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Kansas City Royals Baseball Corp. v. Major League Baseball Players Association, 532 F.2d 615 (8th Cir. 1976)

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CASE COMMENTS

Labor Law—PROFESSIONAL BASEBALL NOT EXEMPT FROM FEDERAL LABOR LAWS—*Kansas City Royals Baseball Corp. v. Major League Baseball Players Association*, 532 F.2d 615 (8th Cir. 1976).

On March 10, 1975, the Los Angeles Dodgers and the Montreal Expos renewed the contracts of John A. Messersmith and David A. McNally for one year.[1] Messersmith and McNally performed for their respective clubs in 1975. After the season concluded, both players declared themselves free agents, claiming they no longer had contractual ties to their respective clubs and were free to negotiate with any of the twenty-four baseball clubs with regard to their services in 1976. The other clubs maintained, however, that under the "reserve system,"[2] the original owners were still entitled to the players' services, and refused to negotiate with Messersmith and McNally. The Major League Baseball Players Association (Players Association) filed grievances during the second week of October on behalf of Messersmith and McNally, charging that the American and National Leagues of Professional Baseball (Club Owners) had conspired to deny them their rights as free agents.[3] The Players Association sought to resolve the grievances under the grievance and arbitration provisions in article X of the 1973 Basic Agreement.[4]

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1. The one-year renewal was accomplished under the provisions of para. 10(a) of the Uniform Player's Contract, which provides, in relevant part, as follows:

> ". . . If prior to the March 1 next succeeding said December 20, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the player . . . to renew this contract *for the period of one year* on the same terms . . ."

Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 409 F. Supp. 233, 235–36 n.1 (W.D. Mo. 1976) (emphasis added by the court). Paragraph 1 of the Player's Contract defines "year" as "including the Club's training season, the Club's exhibition games, the Club's playing season, the League Championship Series and the World Series (or any other official series in which the Club may participate and in any receipts of which the Player may be entitled to share)." *Id.*

2. The reserve system, in effect since 1887, seeks to preserve uniformity of contract for all players and ongoing contractual control of a player by his signing club. Under the reserve clause, a club can unilaterally renew a player's contract, subject to a stated salary minimum, or assign the player's contract to another club. In the past, a player's only recourse against the system has been to retire from the game. Flood v. Kuhn, 407 U.S. 258, 259–61 (1972). The clubs maintain that such a system is essential to the ongoing health of professional baseball, free from "player raiding" and domination of the leagues by the richer clubs. This concern has been embodied in rule 3 of the Major League Rules. *Id.* For a broader discussion of the origin and operation of the reserve system, see Flood v. Kuhn, 316 F. Supp. 271, 273–76 (S.D.N.Y. 1970), *aff'd*, 443 F.2d 264 (2d Cir. 1971), *aff'd*, 407 U.S. 258 (1972).

3. 409 F. Supp. at 235–36 & n.2.

4. Article X of the 1973 Basic Agreement (between the American and National

On October 28, 1975, the Kansas City Royals Baseball Corporation (joined shortly thereafter by the remaining twenty-three major league clubs as plaintiff-intervenors) filed a declaratory judgment action in the United States District Court for the Western District of Missouri.[5] They asserted that the dispute was not subject to the grievance and arbitration provisions of article X because article XV specifically prohibited arbitration of any aspect of the "reserve system."[6] The Players Association filed a counterclaim invoking independent jurisdiction under section 301 of the Labor Management Relations Act, as amended,[7] maintaining that the grievances at issue had to be resolved

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Leagues of Professional Baseball and the Major League Baseball Players Association) contains grievance and arbitration provisions. A summary of article X and the negotiations leading to the 1973 Basic Agreement can be found in Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615, 618, 623–29 (8th Cir. 1976).

5. 409 F. Supp. at 235.

6. Article XV of the 1973 Basic Agreement provides:

> Except as adjusted or modified hereby, this Agreement does not deal with the reserve system. The Parties have differing views as to the legality and as to the merits of such system as presently constituted. This Agreement shall in no way prejudice the position or legal rights of the Parties or of any Player regarding the reserve system.
>
> During the term of this Agreement, neither of the Parties will resort to any form of concerted action with respect to the issue of the reserve system, and there shall be no obligation to negotiate with respect to the reserve system.

409 F. Supp. at 241. Article X of the 1973 Basic Agreement provides that a grievance "which involves the interpretation of, or compliance with, the provisions of any agreement between the Association and the Clubs or any of them or any agreement between a Player and a Club . . . [shall be submitted to arbitration and that] the decision of the Arbitration Panel shall constitute full and complete disposition of the Grievance appealed to it."

409 F. Supp. at 254.

The issue is at what point arbitration of a grievance concerning "compliance with . . . any agreement between a player and his club" (article X) becomes in fact negotiation "with respect to the reserve system" (article XV). McNally and Messersmith had attempted to "play out their option," as it is called in the trade. Having played one year longer than they preferred, on contracts unilaterally executed by the clubs under para. 10(a) of the Uniform Player's Contract, *supra* note 1, the players concluded that they had thereby escaped the reach of the reserve clause. That such a possibility had been in the contemplation of all parties concerned seems evident from the negotiation of the 1973 Agreement. Marvin Miller, representative of the Players Association, testified that he objected to one proposal for salary arbitration on the basis that it would "close the last vestige of rights, the right of the player to become a free agent after a one-year renewal." Kansas City Royals v. Major League Baseball Players Ass'n, 532 F.2d 615, 627 (8th Cir. 1976). Contemporaneous notes of the Club Owners' representative, Richard Moss, corroborate Miller's testimony. *Id.* McNally and Messersmith were the first to carry through on an attempt to exercise the option under the 1973 Agreement, resulting in the instant case. 532 F.2d at 629.

7. 29 U.S.C. § 185(a) (1970), which provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court

in arbitration pursuant to the collective bargaining agreement.[8]

In a pretrial conference on November 6, the parties agreed to a stipulation which provided that they would proceed with arbitration, allowing the arbitration panel to determine the question of its own jurisdiction and—if jurisdiction was found—to decide the merits of the grievance. The stipulation provided for review by the district court of the jurisdictional question, *viz.* whether the players' grievances were within the scope of article X of the Basic Agreement.[9] The arbitration panel found that it had jurisdiction and ruled in favor of Messersmith and McNally, granting them free-agent status. As provided by the pretrial stipulation, the Club Owners petitioned the district court for reversal on the grounds that the arbitration panel had exceeded its jurisdiction.

Upon reviewing the record, the court held that, "despite the claimed effect of the provisions of Article XV of the Basic Agreement,"[10] the Messersmith and McNally grievances were within the scope of the arbitration and grievance provisions of article X and, accordingly, were within the jurisdiction of the arbitration panel.[11] The court noted that notwithstanding baseball's continued exemption from antitrust laws,[12] it is nonetheless subject to other federal laws applicable to businesses affecting commerce.[13] Established federal labor law principles require that in the absence of an *express* exclusionary provision, the party seeking to resist arbitration must establish "by forceful evidence" a purpose to exclude the claim.[14] The presence in article X of other specific exclusionary clauses made notable the absence of any clause expressly relevant to the McNally-Messersmith grievance.[15] In order to escape arbitration, it was in-

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of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

See Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957), which construes § 185(a) as a substantive rather than merely jurisdictional provision. Under this interpretation, the substantive law to be applied is federal, which requires the courts to fashion a federal labor law from the policy expressed in the federal labor statutes.

8. 409 F. Supp. at 235.

9. *Id.* at 236.

10. *Id.* at 260–61.

11. *Id.* at 261.

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

13. 409 F. Supp. at 245.

14. *Id.* at 248–49. "[I]n the absence of any express provision excluding a particular grievance from arbitration, the Supreme Court requires that a party to a collective bargaining agreement who seeks to resist arbitration [is] under a duty to establish a purpose to exclude the claim by the most forceful evidence . . . ." *Id.*

15. *Id.* at 256. "For it is beyond dispute that the parties knew precisely how to exclude grievances which could arise in regard to a particular paragraph of the Uniform Player's Contract."

cumbent upon the Club Owners to present strong evidence in the collective bargaining agreement of a purpose to exclude these claims, and, in the opinion of the court, no such evidence was forthcoming. Thus, the Club Owners having conceded that the grievances were within the arbitration provisions of article X if article XV were found not to exclude them,[16] an order was entered by the court to enforce the award of the arbitration panel, subject to a ten-day delay to allow for an appeal by the Club Owners.[17]

The Club Owners appealed to the United States Court of Appeals for the Eighth Circuit.[18] Recognizing the ambiguity created by article XV, the Eighth Circuit examined the entire record, particularly the history of the collective bargaining agreement, to ascertain whether the parties had intended article XV to exclude such grievances from the scope of article X.[19] But after reviewing the evidence (without probing the merits of the arbitration panel's award), this court likewise could not say the record evinced "the most forceful evidence of a purpose to exclude the grievances here involved from arbitration."[20] The court noted that the 1968 collective bargaining agreement permitted arbitration of grievances pertaining to the reserve system and that from 1970 to 1973 several were submitted without objection by the Club Owners.[21] This evidence, coupled with the "ambiguous" construction of the present agreement,[22] rendered the Club Owners' contention that article XV was exclusionary insufficient to warrant reversal. Accordingly, the Eighth Circuit affirmed the district court decision.[23]

The full impact of this decision can be appreciated only in light of the history of professional baseball. The first organized baseball game was played on June 19, 1846, when the Knickerbockers suffered a 23 to 1 defeat by the New York Nine on Hoboken's Elysian Field.[24] Since that time, the sport has developed into an intricately organized structure and the profession into a multimillion dollar business.[25] After some early years of "interleague warfare with cut-rate admission

16. *Id.* at 249.
17. *Id.* at 260, 270–71.
18. Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n, 532 F.2d 615, 617 (8th Cir. 1976).
19. *Id.* at 623–29.
20. *Id.* at 629.
21. *Id.* at 629–30.
22. *Id.* at 628.
23. *Id.* at 632.
24. Flood v. Kuhn, 407 U.S. 258, 260–61 (1972).
25. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1972, at 753 (93rd ed. 1972).

prices and player raiding,"[26] the "reserve clause" was developed for the purpose of insuring perpetual player control by the Club Owners.[27] The reserve system is maintained through a combination of provisions contained in the Professional Baseball Rules and the Uniform Players Contract,[28] which binds a player for the remainder of his playing career to the club with which he initially signs; yet the club has the right to assign his contract or to renew the contract unilaterally on specified terms.[29]

The peonage resulting from this one-sided and inherently controversial arrangement has been challenged in the courts for more than half a century as violative of federal antitrust principles. The first test came in 1922 in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*.[30] In that case, Justice Holmes found that although professional baseball was a business, it was purely a state affair and the interstate traveling involved was merely incidental to the business.[31] The Supreme Court ruled accordingly that baseball was not subject to federal antitrust laws. Thirty years later in *Toolson v. New York Yankees, Inc.*,[32] the Supreme Court noted baseball's continued reliance on the antitrust exemption and Congress' concomitant failure to remedy the situation.[33] The Court upheld the exemption under the rule of stare decisis. The courts have refused, however, to extend this protection from federal antitrust laws to other professional sports;[34] and in *Radovich v. National*

26. 407 U.S. at 261.

27. The reserve clause was initially placed in baseball contracts in 1887. *See generally* Metropolitan Exhibition Co. v. Ewing, 42 F. 198, 202–04 (C.C.S.D.N.Y. 1890); Comment, *Monopsony in Manpower: Organized Baseball Meets the Antitrust Laws*, 62 YALE L.J. 576, 588 (1953).

28. Flood v. Kuhn, 316 F. Supp. 271, 272 (S.D.N.Y. 1970), *aff'd*, 443 F.2d 264 (2d Cir. 1971), *aff'd*, 407 U.S. 258 (1972). The derivation of the reserve clause is outlined in *Flood*, 316 F. Supp. at 273–76. *See* 2 H. SEYMOUR, BASEBALL 420 (1971); Comment, *supra* note 27, at 585–94.

29. *See* note 1 *supra*.

30. 259 U.S. 200 (1922).

31. *Id.* at 208–09.

32. 346 U.S. 356 (1953).

33. *Id.* at 357.

34. Radovich v. National Football League, 352 U.S. 445 (1957); Chuy v. Philadelphia Eagles, 407 F. Supp. 717 (E.D. Pa. 1976); Mackey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975); Kapp v. National Football League, 390 F. Supp. 73 (N.D. Cal. 1974) (football). Haywood v. National Basketball Ass'n, 401 U.S. 1204 (1971); Robertson v. National Basketball Ass'n, 67 F.R.D. 691 (S.D.N.Y. 1975); Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971) (basketball). San Francisco Seals, Ltd. v. National Hockey League, 379 F. Supp. 966 (C.D. Cal. 1974); Philadelphia World Hockey Club v. Philadelphia Hockey Club, 351 F. Supp. 462 (E.D. Pa. 1972) (hockey). Deesen v. Professional Golfers' Ass'n of America, 358 F.2d 165 (9th Cir. 1966), *cert. denied*, 385 U.S. 846 (1966); Blalock v. Ladies Professional Golf Ass'n,

Football League,[35] the Court suggested that were the question to be considered for the first time, baseball would also be held subject to antitrust laws.[36]

According to the Court in *Flood v. Kuhn*, professional baseball's exemption from the federal antitrust laws is an established aberration in which Congress has acquiesced, an anomaly that is entitled—at this late date—to the benefit of stare decisis.[37] Of equal importance in *Flood* is the Supreme Court's statement that "[p]rofessional baseball is a business . . . engaged in interstate commerce."[38] Although the antitrust door has been virtually closed to athletes seeking to escape the ironclad player reserve clause (unless Congress should intervene), *Flood* opened the door to federal labor law litigation.[39] As stated by the district court in the *Kansas City Royals* opinion, federal labor laws are applicable despite the Supreme Court's anomalous exemption of baseball from federal antitrust laws.[40]

The first of a series of cases in which the Supreme Court sought to fashion a federal substantive labor law was *Textile Workers Union v. Lincoln Mills*.[41] The Court found a congressional policy favoring arbitration embodied in section 301 of the Labor-Management Relations Act.[42] In the famous *Steelworkers* trilogy, decided in 1960, the Court stated that the basic principle of labor law was to ensure maximum utilization of the arbitration process.[43] The Court held in *United Steelworkers v. Warrior & Gulf Navigation Co.*[44] that when a party seeks to compel arbitration in a suit under section 301 of the Labor-Management Relations Act, courts should resolve questions of inter-

359 F. Supp. 1260 (N.D. Ga. 1973) (golf). Heldman v. United States Lawn Tennis Ass'n, 354 F. Supp. 1241 (S.D.N.Y. 1973) (tennis).

35. 352 U.S. 445 (1957).

36. *Id.* at 452.

37. 407 U.S. at 282. *But see* Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897):

> It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.

38. 407 U.S. at 282.

39. One article suggests that the efficacy of federal labor law provisions made available through *Flood* may pull the teeth of the antitrust exemption. Jacobs and Winter, *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage*, 81 YALE L.J. 1 (1971).

40. 409 F. Supp. at 243, 245.

41. 353 U.S. 448 (1957).

42. *Id.* at 453.

43. United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

44. 363 U.S. 574 (1960).

pretation of the arbitration clause by applying a strong presumption in favor of arbitrability.[45] By making the presumption difficult to rebut, the Court guaranteed that in virtually every case in which one party sought arbitration, the dispute would be settled by the arbitrator.

There were several reasons for the strong preference for arbitration over judicial settlement, as emphasized by the Court in the *Steelworkers* triology. First, the Court stated that arbitrators were more competent than courts to interpret collective bargaining agreements and to resolve the unique problems of each labor-management dispute.[46] Second, the Court stressed that the very process of arbitration contributes to the maintenance of industrial peace.[47] Third, the Court pointed out that arbitration was essential to effect the parties' contractual intent to settle disputes through the arbitral process.[48] These principles have remained intact, as evidenced by recent Supreme Court decisions.[49]

The application of federal labor laws to the resolution of the Messersmith and McNally grievances may revolutionize a great national pastime. The *Kansas City Royals* decision marks the eclipse of the

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45. The Court stated:

> The Congress, however, has by § 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. Yet, to be consistent with congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration, the judicial inquiry under § 301 must be strictly confined to the question whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made. An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.
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> . . . In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad. Since any attempt by a court to infer such a purpose necessarily comprehends the merits, the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator.

Id. at 582–83, 584–85 (footnote omitted). *Accord*, Local 4, IBEW v. Radio Thirteen-Eighty, Inc., 469 F.2d 610 (8th Cir. 1972).

46. United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581–82 (1960).

47. United Steelworkers v. American Mfg. Co., 363 U.S. 564, 568 (1960).

48. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960).

49. *See, e.g.*, Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974).

"established aberration,"[50] the exemption of professional baseball from the antitrust laws. It is doubtful that the courts will be confronted with challenges to the legality of perpetual player control clauses, nor will they have to berate Congress for its "positive inaction."[51] The door is open to arbitration governed by the principles of federal labor law. Methods of player control must be resolved by the Club Owners and the Players Association through negotiation. For baseball to continue in its present format, these negotiations must be expeditious and characterized by goodwill. Unfortunately, the past performance of the parties at the bargaining table does not bode well for the future.[52] Should an air of hostility prevail, fanned by the exercise of the parties' "lock out" and "strike" privileges, entire seasons may pass without significant competition. The greatest loss would then be suffered by the fans.

TIMOTHY P. BEAVERS

Local Government—CONCEPT OF IMPACT FEES UPHELD BUT RESTRICTIONS IMPOSED ON SCOPE OF THE FEE AND USE OF FUNDS.—*Contractors & Builders Association v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

For the first time, the Supreme Court of Florida has established the authority of municipalities to impose charges in the nature of impact fees.[1] In May 1972, the City of Dunedin, Florida, enacted ordinances which imposed fees for new water and sewer connections.[2] The charges, supplementary to the actual cost of connection into the water and sewer systems, were collected "to defray the cost of production, distribution, transmission and treatment facilities for water and sewer provided at the expense of the City of Dunedin . . . ."[3] Local contractors and the Con-

50. Flood v. Kuhn, 407 U.S. 258, 282 (1972).

51. *Id.* at 283. Over fifty bills concerning the relationship of baseball to the antitrust laws have been introduced in Congress; none has passed. *Id.* at 281.

52. For example, the Club Owners exercised their power to "lock out" the players from training camps and thus threatened a delay in the 1976 season's schedule. The season began on time and after six months of intense negotiations both parties agreed to a modified form of the reserve system. But the perpetual control issue is still unsettled.

1. Contractors and Builders Ass'n v. City of Dunedin, 329 So. 2d 314 (Fla. 1976).

2. *Id.* at 316–17 nn.1–3.

3. The Dunedin ordinance requires an $800 total charge for sewer and water connections for each dwelling or business unit. 329 So. 2d at 316–17 nn.1 & 2.