

vided that no consolidation into one corporation might be approved by the Commission unless in harmony with a plan for the consolidation of all railways into a limited number of systems, which the Commission was directed to prepare.¹¹⁰ Since the Commission's plan was not completed until 1929,¹¹¹ no consolidations could be approved prior to that date, but consolidations were permitted to go on under state law without Commission approval, thus countenancing the creation of multiple corporations.¹¹² Although the amendment of 1933 provided that all unifications of control of two or more railways undertaken without Commission approval are illegal,¹¹³ approval of a statutory consolidation of corporations of two states, even if it supplies a lack of corporate power, would be of little assistance today where the states provide no machinery to achieve consolidation, since it is clear that federal incorporation is not intended. Furthermore, where the state machinery provided does not permit the consolidated corporation to choose the state in which it will incorporate, Commission approval of a unification accomplished in this manner could hardly prevent a multiple corporation from arising; for there would seem to be no reason why Commission approval should effect the doctrine that a multiple corporation arises when the consolidation statutes of two states are used to unite.

ORGANIZED BASEBALL AND THE LAW*

EARLY in the history of professional baseball, the club owners began to cooperate for mutual benefit.¹ One result of this cooperation is the uniform players' contract, containing a "reserve clause" by which a player signing for one season gives the club an option on his services for the following season at a salary subsequently to be determined by the parties. Since the

110. 41 STAT. 481 (1920), as amended, 48 STAT. 217 (1933), 49 U. S. C. § 5 (2, 4) (1934).

111. Consolidation of Railroads, 159 I. C. C. 522 (1929), *modified*, 163 I. C. C. 188 (1929), 185 I. C. C. 403 (1932).

112. Snyder v. New York, C. & St. L. R. R., 118 Ohio St. 72, 160 N. E. 615 (1928), *aff'd*, 278 U. S. 578 (1929); Acquisition of Lines & Stock Issue by Penn., O. & D. R. R., 105 I. C. C. 189 (1925); see Swaine, *Reorganization of Corporations: Certain Developments of the Last Decade* (1928) 28 COL. L. REV. 29, 32 *et seq.*

113. 48 STAT. 218 (1933), 49 U. S. C. § 5 (6) (1934).

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1. In 1876 the National League was formed, taking control of baseball from the players and putting it in the hands of entrepreneurs. In 1882 the first National Agreement was formulated. SPINK, *THE NATIONAL GAME* (1910) 14. The present National Agreement was adopted by the National Association of Professional Baseball Leagues in 1901. HEILBRONER, *BASEBALL BLUEBOOK* (1937) 148.

contract entered into in each succeeding season will have a similar provision, the player is really signing for the duration of his baseball life. The club is also given power to release the player on ten days' notice or to assign his contract to some other club.² While courts have frequently declined to enforce such contracts for the clubs,³ close organization among club owners has now relieved them of the necessity of resorting to the courts. The "National Agreement," subscribed to by every owner in organized baseball and administered by a commission of their choosing, provides that a player's violation of his contract renders him ineligible,⁴ and subjects to severe penalties any club that hires an ineligible player.⁵ Since the organization of owners is so widespread as to control the entire available supply of skilled players, blacklisting a man ends his baseball career.

Baseball's employer-employee situation is *sui generis*. A player can sell his services to the club making the best offer only when he is a free agent—a status which he will have either when he is just breaking into baseball or when the club holding his contract has no further use for his services and is unable to trade or sell him to some other club. In neither of these situations is his bargaining power likely to be great.⁶ At any other time, the player must accept the terms of the owner claiming his services or

2. The system of sending players from one club to another has been likened to slave trading [Sanborn, *The White Slaves of the Diamond*, *EVERYBODY'S MAGAZINE*, October, 1913, p. 524] and horse trading [Fullerton, *Baseball—The Business and the Sport*, *REVIEW OF REVIEWS*, April, 1921, p. 417, 418].

Minneapolis of the American Association once traded a player for a bull-dog [N. Y. Times, Jan. 12, 1915, p. 10, col. 3]; the St. Louis Cardinals traded a pitcher for a bird-dog [*Ibid.*]; and Omaha of the Western League swapped a pitcher and a catcher for an airplane. N. Y. Times, Dec. 3, 1924, p. 17, col. 2.

3. *Weeghman v. Killifer*, 215 Fed. 289 (C. C. A. 6th, 1914), *aff'd* 215 Fed. 168 (W. D. Mich. 1914); *Brooklyn Baseball Club v. McGuire*, 116 Fed. 782 (E. D. Pa. 1902); *Metropolitan Exhibition Co. v. Ewing*, 42 Fed. 198 (C. C. S. D. N. Y. 1890); *Allegheny Base-Ball Club v. Bennett*, 14 Fed. 257 (C. C. W. D. Pa. 1882); *Cincinnati Exhibition Co. v. Johnson*, 190 Ill. App. 630 (1914); *Baltimore Base Ball & Exhibition Co. v. Pickett*, 78 Md. 375, 28 Atl. 279 (1894); *American Base Ball & Athletic Exhibition Co. v. Harper*, 54 CENT. L. J. 449 (C. C. St. Louis 1902); *American League Club of Chicago v. Chase*, 86 Misc. 441, 149 N. Y. Supp. 6 (Sup. Ct. 1914); *Metropolitan Exhibition Co. v. Ward*, 24 Abb. N. C. 393, 9 N. Y. Supp. 779 (Sup. Ct. 1890); *Columbus Baseball Club v. Reiley*, 11 Ohio Dec. Repr. 272 (1891); *Philadelphia Ball Club, Ltd. v. Hallman*, 8 Pa. C. C. 57 (1890); *Harrisburg Base-Ball Club v. Athletic Ass'n*, 8 Pa. C. C. 337 (1890). *Contra*: *Cincinnati Exhibition Co. v. Marsans*, 216 Fed. 269 (E. D. Mo. 1914); *American Ass'n Club of Kansas City v. Pickett*, 8 Pa. C. C. 232 (1890); *Philadelphia Ball Club, Ltd. v. Lajoie*, 202 Pa. 210, 51 Atl. 973 (1902).

4. NATIONAL AGREEMENT, Art. 30, § 1.

5. *Id.*, Art. 30, § 7.

6. Unless the player who is seeking his first contract has had college experience, he must first sign with a minor league club. MAJOR-MINOR LEAGUE RULES, Rule 3 (f). This operates indirectly to reduce his bargaining power, for the minor leagues are subject to salary limits. NATIONAL AGREEMENT, Art. 16, § 1.

retire from the game.⁷ During the salary negotiations prior to the start of the season, the club is usually in the dominating position, and only if the player possesses such outstanding ability that the club would find it difficult to replace him, will he be able to force a satisfactory compromise. Otherwise he must rely solely upon the owner's reluctance to sacrifice the investment represented by the athlete's original cost and present transfer value. In any event, the player can not take advantage of the fact that there might be more generous club owners willing to make him a better offer. If his club is one of the less wealthy and less successful, he may go through his entire career without acquiring either the fame or the remuneration merited by his ability—and without ever sharing a world series plum.⁸ If he is traded, he must work for his new team even though it be in the hottest part of Texas. If he is with a good club which has a slightly better man at his position, but nevertheless can afford to retain him, he may warm the bench during the years when he should be developing—a misfortune which has ruined some potentially great players.⁹ In return for the player's placing his baseball fortune in the club's hands, the club promises only that it will pay him a stipulated salary for so much of the current season as it desires his services; on ten days' notice it can release him unconditionally and terminate its obligation to pay him a salary.

The legality of this arrangement is questionable. Some courts have called "organized baseball" a monopoly.¹⁰ The uniform contract has been assailed as against public policy and in restraint of trade,¹¹ and as too indefinite¹²

7. N. Y. Times, April 3, 1936, p. 29, col. 1: "Babe Herman was told by the Reds to sign his 1936 contract or quit baseball. General Manager Larry McPhail of the Reds said 'Herman will play with the Reds in 1936 or he won't play.'"

N. Y. Times, April 5, 1936, § 5, p. 8, col. 4: "Herman signs."

8. See Westbrook Pegler's syndicated article, New Haven Register, April 8, 1937, p. 3, col. 1.

9. Outstanding examples: Ben Paschal, Sam Byrd (understudies to Babe Ruth).

10. See American Base Ball & Athletic Exhibition Co. v. Harper, 54 CENT. L. J. 449, 450 (C. C. St. Louis 1902); American League Club of Chicago v. Chase, 86 Misc. 441, 461, 149 N. Y. Supp. 6, 17 (Sup. Ct. 1914).

Rep. Ray Cannon (D., Wis.) recently requested the Department of Justice to investigate organized baseball's alleged violations of the Sherman Anti-Trust Act. The Attorney General refused, citing Federal League Baseball Club of Baltimore v. National League, 259 U. S. 200 (1922), which held that the clubs were not engaged in interstate commerce. N. Y. Times, April 15, 1937, p. 25, col. 2. Federal investigation and regulation have been suggested in the past by Rep. Gallagher (N. Y. Times, Jan. 6, 1914, p. 14, col. 3), by Rep. Bloom (N. Y. Times, Oct. 7, 1924, p. 17, col. 2), by Ban Johnson (N. Y. Times, Jan. 15, 1925, p. 17, col. 1), by Rep. Kelly and Sen. Capper (N. Y. Times, Jan. 1, 1927, p. 16, col. 1). No effective action has yet been taken. Although it is doubtful whether the Supreme Court would reverse its holding in the *Federal League* case, *supra*, prosecutions could probably be brought under the state anti-trust statutes.

11. See Allegheny Base-Ball Club. v. Bennett, American Base Ball & Athletic Exhibition Co. v. Harper, American League Club of Chicago v. Chase, all *supra* note 3.

or too one-sided¹³ to be enforced in equity. The National Agreement's provisions on ineligibility and trading are in apparent conflict with the anti-blacklisting statutes of several states,¹⁴ and with the traditional common-law doctrine that contracts for personal services are non-assignable.¹⁵ The clubs' method of dealing with players has been compared unfavorably with peonage,¹⁶ and has been attacked as "contrary to the spirit of American institutions and contrary to the spirit of the Constitution"¹⁷ and as "an affront to American labor."¹⁸

Despite the vehemence of these criticisms, baseball's benevolent despotism enjoys a reign unhampered either by criminal prosecutions or by revolts among its "slaves." The last uprising of any considerable dimensions was the formation in 1912 of the Federal League, which ultimately succumbed to the power and wealth of the organized owners.¹⁹ At the present time, it would be virtually impossible for any group successfully to present professional baseball games in competition with the dominant interests.²⁰ Most major league players seem satisfied with the prevailing state of affairs,²¹ and the public has grown accustomed to it. Minor league players are hardly in a position to object. The prospect of promotion to more lucrative jobs in the major leagues militates against discontent in the minors.²² Individually,

Cf. Milwaukee Linen Supply Co. v. Ring, 210 Wis. 467, 246 N. W. 567 (1933), (1933) 18 IOWA L. REV. 546.

12. *Metropolitan Exhibition Co. v. Ewing*, *Metropolitan Exhibition Co. v. Ward*, *Philadelphia Ball Club, Ltd. v. Hallman*, all *supra* note 3.

13. *Brooklyn Baseball Club v. McGuire*, *Cincinnati Exhibition Co. v. Johnson*, *American Base Ball & Athletic Exhibition Co. v. Harper*, *Metropolitan Exhibition Co. v. Ward*, *Philadelphia Ball Club, Ltd. v. Hallman*, *Harrisburg Base-Ball Club. v. Athletic Ass'n*, all *supra* note 3.

14. See, e.g., ILL. REV. STAT. (1935) c. 38, § 116; MO. STAT. ANN. (Vernon, 1932) § 4255; N. Y. PENAL LAW § 580.

15. *Davis v. Coburn*, 8 Mass. 299 (1811); 2 WILLISTON, CONTRACTS (2d ed. 1935) § 421.

16. See *American Base Ball & Athletic Exhibition Co. v. Harper*, 54 CENT. L. J. 449, 451 (C. C. St. Louis 1902) (citing U. S. CONST. AM'D'T XIII, § 1, prohibiting slavery and involuntary servitude); *American League Club of Chicago v. Chase*, 86 Misc. 441, 461, 465, 149 N. Y. Supp. 6, 17, 19 (Sup. Ct. 1914); N. Y. Times, Jan. 12, 1928, p. 26, col. 5.

17. *American League Club of Chicago v. Chase*, 86 Misc. 441, at 465, 149 N. Y. Supp. 6, at 19 (Sup. Ct. 1914).

18. Rep. Ray Cannon (D., Wis.) in N. Y. Times, May 5, 1937, p. 11, col. 1.

19. The organized owners have fought off or bought off several rebellions. The Union Association, formed in 1884, disbanded after one year. The Players' League, created in 1890, also lasted only one year. SPINK, THE NATIONAL GAME (1910) 14.

20. See Kieran, *Big League Business*, SAT. EVE. POST, May 31, 1930, p. 16.

21. Communications from various sports writers. There seems to be some difference of opinion, however. N. Y. Times, April 17, 1937, p. 12, col. 6.

22. In no other industry do the capitalists make such sustained and scientific efforts to discover and develop competent laborers. The major league clubs spend a million dollars annually on their "scouting" system. Evans, *Hunting Baseball Ivory*, SAT. EVE. POST, April 27, 1935, p. 16.

the players have no power to fight the system—and they are essentially individualists, lacking all semblance of organization or class consciousness.²³ Attempts to unionize them have repeatedly failed. The first Brotherhood, organized in 1887, lasted only four years, disbanding after the Players' League's losing struggle with the National League.²⁴ A second Brotherhood, formed in 1900, broke up two years later.²⁵ In 1912 the Baseball Players' Fraternity was organized. Although successful in obtaining from the National Commission several concessions favorable to the players, it went out of existence in 1917²⁶ as the result of an ill-fated strike. Since then only two abortive efforts have been made to unite the baseball "workers."

So long as baseball's much maligned combination operates to the satisfaction of owners, players and public, its present form of self-government will probably be allowed to continue notwithstanding apparent infractions of the law. Although open bidding annually for the players' services would avoid some of the tyrannical aspects of the present system, it might result in concentrating the best players among the wealthiest clubs. The prevailing order makes for closer pennant races, better ball games, greater public interest and greater consumer satisfaction.²⁷ And more fun for the fans means more money for the magnates.

23. The Association of Professional Ball Players of America (membership 2,381) is not a union; it is a benevolent organization with the objective of caring for sick and indigent players.

24. SPALDING'S OFFICIAL BASEBALL GUIDE (1937) pp. 342-343.

25. *Ibid.*

26. *Ibid.*

27. The despots of the diamond have performed a remarkable job in reducing the gambling and other scandal which formerly demoralized the sport and threatened its existence in 1875. To those suspected of dishonesty, baseball's self-government has been harsher than the law. Several men acquitted by juries of various offenses have nevertheless been expelled from the game.