FIELDING FAIRNESS: A NEW APPROACH TO MLB SALARY ARBITRATION

Alyssa Rodarte

I. INTRODUCTION

The world of Major League Baseball (MLB) salary arbitration is an uncomfortable reality. The story of Ryan Thompson, a relief pitcher for the Tampa Bay Rays, offers a compelling narrative revealing the complexities and challenges in this process.[1] His recent experience begs the question, why do arbitrators, who are entrusted with making million-dollar decisions, lack essential knowledge of baseball?

On February 18, 2023, Thompson and the Rays had their arbitration hearing.[2] Thompson and his legal team prepared a presentation filled with his contributions to the team while closely aligning the presentation to the criteria set in MLB's Collective Bargaining Agreement (CBA).[3] Assuming the arbitrators understood "basic [MLB] rules and statistics," Thompson felt confident as his legal team presented his excellent holds and leverage index statistics (the most important statistics for a middle reliver).[4] In response, the Rays discredited holds and leverage while emphasizing Thompson's "blown saves" and "meltdowns."[5] Thompson believed the Rays' argument was not compelling given that blown saves are not indicative of how a middle reliever performs and that meltdowns are not an official MLB statistic.[6] However, to his dismay, Thompson lost the arbitration hearing.[7] He believed the arbitrators were swayed by the usage of "buzz words"

---

[1] *See* Michael Elizondo, *The Curious case of Ryan Thompson and salary arbitration*, SB NATION (Feb. 27, 2023), https://www.truebluela.com/2023/2/27/23612956/ryan-thompson-salary-arbitration-brusdar-graterol-mlb (The arbitration hearing for Ryan Thompson took place on February 18, 2023, and he tweeted about the process five days later. His tweets, written from his perspective – a first-time arbitration eligible MLB pitcher – provide the insight for this introduction).

[2] *See id.*

[3] *See generally* 2022–2026 Basic Agreement between the 30 Major League Clubs and Major League Baseball Players Ass'n, https://www.mlbplayers.com/cba [https://www.mlbplayers.com/_files/ugd/4d23dc_d6dfc2344d2042de973e37de62484da5.pdf] (last visited Mar. 10, 2024) [hereinafter 2022–2026 Basic Agreement] (the document is valid from 2022–2026).

[4] *See* Elizondo, *supra* note 1.

[5] *Id.*

[6] *See id.* (noting that "a blown save can happen with no earned runs in the 7th inning or in extra innings from the ghost runner scoring," thus not a statistic indicative of a middle reliver's poor performance; and that Fangraphs, not MLB, uses a statistic called "meltdowns," one which Thompson had never heard before).

[7] *See id.*

implemented by the Rays, who played more on the arbitrators' emotions rather than relying on logic and facts.[8] He credited his loss to his "unwise assumption[] on the arbitrators' understanding of statistics."[9]

Thompson's experience highlights the challenges faced by baseball players in salary arbitration when advocating for fair compensation while confronted with arbitrators who may lack the requisite baseball knowledge to make informed decisions. Over the past twenty years, statistical analysis has permeated baseball, becoming an integral element of the game.[10] Sabermetrics, a term used to describe the statistical analysis of baseball, is "increasingly being used by teams in evaluating and predicting player performance."[11] More than ten years ago, even radio broadcasters were expected to keep up with the times and know advanced metrics when calling games.[12] So, why are those in charge of determining million dollar salaries not expected to do the same?

This research paper will explore the negative effects of labor lawyers as MLB salary arbitrators and propose solutions to mitigate those effects. Part II.A offers historical context on how MLB salary arbitration came to be. Part II.B explains why MLB salary arbitrators are labor lawyers opposed to baseball experts. Part II.C describes the current process of MLB salary arbitration. Part III recommends solutions MLB can employ to mitigate the negative effects of labor lawyers as arbitrators while acknowledging the counterarguments to each solution, with Part III.A

---

[8] *See id.* (citing Thompson's tweet, "the use of 'buzz words' by the team without a doubt swayed the arbitrators. Blown saves, meltdowns … created a bias. Brilliant…").
[9] *Id.*
[10] Steve Eder, *Era of Modern Baseball Stats Brings WAR to Booth*, N.Y. TIMES (Apr. 1, 2013), https://www.nytimes.com/2013/04/02/sports/baseball/baseball-broadcasts-introduce-advanced-statistics-but-with-caution.html (noting that statistical analysis, or sabermetrics, is becoming "part of the fabric of the game").
[11] *See A Guide to Sabermetric Research*, SOC'Y AM. BASEBALL RSCH. https://sabr.org/sabermetrics (last visited Mar. 10, 2024); *see also* Jeff Fannel, *Salary Arbitration 101: Part Two*, FANNELL.COM, http://fannell.com/salary-arbitration-101-part-two/ (last visited Mar. 10, 2024).
[12] *See* Eder, *supra* note 10 (discussing how in addition to players, managers, and front office executives becoming versed in statistical analysis, teams want their radio announcers to be just as fluent).

recommending specialized baseball knowledge training, Part III.B suggesting publishing written opinions of the arbitrators, and Part III.C encouraging the adoption of mediation prior to a hearing.

II. BACKGROUND: HISTORICAL PRETEXT AND CURRENT CONTEXT OF MLB SALARY ARBITRATION

Before considering the faults of baseball salary arbitration and my suggestions to improve the antiquated system, it is critical to introduce the history of MLB salary arbitration. Salary arbitration is a process that is considered a win for baseball because it promotes the resolution of salary disputes in a way that is viewed as fair, compared to a long history of complete ownership control. It is also essential to describe the current conditions of MLB salary arbitration. Although the rules of arbitration have marginally varied over the past fifty years, the preparation and substance of presentations have undergone significant transformation since 1974.

A. History of Salary Arbitration

Before the dawn of salary arbitration, MLB owners held nearly complete control over player salaries.[13] This control began in the form of the "reserve rule" and developed into the "reserve clause." The reserve rule was a secret agreement amongst team owners that allowed them to reserve five players that other teams could not pursue.[14] Further, the reserve clause, which found its way into every player's contract, gave the team unilateral power to renew the contract, in one-year increments, upon termination, for as long as the team desired.[15] The purpose behind reserving players was to prevent owners from engaging in bidding wars and driving up player salaries by outbidding each other.[16]

---

[13] *See* Jeff Monhait, *Baseball Arbitration: An ADR Success*, 4 HARV. J. SPORTS & ENT. L. 105, 131 (2013).
[14] *See* Andrew Zimbalist, *Baseball and Billons: A Probing Look Inside The Big Business Of Our National Pastime* 4 (1994).
[15] *See Flood v. Kuhn*, 407 U.S. 258, 259 n.1 (1972) ("The reserve system, publicly introduced into baseball contracts in 1887, … centers in the uniformity of player contracts; the confinement of the player to the club that has him under the contract; the assignability of the player's contract; and the ability of the club annually to renew the contract unilaterally, subject to a stated salary minimum.").
[16] *See* Monhait, *supra* note 13, at 109.

For this reason, in 1966 the Major League Baseball Players Union (MLBPA) hired Marvin Miller, a former negotiator for the United Steelworkers Union, to alter the course of the reserve system.[17] In 1968, Miller negotiated the First Basic Agreement, which successfully included grievance arbitration for the players.[18] Despite the MLB Commissioner as the designated arbitrator in these grievances, this was the first formal procedure for players to issue their complaints.[19]

Just two years later, the Second Basic Agreement was adopted.[20] The Agreement of 1970 developed grievance arbitration by removing the Commissioner, and securing a panel of three individuals who would hear the grievance; the panel consisted of one arbitrator appointed by the players, one arbitrator appointed by the teams, and one neutral arbitrator.[21] With the fear of losing the reserve system completely, the owners proposed salary arbitration.[22] The development of this proposition resulted in the Agreement of 1973; it held that any player with at least two years of Major League Service (MLS) and at least three seasons with a championship team would be eligible for salary arbitration.[23] Salary arbitration in baseball is unique because it requires the player and team to each submit a single number to the arbitrator and the arbitrator then chooses one of the two numbers after hearing both arguments, a format referred to as "final offer arbitration."[24] Likely not evident at the time, the Agreement of 1973 opened a new door for player compensation in baseball with the start of arbitration.

---

[17] Ed Edmonds, *At the Brink of Free Agency: Creating the Foundation for the Messersmith- McNally Decision 1968–1975*, 34 S. ILL. U. L. J. 565, 572 (2010).
[18] *See* J. Gordon Hylton, *The Historical Origins of Baseball Grievance Arbitration*, 11 MARQ. SPORTS L. REV. 175, 182 (2001).
[19] *See id.*
[20] *See id.*
[21] *See* Mark L. Goldstein, *Arbitration of Grievance and Salary Disputes in Professional Baseball: Evolution of a System of Private Law*, 60 CORNELL L. REV. 1049, 1057 (1975).
[22] *See id.* at 1067.
[23] *See* 1973–1975 Basic Agreement Between The American League of Professional Baseball Clubs and The National League of Professional Baseball Clubs and Major League Baseball Players Ass'n, at art. V § D(4) ("[a]ny Club, or any Player with both a total of two years of Major League service and Major League service in at least three different championship seasons, may submit the issue of the Player's salary to final and binding arbitration.").
[24] *See* Josh Chetwynd, *Play Ball? An Analysis of Final-Offer Arbitration, Its Use in Major League Baseball and Its Potential Applicability to European Football Wage and Transfer Disputes*, 20 MARQ. SPORTS L. REV. 109, 123-24 (2009).

The first salary arbitration hearing was held in February 1974 and the "sacrificial lamb" was Dick Woodson, a right-handed pitcher for the Minnesota Twins.[25] Woodson filed for $30,000, looking to double his salary from $15,000.[26] Despite winning his arbitration hearing, both Woodson and the team walked away from the hearing dissatisfied with the result.[27] Woodson's discontent stemmed from the revelation during the hearing that the arbitration panel determined his salary by comparing it to that of other pitchers in similar roles, considering factors such as innings pitched, MLS, and performance records.[28] Other pitchers with worse statistics than him were earning over $20,000 more than the salary he fought for in arbitration.[29] Further, the team was upset because for the first time in MLB history, owners had diminished control over their players.[30]

Furthermore, in 1975, a monumental shift occurred when arbitrator Peter Seitz dismantled the reserve system completely, granting baseball players free agency status.[31] The MLBPA brought a grievance on behalf of pitchers Andy Messersmith and Dave McNally, two players who were subject to the reserve clause in their contracts, but refused to sign new contracts at the end of their seasons.[32] The MLBPA challenged the perpetual reservation of a player to a single team.[33] In a revolutionary decision, Seitz held that MLB teams cannot indefinitely hold a player's rights from one

---

[25] *See* Interview by John Swol with Dick Woodson, Former Pitcher, Minnesota Twins, http://twinstrivia.com/interview-archives/dick-woodson-interview.
[26] *See id.*
[27] *See id.*
[28] *See id.*
[29] *See id.*
[30] *See* Telephone Interview by Twinstrivia.com with Dick Woodson, Former Pitcher, Minnesota Twins (2011), http://twinstrivia.com/wp-content/uploads/2011/06/Woodsonsalaryarb.mp3 (noting Calvin Griffith's, then owner of the Minnesota Twins, discontent with the decision, who publicly declared his refusal to pay Woodson the money he was awarded at arbitration and would rather trade him away). Two months later, Griffith was traded to the New York Yankees in May 1974. *Id.*
[31] *See generally* Prof'l Baseball Clubs, 66 Lab. Arb. Rep. (BNA) 101 (1975) (Seitz, Arb.).
[32] *See id.*
[33] *See id.* at 110 (bringing issue with the language in the reserve clause of the uniform player contract (UPC) which stated that the team had the right to renew a player's contract for one year if the two parties could not reach an agreement on the deal, forcing a player to play a single "option year" without signing a contract). This challenge follows a situation in which Messersmith and McNally did not come to a deal with their teams, played the option year without signing contracts, and thus believed they had played out of the contract since the UPC held only if a player signed a new deal did the team gain the option year.

year to the next without specifying a time limit on the renewal.[34] In so holding, Seitz declared Messersmith and McNally free agents.[35] The following year the holding was sustained in federal court.[36]

The demolition of the reserve clause caused MLB team owners to scramble at the possibility of players becoming free agents by simply playing out of the one option year in their contracts.[37] As a result, the owners again negotiated with the MLBPA to evolve the meaning of salary arbitration.[38] The negotiation resulted in the formation of the Agreement of 1976, which stated that players could become free agents after earning six years of MLS.[39] Since 1976, the arbitration and free agent format in MLB is largely unchanged.

B. Why Labor Lawyers are MLB Arbitrators

MLB's unique position arises in its exemption from antitrust laws,[40] as highlighted by labor policies that favor owners, such as the reserve rule, the reserve clause, and salary arbitration.[41] In a landmark decision by the National Labor Relations Board (NLRB), the landscape of labor arbitration within MLB transformed entirely.[42] This ruling led to the election of labor lawyers, opposed to baseball experts, as arbitrators in MLB salary arbitration hearings.[43]

---

[34] *See id.* at 117.
[35] *See id.*
[36] *See generally* Kansas City Royals v. Major League Baseball Players Assn., 409 F. Supp. 233 (W.D. Mo.), *aff'd* 532 F.2d 615 (8th Cir. 1976).
[37] *See* Thomas J. Hopkins, *Arbitration: A Major League Effect on Players' Salaries*, 2 SETON HALL J. SPORT L. 301, 309 (1992).
[38] *See id.*
[39] *See id.*; *see also* 1976–1979 Basic Agreement, art. XVII, §B(2) (1976).
[40] *See generally* Federal Baseball Club of Baltimore, Inc. v. National League, 259 U. S. 200 (1969-1970) [hereinafter Federal Baseball]. The Supreme Court, in a unanimous decision, ruled that MLB is not subject to federal antitrust laws because baseball is not considered interstate commerce.
[41] *See* Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-Revolution*, 4 JEFFREY S. MOORAD SPORTS L.J. 53, 59 (1997) (indicating that the ruling in *Federal Baseball* allowed owners to operate their businesses without federal interference).
[42] *See generally* Am. League of Pro. Baseball Clubs, 180 NLRB 190 (1969).
[43] *See* Fannel, *supra* note 11 (explaining why the CBA indicated that the panel of arbitrators are the top labor lawyers in the country).

In 1969, the Association of National Baseball League Umpires, filed a petition with the NLRB.[44] The petition asked the NLRB to determine whether MLB umpires could be represented by a labor union, seeking the NLRB's assertion of jurisdiction over them.[45] The Board's jurisdiction is based upon the Commerce Clause of the United States Constitution, deciding on issues that directly impact interstate commerce.[46] Thus, the main issue facing the NLRB was that *Federal Baseball* characterized the business of baseball as not interstate in nature, placing MLB beyond the scope of federal antitrust laws.[47]

Nevertheless, the NLRB asserted jurisdiction over the business of baseball, swayed by the unfair labor practices of the unilateral dispute settlement system in MLB.[48] The 1969 case before the NLRB was filed when the Agreement of 1968 permitted grievance arbitration with the MLB Commissioner as the sole arbitrator.[49] The NLRB criticized the dispute resolution procedure for being designed by the owners, with the arbitrator being selected by them, deeming it ineffective in preventing future labor disputes.[50] The decision of the NLRB confirmed that MLB's antitrust exemption did not extend to labor regulation immunity.[51] As a result, this ruling paved the way for labor lawyers, rather than baseball experts, to serve on the tripartite panel during salary arbitration hearings, seeking to ensure a more balanced and impartial approach to labor disputes in MLB.[52]

---

[44] *See Am. League of Pro. Baseball Clubs*, 180 NLRB 190 at 190.
[45] *See id.* (noting the petition was filed under Section 9(c) of the National Labor Relations Act); Section 9(c) of the Act reads: "by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative….").
[46] *See generally* N.L.R.B. v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937).
[47] *See generally Federal Baseball*, 259 U. S. 200.
[48] *See Am. League of Pro. Baseball Clubs*, 180 NLRB 190 at 191.
[49] *See* Hylton, *supra* note 18.
[50] *See Am. League of Pro. Baseball Clubs*, 180 NLRB 190 at 191.
[51] William B. Gould IV, *Labor Issues in Professional Sports: Reflections on Baseball, Labor, and Antitrust Law*, 15 STAN. L. & POL'Y REV. 61, 66 (2004).
[52] *See* Fannel, *supra* note 11.

C. Current Process of Salary Arbitration

A player's right to salary negotiations depends on their years of MLS.[53] According to the CBA, MLB players can fall into three different categories.[54] The first category, pre-arbitration eligible players, is for players who have less than three years of cumulative MLS; these players are bound to their teams and must accept the team's salary offer if they want to play in the majors.[55] The second category, arbitration eligible players, is for players who have between three and six years of MLS (or are a designated "Super Two")[56]; these players have the option to negotiate their salary with their teams or submit their offer to a third party arbitrator for a final and binding decision.[57] The third category, free agents, is for players who have more than six years of MLS and have the freedom to negotiate with any team and sign with the one that makes the most appealing offer.[58]

This research paper focuses on the second category, arbitration eligible players. The CBA establishes a specific timeline for the arbitration process.[59] Leading up to the exchange date—the deadline for both parties to submit their proposed salary figures—the team and the player have the opportunity to negotiate a salary.[60] If a negotiation cannot be reached, both sides submit a proposed salary to the arbitrator.[61]

The regulations governing the kind of evidence that arbitrators are permitted to consider differ from those that clubs and players use when engaging in private negotiations or discussing free

---

[53] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. XXI § A(1) (noting that one year of MLS is defined as 172 days on the MLB roster).
[54] *See generally* 2022–2026 Basic Agreement, *supra* note 3.
[55] *See id.* at art. XV § D(1).
[56] *See id.* at art. VI § E(1) (defining Super Two players as "a Player with at least two but less than three years of Major League service shall be eligible for salary arbitration if: (a) he has accumulated at least 86 days of service during the immediately preceding season; and (b) he ranks in the top 22% (rounded to the nearest whole number) in total service in the class of Players who have at least two but less than three years of Major League service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season.").
[57] *See id.* at art. VI § E(1).
[58] *See id.*at art. XX § B(1).
[59] *See id.*, at art. VI § E(2).
[60] *See id.*
[61] *See id.*; *but see id.* at art. VI § E(3) (noting the player and team are able to continue negotiations past the exchange date and if reach an agreement on salary, they are withdrawn from the arbitration process).

agency agreements.[62] The CBA has an exhaustive list of factors to decide a player's value, which is not the same as the wider range of considerations a team might study when deciding on signing players.[63] Permissible criteria in an arbitration hearing includes: (1) the player's contribution to his team during the previous season, (2) the player's career contribution, (3) the player's past compensation, (4) the salaries of comparable players, (5) any physical or mental defects of the player, and (6) the team's recent performance.[64] Conversely, impermissible criteria in an arbitration hearing includes: (1) the financial position of the player or team, (2) press comments about the player or team, (3) offers made prior to the hearing, (4) attorney's fees, and (5) salaries not in the MLB context.[65]

What happens when a case actually appears at arbitration? When the parties appear at arbitration, they are met with a three-person panel of arbitrators.[66] Each side has one hour to present their evidence, with an additional thirty minutes for rebuttals.[67] Pursuant to the CBA, the player's side must present their case in chief first before the team, which arguably places an "immediate, if informal burden of proof on the player."[68] The player's case in chief is littered with statistics, attempting to demonstrate his worth and contribution to his team, while the team's case in chief is similarly inundated with statistics, attempting to argue the contrary.[69] Despite sharing the same statistical data, both parties often present vastly different views of the player's value, leaving arbitrators to question if they are even discussing the same player.[70] After each side presents, the

---

[62] *See* Ethan Lock & Allan DeSerpa, *Salary Increases Under Major League Baseball's System of Final Offer Salary Arbitration*, 2 LAB. LAW. 801, 804 (1986).
[63] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E(10).
[64] *See id.* at art. VI § E(10)(a).
[65] *See id.* at art. VI § E(10)(b).
[66] *See id.* at art. VI § E(5).
[67] *See id.* at art. VI § E(7).
[68] Ken Rosenthal, *Rosenthal: Tension over MLB salary arbitration rulings could translate to another battle*, THE ATHLETIC (Feb. 20, 2023) https://theathletic.com/4230583/2023/02/20/mlb-salary-arbitration-cba-tension.
[69] *See* Roger I. Abrams, *Inside Baseball's Salary Arbitration Process*, 6 U. CHI. L. SCH. ROUNDTABLE 55, 65 (1999).
[70] *See id.* at 65 (noting how the presentations about the same player differ greatly in how the statistics are presented).

parties are given a short break to prepare their rebuttals.[71] Rebuttals are a way for each side to refute the opposing side's case in chief, as "every claim is met with a counterclaim until the arbitrators are left with a huge pile of numbers."[72]

After presentations are through, arbitrators have 24 hours after the conclusion of the hearing to choose between the two proposed salaries.[73] The next day the panel chairperson will call the MLBPA and report which salary figure they chose, without offering any explanation or rationale.[74]

III. ANALYSIS AND SUGGESTIONS

The following analysis argues for change within the current, antiquated process of salary arbitration, seeking to increase settlements between teams and arbitration eligible players. Despite a destructive past, MLB players and teams have fought for fairness, with the result being the current process of salary arbitration.[75] Despite the perspective that "a holistic view of this system shows that its purported shortfalls function to incentivize negotiated settlements between the parties, with arbitration as a fallback option to guarantee resolution prior to the season's start," this analysis demonstrates how the system's deficiencies are *too* archaic to effectively promote settlements.[76]

A significant detriment to the process is a labor lawyer's lack of basic baseball knowledge.[77] This lack of knowledge forces players and teams to curate weaker arguments they *hope* the arbitrator will understand, rather than producing stronger arguments they *know* a baseball aficionado will comprehend. Though "salary arbitration is not rocket science … it is a unique process, and most arbitrators are not accustomed to ruling on cases involving such big salaries."[78] Moreover, the

---

[71] *See* Andrew J. Wronski, *The Unique Game of Baseball Arbitration*, FOLEY AND LARDNER LLP (Feb. 12, 2022) (noting the short break the parties receive to quickly and frantically prepare their 30-minute rebuttal).
[72] *See* Abrams, *supra* note 69, at 66.
[73] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E(13).
[74] *See id.*
[75] *See supra* Part II.
[76] *See* Monhait, *supra* note 13, at 113.
[77] *See* Roy Strom, *Baseball experts reveal ins, outs of arbitration system*, CHI. DAILY L. BULL. (Apr. 17, 2012), https://news.law.uic.edu/wp-content/uploads/2012/05/baseball-Apr17.pdf.
[78] *See* Rosenthal, *supra* note 68.

absence of written decisions from arbitrators contributes to the unpredictability and risk associated with arbitration hearings.[79] Another issue with the process is the deterioration of the team and player relationship after a hearing.[80] In most arbitration hearings, the player is present in the room, compelled to bear witness as his own team devalues him.[81] This experience can be emotionally taxing as the player is confronted with negative assertions about his worth and contributions directly from the organization that is supposed to support him.[82] Addressing these matters by incorporating modern changes into MLB's salary arbitration system is crucial for the league's progress. Positive change can come in the form of requiring arbitrators pass a basic Baseball Knowledge Exam, implementing a requirement that arbitrators provide a written decision post-hearing with their rationale, and compelling a mediation session prior to arbitration.

A. Specialized Baseball Knowledge Training

Fifty years after the inception of the arbitration process with the aim of achieving balance and impartiality, it is essential to reassess whether these objectives have been achieved. Pursuant to the CBA, the Union and the MLB Labor Relations Department (LRD) jointly select the arbitrators for arbitration hearings each year, and if they cannot agree on arbitrators, they request lists from the American Arbitration Association (AAA).[83] The AAA is the largest provider for alternative dispute resolution services with specialization in different forms of arbitration.[84] Though the AAA has

---

[79] *See id.*
[80] *See* Jeff Tracy, *The uncomfortable reality of MLB arbitration*, AXIOS (Feb. 22, 2023) https://www.axios.com/2023/02/22/mlb-baseball-arbitration-uncomfortable-reality.
[81] *See id.* (quoting Corbin Burnes, an MLB player who underwent arbitration and had to hear his team explain why he deserves less money; Burnes stated, "There's no denying that the relationship is definitely hurt from what [transpired] over the last couple weeks.").
[82] *See id.*
[83] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E(5) ("The Association and the LRD shall annually select the arbitrators. In the event they are unable to agree by January 1 in any year, they jointly shall request that the American Arbitration Association furnish them lists of prominent, professional arbitrators. Upon receipt of such lists, the arbitrators shall be selected by alternately striking names from the lists. All cases shall be assigned to three-arbitrator panels. The Association and the LRD shall designate one arbitrator to serve as the panel chair.").
[84] *See About the AAA and ICDR*, INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION, https://www.icdr.org/about, (last visited May 4, 2024).

heightened qualification criteria for their sports arbitrators, none of the "sports industry experience" requirements include knowledge of statistics, a necessary component in MLB salary arbitration hearings.[85]

An arbitrator's lack of essential baseball knowledge is detrimental to the salary arbitration process. As it stands, it is an antiquated but accepted fact that arbitration hearings surround "baseball card" statistics more than they do advanced metrics.[86] This is because "arbitrators don't necessarily know much about baseball or its statistics."[87] It becomes a detrimental issue specifically when arbitrators face players who derive their value from non-traditional statistics, like defensive prowess. In these instances, the player's legal team must take time to explain the value of sabermetrics like Defensive Runs Saved (DRS) to the arbitrator.[88] Taking valuable time to explain advanced statistics to the arbitration panel leaves the player's side at a disadvantage, with no assurance the arbitrator will even fully understand the concept.

Take for example, a player that is below average on offense but above average on defense. This player probably does not have high homerun totals, but excels in DRS. At a hearing, the team is likely to make a case the panel will understand—arguing low "baseball card" statistics—that this

---

[85] *See Qualification Criteria and Responsibilities for Members of the AAA Panel of Sports Arbitrators*, AMERICAN ARBITRATION ASSOCIATION, https://www.adr.org/sites/default/files/document_repository/Sports-Panel-Qualifications.pdf (last visited May 4, 2024) ("Sports Industry Experience: Minimum of 10 years of experience representing or providing alternative dispute resolution services for sports governing bodies and entities, athletes or coaches involving eligibility or participation issues. Minimum of 10 years of executive-level business experience, including business executive experience with at least 7 years in one or more senior-level positions of a sports industry-related company, firm, association or organization. Attorney with a minimum of 10 years in legal practice with at least 30% of practice for the past 10 years devoted to the practice of Sports Law.")

[86] *See* Sheryl Ring, *Let's Fix MLB's Salary Arbitration System: The Arbitrators*, FANGRAPHS (Jan 18, 2019), https://blogs.fangraphs.com/lets-fix-mlbs-salary-arbitration-system-the-arbitrators/ (following "MLB Trade Rumors' arbitration model which is based on those "baseball card" numbers" alluding to basic statistics like homeruns, hits, and runs batted in).

[87] *See* Strom, *supra* note 77 (quoting Matt Colleran, an MLB player agent).

[88] *See MLB Glossary*, MLB.COM, https://www.mlb.com/glossary/advanced-stats/defensive-runs-saved (last visited Mar. 10, 2024) ("DRS quantifies a player's entire defensive performance by attempting to measure how many runs a defender saved. It considers errors, range, outfield arm and double-play ability. It differs only slightly from UZR (Ultimate Zone Rating) in its formula, but the concept is the same.").

player does not have enough homeruns to earn the salary he is requesting.[89] In contrast, the player's side likely has a winning argument if they are able to successfully compare this player to others with high DRS statistics.[90] However, both sides only have a one-hour window to present their case in chief.[91] It is unjust for a player's legal team to contemplate excluding DRS, a sabermetric that could illustrate this player's true value, simply because it may take too much time and the looming uncertainty that an arbitrator will understand the significance of the statistic.[92]

Notwithstanding the varying criteria set for arbitration, the process has evolved into a statistical showdown.[93] Despite the lack of baseball experts sitting on the arbitration panel, the presentations and arguments pled to the panel are heavily statistics based.[94] Of the six criteria established in the CBA for arbitration hearings, the one that stands out and is focused on heavily is the "comparable salaries" criterion.[95] Although the CBA does not weigh one factor over another, the actual practice of salary arbitration suggests that this criterion is most determinative of the outcome.[96] By virtue of the value arbitration places on comparable salaries, the parties must present an overwhelming amount of statistics to the arbitrators who may or may not understand what is on each slide.[97]

---

[89] *See* Ring, *supra* note 86.
[90] *See* Eldon L. Ham & Jeffrey Malach, *Hardball Free Agency—The Unintended Demise of Salary Arbitration in Major League Baseball: How the Law of Unintended Consequences Crippled the Salary Arbitration Remedy—and How to Fix It*, 1 HARV. J. SPORTS & ENT. 64, 92 (2010) ("lack of guidance given to arbitrators regarding comparing players in different service groups can lead to inconsistent results").
[91] *See* art. VI § E(7), *supra* note 65.
[92] *See* Strom, *supra* note 77 (quoting Matt Colleran, "If I want to get a point across to someone who's not in baseball, I'm not going to try and expose them to sabermetrics because it would just confuse them").
[93] *See* Edward Silverman, *Dick Woodson's Revenge: The Evolution of Salary Arbitration in Major League Baseball*, 2013 PEPP. L. REV. 21, 31 (2013).
[94] *See* Abrams, *supra* note 69, at 66 ("Today's salary arbitration hearing room table is adorned with laptop computers capable of generating any needed comparison in an instant. Every claim is met with a counterclaim until the arbitrators are left with a huge pile of numbers. Player performance is chopped and diced, particularized and dissected. Anything not easily convertible into numerical terms, such as team leadership, hustle and courage in the face of debilitating injury, seems to play no role.").
[95] *See* Dean Roger I. Abrams, *Sports Labor Relations: The Arbitrator's Turn at Bat*, 5 U. MIAMI ENT. & SPORTS L. REV. 1, 8 (1988).
[96] *See id.*
[97] *See id.*

Mandating arbitrators take a "Baseball Knowledge Exam" prior to their selection each year has the potential to be an extremely valuable addition to the arbitration process. This requirement would ensure that arbitrators possess a foundational understanding of the sport, and the weight statistics play in its dynamic. The purpose of the exam is to promote fairness in the arbitration process. Players with misunderstood, neglected, or undervalued statistics deserve a fair chance to demonstrate their worth at salary arbitration hearings, and requiring arbitrators to understand their value will provide them that fair chance.[98] Given that the CBA, the rules of baseball, and analytics are constantly evolving, it would be most beneficial if the Baseball Knowledge Exam were administered yearly to ensure arbitrators stay up to date on the latest developments and maintain a thorough understanding of the sport.[99]

The Baseball Knowledge Exam should cover a range of topics to ensure arbitrators in MLB salary arbitration hearings have a comprehensive understanding of the sport. Topics that could be on the exam include: CBA competence, rules and regulations, player evaluation, and historical context. It is important for arbitrators in these hearings to know and understand the specific criteria regarding arbitration hearings set forth in the CBA.[100] Further, it is crucial for arbitrators to comprehend the official rules of baseball, including both on-field rules and regulations governing player contracts. Additionally, it is imperative that arbitrators understand statistics, not just what they are, but how certain statistics are valued in today's analytical world of baseball.[101] Lastly, it is essential

---

[98] *See* Strom, *supra* note 77.
[99] *See* Nick Selbe, *The MLB Rule Changes Agreed Upon in New CBA*, SPORTS ILLUSTRATED, https://www.si.com/mlb/2022/03/10/mlb-rule-changes-new-cba-universal-dh (Mar. 10, 2022) (noting the 2022-2026 CBA inclusion of rule changes regarding playoffs, designated hitters, and the draft); *see also* Tom Friend, *Biometrics language evolving with each new CBA*, SPORTS BUSINESS JOURNAL, https://www.sportsbusinessjournal.com/Journal/Issues/2022/08/01/In-Depth/Biometrics.aspx (Aug. 1, 2022) (noting the CBA's inclusion of the permissibility of biometric data).
[100] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E.
[101] *See generally* Ham & Malach, *supra* note 90.

for arbitrators to understand the history of final offer arbitration, and the significant role they themselves play in setting precedents for future player comparisons.[102]

An exam to oversee baseball salaries is not unchartered territory. To become an MLB agent, individuals must undergo the MLBPA Agent Certification training program, which includes successfully passing the MLBPA Agent Exam.[103] The Agent Exam covers the CBA, rules and regulations, agent regulations, and MLB's joint drug agreement.[104] If an agent is expected to "possess basic knowledge about the terms and conditions in the Basic Agreement [and] the Major League Rules … prior to being approved to become a member of the MLBPA's certified agent pool,"[105] why should MLB salary arbitrators not be held to that same standard?

Although requiring arbitrators to understand basics about baseball statistics may enhance arbitration hearings, critics of this proposition argue that baseball is not a place for advanced statistics like sabermetrics.[106] Some fans believe baseball's modernizations like instant replay and advanced metrics have diluted the game's traditional, nostalgic, old-school charm.[107] However, this argument shuns the path MLB has taken to modernize the industry. It is notable that although statistics generated through wearable technology like "WHOOP" or projection data like "STATCAST" are not admissible in arbitration hearings, sabermetrics *are*.[108] Thus, because

---

[102] *See supra* Part II.A.
[103] *See generally* MLBPA Agent Certification, https://www.agent.mlbplayers.com/ (last visited May 4, 2024).
[104] *See* John Sparaco, *How to Become a Sports Agent: Five Tips to Gent Into the Biz*, THE LITTLE REBELLION (Nov. 21, 2022) https://thelittlerebellion.com/index.php/2022/11/how-to-become-a-sports-agent-five-tips-to-get-into-the-biz/.
[105] Gregg E. Clifton, *Major League Baseball Players Association Amends Agent Regulations to Require Written Exams for Applicants*, SPORTS LITIGATION ALERT (Feb. 6. 2015) https://sportslitigationalert.com/major-league-baseball-players-association-amends-agent-regulations-to-require-written-exams-for-applicants/ (explaining what MLB agents must know before becoming a certified MLB agent).
[106] *See* Angela Kaye Carpenter, *The Disappearing American Pastime: 18 Reasons Baseball Isn't What It Used To Be*, SEW SHE CAN (Apr. 23, 2024) https://sewcanshe.com/the-disappearing-american-pastime-reasons-baseball-isnt-what-it-used-to-be/.
[107] *See id.*
[108] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E(10)(c) ("Only publicly available statistics shall be admissible. For purposes of this provision, publicly available statistics shall include data available through subscription-only websites (e.g., Baseball Prospectus). Statistics and data generated through the use of performance technology, wearable technology, or "STATCAST", whether publicly available or not, shall not be admissible."); see also Eric Fisher, *Wearable tech wins over MLB*, SPORTS BUS. J. (Mar. 13. 2017)

sabermetrics are admissible criteria in hearings, it is only reasonable that arbitrators understand its meaning.

B. Published Opinions

The absence of written opinions from arbitrators in salary arbitration results in unwanted uncertainty and a lack of guidance for future cases.[109] Without written decisions explaining the rationale of the panel's decision, players and teams have no way of knowing how much importance the arbitrators placed on specific statistics presented during the hearing. The inherent unpredictability of the process stems from the inability of either party to rely on past decisions as precedent. The only form of precedent that can be used by players and teams when building their arguments is a comparable player analysis (comparing the salaries of other MLB players with similar MLS and statistics), but nothing on how or why the arbitrators decided the winner.[110] Moreover, because arbitrators are not required to write written decisions and have only 24 hours to issue a decision, they do not have to give reasoning for potential arbitrary decisions they made in haste.[111]

In furtherance of the uncertainty, the CBA itself does not provide direction on how much weight the panel should give to each criterion.[112] As a result, teams and players are left without a roadmap on how previous arbitration decisions were reached and what arguments may sway future hearings.[113] In addition to teams and players, arbitrators themselves "are left in the dark as to the

---

https://www.sportsbusinessjournal.com/Journal/Issues/2017/03/13/Technology/MLB-analytics.aspx (noting MLB's approval of wearable technology for expanded analytics in game use).

[109] *See id.* at art. VI § E(13) ("The arbitration panel shall be limited to awarding only one or the other of the two figures submitted. There shall be no opinion. There shall be no release of the arbitration award by the arbitration panel except to the Club, the Player, the Association and the LRD. The panel chair shall initially inform the Association and the LRD of the award only and not how the panel members voted.")

[110] *See* Dustin Dorsino, *Arbitration on Ice: How MLB can solve the issues with its salary arbitration process by borrowing practices from the NHL & implementing pre-arbitration mediation*, 71 SYRACUSE L. REV, 1459, 1474 (2021).

[111] *See id.*; *see also* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E(13).

[112] *See* 2022–2026 Basic Agreement, *supra* note 3, at art. VI § E(10) ("… any evidence may be submitted which is relevant to the above criteria, and the arbitration panel shall assign such weight to the evidence as shall appear appropriate under the circumstances. The arbitration panel shall, except for a Player with five or more years of Major League service, give particular attention, for comparative salary purposes, to the contracts of Players with Major League service not exceeding one annual service group above the Player's annual service group").

[113] *See* Silverman, *supra* note 93, at 32.

reasoning behind apparently similar cases decided in the past."[114] While the practice of salary arbitration indicates that the comparable salaries criterion is highly influential, it remains uncertain whether the arbitration panel actually assigns greater weight to this criterion.[115] This shortcoming has wider ramifications for salary negotiation tactics across the league, further contributing to a cycle of guesswork and speculation in an already complex process.

Published opinions after sports salary arbitration hearings are not unprecedented and have the potential to be an extremely valuable addition to the process of arbitration for players, teams, and arbitrators. The National Hockey League (NHL) is the only other sports league in the United States that uses a salary arbitration process.[116] However, unlike MLB salary arbitration hearings, NHL hearings result in a written decision.[117] The written decision by the arbitrator is e-mailed to each of the parties within 48 hours of the hearing. [118] The decision establishes the player's contract term and salary, as well as a statement of the reasons for the decision, including a list of the comparable players relied on.[119] This requirement not only holds arbitrators accountable for their decisions, but also provides for a system of precedents the parties can rely on in the future.[120]

MLB should follow in the NHL's footsteps and adopt a similar written opinion requirement. Adopting such a requirement would greatly reduce the unpredictability associated with MLB's current process because written opinions, even brief statements explaining how the arbitration panel

---

114 *See* Ham & Malach, *supra* note 90.
115 *See id.* at 81 (explaining how the uncertainty regarding the weight arbitrators assign to the CBA criteria creates an unpredictable process).
116 *See* Phillip Miller, *MLB vs. NHL Arbitration - A Brief Comparison*, FORBES (Feb. 5, 2014), https://www.forbes.com/sites/phillipmiller/2014/02/05/mlb-vs-nhl-arbitration-a-brief-comparison/#6b2695674a36 [https://perma.cc/8CYS-RFPU].
117 *See generally* 2013–2026 Collective Bargaining Agreement between the National Hockey League Players Association and the National Hockey League, https://www.nhlpa.com/the-pa/cba, [https://cdn.nhlpa.com/img/assets/file/NHL_NHLPA_2013_CBA.pdf] (the document is valid from 2013-2026).
118 *See id.* at art. 12.9(n) ("The decision of the Salary Arbitrator shall establish: … a brief statement of the reasons for the decision, including identification of any comparable(s) relied on.").
119 *See id.*
120 *See* Melanie Aubut, *When Negotiations Fail: An Analysis of Salary Arbitration and Salary Cap Systems*, 10 SPORTS L. J. 189, 211 (2003) (noting how the NHL requires its arbitrators to justify their decisions).

came to their decision, would streamline future arbitration hearings.[121] Access to the written decisions would allow the parties to gauge their success more accurately prior to a hearing.[122] Consequently, a clearer understanding of how arbitrators come to decisions may influence teams and players to reach a settlement.[123]

While mandating written decisions offers clarity on arbitration outcomes, critics argue the lack of such decisions increases the incentive for parties to settle prior to a hearing.[124] The argument suggests that the unpredictability of salary arbitration hearings is enough motivation for players and teams to settle, unsure of how their case will be determined. However, this rationale is flawed as it praises those who opt to settle out of fear they may be subjected to arbitrators lacking requisite baseball knowledge.[125] Furthermore, "every victory or loss in salary arbitration carries precedential value" because the system hinges on comparable player salaries as the gauge of a player's worth.[126] Thus, a brief statement explaining arbitrator rationale can help establish a guide which would help teams and players better prepare for future hearings.[127]

Additionally, critics argue against the implementation of written decisions because it preserves the absolute impartiality on behalf of the arbitrator.[128] The impartiality rationale is supported by the MLB and MLBPA's trust in the arbitrators.[129] However, this justification assumes

---

121 *See* Dorsino, *supra* note 110, at 1482.
122 *See id.*
123 *See* Benjamin A. Tulis, *Final-Offer "Baseball" Arbitration: Contexts, Mechanics & Applications*, 20 SETON HALL J. SPORTS & ENT. L. 85, 127 (2010) (explaining why the more information both parties have as to how the arbitration panel may decide will increase the likeliness of settlement).
124 *See* Monhait, *supra* note 13, at 135.
125 *See* Vittorio Vella, *Swing and a Foul Tip: What Major League Baseball Needs to Do to Keep Its Small Market Franchises Alive at the Arbitration Plate*, 16 SETON HALL J. SPORT L. 317, 327 (2006) ("[The] extreme difference between player and team salary proposals makes Final Offer Arbitration an extremely unpredictable risk for players and owners alike because both parties are uncertain as to which of their extreme proposals a panel will choose.").
126 Roger I. Abrams, *The Money Pitch: Baseball Free Agency And Salary Arbitration* 157 (2000).
127 *See* Dorsino, *supra* note 110, at 1474.
128 *See* 2022–2026 Basic Agreement, *supra* note 3, at art. XI § A(9) ("The arbitrator whose name remains shall be deemed appointed as the *impartial* arbitrator." (emphasis added)).
129 *See* Marvin Miller, *A Whole Different Ball Game: The Inside Story Of Baseball's New Deal* 239 (1991) ("With *impartial* arbitration in effect, we could argue the meaning and interpretation of a contract provision" (emphasis added)).

confidence in the arbitrator's decision solely because their collective representative selected the panel.[130] This argument fails to consider whether the arbitrator stayed within the guidelines of the admissible criteria set forth in the CBA, because without written decisions, there is no way to know if an arbitrator's decision is truly neutral. The absence of written opinions denies both parties the transparency required to evaluate the arbitrator's impartiality and fairness.[131] Salary arbitration in MLB would be greatly improved if the league considered adopting the NHL's written opinion requirement.

C. Adopt Mandatory Mediation Before Arbitration

The salary arbitration process can be detrimental to the relationships between players and their teams.[132] Final offer arbitration places both parties in an adversarial position which is why the process was designed to be used sparingly.[133] Salary arbitration is considered successful because of its final offer arbitration process.[134] However, an arbitration hearing can create tension between the team and the player because it forces the team to present evidence that the player is worth less than they believe.[135] To win the hearing, the team must diminish the player's value directly in the presence of its player in an attempt to sway the panel.[136]

Sometimes, players take offense to the team's evidence against him.[137] Even if a player's agent attempts to prepare him for the negative comments, a player may still feel slighted.[138] However, because the player has no choice but to stay with his team until he attains free agency, the

---

130 *See* Monhait, *supra* note 13, at 135.
131 *See* Ham & Malach, *supra* note 90, at 92.
132 *See* Dorsino, *supra* note 110, at 1477.
133 *See* Scott Bukstein, *A New Solution for Salary Disputes: Implementing Salary Arbitration in the National Basketball Association*, 22 MARQ. SPORTS L. REV. 25, 47 (2011).
134 *See* Chetwynd, *supra* note 24.
135 *See* Dillon Reid, *Major League Baseball's Major Issue*, 72 DISP. RESOL. J. 87, 90 (2017).
136 *See* Dorsino, *supra* note 110, at 1477.
137 *See* Sam B. Smith, *Show Me the Mediation!: Introducing Mediation Prior to Salary Arbitration in Major League Baseball*, 42 HOFSTRA L. REV. 1007, 1026 (2014).
138 *See id.*

player might carry a grudge against his team by purposely not playing to his full potential during the season following arbitration.[139] This grudge can go both ways, because a team who felt an arbitration award was too high may reduce playing time or trade away the player they lost to in arbitration. This type of adversarial relationship has existed since the first arbitration, with Dick Woodson being traded after winning his arbitration, and still exists today.[140]

For example, in 2017 Dellin Betances and the New York Yankees went to arbitration; Betances filed at $5 million, while the team filed at $3 million.[141] The arbitration panel ruled for the team, awarding Betances $3 million.[142] Following the decision, Randy Levine, Yankees' president, criticized Betances' filing number claiming it had "no bearing in reality" and that it was a "half-baked attempt" in resetting the market for closing pitchers.[143] In response, Betances communicated his displeasure with how he was treated by the team during the hearing, indicating it was enough for him to evaluate whether he wanted to put himself at risk for the organization.[144] This outcome is unfortunate, but not uncommon.[145]

---

139 *See id.*

140 *See* Telephone Interview by Twinstrivia.com with Dick Woodson *supra* note 30 (noting how Woodson was traded after winning his arbitration hearing); *see also* Tracy, *supra* note 80 (noting Burnes's frustration with his team's portrayal of him at arbitration).

141 *See* SI Wire, *Yankees President Feuds with Dellin Betances After Winning Arbitration Case*, SPORTS ILLUSTRATED (Feb. 18, 2017), https://www.si.com/mlb/2017/02/18/yankees-dellin-betances-arbitration-salary-randy-levine.

142 *See id.*

143 *See id.*

144 *See* Billy Witz, *Yankees' Dellin Betances Loses in Arbitration, and a War of Words Begins*, N.Y. TIMES, (Feb. 18, 2017), https://www.nytimes.com/2017/02/18/sports/baseball/yankees-dellin-betances-arbitration-.html ("They take me in a room, and they trash me for about an hour and a half," Betances said. "I thought that was unfair for me. I feel like I've done a lot for this organization, especially in these last three years. I've taken the ball time after time. Whenever they needed me, I was there for them." Betances was upset enough to say he would reconsider how the Yankees used him … "Is it selfish of me just to say now, 'Hey, guys, I just want to come in for the eighth inning with no runners on, all the time'?").

145 *Compare* Richard Griffin, *Stroman Fumes After Losing Arbitration Fight with Blue Jays*, The Star (Feb. 15, 2018), https://www.thestar.com/sports/blue-jays/stroman-fumes-after-losing-arbitration-fight-with-blue-jays/article_d4bf73cb-fdb4-556f-8f8d-7e5ef8b5cff5.html (describing Marcus Stroman's dissatisfaction with his 2018 arbitration hearing); *see also* Marcus Stroman (@MStrooo6), TWITTER (Feb. 15, 2018, 12:21 PM), https://twitter.com/MStrooo6/status/964202930583859201 (tweet has since been deleted) (tweeting, "the negative things that were said against me, by my own team, will never leave my mind").

Mediation has the potential to be a particularly valuable addition to the current salary arbitration process. Mediation is a "voluntary, non-binding, 'without prejudice' process that uses a neutral third party (mediator) to assist parties in a dispute to reach a mutually agreed settlement without having to resort to a court."[146] Mediation would be an ideal addition because it is a conflict resolution method that empowers the parties involved to actively participate in the discussion, while helping them find their common interests.[147] Proponents of mediation have highlighted its effectiveness in "foster[ing] healthier communication between disputants."[148]

Mediation differs significantly from arbitration as an alternative dispute resolution process because mediation creates an environment where both parties can find mutual satisfaction in the outcome, opposed to being left with a binding decision from the arbitrator, potentially leaving the parties at odds.[149] Mediation preserves working relationships and encourages a quick resolution of time sensitive matters.[150] Mediation is especially beneficial when the mediator is able to facilitate open communication and negotiation between the parties.[151] A mediator is a neutral third party skilled at keeping a conversation civil, even when there is face-to-face communication between the parties.[152]

In the context of MLB salary arbitration, mediation can take place after the final exchange date but before the arbitration hearing. Scheduling a mediation session between these two events serves as a final opportunity for the parties to reach a settlement amicably before resorting to the

---

146 *See* Ian S. Blackshaw, *Sport, Mediation, and Arbitration,* 19 (2009).
147 *See* Kenneth R. Feinberg, *Mediation—A Preferred Method of Dispute Resolution*, 16 PEPP. L. REV. S5, S7–S10 (1989).
148 Kathleen C. Wallace, *A Proposal for the United States Olympic Committee to Incorporate Formal Mediation Within Its Grievance Process*, 16 MARQ. SPORTS L. REV. 59, 65 (2005).
149 *See id.*
150 *See* Peter B. Kupelian & Brian R. Salliotte, *The Use of Mediation for Resolving Salary Disputes in Sports*, 2 T.M. COOLEY J. PRAC. & CLINICAL L. 383, 391-93 (1999).
151 *See* Smith, *supra* note 137, at 1038 ("By opening up and promoting communication between the parties in a nonadversarial environment-rather than the ownership belittling the achievements of the athlete during his time on their team-there can be respectful discussions regarding a fair and reasonable salary").
152 *See id.* at 1032 n.214.

confrontational setting of arbitration. Mediation is likely to induce settlements because it places less of an emphasis on actual procedure like arbitration, but rather focuses on the specific needs of the parties involved.[153] Further, even if the mediation is not successful in producing a settlement, progress will still have been made because the parties communicated their grievances in a controlled setting.[154]

A benefit of mediation includes the preservation of public image. Mediation offers a chance to resolve disputes privately, reducing the exposure of disagreements that have alienated fans and sponsors in the past.[155] Public labor disputes in professional sports ultimately hurt the sports themselves because fans become victim to the conflict.[156] Additionally, in an era of social media, the public becomes easily involved (through their own research or by a player publicizing what happened during their hearing) in salary arbitration disputes.[157] Therefore, because of the greater privacy offered through mediation, teams and players will not be subject to public scrutiny about what happened behind closed doors.[158] Similarly, the public will not fall victim to the dispute.[159] An additional benefit of mediation is that it can either maintain or repair relationships between teams

---

153 *See* Reid, *supra* note 135, at 91; *see also* Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1363-64 (1985) ("In mediation, a neutral, noncoercive, nonadversarial third party coordinates and facilitates negotiations between disputants. The mediator only encourages settlement; the parties retain ultimate decision-making authority. Mediation is widely used in resolving domestic disputes and consumer grievances.").

154 *See* Smith, *supra* note 137, at 1034 (noting how the parties have a better handle on key issues after a mediation session, even if they proceed to arbitration).

155 *See* Hannah Keyser, *A look at fan rage from 1994 MLB strike, and those who never really came back*, YAHOO SPORTS (Aug. 12, 2019), https://sports.yahoo.com/a-look-at-fan-rage-from-1994-mlb-strike-and-those-who-never-really-came-back-054158066.html (noting how the 1994 MLB strike left a lasting impact on fans with some fans even calling for boycotts due to their resentment toward owners and players).

156 *See* Kenneth A. Kovach et al., *Leveling the Playing Field*, (Oct. 13, 1997) http://research.moore.sc.edu/Publications/B&EReview/Be44_I/sports.htm (Oct. 13, 1997) ("professional sports have experienced open labor warfare. Most of these disputes have spilled over into the American political and legal arenas and, in the end, the sports have suffered, and sports consumers, i.e., the fans have become victims of labor chaos and conflict").

157 *See* Witz, *supra* note 144; *see also* Griffin, *supra* note 145.

158 *See* Dorsino, *supra* note 110, at 1485.

159 *See id.*

and players.[160] Through mediation, players and teams can attempt to settle in an environment that is respectful of differences and gives each party a voice.[161] Ultimately, requiring mediation before arbitration will provide the players and teams with an avenue to communicate their positions in a welcoming atmosphere for a non-binding discussion.[162]

Mediation can help maintain relationships between players, teams, and fans. However, critics of mediation believe that a mediation will only lower the best alternative to a negotiated agreement ("BATNA") for both sides.[163] This argument assumes that the team's and player's only goal is that of monetary value. The argument fails to acknowledge the value mediation can provide to maintaining a positive relationship, player satisfaction, team cohesion, and public image. In fact, by presenting the arbitration hearing as a less attractive alternative, both parties are encouraged to find common ground during mediation to avoid a less favorable outcome during arbitration.

Another criticism to mediation is the argument that teams have a vested interest in maintaining a good relationship with its players, thus does not need to submit to a mediation.[164] This argument fails on account of perception. Although the team may have good intentions and illustrate their arguments in a respectful way, when it comes down to it, the team has to argue in a way that undercuts their own player if they want to win the hearing.[165] Thus, a vested interest in maintaining a good relationship does not equate to the maintenance of one. Consequently, without such an avenue for a positive discussion of needs, parties will continue to be restricted by arbitration's rigid and

---

[160] *See* Wallace, *supra* note 148, at 65 (noting how mediation can repair and foster relationships among athletes, coaches, and governing bodies).
[161] *See id.*
[162] *See* Robert Pannullo*, Facilitating Change: Addressing the Underutilization of Mediation in Professional Sports*, 25 HARV. NEGOT. L. REV. 103, 127 (2019).
[163] *See* Monhait, *supra* note 13, at 141.
[164] *See* Mark Grabowski, *Both Sides Win: Why Using Mediation Would Improve Pro Sports*, 5 HARV. J. SPORTS & ENT. L. 189, 199 (2014)
[165] *See* Smith, *supra* note 137, at 1034.

capricious structure. The damage to player-team relationships can be lessened if MLB were to adopt mediation prior to arbitration hearings.

IV. CONCLUSION

The purpose of final offer arbitration is to foster an environment that promotes settlement.[166] Although the process has achieved its objective, with more than eighty percent of cases filed for arbitration being settled prior to the hearing, the rise in frequency of salary arbitration demonstrates how there is room for improvement.[167] MLB salary arbitration is criticized for its unchanged, old-school, archaic scheme.[168] Implementing a Baseball Knowledge Exam will level the playing field in the new age of sabermetrics. Requiring that arbitrators issue written decisions after a hearing will establish precedent with comparable player markets, while holding arbitrators accountable for their decisions. Mandating a mediation session prior to arbitration will accomplish the goal of settlements, while preempting damage to player-team relationships. All of these solutions will resolve the problems with MLB's current salary arbitration process.

---

166 *See* Bukstein, *supra* note 133.
167 *See* Jonathan M. Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 SPORTS L. J. 221, 232 (1998) ("Since 1974, and up to and including 1996-2008 players have filed for arbitration, yet 1608 (80%) settled before the dispute ever resulted in a hearing"); *see also* Christopher R. Deubert, *The Return of Salary Arbitration*, SPORTS L. BLOG (Mar. 15, 2018), http://sports-law.blogspot.com/2018/03/the-return-of-salaryarbitration-in.html [https://perma.cc/K4Q2-EWUN] (noting the upward trend of players going to arbitration since 2015).
168 *See* Carpenter, *supra* note 106.