## III. ARBITRATING IN BASEBALL

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There can be no question about it. Major league baseball salary arbitration is different. Indeed, it is unique to my experience and, I would guess, to the experience of most of you in this room. No other form of arbitration compares to baseball salary arbitration in substance, format, and the criteria imposed upon the neutral.

At the Annual Meeting of the National Academy of Arbitrators convened at Atlanta during April of 1973, John J. Gaherin, then director of the Major League Baseball Player Relations Committee (the bargaining representative of the club owners), announced the adoption of what he described as "a totally new concept—individual salary arbitration." Mr. Gaherin advised his audience that the new procedure was constructed "to meet the particular needs of baseball." In that context, he predicted success for the venture. A decade has now gone by and we may ask, "What has been the performance following that early promise?"

I would begin the formulation of a tentative response to such an inquiry by recalling that salary arbitration was first proposed by the Major League Baseball Players Association as an alternative to the reserve system as it was then constructed. I have been told, however, that it was the Player Relations Committee that initially suggested the concept of final-offer arbitration.

Although the first collective bargaining agreement ("Basic Agreement") in baseball was negotiated in 1968, individual salary arbitration was not adopted by the parties until 1973. The first hearings and awards were therefore applicable to the 1974 championship season. The procedure was designed to provide an informal hearing wherein the same type of arguments historically advanced during individual player contract negotiations could be presented to a neutral for binding disposition. Thus, from the very outset baseball salary arbitration has been unique. Not that final-offer arbitration was an unknown procedure, but rather that it was custom-fitted to baseball.

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Let me briefly describe that which sets this hand-tailored format apart from the more generally utilized arbitration procedures. In doing so, I remind you that salary arbitration in baseball is interest arbitration and not grievance arbitration. Note also that only some of the members of the bargaining unit are eligible to invoke salary arbitration in the absence of consent on the part of the employer-club. The bargaining unit members who are eligible are those with a total of two years but less than six years of major league service.

Those players with the requisite major league service are entitled to arbitrate with or without the consent of the club (under certain circumstances the club itself may invoke salary arbitration, but this has occurred only once or twice over the past ten years). While the Players Association and the Player Relations Committee negotiate a minimum salary ($35,000 for 1983), every player in baseball bargains his own individual salary. Those who are eligible may declare for arbitration if they are unable to reach agreement with their employer.

The concept and intent of final-offer arbitration as utilized in baseball are found in the hope that the bottom-line contractual necessity to submit to the arbitrator a final money figure for adjudication will result in more realistic bargaining. It is felt that the inherent uncertainties surrounding the outcome of the hearing will lead the player and the club to select more reasonable figures and thereby provide a basis for settlement. In this regard, it may be noted that the neutral selects the figure that falls nearest to his determination of the indicated salary. In my own experience, it is rare that the arbitrator subjectively comes out even with either of the two extremes.

Returning now to other aspects of this procedure that set it apart from the garden-variety arbitration case, I point out that all of the hearings are conducted immediately prior to the February opening of the spring training camps. The award of the arbitrator is effective for but one year. The player and the club submit to the arbitrator a written "demand" and a written "offer." As noted, the neutral must select one of these two figures. There can be no compromise. To render the award, the arbitrator simply enters the dollar amount he has selected in a previously executed standard player contract. The basic agreement provides that he "may" render the decision on the day of the hearing, but in any event he shall make every effort to issue the award within 24 hours. In practice, the arbitrators are re-

quested to telephone their decision to the respective offices of the Player Relations Committee and the Players Association and thereafter mail the completed contract to the office of the league president.

The basic agreement defines in some detail the procedure to be followed during the conduct of the hearing. The parties are limited to one hour for initial presentation and one-half hour for rebuttal and summation. I note, however, that these time limits "may be extended by the arbitrator in the event of a lengthy cross-examination of witnesses, or for other good cause." Continuances or adjournments are not permitted. The arbitrator is provided, in strict confidence, a tabulation of the salary paid to every player on the major league rosters as of August 31 of the preceding year, as well as an identification of their years of major league service. The neutral likewise receives the official National League averages for the preceding year along with a comparable statistical presentation prepared by the American League. Also included in the material provided—that is, the "evidence"—is the Baseball Register published for the preceding year. Thus, the arbitrator begins the hearing armed with updated career averages for every major league player plus the salary paid each and every player over the preceding three years.

The criteria to be applied by the arbitrator is likewise spelled out in the Basic Agreement. It consists of the quality of the player's contribution to his club during the past season ("including but not limited to his overall performance, special qualities of leadership and public appeal"), the length and consistency of his career contribution, the record of his past compensation, comparative baseball salaries, the existence of any physical or mental defects on the part of the player, as well as the recent performance record of the club including, but not limited to, its league standing and attendance as an indication of public acceptance. Certain potential items of evidence are, however, specifically excluded from the deliberations of the arbitrator. These are the financial position of the player or the club, press comments, testimonials or similar material bearing on the performance of either the player or the club (other than recognized annual player awards for playing excellence), offers made by either party prior to the arbitration, the cost to the parties of their presentation, and salaries paid in other sports or occupations.

The arbitrators employed by the parties serve on a panel mu-

tually designated by the Player Relations Committee and the Players Association. Thus, the arbitrator who serves in an individual case is not directly selected by the player and club involved. I am told the Players Association and the Player Relations Committee attempt to populate the panel with arbitrators of national stature who have earned a reputation for neutrality. The Basic Agreement calls for "prominent, professional arbitrators convenient to the hearing sites." I am further advised that some of the participants welcome an arbitrator who possesses some general knowledge of baseball, while others place no particular importance on such a background.

The roster of those who participate in the arbitration hearings likewise differs from the cast of characters arbitrators are otherwise accustomed to encountering. On one side of the table may be found one or more representatives of the club, one or more attorneys to present the arguments of the club, a statistician or two, perhaps a witness or two, and the Player Relations Committee general counsel or a member of his staff. On the other side of the table we find the player-grievant, one or more attorneys to present his case, the player's agent, sometimes a witness or two, and the general counsel for the Players Association or a member of his staff. The role of the representatives of the Players Association and the Player Relations Committee in the proceeding deserves special mention. They bring to the hearing experience in the presentation of cases of this type (along with player signing information updated by the minute) as well as an expertise in responding to the increasingly sophisticated and detailed presentations of both sides.

Now a few words about what takes place at the hearing. Within the framework of the negotiated criteria (as spelled out in the Basic Agreement), the baseball salary arbitrator is presented statistics not unfamiliar to the dedicated fan. He is asked to consider batting averages, won-loss percentages, fielding averages, earned run averages, extra base hits, and slugging percentages. It does not stop there, however. Performance of the player on turf as opposed to an artificial surface is sometimes analyzed. On occasion a player will rationalize a less than robust batting average by explaining that the manager has a "turkey" hitting behind him in the batting order. All in all, the statistics and the comparisons drawn can be quite innovative. They are always detailed.

It has been my lot to have served as a baseball salary arbitrator

with seniority dating back to 1974—that is, the first year of these hearings. Over that span of time I have acquired the impression that most of the club representatives, the agents, the players, and the lawyer-advocates leave the hearing room with a conviction that they have been provided a fair and full opportunity to present their case. The representatives of the Player Relations Committee and the Players Association I have interviewed report general satisfaction with the process. True enough, some rumblings are heard regarding the increasing role of lawyers, the constraints of the contractual time limitations, the increasing complexity of player contracts, and the recent appearance of such forms of evidence as extensive written presentations and videotape showings. I believe I am correct in concluding, however, that the parties view these items as areas for potential procedural adjustments rather than problems that would warrant an abandonment of the process.

I have said that one of the motives for adopting a final-offer arbitration system is the hope that the need to anticipate the probable award will result in more realistic negotiations and, as a consequence, induce an award. That aim seems to have been realized in baseball. About 70 percent of the players who file for arbitration settle their contract dispute prior to the hearing. To date, a total of 167 players have had their salary set for one year by an arbitrator. The players have prevailed in 76 hearings and the clubs in 91. These results, in my judgment, establish an absence of bias in either direction. This year, 88 players filed for arbitration, but 58 of that number reached an agreement with their club prior to a hearing. As a matter of interest, of the 30 players who actually went to a hearing, 13 prevailed, while the clubs won in 17 of the cases. The salaries awarded for the 1983 championship season ranged from $135,000 to $1,000,000 (I compare this to 1974 when I was asked to select between $42,000 and $50,000 for a four-year San Diego Padre outfielder—then considered a wide spread and an enormous amount of money).

I suggested at the outset that baseball salary arbitration is unique. In conclusion, permit me the opportunity to identify some of the more unusual environmental factors as viewed from the perspective of the arbitrator. First, although the arbitrator is relieved of the burden of writing an award, there exists no opportunity to explain why one figure was selected over another. Nor is there an opportunity for the intellectual discipline that

the production of a written discussion of the arguments may provide.

There exist other more exotic distinctions. In how many other hearing settings is the arbitrator distracted by television crews attempting to eavesdrop on what is being said by inserting their microphones in the opening at the bottom of the hearing room door? In what other arbitral forum does the neutral come face-to-face with employers who have earned a reputation for fighting with phantoms in elevators or just plain working stiffs who are driven to the hearing in a Rolls Royce? How often in the more routine environment are we expected to translate testimony offered in Spanish into dollars—not one dollar, or a few thousand dollars, but one million dollars?

The list of distinctions—many of them discomforting in some degree—goes on. In the more routine factory grievance situation, you and I as arbitrators award promotions or upgrades without ever being told how the grievant performed at the higher wage scale. In baseball, however, the salary arbitrator is reminded of his award on a daily basis through the medium of the published box scores, newspaper accounts of the game, sportscasts, radio broadcasts, and television. Every pitch, every hit, every error serves as a haunting reminder of his wisdom or folly—as may be the case. I recall that just this past spring, for example, a left-handed pitcher who appeared before me walked away with a king's ransom. When he thereafter gave up six runs in three ineffective innings of pitching during his first spring training appearance, the headline in the sports section of one of the Los Angeles newspapers read: "What do you suppose Tom Roberts is thinking now?"

And finally, in disposing of other disputes, how frequently are you condemned to remain forever closeted behind the security of your own front door because your neighbors and former friends pounce upon you each time you set foot outside—pounce upon you with the castigation that it is you alone who caused the price of a cup of beer sold at the ballpark to be raised by 25 cents?

Participation in baseball salary arbitration is different but delightful. The process was initiated with high promise, and it has generally performed up to that promise. It is no longer new, but the system has adjusted to change with reasonable utility. What was once a rather bold experiment is now an accepted method of resolving salary disputes.