is so far ahead that these little things like getting them into evidence bothers him.

MR. HADDEN: May I offer the document?

THE COURT: You certainly may.

MR. TOPKIS: Again, your Honor, this is a marked up copy. May a clean copy be substituted?

THE COURT: I am sure counsel will see to it.

(Defendant Feeney et al Exhibit O received in evidence.)

MR. HADDEN: I am reading from a page which Mr. Gaherin has referred to, your Honor. The caption is "reserve clause" on Page 5:

"The present Uniform Player's contract provision under which a Club asserts the right to renew the contract

without the player's agreement and to determine unilaterally the salary to be paid (subject only to limitation on the amount of a cut), requires a review.

"The impact of this provision is to deprive the player of bonafide bargaining power in his salary 'negotiations' with the club. In addition to placing the player in the untenable position of being required to accept the Club's proposed salary or leaving organized baseball, the reserve clause is of doubtful legality.

"The solution to this problem lies neither in a sudden elimination of the reserve clause, whether by judicial decree or otherwise, nor in the preservation of the status quo. We find no validity in the calamitous predictions that chaos will result from any change whatsoever. Rather, the solution lies in a reasoned, open-minded approach which seeks an accommodation in the interest of fairness for the player in his salary negotiations and of the growth and prosperity of baseball as a whole."

Q Mr. Gaherin, following the club's receipt of this paper -- which was when, approximately?

THE COURT: This paper referring to exhibit --

MR. HADDEN: Excuse me. Exhibit O, your Honor, yes.

A About August 1, 1967.



Q Following that, what discussions or negotiations did the clubs have with the Players Association with reference to the reserve system?

A We discussed that proposal.

THE COURT: And by "that proposal," do you mean what --

THE WITNESS: Appearing at Page 5.

THE COURT: -- Mr. Hadden just read into the record?

THE WITNESS: Yes, sir.

A And during the course of the discussions at one point Mr. Miller proposed but subsequently did not press that the agreement which would come from these negotiations would contain a reopener in the second year of the agreement to deal specifically with the reserve clause because he recognized as well as we that the proposal we were dealing with was not a specific proposal, and then subsequently he reasoned that the problem --

MR. TOPKIS: He stated.

A He stated that the problem could be best approached if both parties did so with the greatest degree of objectivity possible, and consequently proposed that following the negotiation of the basic agreement the parties enter into a joint review or joint study of possible

alternatives or changes in the reserve system. And the parties did so agree and they memorialized that agreement in Article 8 of the basic agreement which appears at Page 4 of that agreement.

THE COURT: And that refers in turn to which exhibit? When you say "basic agreement," you mean --

MR. HADDEN: Defendant Feeney Exhibit F, your Honor.

THE COURT: Right?

THE WITNESS: Yes, Judge.

THE COURT: We will take a short recess. You may not think much of this, but I would like to have more detailed testimony as to dates, action by management with respect to Page 5 of Exhibit O. In other words, when management was confronted with it, I would like to have more details of how much consideration was given. I take it there was no flat rejection of it. Just approximately what dates, what time, what amount of consideration was given to it.

MR. HADDEN: Very well, your Honor.

THE COURT: Short recess.

THE CLERK: Short recess. All rise.

(Recess.)

THE COURT: Mr. Hadden, I don't want to add to

your burden, but there is another point that suggests itself to us: Does Article 8 of the basic agreement whereby the parties agree to undertake a joint review of the reserve system, did it precede or follow the order of the NLRD asserting jurisdiction over baseball?

BY MR. HADDEN:

Q Do you know the answer to that question, Mr. Gaherin?

A It preceded.

THE COURT: Next question.

Q Mr. Gaherin, you heard the Judge's inquiry just prior to the recess which, if I may paraphrase it, was as to whether or not you could give further detail as to the deliberations, discussions, negotiations which took place with reference to the portion of the Exhibit O, the July 28, 1967, statement of policy which I read and which negotiations led to the adoption of Article 8 of the basic agreement.

A Your Honor, I am lax on dates, perhaps, but I will try to say what our conclusions were and what our thoughts were concerning this situation.

We had a proposal from the Association which we entertained as part of their request which was more philosophical than a specific demand for amendment to



1  
2 a certain extent. It highlighted certain underlying  
3 faults with the system, as they saw it which they thought  
4 cried for correction. To what extent and in what manner  
5 was not evident.

6 So the Association, us, together, we agreed that  
7 we would create a machinery, the joint review, with the  
8 hopes that from this machinery would evolve (a) is there  
9 need for change; (b) to what extent should it be changed;  
10 (c) how do you go about it. Sitting in a calm atmosphere  
11 not as adversaries but as co-journeymen wandering through  
12 this very difficult situation, that is how we approached  
13 it and that is how this review thing came into being.

14 Q Mr. Gaherin, in connection with the negotiations  
15 which led to the basic agreement and having in mind the  
16 fact that the NLRB had then not yet asserted jurisdiction  
17 over organized baseball, did the clubs in their discussions  
18 and negotiations with the Association ever claim that the  
19 reserve system was not a subject of bargaining?

20 A Oh, no.

21 Q And to the extent that it led to the adoption  
22 of Article 8, did the clubs in fact bargain with the  
23 Association on the reserve system?

24 A Yes, sir.

25 Q Did the first basic agreement contain any

provisions apart from Article 8 by means of which the Association consented to the provisions of the reserve system as then constituted?

A Yes, sir.

Q Would you tell the Court what those provisions of the basic agreement and exhibits thereto were?

A May I refer to the agreement?

THE COURT: He wishes to refer to the agreement. By the agreement, you mean Exhibit --

THE WITNESS: Exhibit F.

A At Page 1 of Exhibit F, Article 2, Uniform Player's Contract, the parties agreed to the inclusion of the Uniform Player's Contract into and became a part of the basic agreement. The Uniform Player's Contract embodies the commitment of the players and its clubs to obligate themselves to the major league agreements, major league rules. The entire reserve system flowed into the agreement.

Q That would include, I take it, the assignability clause and the clause giving the clubs the right to exercise a right of renewal of players' contracts?

A Yes, sir.

Q Were there any other discussions of the reserve system during the negotiations leading to the first basic agreement?

1  
2 A Well, yes.

3 Q What were they?

4 A Again this Article 2, and specifically the last  
5 sentence of that article --

6 Q I will read that so the Court will have the  
7 language before it.

8 THE COURT: Thank you.

9 Q The sentence is: "The termination of this  
10 agreement shall not impair, limit or terminate the rights  
11 and duties of any club or player under any contracts  
12 between any individual player and any of the clubs."

13 Now would you continue your answer, Mr. Gaherin.

14 A The purpose of that, your Honor, was to document  
15 the understanding of the negotiators of the agreement  
16 that the demise of the basic agreement would in no way  
17 whatsoever affect the Uniform Player's Contract or any of  
18 the prerogatives of the contract, including the right of  
19 renewal. It is freely conceded by the organization,  
20 the Association, we could renew these contracts even if  
21 this agreement were not in effect.

22 Q When did the first basic agreement terminate?

23 A May 5 -- excuse me. April 5th of this year.

24 Q Are you certain about that?

25 A The first basic agreement?



Q Yes.

A This is the first basic agreement?

Q Yes.

A It terminated this year. It terminated in April of this year by an agreement of the parties.

Q Was it at or about the time when the season started?

A Yes.

Q And well after spring training?

A Yes.

Q In those discussions which you have just described, did the Association's representatives make any statements to the clubs' representatives with regard to the last sentence of Article 2 in which they stated what their intentions were with regard to the bringing of any suit?

A Yes, they did.

Q What did they say? Who was it?

A It was Mr. Miller.

Q What did he say?

MR. TOPKIS: Could we know when, your Honor?

THE COURT: Yes, as closely as you can fix it, Mr. Gaherin.

THE WITNESS: May I ask a question?

THE COURT: If you think you have to, yes.

THE WITNESS: Are we looking for a specific date?

Q As best you can recall, I take it your answer must refer to some statement made during the course of the first basic agreement negotiations?

A It was during the discussion of the basic agreement, the first basic agreement, and during the specific period of those negotiations, it was during the construction of what is now Article 2, and Mr. Miller and Mr. Moss, too, for that matter, said that it was not their intention during the life of this agreement to test its legality by a suit in a court of law.

Q Do you know when this suit was started?

A This present suit?

Q Yes.

A January -- the middle of January, between the 15th and 19th, I think, of January of this year.

Q Following the adoption of the first basic agreement, when did the reserve system next become the subject of any formal discussions with the Players Association?

A When we entered upon the joint study procedure that we had agreed upon.

Q And approximately when was that?

2nd  
Negotiation

1  
2 A April of last year.

3 Q If I may interrupt this line of questioning,  
4 Mr. Gaherin, you gave an answer just prior to the recess  
5 with reference to the approximate money value of the  
6 clubs' relinquishment of the clubs' 10 per cent expense  
7 money with reference to the first three games of the  
8 playoffs.

9 You said that your estimate of that amount  
10 was \$250,000. Do you wish to correct your answer?

11 A Yes. 10 per cent would be about \$140,000.  
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Q Thank you. Now, returning again to the joint study, will you describe for the Court what discussions took place with the Players Association and what was said, in substance?

A Well, your Honor, the proceeding, of course, was informal. We met on various occasions, either in Mr. Miller's office or in mine. Generally it was Mr. Miller and Mr. Moss, sometimes a player representative. I was accompanied by counsel for the leagues and we had a freewheeling, in depth exploration of all the phases of what has become known as the reserve system.

This, of course, was not a forum in which proposals were made, but ideas were thrown out. I would say, in candor, that many of these ideas have subsequently been converted into proposals by the Association.

Q Were any proposals of any sort made by the Association during the course of the joint study?

A As proposals, no. As suggestions of possibilities of answers, yes, they talked -- well, we talked; for example, one of the things we talked about was the so-called football option thing, but it wasn't something that the Association at the time thought had a great deal of merit or applicability to our situation and it sort of got dropped.

Q Did the Association at any time during the course

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of the joint study say, in effect, to the clubs, "This is a change we would like to have and we ask you for it"?

A No.

Q Approximately how many meetings were held with reference to the joint study?

A Total, probably five, six.

Q What reactions were expressed by the clubs, in substance, to the various suggestions which the Association had mentioned?

A Well, we explored each suggestion that was put into the proceeding. We explained from our point of view why we felt that they lacked merit or lacked applicability to our particular situation.

Q Would it be a fair statement that the reasons which were presented by the clubs were of the sort which have come from the testimony of witnesses in this court on behalf of defendants?

A Yes.

Q And how did the joint study conclude?

A Well, the joint study terminated without the parties being able to recommend to their people a solution other than the system as it is now in existence and -- well, that's how it ended.

Q Did the clubs suggest to the Association or invite

it to submit a formal proposal?

A Yes. We said that if their interest was in change -- we were then approaching the threshold of the new negotiations-- it would be appropriate for them to submit to us the specific changes that they wanted us to consider and we would give them the most profound consideration.

Q Did the Association's representatives express themselves in any way at the conclusion of the joint study as to the utility or usefulness of the joint study?

A Well, I think, again, Judge, in candor, there was some disappointment that out of the joint study there hadn't evolved a pattern that we could both propose, but I think they recognized that it had given us an opportunity in a relatively calm atmosphere, without the atmosphere of advocating anything, to explore the whole problem, and they were appreciative, as were we, to have the benefit of their thinking in such candor as came out in that study.

Q And after that, sir, did there come a time when a proposal in writing was received from the Association to open the new negotiations?

A Yes, that was in August of last year.

(Defendant Feeney et al. Exhibit P marked for identification.)

Q Mr. Gaherin, I hand you what has been marked



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2 Defendant Feeney et al. Exhibit P for identification, and  
3 I ask you whether that is the document that you referred to?

4 A Yes, it is the one.

5 Q Thank you. Keep that, if you will. And is that  
6 a document entitled Proposed Amendments and Additions to  
7 Basic Agreement of February 19, 1968, to which is attached  
8 a covering letter from Mr. Miller to you, dated August 29,  
9 1969.

10 A It is.

11 MR. HADDEN: I offer the exhibit in evidence, your  
12 Honor.

13 MR. TOPKIS: A moment, your Honor, please.

14 THE COURT: Surely.

15 (Pause.)

16 MR. TOPKIS: No objection, your Honor.

17 (Defendant Feeney et al. Exhibit P received in  
18 evidence.)

19 Q Was there in that paper, Mr. Gaherin, Exhibit P,  
20 any provisions with reference to the reserve clause?

21 A Yes.

22 Q And where do you find it, sir?

23 A You will find it beginning at the bottom of page 1 and  
24 following over on page 2.

25 MR. HADDEN: Your Honor, may I read this into the

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2 record?

3 THE COURT: Please do.

4 MR. HADDEN: The caption of that section is Reserve  
5 Clause and Related Rules, and then there is a paragraph:

6 "Replace with alternative provisions. Such pro-  
7 visions shall be:" and there is an itemized list.

8 "1. Legal and constitutional;

9 "2. Reasonably required to maintain the integrity  
10 of the game; and

11 "3. Responsive to the legitimate interests of the  
12 club owners with respect to their investment and equity in  
13 baseball franchises and at the same time shall provide the  
14 players with the normal rights of other people in a competitive  
15 free enterprise economy."

16 Q Following the receipt of this document, Mr. Gahein,  
17 did the parties undertake negotiations?

18 A Yes, they did.

19 Q Were there other proposals contained in the document  
20 covering subjects other than the reserve system?

21 A Yes, there were.

22 Q And would it be fair to say that the proposals  
23 embraced all of the subjects which you have testified to  
24 earlier and which became changes in the new basic agreement?

25 A Yes, Mr. Hadden.

1 Q Would it be a fair statement, Mr. Gaherin, that  
2 adjustments were made in the new basic agreement in sub-  
3 stantially every one of the itemized lists in this Exhibit  
4 P during the course of the negotiations?  
5

6 A Yes.

t5/2 7 Q Will you describe what negotiations took place with  
8 reference to the reserve system?

9 A Well, the reserve system, as part of these negoti-  
10 ations, was discussed intermittently during the negotiations,  
11 and we at all times pointed out that the proposal which you  
12 have read into the record was not specific. It was some-  
13 thing you could not bite into, come to grips with, and we  
14 continued to urge that in order that this could be given the  
15 consideration that it merits, that if the Association was  
16 going to pursue it, diagram the changes you want, let's look  
17 at them, let's be able to evaluate them in their totality.

18 Q And did the Association do that?

19 A Not for quite a while. Eventually the Association -  
20 may I refresh my memory, your Honor?

21 THE COURT: Surely.

22 A Finally the Association came forward with a pro-  
23 posal --

24 MR. HADDEN: Would you hold it a minute, Mr. Gaherin.

25 May I have a moment, your Honor?



THE COURT: Yes, by all means.

(Pause.)

MR. HADDEN: Would you read the witness' answer, Mr. Court Reporter? Judge, may I have it read?

THE COURT: Of course. Would you, please, Mr. Court Reporter.

(Answer read.)

Q Continue your answer, Mr. Gaherin.

A -- which did contain specific proposals, very drastic revisions. Basically they proposed a free agency status for any, as I recall it -- I don't have the paper in front of me -- free agent status for any player after three years. It provided for a reduction in the number of players that could be reserved by the club. It provided for salary arbitration. It provided for a bar against transfer of contracts without the consent of the person being transferred. It provided for a change in the definition of what is known as the veterans status.

I think that that is a fair characterization of what was in there.

MR. TOPKIS: If your Honor please, on the voir dire, might I inquire whether this proposal was in writing, and if so, might the writing be produced?

THE COURT: That is a suggestion to counsel.

MR. TOPKIS: Yes.

THE COURT: Yes.

Q The proposal was in writing, was it not?

A Yes, it was.

MR. HADDEN: I thought we had copies of it available, your Honor, but I seem to have mislaid it. I wonder if we might have permission to obtain a copy of it and introduce it into evidence whenever I can lay my hand on one.

THE COURT: Yes, indeed.

You are now handing a paper to the witness which will be considered as Exhibit Q for identification until the clerk comes back to so endorse it.

Q I hand you a document which will be marked for identification Exhibit Q, Mr. Gaherin, and ask you if you are familiar with that paper.

A Yes. This intervened between.

Q Do you have a copy of that among the papers you have here on the witness stand?

A I think I do, yes.

Q Do you have it before you?

A Yes.

Q What is that paper, sir?

A It is a paper which I have noted was received on June 27, 1969, on the stationery of the Major League Base-

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ball Players Association, and it is headed Joint Study of the Reserve Clause.

Q Mr. Gaherin, in what connection was that received by the Player Relations Committee?

A It was received as part of the material that was introduced into the study by the Association's representatives.

(Defendant Feeny et al. Exhibit Q marked for identification.)

MR. HADDEN: I would like to offer the exhibit in evidence. I assume Mr. Topkis is reviewing it to see what his reaction is.

MR. TOPKIS: One moment, if I may.

(Pause.)

MR. TOPKIS: Just so the record may be clear, your Honor, may I inquire on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION BY MR. TOPKIS:

Q Mr. Gaherin, I gather this was a document that was supplied to you during the joint study, is that right, Exhibit Q for identification?

A Yes, that's correct.

Q This is not the document containing proposals?

A It is not.

MR. TOPKIS: I have no objection to it, your Honor.



THE COURT: It is received. Would you be good enough to mark it in evidence, Mr. Clerk?

THE CLERK: Yes, your Honor.

(Defendant Feeney et al. Exhibit Q received in evidence.)

BY MR. HADDEN:

Q Mr. Gaherin, what was the purpose for which that paper was sent to the Player Relations Committee?

THE COURT: Q in evidence.

Q Q in evidence, yes.

MR. TOPKIS: If your Honor please, I would suggest that that question be better addressed to the man who sent it rather than Mr. Gaherin.

THE COURT: Sustained.

Q What did you understand the purpose was that this paper was to serve, Mr. Witness?

MR. TOPKIS: I object to that, too, your Honor. There is no question, it was produced in the course of this joint study, furnished to the other side by the Players Association.

THE COURT: I will allow it. Overruled.

What is your answer?

A Well, the purpose of the paper was again to, in general terms, highlight the problems of the reserve system as the Players Association representatives saw them.

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Q Mr. Gaherin, I will ask you to turn to the second page of that document and I will ask you whether, in the material that appears in the first three paragraphs on Page 2, there was not a request made by or it was not pointed out by the Players Association that there was a lack of bilateral obligation in the contract, Uniform Player Contract?

A Yes.

MR. TOPKIS: Objection, your Honor. The document is in evidence and, of course, speaks for itself.

THE COURT: Yes.

MR. HADDEN: Your Honor, I can read these three paragraphs and it will take 15 minutes or I can shorten it by trying to summarize it.

MR. TOPKIS: I have no objection to Mr. Hadden summarizing it.

THE COURT: All right.

Q And what is the fact, Mr. Gaherin, as to whether changes were negotiated with the Association in the recently concluded negotiations with reference to that matter?

A The imbalance?

Q Yes.

MR. TOPKIS: Objection, your Honor. If the new document, the new basic agreement has provisions dealing

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with this subject, then it is in evidence and it speaks for itself.

MR. HADDEN: May I direct the witness' attention to a specific sentence in the paper, your Honor?

THE COURT: Surely.

Q I will ask you to look, Mr. Gaherin, at page 2, the first full paragraph, about two-thirds of the way down there is a sentence that starts: "If the contract is terminated in the off. season and prior to the training season, the club has no financial obligation. If terminated during the training season, the club's only financial obligation is to provide appropriate traveling expenses to the player's home. If terminated during the championship season, the obligation of the club is limited to 30 days' pay and appropriate traveling expenses to the player's home."

That is the end of the quotation.

Have changes been made in the course of the recently concluded negotiations on the subject matter treated there?

A Yes, sir.

Q I think you previously described them.

A Yes, I did.

Q I will ask you to turn to the top of Page 4, Mr. Gaherin, of Exhibit Q and I will read into the record Paragraph 2 at the top of the page:



"Player management salary discussions are limited by management fiat to, on the one hand, a player, most often relatively young and inexperienced in business affairs and contract negotiations, and on the other hand, an experienced club official with considerable background in business matters and usually a veteran of many hundreds of contract negotiations."

Was a change negotiated in the basic agreement in response to that suggestion?

A Yes, sir.

Q And what was that change?

A That a player may be accompanied by a representative of his own choosing if he so desires when he is negotiating his individual contract with the club.

Q Thank you. I will ask you to turn to the bottom of Page 5 --

MR. TOPKIS: If your Honor please, I see no reason for us to continue this summation. The two documents are in evidence. If Mr. Hadden wants to call to your Honor's attention the points at which the various provisions in this document, Exhibit Q, were acted on in the second basic agreement, I don't object, but what is the point in dragging it out of the witness?

THE COURT: Well, I --

1  
2 MR. HADDEN: Your Honor, if Mr. Topkis finds it  
3 painful, I will be glad to pass to another subject.

4 MR. TOPKIS: I am not painful. I am just bored.

5 THE COURT: It looks as though I am not called  
6 upon to say anything in the light of this exchange.

7 Q Returning now, Mr. Gaherin, to the subject of the  
8 negotiations this past fall, what followed the receipt of  
9 the paper which you have described, and which we will have a  
10 copy of shortly, in the course of the negotiations?

11 A Well, let me try and put this in the context in  
12 which it occurred. The paper to which I referred came on  
13 the table in our urging for specifics before the end of the  
14 year and before the winter meeting of the clubs.

Q When were those held?

A In December.

Q Of 1969?

A 1969. At those meetings, your Honor, we reported the status with respect to the status of the negotiations and insofar as this subject was concerned explained the --

MR. TOPKIS: Objection, your Honor, at this point. I want to interrupt in order to protect the record. We weren't at this meeting and the testimony is, I think, hearsay.

Q Mr. Gaherin, perhaps we can shortcut that. Will you tell the Court, please, what transpired across the bargaining table?

A Across the bargaining table, when we resumed our meetings in December after the receipt and consideration of this proposal, we told the representatives of the Association we had given very careful and very thorough consideration to this, had conferred with our principal, and we were indeed shocked by the extent of these proposals and the obvious harm that the adoption of them would do to the game of baseball.

Q What transpired after that?

A Well, the negotiations rocked along then into January.



1 Q Were a large number of other subjects also  
2 under discussion?  
3

4 A And if I may, there is something that really,  
5 I think, needs to be said, if I am permitted to say it.

6 Q Go ahead.

7 A We had an extensive proposal before us. It  
8 was in the four corners of the compass. It dealt with  
9 a request for a reduction in the number of games that  
10 would be played in the season. There was a pressing need  
11 to get that resolved because while we were negotiating  
12 the season was nevertheless getting a day closer each day  
13 that we met. We had to find some answer to that. We urged  
14 that as the first order of business. We weren't success-  
15 ful. We were dealing with a package, Mr. Miller said,  
16 all things lining up, and what you do in one area plus what  
17 they would be willing to do in another.

18 We had the problem of the minimum salary. As  
19 I explained, Judge, previously we had this terrible probl-m  
20 of the grievance procedure that was pressing us.

21 MR. TOPKIS: If your Honor please, may the  
22 witness be directed to avoid this editorializing?

23 THE COURT: Yes. If you can, avoid giving  
24 us your reaction to it or summing up, "terrible," words  
25 like that.

A We had the problem of the grievance procedure,

1 we had the question of reducing the maximum permissible  
2 cut allowed in the salaries, and all these things were  
3 all on the table at one time, and they were all part of  
4 the bargaining. And finally, we did sort of get to  
5 a point where the question of the number of games, if every-  
6 thing else fell into place, going to be played was put to  
7 one side and then we moved to the next problem, which is  
8 the grievance procedure and this matter we are talking about.

9  
10 THE COURT: By that you mean?

11 THE WITNESS: The reserve system.

12 A And then we were now approximately in mid-  
13 January.

14 Q Let me interrupt you a minute there, Mr.  
15 Gaherin. When did you as a representative of the clubs first  
16 learn that there would be or might be a suit brought by  
17 Mr. Flood?

18 A Well, I don't know the precise date the execu-  
19 tive board met in Puerto Rico. It was approximately at  
20 the same time that the winter meetings were held by the  
21 leagues.

22 And following that meeting we became aware of  
23 the fact that Mr. Flood had appeared before the board  
24 and discussed the matter with them and subsequently  
25 Mr. Miller informed us that there was a possibility there

1 was going to be a lawsuit. And then the most positive  
2 recollection of it is the fact I was served with a sub-  
3 poena in my office during the time that we were engaged  
4 in negotiating or attempting to negotiate something on the  
5 reserve clause and all the other matters that were involved.  
6

7 Q That is, you were served with a summons, I  
8 take it?

9 A A summons. There was a lot of legal paper  
10 there.

11 Q You were served with a summons which designated  
12 you as an agent for the major 24 major league clubs, is  
13 that correct?

14 A Yes, sir.

15 Q And that was, as you say, in the middle of  
16 January?

17 A Yes, and right in the midst of a collective  
18 bargaining session.

19 MR. KRAMER: Your Honor, before --

20 THE COURT: The Court recognizes Mr. Kramer?

21 MR. KRAMER: Thank you. Before we go too far,  
22 I would like to have the next to the last answer read  
23 back, if your Honor would permit.  
24

25 THE COURT: Certainly. Would you kindly do



1  
2 that?

3 MR. KRAMER: I may have been mistaken. It is  
4 a long one.

5 (Record read.)

6 MR. KRAMER: It is the word "board" in that  
7 answer that is meaningless to me.

8 THE WITNESS: The executive board of the  
9 Players Association.

10 MR. HADDEN: Do we have a pending question?

11 THE COURT: Would you try to locate it, Mr. Court  
12 Reporter, please.

13 THE REPORTER: There is no unanswered question.

14 Q Did the institution of this litigation have any  
15 effect on the position of the clubs with reference to the  
16 negotiations on the reserve clause as those positions  
17 were expressed across the bargaining table?

18 MR. TOPKIS: Your Honor, I rise reluctantly,  
19 but Mr. Hadden modified his question as he saw me start  
20 to rise. I would have no objection to the witness being  
21 asked: Did you make a statement subsequent to being served  
22 with this summons in subsequent negotiations with the  
23 players' representatives.

24 MR. HADDEN: I submit the question as phrased  
25 is entirely proper, your Honor.

THE COURT: Objection overruled. Listen to the question, Mr. Gaherin.

(Question read.)

A Yes.

Q What was the position as expressed across the bargaining table?

A We were -- we advised the Association that we were confronted by two efforts of theirs which had diametrically opposite goals. We were bargaining in collective bargaining on the assumption that the goal of the Association was to seek to amend the existing reserve system. We were confronted in Mr. Flood's action, joint action, that by prayer to destroy it. This made a very difficult atmosphere in which to try to bargain. You were in the position of trying to ride two horses galloping in opposite directions.

Q So what position did the clubs express with relation to the reserve system and what was the response of the Players Association?

A Well, we said if the Association had chosen to pursue the question of whether the clause was in effect a legal situation, then let's find that out and once that is disposed of resume from wherever that puts us.

1  
2 Q Was any understanding reached with the Associa-  
3 tion concerning the reserve clause?

4 A Yes, there was. We had considerable discussion.  
5 The position of the Association was basically, and I  
6 think so stated by advice of counsel, that if they included  
7 the reserve clause, amendments to the reserve clause,  
8 in the framework of this agreement we were attempting to  
9 put together, they were going to perhaps do irreparable  
10 damage to this action that is before your Honor.

11 We proposed originally that we'd wait until the  
12 end of the contract term before this was resumed. We finally  
13 reached an agreement which is part of --

14 (Mr. Kramer hands document to witness.)

15 A That is Feeney Exhibit N.

16 Q What portion of Exhibit N was the agreement  
17 expressed in?

18 A It is in Attachment B.

19 MR. HADDEN: Your Honor, may I read a portion  
20 of that into the record?

21 THE COURT: Thank you.

22 MR. HADDEN: Attachment B to the understanding  
23 is this: It is titled "The Reserve System."

24 "Regardless of any provision herein to the  
25 contrary, this agreement does not deal with the reserve



1 system. The parties have differing views as to the  
2 legality and as to the merits of such system as presently  
3 constituted. This agreement shall in no way prejudice  
4 the position or the legal rights of the parties or of any  
5 play regarding the reserve system.  
6

7 "It is agreed that until the final and unappeal-  
8 able adjudication (voluntary discontinuance) of Flood  
9 versus Kuhn, et al, now pending in the Federal District  
10 Court of the Southern District of New York, neither of the  
11 parties will resort to any form of concerted action with  
12 respect to the issue of reserve system and there shall be  
13 no obligation to negotiate with respect to the reserve  
14 system. Upon the final and unappealable adjudication (or  
15 voluntary discontinuance) of Flood versus Kuhn, et al,  
16 any party shall have the right to reopen negotiation on the  
17 issue of the reserve system as follows," and that is the  
18 end of the quotation, your Honor. The provisions that  
19 follow are a timetable for negotiations.

20 THE COURT: Yes, sir.

21 Q What do you understand, Mr. Gaherin, to be the  
22 effect of that provision which I have just read?

23 A It puts the matter in limbo until the action  
24 here is disposed of in some form.

25 Q In the course of the negotiations, have the

2 clubs made any statements to the Players Association  
3 explanatory of their reasons for being willing to adopt  
4 that procedure?

5 A Yes.

6 Q What did they say?

7 A We said that we think the only proper forum for  
8 dealing with this situation is in the give and take of  
9 collective bargaining, but since we are involved here let's  
10 have this overwith and then we'll be ready and prepared  
11 to go on across the table.

12 Q In your judgment as a labor negotiator of long  
13 experience, Mr. Gaherin, is the collective bargaining  
14 process well-suited to the resolution of an issue of this  
15 sort?

16 MR. TOPKIS: Objection, your Honor.

17 THE COURT: Would you like to be heard on that?

18 MR. HADDEN: I think the question is entirely  
19 proper. I qualified the witness as an expert, your Honor.

20 THE COURT: I agree with you. Objection  
21 overruled.

22 A I think --

23 THE WITNESS: May I have the question again,  
24 sir?

25 THE COURT: Yes, certainly.

(Question read.)

A Yes, sir.

Q Will you tell the Court why?

A Well, your Honor, collective bargaining is not a precise science. You deal in the areas of the shadow, the give and take of compromise, each side motivated by whatever the pressures are. Each of us know more intimately than anybody else can ever know what this problem is, what all the ramifications and complications are of the things we suggest to one another, and we have the -- I don't know if expertise is the proper term, but we certainly have all of the ability in the two sides to sit down and in the free arena of collective bargaining resolve a matter of this nature.

And I may say parenthetically, if I may, Judge, we are quite willing to do so.

Q Perhaps it has been covered, but if it has not, Mr. Gaherin, do the clubs recognize the reserve system satisfactory as a mandatory subject of bargaining?

A Oh, yes.

THE COURT: Mr. Hadden, possibly unbeknownst to you, your voice must be raised a little bit. There are some young ladies and gentlemen from the Chappaqua high school who have come here and I am sure they are disappointed



1 that neither the witness, you, nor the Judge are Curtis  
2 Flood or Hank Greenberg, so we have to kind of make it up  
3 to them a little bit.  
4

5 Would you be good enough to raise your voice?

6 MR. HADDEN: I certainly shall, your Honor.  
7 If we can even brighten their day as much as they brighten  
8 ours, I would be happy.

9 Q Again, Mr. Gaherin, based on your years of  
10 experience in labor negotiations, is the collective bargaining  
11 mechanism or machinery which now exists in major league  
12 baseball a reasonably effective one?

13 A Yes.

14 Q Has the Association, in the course of the  
15 bargaining of the new basic agreement, accused the management  
16 representatives of not bargaining in good faith on the reserve  
17 system?

18 A They have.

19 Q And what has been the rejoinder?

20 A That we have bargained sincerely in good faith  
21 and in the context of collective bargaining the whole  
22 picture. If I may describe it, you put piece by piece  
23 together and you weigh the value of one against another  
24 and finally you get the totality of an agreement, and we  
25 have bargained in good faith. Simply because a party

1 says, "I won't give you this, but I am prepared to do  
2 something here and here and here," does not mean it is  
3 not bargaining in good faith. It is collective bargaining.  
4 It is the balancing of one thing against another, one  
5 consideration against the other. Repeatedly in these  
6 negotiations we have been told: "What you do here is going  
7 to influence what we are willing to do there."

8  
9 It is understandable, agreeable, and we have  
10 bargained in good faith.

11 Q Is it a fact, Mr. Gaherin, that in the recently  
12 concluded negotiations changes have been made in various  
13 aspects of the reserve system?

14 A Yes, sir.

15 MR. HADDEN: Your Honor, may I have a moment?

16 THE COURT: Surely.

17 (Pause.)

18 MR. HADDEN: No further questions, your Honor.

19 THE COURT: Would you mind, Mr. Hadden, a  
20 suggestion? You may adopt it or reject it, as you deem  
21 best. I would like to get this witness's reaction as  
22 an expert in the field as to whether or not the challenges  
23 and the difficulties and the give and take and all the  
24 elements that come into existence in the course of such  
25 negotiations are heavier, more insurmountable than those

1 he has experienced in the course of his career when he  
2 was confronted with difficulties of a similar nature.

3  
4 MR. HADDEN: I would be glad to have him answer  
5 that question, your Honor.

6 Q Would you do so, Mr. Gaherin? Do you understand  
7 what the Judge asked?

8 A I am not sure I do, Judge.

9 THE COURT: I hope you do, Mr. Hadden.

10 Q I think what his Honor has in mind, and please  
11 correct me if I am wrong, do you feel qualified to express  
12 an opinion as to whether, having in mind your long experience  
13 with other industries, the types of problems which are con-  
14 fronting the major league clubs in the labor area are  
15 tougher ones or easier ones than has been the general course  
16 of your experience?

17 A Well, they are probably more difficult at this  
18 point because the industry is rather new to the process  
19 of collective bargaining. We have a ripening relationship  
20 with the Association which will improve our position.  
21 So I think at the moment probably, Judge, we have a more  
22 difficult situation than most.

23 THE COURT: Is it your testimony that neverthe-  
24 less as you envision it, the possibilities are quite strong  
25 that it might be resolved?



1 THE WITNESS: Yes. I think all problems  
2 are resolvable but I can't propose the solutions. I think  
3 the parties, in my judgment, are always the best judges  
4 of what they should live with, and how they reach that  
5 understanding is quite another matter.  
6

7 THE COURT: You bear in mind, do you, the well-  
8 pronounced experience in the law that a contract is no  
9 stronger than the good faith of the parties thereto; you  
10 recognize that, do you?

11 THE WITNESS: Yes, I do, Judge.

12 THE COURT: And you think that is indispensable,  
13 I take it, that quality, in connection with this bargaining  
14 process that has been going on?

15 THE WITNESS: Yes.

16 THE COURT: All right.

17 BY MR. HADDEN:

18 Q Have the clubs, in your view, negotiated in  
19 good faith?

20 A Yes, sir.

21 Q Is it your view, Mr. Gaherin, that provisions --  
22 that changes in the reserve system, if any are to be  
23 adopted, can better be fashioned in the give and take of  
24 collective bargaining than in the somewhat different arena  
25 we are presently in?

1  
2 A Yes, sir.

3 MR. HADDEN: Thank you.

4 THE COURT: I am not commenting on the answers,  
5 but that is the type of testimony I was anxious to obtain.

6 All right.

7 Mr. Kramer, would you like to question the  
8 witness?

9 MR. KRAMER: While the witness is on the stand,  
10 might I read a paragraph from Defendant Feeney Exhibit  
11 N which relates to the role or lack of a role of the  
12 Commissioner under the new grievance procedure?

13 I should also like to point out that the griev-  
14 ance procedure itself is known as Attachment C to Defend-  
15 ant Feeney Exhibit N. I now read a short paragraph  
16 on Page 5 from Defendant Feeney Exhibit N, which is a  
17 portion of the clubs' amended proposal for complete  
18 disposition of all outstanding issues dated May 1, 1970.

19 "Grievance procedure. Refer all grievances  
20 to three-man arbitration panel with the chairman un-  
21 connected with baseball who is acceptable to both sides.  
22 Provide that matters involving preservation of the integrity  
23 of or maintenance of public confidence in the game of  
24 baseball may be decided by the Commissioner. Excluded  
25 from the determination by either the panel or the Commissioner

cross

would be certain matters determinable only by collective bargaining or legal action.

"See Attachment C for specific language."

That was all, your Honor.

THE COURT: Mr. Topkis.

MR. TOPKIS: Yes, your Honor. Thank you.

CROSS-EXAMINATION BY MR. TOPKIS:

Q Mr. Gaherin, you have read the complaint in this action?

A Yes, I think I did.

Q You are aware, then, that in the complaint the plaintiff, Curt Flood, charges organized baseball with having placed him in a condition of slavery in violation of the Thirteenth Amendment to the Constitution of the United States?

A I have heard the allegation.

Q And your response to it is that you want to negotiate in collective bargaining the terms and conditions of his slavery, is that right?

A No.

Q Has organized baseball at any time ever put forward orally or in writing or in any other means of human communication a proposal calling for the slightest modification in that aspect of the reserve system which