Chapter 7

MAJOR LEAGUE BASEBALL AND THE NATIONAL HOCKEY LEAGUE FACE OFF: CONTRASTING STYLES OF SPORTS ARBITRATION

I. Salary Arbitration in the NHL: Eligibility, Rules, and Process

Daniel Dumais

Introduction to NHL Salary Arbitration

The *2005 Collective Bargaining Agreement* (CBA) negotiated between the National Hockey League (NHL) and the National Hockey League Players Association (NHLPA) is a complex document, spanning several hundred pages. It covers such matters as the entry draft, entry-level compensation, free agents, waivers and loans of players to minor league clubs, pension plan, international hockey games, endorsements and licensing, as well as grievance and salary arbitration.

This article focuses on salary arbitration. The rules are contained in Section 12 of the CBA, which covers the salary arbitration process from the selection of arbitrators to the issuance of an award. Although it existed before, this mechanism of dispute resolution began to be used on a consistent basis with the 1993 CBA under the leadership of executive director Bob Goodenow. Until 2005, only Players were allowed to file for salary arbitration. Now, Clubs and Players may do so. The number of filings has progressively increased over the years and reached a peak in 2004 with 67 filings and 19 hearings. Under the previous CBA, a Player would not become an Unrestricted Free Agent before he turned 31 years old. Therefore, many stars went through this process (e.g., Raymond Bourque, Scott Niedermayer, Joe Sakic, and Wade Redden).

With the last CBA, we see fewer cases going to arbitration. This is mainly due to two factors: (1) a Player can become an unrestricted free agent much earlier (as early as 25 years old), and (2) there are more long-term contracts signed than there were before.

Who Can File?

To be eligible for salary arbitration, a Player must be a "Group 2" Player (restricted free agent).

The same Player is eligible for salary arbitration if he meets the qualifications set forth in the following chart at the expiration of his last contract:

First SPC* Signing Age	Minimum level of professional experience required to be eligible for salary arbitration
18–20	4 years professional experience
21	3 years professional experience
22–23	2 years professional experience
24 or older	1 year professional experience

*Standard professional contract

In summary, Players eligible for salary arbitration are those who, at the same time, are Group 2 Players and meet the required level of professional experience. Following previous criteria, a Player in salary arbitration will then normally be between 23 and 27 years of age (age to which a Player can become an Unrestricted Free Agent).

The Clubs may also elect a salary arbitration for one of their eligible Players. There are two situations where the Clubs can use this prerogative:

1. Clubs can elect salary arbitration for Players with a salary greater than $1,500,000 in the prior League Year instead of extending a qualifying offer. In that case, and *only* in that case, Clubs may ask for a wage decrease corresponding with a maximum of 15 percent of the final League Year of the Player's most recent contract;
2. Clubs can elect salary arbitration for Players who did not accept their Qualifying Offer and did not file for salary arbitration.

In the second case, the Club's offer in salary arbitration must be equal to or higher than the Player's salary in the final League Year of the Player's SPC.

It should be noted that a Player will be subject to only one Club-elected salary arbitration in his career and that a Club may exercise its right to elect salary arbitration not more than twice per League Year.

Finally, in every salary arbitration, the party against whom an arbitration election was filed elects in its brief whether the arbitration award will be for a one- or two-year SPC, except if there is only one year left before the Player acquires the status of Unrestricted Free Agent.

Deadlines to Elect Salary Arbitration

There are several dates and deadlines governing salary arbitration election, depending on which of the previously mentioned arbitration options will be used:

- When a Player elects salary arbitration, he must do so by making a written request, on July 5 in the League Year in which he is eligible for salary arbitration.
- When a Club elects salary arbitration, it must do so by making a written request, at the latest June 15 or 48 hours after the conclusion of the Stanley Cup Finals in the League Year prior to the League Year for which the Club seeks to determine a salary by arbitration.
- When a Club elects salary arbitration, it must file a written request within 24 hours following the Player deadline of July 5.

Hearing Dates and Location

All salary arbitration hearings must be completed in accordance with a specified calendar date. For the duration of the CBA, the hearings take place between July 20 and August 4 of each year.

The League and the NHLPA jointly schedule the location for the salary arbitration hearings. According to the practice over the past years, all hearings now take place in Toronto.

Selection and Termination of Salary Arbitrators

The League and the NHLPA jointly appoint eight Salary Arbitrators (each party appoints four Arbitrators) who are members of the National Academy of Arbitrators.

Each party has the right to terminate the appointment of a Salary Arbitrator(s) during the period commencing on the date the final salary arbitration award is issued and ending on December 5 of such League Year. No reasons are required to justify such termination, although it normally means that the party who fired the arbitrator was not satisfied with previous award(s).

The party who did not terminate the Salary Arbitrator(s) must, within ten days of receiving the termination notice, submit a list of three names to the terminating party. Within ten days of receiving the names, the terminating party strikes two of the names and the remaining person becomes the new member of the salary arbitration panel.

Scheduling

On December 5 of each League Year, the parties, in writing, request each Salary Arbitrator to provide seven available dates for the next summer's round of salary arbitrations; these dates represent the "Salary Arbitration Calendar." Thereafter, no Salary Arbitrator can be asked to change or add any date except upon the mutual agreement of the parties.

Afterward, on the first business day following the final date for a Club to request salary arbitration, July 6, the League and the NHLPA jointly compile a list of all Player and Club requests.

Then, they flip a coin to determine which party will begin the selection process. The party that wins the coin-flip selects a Player from the list and assigns such Player to a particular Salary Arbitrator on one of the available dates, as indicated on the Salary Arbitration Calendar. The other party follows the same process until every Player has been assigned a hearing date and a Salary Arbitrator. Once so assigned, a Player's hearing date and Salary Arbitrator may not be changed without the mutual consent of the NHL and the NHLPA. There are some restrictions to a party's ability to assign a Player when a Club has more than one Salary Arbitration on a given date or when a Certified Agent has two players scheduled to have their salary arbitrations on the same date.

Procedures

The Player and the Club must prepare their respective briefs, limited to 40 pages, (exclusive of appendices, tables of contents, and exhibits) where they communicate their demand/offer and

explain their rationale. The main section of a brief refers to players presented as "valuable comparables." Objective criteria are employed in the selection of these comparables. Computer systems are used by the parties for their research and analysis. In addition, the parties usually refer to jurisprudence of past salary arbitrations to support their argumentation. This internal case law has been developed extensively over the last 15 years.

The parties must file their briefs to the Salary Arbitrator and simultaneously exchange briefs with each other at least 48 hours prior to the scheduled opening of the hearing. (A party that fails to timely file and exchange a brief waives the right to file any brief, unless excused by the Salary Arbitrator.) During those 48 hours, the parties set up rebuttal exhibits and prepare for the hearing while continuing to negotiate a potential agreement. Rebuttal exhibits cannot constitute an additional brief; they can be used only to reply to the other party's brief.

Except upon agreement of the NHL and NHLPA, every salary arbitration shall commence at 9:00 a.m. The Player, the Club, the League, and the NHLPA are each party to the proceeding. In addition to representatives of the parties, any other persons agreed upon by the League and the NHLPA may also attend. The parties each have a maximum of 90 minutes to present their case; the way they allocate these 90 minutes between their direct case and their rebuttal is at their sole discretion. The party who requested the arbitration initiates the hearing with its direct presentation. The other party follows with its submissions and each party completes with its rebuttal.

Regarding the evidence, the parties may present whatever witnesses (normally very few if any), affidavits, documents, charts, and other relevant evidence they choose to present at the hearing as long as it is not ruled inadmissible. The Salary Arbitrator has discretion concerning the relevancy, the materiality, and the weight to attach to any evidence. Moreover, he or she is not bound by any formal legal rules of evidence.

Statistical evidence asserted in a party's affirmative case must be included in such party's brief in order to be admissible. The CBA lists what is seen as admissible evidence:

- the overall performance, including official statistics prepared by the League (both offensive and defensive), of the Player in the previous season or seasons;

- the number of games played by the Player; his injuries or illnesses during the preceding seasons;
- the length of service of the Player in the League and/or with the Club;
- the overall contribution of the Player to the competitive success or failure of his Club in the preceding season;
- any special qualities of leadership or public appeal not inconsistent with the fulfillment of his responsibilities as a playing member of his team;
- the overall performance in the previous season or seasons of any Player(s) who is alleged to be comparable to the party Player whose salary is in dispute; and
- the compensation of any Player(s) who is alleged to be comparable to the party Player, provided, however, that the Salary Arbitrator shall not consider the Player(s) to be comparable to the party Player unless a party to the arbitration has contended that the Player(s) is comparable; nor shall the Salary Arbitrator consider the compensation or performance of a Player(s) unless a party to the arbitration has contended that the Player(s) is comparable.

The CBA also defines inadmissible evidence. The following evidence should not be considered by the Salary Arbitrator:

- any SPC, the term of which began when the Player party to such SPC was not a Group 2 Player;
- any SPC entered into by an unrestricted free agent, including SPCs signed by Players after the Player's Club has exercised a walk-away right;
- the SPC of any Player who is not being offered as a comparable Player to the party Player;
- qualifying offers made by the Club;
- any prior offers or history of negotiations between the Player and the Club;
- testimonials, videotapes, newspaper columns, press game reports, or similar materials;
- any reference to actual or potential walk-away rights;
- any award issued by a Salary Arbitrator as to which a Club exercised its walk-away rights;
- the financial condition of the Club or the League;
- references to a Club's Upper or Lower Limit, or to the Players' Share;

- any salary arbitration award issued in 2005–2006; or
- any reference to any salary or other compensation information in any salary arbitration opinion that took place prior to the execution of this Agreement. If any salary arbitration opinion issued prior to the execution of this Agreement is cited as a precedent, all references to any compensation information will be redacted.

Salary Arbitration Decision

The number of hearings varies but generally represents approximately 25 percent of the number of filings. Each salary arbitration decision must be issued within 48 hours of the closing of the hearing. The decision of the Salary Arbitrator shall establish, in a brief statement, the reasons for the decision, including identification of any comparable relied on. The conclusion of the award covers the following items:

- the term of the SPC, based upon the Player's or the Club's election of a one or two year SPC, as set forth in its brief;
- the salary to be paid to the Player by the Club for the season(s) with respect to which the arbitration is conducted;
- the inclusion or otherwise of a Minor League clause (or clauses) and the amount of Paragraph 1 Minor League Salary to be paid under each of the season(s) with respect to which the arbitration is requested.

Each party is responsible for its own expenses with regard to its participation in the arbitration. The cost of the arbitration proceedings, including the Salary Arbitrator's fees and expenses, are shared equally among the parties.

Walk-Away Rights

In spite of the imperative character of the arbitration decision, a Club can refuse to submit to it under certain circumstances. This is known as the right to walk away. Only the Club can exercise the walk-away prerogative from an Arbitrator's decision. The conditions to the walk-away are:

- Walk-away rights exist only when a Player has filed for arbitration (Player Elected Salary Arbitration).
- The award of the arbitration must be over a certain amount (increased on an annual basis at the same percentage rate of

increase as the Average League Salary). In 2008, the walk-away amount was approximately $1,050,000.
- If a Club elects to arbitrate a one-year SPC, the player shall automatically become an Unrestricted Free Agent.
- If a Club elects to arbitrate a two-year contract, the Player and the Club shall enter into a one-year SPC providing for the compensation set forth in the award and the Player will automatically be deemed to be an Unrestricted Free Agent at the conclusion of that one-year contract.
- Finally, a Club has limited walk-away rights per League Year.

Comparisons With Baseball

There are some fundamental distinctions between salary arbitration in baseball and in hockey. Among those differences, we have:

	HOCKEY	BASEBALL
Number of arbitrator(s) per case	1	3
Discretion of arbitrator	Can decide any salary between the 2 offers	Must select one or the other
Award	Must be written and justified	No justification only a salary
Exchange of briefs	48 hours before hearing	At the hearing
Exchange of official offer	48 hours before hearing	Many weeks before hearing
Selection of arbitrators	By the parties	At random
Term of award	One or two years	One year
Club's right to walk away	Yes	No

Conclusion

The NHL salary arbitration process has evolved pretty well since its creation. It is fast and efficient. As one can expect, most cases settle before they reach the hearing stage. Approximately 75 percent of the filings will be resolved without the decision of an arbitrator.

Although not perfect, we believe that this process is fair and can allow the concluding of a contract in a context where negotiations cannot produce such a result.

The fact that the arbitrator has a wide discretion generally avoids the characterization of winner-loser. It appears appropriate to oblige the arbitrator to justify his or her conclusion and motivation for choosing the final figure. The parties may not agree with the result, but at least they know why and how this result was determined. Principles are established and guide the parties in the next summer's round of salary arbitration.

II. PANEL DISCUSSION

Moderator:	Margaret R. Brogan, National Academy of Arbitrators, Narberth, Pennsylvania
Arbitrators:	Richard I. Bloch, National Academy of Arbitrators, Washington, D.C.
	Michel G. Picher, National Academy of Arbitrators, Ottawa, Ontario, Canada
Advocates, Hockey:	Daniel Dumais, Heenan Blaikie, Quebec, PQ, Canada
	Rex R. Gary, Turner Gary Sports, Media, Pennsylvania
Advocates, Baseball:	Daniel R. Halem, Senior Vice President, General Counsel–Labor, Major League Baseball, New York, New York
	Michael S. Weiner, General Counsel, Major League Baseball Players Association, New York, New York

Major League Baseball (MLB) and the National Hockey League (NHL), along with their respective players associations (PAs), have crafted salary arbitration models unique to each sport. How was each system created, how and why do they differ, and which is "better"? Advocates and arbitrators involved in these procedures discuss these questions, as well as other issues related to sports and arbitration.

Brogan: This topic is on the innovative salary arbitration systems in Major League Baseball and the National Hockey League.

Our distinguished panel is here to discuss how each system was created, how and why they differ, and which is "better." As you will see, the systems have elements in common with regular interest arbitration, as well as some glaring differences. Also, in contrasting baseball with hockey, you will see that the parties have crafted two styles of arbitration. For instance, hockey seeks a rationale from its arbitrators; baseball does not. The NHL system utilizes one arbitrator who has the authority to determine the specific salary, whereas in baseball a three-person panel is used that only has the authority to choose the club's figure, or that of the player.

First, I have asked Daniel Halem, Senior Vice President and General Counsel of Labor for MLB, and Daniel Dumais, an extremely experienced advocate for the clubs of the NHL, to generally explain the two systems of salary arbitration.

Halem: The compromise in baseball's 1973 collective bargaining agreement was that clubs control players for six years, during which time a player can't become a free agent. In exchange for that, players have the right to have their salary determined by an arbitrator for a portion of those six years. Specifically, players with between three and six years of major league service have the right to have their salary determined by an arbitrator. We also have a small group of players with two years of service who have the right to have their salary determined in arbitration. They're referred to as "Super Twos."

In essence, our process works as follows: By December 12 of each year, a club has to tender to a player a contract for the next season. If the club doesn't tender a contract, then the player becomes a free agent. That's called being "non-tendered." Assuming that a club does tender a contract, the player and the club negotiate over salary. If they can't agree on a salary by January 18, then each side exchanges its offer for the salary arbitration process. Per the collective bargaining agreement, a club submission can't be 20 percent lower than the player's prior season's salary.

After the numbers are exchanged, arbitration hearings are held during the first three weeks in February. No briefs are exchanged in advance. Each side has an hour to present its direct case and a half-hour to present its rebuttal.

Decisions are issued by the arbitration panel—we use three-person arbitration panels—within 24 hours of the end of the hearing. There are no written decisions; so the next day, the panel reports. Either the player wins or the club wins. During the hearing, reams of statistics and salary information are handed to the arbitrators.

In rebuttal, sometimes they're thrown at the arbitrators in haste. I think the best way to characterize it is controlled chaos.

We do, by the collective bargaining agreement, provide the arbitrators with the criteria that they must use in making their decision. The major criteria are the player's contribution to the club during the prior season, the length and consistency of the player's career contribution, comparable baseball salaries—which we could probably have a whole discussion about—and the performance record of the club during the last season.

We use a system of "final-offer" arbitration. In the vernacular, it's often referred to as "baseball arbitration." And of course, as you know, in this system of arbitration the arbitrators pick one side's number. They have no flexibility to pick a compromise number.

The only purpose of using this process is to promote settlement. There is really no other purpose for using such a system. And in our experience the process does work in terms of promoting settlement.

In 2008, we had 121 players who were eligible for arbitration. Those were players who were tendered a contract after December 12. And approximately 95 percent of those players and clubs settled their cases. With respect to the group of arbitration-eligible players, we had seven hearings. I should probably add that certain players who are becoming free agents also have the right to go to arbitration if their club offers them arbitration in order to get a compensatory draft pick. We also had one of those arbitrations. Not many of those players elect arbitration. Most of them elect to become a free agent and to sign a contract accordingly.

Because it's final-offer arbitration, it's a maddening process for those involved. It's not designed to be a friendly process for either the clubs, the players, the arbitration practitioners, or the arbitrators. It's designed to promote settlement. And settlement is promoted by creating a lot of uncertainty and creating a lot of risk.

For example, deciding what filing number to submit is a process that involves much strategy—some would say gamesmanship. For example, if a club believes that a player is worth $4 million and wants to settle in that range, and can't reach a settlement by January 18, the club has a choice. If the club still wants to hold out the possibility of settling after the numbers are filed, it's going to have to file a number well south of $4 million in order to get a $4 million settlement, creating a lower mid-point and a better possibility of settling near $4 million. Yet, the lower the club files, the more risk it has in arbitration. For example, if the club knows that the

player is represented by a player agent who has a tendency to go to arbitration, the club may file a higher number, which makes it more difficult to settle. And the agent and the player are engaging in the same calculus. I think the point is, there is a lot of uncertainty in the process. And this uncertainty, at least in the past, has promoted settlement. But it's not an easy process for the parties to manage.

Some clubs and agents adopt all sorts of strategies to try to manage the process. Some clubs have taken the position that come January 18, if there's no settlement, once they file numbers, they don't talk to the agent anymore. They go right to a hearing room. The purpose of that strategy is to induce the agent and the player to make their best offer at an early time; and if they don't, they're going to go to arbitration. And when they do, hopefully they're inducing the agent to file a lower number. Because clubs are generally risk averse, and the higher number the agent files in arbitration, the more risk they have. Although, conversely, they probably have a better chance of prevailing.

The two other factors that I'll talk about: three-person arbitration panels—we have them, the NHL doesn't. Three minds are better than one. Also, it protects our arbitrators. Arbitrations are emotional for both clubs and players; when a club or player loses, we'd rather have them direct their wrath at three people—four, including me or Michael, depending on who's winning—rather than one or two. We don't have written decisions. The reason for that is it allows the arbitration process to move more quickly, and also, it creates more uncertainty. And, again, uncertainty promotes settlement.

Dumais: We'll switch to the NHL. My first case in arbitration was in 1992. The player's name was Joe Sakic, a young player. And the arbitrator was Mr. Hennigan. We were under the old collective bargaining agreement before Bob Goodenow came in; and then the system changed. The arbitration increased in terms of numbers, refinement. And I've been doing that for the last 15 years or so. I've probably argued more than 30 cases, and been involved in more than 100.

Now, in hockey, you'll find the rules in two places. First of all, there's a collective bargaining agreement, section 12. The collective bargaining agreement gives us the main rules of salary arbitration. And in hockey, contrary to baseball, we have a system where the arbitrators must write their awards, must explain their reasons

why they arrive at the given number. Therefore, we have jurisprudence. And that's a big difference between hockey and baseball.

In hockey, we start from jurisprudence. We have precedents. We have famous quotes we can use. One of my favorites comes from Michel Picher in the case of *Leblanc v. Chicago Blackhawks* where he wrote, "One year does not a career make," which is, obviously, not bad for the clubs and arbitrator.

Now, who can file? In hockey, players are divided by groups: group 1, group 2, group 3. Those players who are eligible for arbitration are group 2 players. Let's say that they're between 22 or 23 years old, depending of the time they signed their contract, and 27. At 27, you become a UFA, unrestricted free agent. So the period of arbitration is between 22–23 and 27.

Since the last collective bargaining agreement, there is a new provision where the clubs may request arbitration. In the past, only the players were allowed to file for arbitration. The clubs had to go to arbitration if the player chose that way; but they had no way to do it themselves. The players chose the cases that went to arbitration; so, therefore, they chose the good ones. And we, the clubs, had no opportunity to bring a player to arbitration.

Now, since the new rule, clubs may go to arbitration. But I'll tell you frankly, we don't go often, the reason being that the club wants to avoid, as much as it can, going to arbitration with one of their players.

All of the hearings are now in Toronto. In the old days, we were traveling all over the United States and Canada. We were doing those arbitrations sometimes in October during the season. It made no sense. I remember arbitrating a player the night before a game. So imagine the dynamic where you have the player and you have the team and they play a game tomorrow and then the team said the player is not good. But it wants the player to play well the next day. So that was a strange process.

The selection of arbitrators: How many arbitrators do we have for these hearings and these cases? We have eight. It's in the collective bargaining agreement. And by the way, each arbitrator has to be a member of the NAA. This is written in the collective bargaining agreement. There's only one Canadian arbitrator on the panel right now; the other seven are Americans. At the beginning, there were four and four.

Going back to the selection of hockey arbitrators, every year a party being either the PA or the league can terminate an arbitra-

tor by December 5. If we don't do that, then they'll be there for the next year. If an arbitrator is terminated by one side, then the other side will propose three names. And the side that terminated the arbitrator will retain one name. So that's how we proceed. Since the beginning of this process, Rich Bloch and Michel Picher have been with us for the whole time, which means a lot to me.

How do we do the scheduling? The collective bargaining agreement says that when we know how many cases we'll have in a summer, we get the dates that the arbitrators are available between July 20 and August 4. They must give us seven dates. And then we meet with the league and the PA. We flip a coin and the one who wins goes second. So the first goes. And we choose a case. And we'll say, "The case of Player A will be heard by Arbitrator Brogan on July 25." And then the other side says, "The case of Player B will go before Arbitrator Blah-Blah." And that's how we schedule the arbitration.

We prepare briefs of maximum 40 pages with exhibits—a lot of charts, as you can imagine. These briefs are mainly driven by statistics. And as I said before, there might be some references to past words. We have to bring in comparables to see why the player in arbitration should be paid "X" dollars.

We exchange the official numbers in the brief 48 hours before the hearing. And in the brief, the other side will know the exact offer we're making. So the club will say, "I offer $2 million." The player will say, "I want $4 million." And that's where we learn exactly what the situation is. It doesn't mean that there's no negotiation going on. But these are the official positions. If there's no deal, those will be the positions defended during the hearing.

Because we exchange briefs 48 hours in advance, first of all, the arbitrators receive those briefs. They can read the positions of the club and the union. They know where we're going. They know which comparables we're using. So it gives a process, which I think is more complete and more thorough than may be in baseball. Because here, as I said, each party understands why the other party is taking its position.

During those 48 hours, we have to prepare what we call the rebuttal. So we prepare a lot of exhibits to show that the other side is wrong in its position. And we say why they're not okay when they're asking for "X" dollars. This is a crazy period preparing those cases, those briefs. We hardly sleep during the month. Personally, I represent 12 clubs; so a lot of arbitration cases. I have

worked days and nights for a month. And then we go back to work.

Okay. Going back to the hearings. Who attends to the hearing? Well, the arbitrator, the lawyers, the agent, the player, the General Manager (GM), the assistant GM, representatives from the PA, representatives from the league. The arbitrators are given the salaries of only the players who we contend to be comparables. The club says that the player should be paid $2 million because a, b, c, d, and e are making this money, then the union will say, "No, he should make $4 million because e, f, g, and h make this money." The arbitrators have to work with those numbers, nothing else.

The hearings last 90 minutes for each side. We can use it the way we want in terms of direct presentation and rebuttal. The side that requested the arbitration goes first with its direct presentation. He can talk 90 minutes, or he can talk 45 minutes. Then the other side goes. And we come back on rebuttal to complete the 90 minutes. That's how it works for the hearings.

Of course, as you can imagine, because the process is pretty speedy, there is not much time for questions during the hearing. There might be some questions from the arbitrators; but normally, they'll have us argue our cases pretty well. Not many witnesses. We try to avoid putting witnesses in the box because these parties will have to live together after the hearing. Maybe one of their future stars was arbitrated; so we try to be as objective as much as we can.

It happens sometimes that the GM will tell us, "Go hard on him. He needs something—he needs to learn he's not as good as he thinks he is." Sometimes we'll do that. But we try to save the feelings of those players.

The decisions must be rendered within 48 hours of the closing of the hearing, which, as you can imagine, is not very long and there's a lot of pressure on the arbitrators. And by the way, I do a little litigation outside this arbitration work. And we do trials. We go to court for ten days for a case of $1 million dollars—and here we have a process where in less than a month and after less than a half-day of hearing, in less than two days we'll have a decision, which often is deciding between millions of dollars on the one side and the other.

As I said, the decisions have to be written. Each party shares the cost. There's one thing in hockey: If the player filed for arbitration, if the salary is over a certain amount for next year, the club has a

walk-away right, which means the club can say, "I don't like the award, therefore, I will not respect this contract," and the player becomes free. So the walk-away makes the award non-applicable. And the player becomes an unrestricted free agent. There are not many walk-aways. I guess in the last five years we probably saw four, maybe five, walk-aways on more than, I guess, 100 hearings.

Now just a couple of numbers, the stats: In summer 2007 we had 30 filings and 8 hearings. The season before, in 2006, we had 68 filings and 12 hearings. The reason for that is because it was after the lockout. And many players had no contract. So there were many players who needed a contract. A lot of filings. In 2008, we'll see. I expect there might be not many filings in '08 because many players have been signed long term so they don't come back for renegotiation.

Brogan: Michael Weiner, General Counsel of the Major League Baseball Players Association, will now give us some history of the two systems, in light of his experience with both formats. I have also asked him to offer his thoughts as to which system is "better."

Weiner: I really could not speak before this gathering on this subject without at least some reference to the passing of Tom Roberts. Tom heard 36 baseball salary arbitration cases, at a time when we had single arbitrator panels. The first was in 1974 when he ruled for the Padres against Cito Gaston. The last was in 1990, when he ruled for Jeff Musselman against the New York Mets. He was then fired by the clubs—a very long story that we can't tell here, today.

Tom, at the time that he was fired, was unquestionably the dean of our salary arbitration panel. He served the players and the owners in baseball in various capacities with distinction and always with class. Tom was a man of conviction. And he had the courage to live with the consequences of those convictions. He was a pragmatist with an intuitive feel for the just result. He was an ambassador for the arbitral profession and, certainly, a credit to this Academy.

I've been to almost 20 annual meetings of the National Academy of Arbitrators. This is my first without Tom. I imagine that that statement holds for many who are in attendance today.

It's just not quite the same without him. [Applause.]

Let me now talk about the history of salary arbitration in baseball. My contention is that salary arbitration has been a remarkably enduring solution to a very difficult problem in collective bargaining. And secondly, salary arbitration, baseball-style, has proven to be a remarkably effective means of dispute resolution.

Salary arbitration emerged for the first time in baseball in the 1973 collective bargaining agreement. Salary arbitration actually preceded free agency. So in 1974, the first year of salary arbitration, you can imagine that the numbers were quite different than they are today. There was no market for salary arbitration to be a surrogate for. All the comparable players were players under reserve who had no meaningful leverage to negotiate their contracts. So the first-year results in 1974 ranged from the case of Frank Tepedino against the Atlanta Braves—the Braves won that case with a submission of $20,000 compared to Mr. Tepedino's $23,000. The biggest spread in 1974 involved Reggie Jackson, then of the A's, Most Valuable Player, two-time World Series winner, and he won his case. Arbitrator Morris Meyers awarded him $135,000 compared to the club submission of $100,000.

The world changed after the arbitration decisions of Peter Seitz involving Catfish Hunter and Andy Messersmith, which led to the creation of free agency in baseball. Prior to those arbitrations we lived in a world where clubs had eternal reserve rights over a player. A player was never free to negotiate with any club other than his own unless the club released him.

After those arbitration cases in 1976, the parties had to negotiate a new collective bargaining agreement. Under the grievance arbitration awards, all players would be free agents immediately at the end of each of their contracts.

The clubs' position in collective bargaining in 1976 I think began with 20-year free agency. A player would have to play for 20 years before he could be a free agent. Not a position that the union was very fond of. Ultimately, a compromise was reached; and this is quite remarkable—that compromise remains in place today. The initial compromise called for arbitration after two years of service; from years two through years six, the player remained under reserve. If the club wanted to maintain reserve rights, it could tender him a contract, but he'd have arbitration rights. And then after six years of service, a player would become a free agent.

There have been some modifications over that in 30-some-odd years. But it's basically been unchanged despite, obviously, a very contentious bargaining history in baseball, work stoppages, and even vastly changed industry economics.

The genius of the compromise, from my perspective, is that it gives something to both sides. The clubs maintain reserve rights over players. But at least the player gets some surrogate, some

market-based determinant of his salary, even though it's not an actual market. And I think anybody in the game would agree that salary arbitration has been a key contributor to what really has been remarkable competitive balance in baseball over the past 30-some odd years since this system came into place. Teams like the Pittsburgh Pirates of the early 1990s, and the Florida Marlins of today, could not possibly keep their younger players without this collective bargaining solution. Clubs often gripe about the salaries they have to pay to young players as a result of salary arbitration; but the superstar—the young superstars of today—would command a far higher salary if they were free agents. And that would be assuming that their clubs could actually sign them if they were competing for them in the open market.

Not only has salary arbitration been an enduring compromise from the collective bargaining perspective, but it's been a remarkably effective means of settling disputes. Since the expansion of baseball clubs to the current 30 teams in 1998, we have, roughly, 175 to 200 players who are potentially eligible for salary arbitration. Dan gave you the number after players are tendered; but if you look at it from the end of a regular season, the players with sufficient service to potentially be eligible for arbitration number close to 200 per year. In the 11 years since expansion, we've had 86 cases total go to salary arbitration. That's an average of just under 8 cases per year—a really remarkable success rate.

And how do we accomplish that? By imparting risk to both sides. To put it more bluntly, if somewhat hyperbolically, we want the system to be a crapshoot. It is final offer, either/or. I'm unaware of any other civil proceeding where millions of dollars are potentially at stake and there are no pleadings. There is no discovery. There are no pre- or post-hearing briefs. There is no transcript. There are no opinions. There is no appeal. Arbitrators know nothing about the case when they walk into the room. They don't know which player. They don't know which club.

The arbitrators come into the room and the advocates, essentially, scream at them for three or four hours. They throw papers in their direction. And then we recess. And in 24 hours, we get a thumbs up or a thumbs down and nothing more.

Every case that goes to hearing is a failure of the process because the process is designed to get all the cases resolved.

Let me now talk about hockey. Hockey is a different process. You've heard the differences. It looks a lot more like traditional interest arbitration. Why is it different from baseball? Historically,

salary arbitration in hockey is about as old as baseball. It goes back to the mid-1970s in one form or another. But salary arbitration in its current form arose out of collective bargaining that resulted in the end of a strike in 1992.

The key change in the system was in 1992, when the parties in collective bargaining agreed that all arbitrators had to be members of the National Academy of Arbitrators. Prior to that, there was arbitration in hockey. People who tell me about it say that it was not with independent arbitrators, and that it was not unusual for a case to be argued in the afternoon and to be decided in the owner's box at the game that evening. Once the parties agreed that NAA Members would be employed, the process had instant credibility.

Salary arbitration has played, and now plays, a different role in the reserve system in the NHL. It is beyond the scope of this gathering to explain the details of that; but from a union advocate's perspective, I can summarize it this way: In baseball, once a player is tendered a contract by his team, he will always file for arbitration. There is no reason for him not to as long as his case is still pending. In hockey, once a player is in position to elect arbitration, there are many reasons why he might not actually file for arbitration given what the alternatives are.

What about the different procedures? I was actually involved to a limited extent in the collective bargaining that followed the strike of 1992, as an outside consultant. I have spoken with people who were directly involved. The National Hockey League Players Association (NHLPA) in 1992 sought sort of a hybrid. They sought final offer arbitration. And they actually sought a world without written opinions. But the league wouldn't go for it because in the prior incarnation of arbitration, it was not final offer and there were written opinions. So in the end, they agreed to the system that has been described to you.

I don't think you can really compare settlement success rates in the two sports given the difference in rules and the context of the reserve system. But from my perspective, salary arbitration has been a huge success for the NHLPA in terms of its internal union politics and, more specifically, allowing the union to establish credibility with its members, with the players, and with its agents.

The more legalistic process required the union to provide more central support – for example, assistance with briefs, with oral arguments, and in the evaluation of precedent. This model of support created a model that the union used in other contexts

to support individual contract negotiations. It also established the union's bona fides and their capabilities with their new members. And given the history of collective bargaining in hockey, and particularly the NHLPA, that was very important.

A more irrational process—an intentionally irrational process—would not have served that goal. And, in fact—again, from my perspective—the NHLPA, at least in the early stages of arbitration, outworked the league. They received very good results, but maybe, more importantly, they established their credibility with their members; and that contributed to their success through the 1990s and into this decade.

Finally, which system is better? I think it depends on your perspective. I think they both have worked very well. As a means of pure dispute resolution, I prefer baseball. But I'm certain that my colleagues at the NHLPA would not regret for a minute the system that they negotiated in 1992.

Brogan: Rex Gary is an attorney and player agent for baseball. Mr. Gary also advocates on behalf of the NHLPA. In light of his significant experience in both sports, he will now give his point of view.

Gary: I argued my first baseball case in 1986 and my first hockey case in 1993. When I think about what has changed and what has remained the same, for me over that time period, a few things come immediately to mind. What has always stayed the same for me is the excitement, the adrenaline rush, and the fast-paced nature of these hearings. Each case has its own story line. The strengths and weaknesses of the player, the dynamics of each team, and how the season unfolds usually combine for the opportunity to tell a unique tale. And you have only 90 minutes to tell it. Because of the time limitations, these hearings are like three-round prize fights where combatants go hard from the opening bell.

The level of advocacy is something that has always been impressive but in my opinion, has just gotten better over time. Long gone are the days where exhibits were handed in on yellow legal tablets, hand written. Today, the lawyers with whom I work at the players associations in hockey and in baseball, the lawyers with the respective leagues and those like Mr. Dumais that I oppose across the table, are really good at what they do. And hopefully, this makes us all better lawyers. This makes it more fun and more interesting for you when you have to sit and listen to these hearings and make the decisions.

What has changed? Two main things jump out at me. Although these cases are still highly combative, I think they've become somewhat less acrimonious and less bitter than in the past. Nowadays, it's far less common than it was years ago for exchanges like this to occur. And I heard this in a hockey case. A club advocate turns to his GM of the club and says, "You have just heard the player compare himself to player X. How do you respond?" And the GM looks across the table at his own player and says, "I'd trade you for player X in a heartbeat. In fact, I'd trade two of you for him."

In a baseball case in the 1980s, the club called its starting shortstop the worst shortstop in the history of the major leagues. And that doesn't occur as frequently these days. And I'm frequently asked how players react to that type of criticism. Well, in that case, that particular player sat there, curiously to some, with this big grin on his face while he was being absolutely ripped. The reason: He didn't understand a word the lawyer was saying because he spoke only Spanish. And I can't tell you that all players react that cheerfully.

The second change over time that I've observed is the expansion of statistical data used to describe and compare players and its corresponding effects on these cases. This is significant because in sports arbitrations, statistics are the tools we have to work with to tell our story. Years ago, in hockey, statistics used to be limited to goals, assists, points, penalty minutes, and plus/minus. And that, basically, was it. And it was harder to get a handle on a player who wasn't a real high scorer or who accumulated high penalty minute totals.

For that type of in-between player, the issue always would be, is he a marginal, easily replaceable player—as Daniel Dumais would always argue? Or is he a valuable player who contributes significantly in aspects other than scoring, as the player would argue? The club's evidence in such a case would largely come from the GM, who not only would be critical of his value on the ice, but occasionally, of his work ethic and off-ice habits as well.

Now, we have many more statistics to give the arbitrator a better picture of who the player is. These include ice times, hits, shifts per game, giveaways, takeaways, special team's minutes, face-off winning percentage, and many other statistics. And, therefore, the expansion of the pull of statistics, particularly in hockey, allows the arbitrator to better objectively evaluate the player.

As you're probably aware, baseball has gone crazy with new statistics. We all grew up with the same basic statistics: batting

average, home runs, RBIs for hitters, wins, ERAs, strike-outs for pitchers. We now have the on-base percentage statistic popularized by the book, *Moneyball*. We have statistics on runs created, secondary average, pitches seen per plate appearance for hitters. For pitchers, we have ground ball/fly ball ratio, holds, inherited runner scoring percentage, run support per nine innings pitched, just to name a few.

There are books available. There are Web sites created with new statistics and new statistical evaluations all the time. But what's great and fun about these cases in both sports is that with each statistic, there is still room to argue its relevance and true relationship to the performance and role of the particular player. But one also must be very careful in not taking too much of their time because you only have 90 minutes in trying to explain to an arbitrator a new statistic or a new statistical theory.

Now, what system, baseball or hockey, do I prefer? Like Daniel Dumais, I've probably worked on well more than 100 arbitration cases in the two sports and actually argued in hearing more than 30, split about 50/50 between baseball and hockey. Hockey is such a fluid team-oriented game whereas baseball is a series of one-on-one battles with a concrete outcome each time. First, I'll say my preference is for the variety. It's really fun to argue both sports and under the two systems. The sports are very different; and the relatively minor differences in the arbitration systems make it more interesting.

But as an advocate, my preference clearly is hockey. I like the exchange of briefs in advance. Because rebuttal time is limited, it allows both sides to fully organize and prepare their presentations and evaluate the other side's presentation. And in baseball, as you're aware, neither the arbitrators nor the opposing sides see the opposing cases until we walk into the room to begin the case.

I also like the flexibility as to how the time is used in hockey. In hockey, you do have 90 minutes to use as you see fit. If you want to take a half-hour to present your case in chief and leave an hour for rebuttal, you may do that. In baseball, you're pretty much limited to one hour for your case and one half-hour for rebuttal.

And finally, in hockey we have written opinions. Quite frankly, I like to read how the arbitrator has reached his or her decision, mostly for curiosity reasons but particularly if there's an unfavorable result; it gives me an opportunity to see what, if anything, I could have possibly stressed or argued differently. But the bottom

line is if the object of each system is to encourage settlements, they clearly both work.

Brogan: Well, now we'll have an arbitrator's point of view. Or a couple. So Rich, do you want to start first?

Bloch: Thank you, Margie. As usual, these guys have done a pretty comprehensive job of giving you the overlay. I want to add just a couple of comments on it. First, I think it's important to observe that these systems differ in one major respect from an arbitrator's standpoint and that is that hockey—and Rex alluded to this—hockey is a very fluid team sport, unlike baseball, where individual performances continually happen throughout the game. As such, the statistical impact in hockey is a much more difficult thing to grasp. There are some statistics that can be very misleading. A superb player may have very poor statistics, for example, on a plus/minus basis. That's how many times goals are scored against you rather than for your team. Because that player may be used a lot in a penalty situation where they're one down. So sometimes statistics in this very much team sport are more elusive than in baseball.

Secondly, the two sports are, in terms of advocacy, not a place for rookies. The advocacy is done these days by extraordinarily skilled people. And it requires it, the particular nature of the discipline.

Now, hockey in some respects can get very difficult. I mean, for example, as you've heard, Daniel speaks funny; so I've never really understood anything he's said.

Dumais: You know, I want to say something. I'm not surprised to hear that because I have read your awards. [Laughter.]

Bloch: Will you read the next one? [Laughter.]

Dumais: Who knows? There might be no "next ones." [Laughter.]

Bloch: They're both difficult. And I want to just leave you with one—as you might imagine, there are hundreds of great stories that have arisen out of these—but I want to leave you with the one that I tell with what I believe would be the permission of Andrea Christianson whom I see sitting here. She can attest to its veracity.

Tom Christianson, as certainly all the Academy people know, is one of the giants of our group and one of the very early forerunners in the salary arbitration process. And he was assigned to hear the case of Bruce Sutter who was a pitcher for the Cubs. And this was in the early days and so when Tom awarded a $750,000 salary,

it sent shock waves through the sporting world. And Andrea told me this story; so I will apologize in advance for the language.

Andrea was riding from New York to Philadelphia, as I recall, the next morning on an Amtrak train. And there were two business people sitting in front of her. And the one guy turned to the other and he had opened the *New York Times*, which in 60-point bold type in the sporting section said something like, "Arbitrator gives Sutter $750k." And the one guy looked at the other and said, "Christ! Did you see what the f—— arbitrator did?" And Andrea leaned forward and tapped them on the shoulder and said, "Excuse me, when you're finished with the paper, if you wouldn't mind, I'd love to see it." And the one guy turned and said very cordially, "Oh, are you a sports enthusiast?" And she said, "No, I'm the wife of the f—— arbitrator." [Laughter.]

I'll yield.

Brogan: Obviously, we're going to have to edit this transcript of *The Proceedings*.

Picher: You have to understand that Rich was a goalie. I was a center. So when I see the heading, "Face Off," I know what I have to do. But I will not suggest that hockey is a better arbitration system than baseball. I think Mike Weiner has really nicely set the table to show the qualities and values of both systems.

I just want to give you a little historic sense because both Rich and I have been involved to some degree with the evolution of this process. When I began doing hockey salary arbitrations, it was different than it is now. The big difference was that in the earliest days—and this is post-1992—agents would appear at the arbitration and carry the ball and basically be making the pitch for their player. Well, as you can appreciate, agents don't have a particular investment in the collective bargaining agreement. And some of the arguments being made were quite disparate and not necessarily consistent from player to player or agent to agent. That quickly changed. I can't remember the exact year, but all of a sudden I realized that all the presentations on behalf of the player—at least in chief—were being made by the NHLPA. And that was a very salutary move on their part. It brought consistency. No argument was made if it wasn't at all times wary of the process and wary of the interest to be protected in the collective bargaining agreement. That has worked very, very well. And I can't agree more that the quality of advocacy is absolutely superb on both sides.

I think from the standpoint of those of you who are arbitrators, the process should be talked about a little bit. The process

is extremely intensive for the arbitrators who are receiving these cases. In hockey, it's essentially a three-day washing machine. You receive the briefs on the Monday. You have to spend your time going through those. And there are appended statistics—a lot of numbers. There is some degree of mystification—at least for a guy like myself who chose to major in English rather than math.

Then, of course, there's the day of the hearing, which is a bit of adrenaline rush. It happens quickly. It happens intensely. Each side has an hour in chief and a half-hour in rebuttal. And then you've got to produce your decision within 48 hours under the hockey system. But realistically, you're going to be going through the materials that night and trying to generate your decision the next day with reasons. A very intense and high-energy exercise. Fun, but intense.

Looking at the way the hearing unfolds, I want to share with you—at least in my experience—the value of that rebuttal phase of the hearing. Needless to say, both sides are presenting to you the world as they see it in chief. To some degree you got that by the reading of the brief the day before. But often there's a bit of mystery there. You're still not sure why these comparables are being picked and how this all fits. But then comes the half-hour rebuttal. And that's something to see because it's then that the quality of advocacy really comes to the fore.

I think I can best put that to you in an example: We had a case where there was a—I won't use any names—but one club had a player who was being used as a comparable by the player who was before me. And all of the comparables—I'll make up numbers—were at, let's say, $1 million. But this player was at $2 million. And all of the players had similar stats, similar games played, similar everything. I couldn't understand why this guy was at $2 million. Well, of course, in rebuttal, the advocate—the counsel for the club—says to me, "Well, Mr. Arbitrator, there's one thing they forgot to tell you. This player, the one at $2 million, he married the daughter of the general manager of that club." [Laughter.] So the clouds part, you see, at the rebuttal stage. It's very well done.

The other thing I want to impart is that there really is a "Caesar's wife" quality to the process. There is no fraternization with the parties. They are extremely arm's length to the arbitrators. And I think Rex touched on what was seen as a less-than-proper situation that existed prior to what we'll call the "modern era" of arbitration in hockey.

I had one very hard experience that I've got to tell you about. I arbitrated a player who was with the New York Rangers named Tom Poti. A fine young man, and his agent was Bobby Orr. So at the hearing, I walk in and there's Orr sitting at the table. Now those of you who are Americans may not understand, but this is as though you walked into the room and Babe Ruth was sitting there. It was quite something to see Bobby Orr. It was just great fun to meet him. After handshakes and hellos, the hearing proceeded in the normal way.

I issued the award the next day and then went about my business. About four days later, I came back to my office and my secretary said, "Michel, there's a pink note on your desk. Bobby Orr called and he'd like to take you to lunch." I stared at that pink note for at least a week. Finally I punched in the number. "Hello, Bobby, it's Michel. Listen, I want to thank you for that lunch invitation; but if I have lunch with you, you have to understand that it will be my last lunch as a hockey salary arbitrator. Thanks, I knew you'd understand. Okay. Yeah. Thanks. Thanks, Bobby. Bye."

That's the hardest thing I ever did as a hockey salary arbitrator.

Brogan: Thank you, Michel and thanks to our panel. I have some questions.

Do we, as arbitrators, need to understand the sport? Or is it better that we are very good at statistics? That's one question.

Second, is it bad to be a fan of the sport? Can you be too overwhelmingly enthusiastic? [Brogan dons a Philadelphia Phillies cap as she asks that question.]

The next question is—there are quite a few women who are now on the salary panels of both baseball and hockey. I don't think that any of the advocates here would think less of an arbitrator who is a woman. But, certainly, there must be situations where their clients feel uncomfortable that a woman is an arbitrator because there is this conception—misconception—that women don't understand sports as well as men.

I am throwing out those questions to you all.

Dumais: I can go first. Regarding the last question: It's not a question of being a man or a woman. In the NHL, there are many women lawyers there who work with us and decide on arbitration. They are very good. I think there is a minimum of sports knowledge that the arbitrator must possess.

I remember a case where we were arguing a defenseman. And finally, the arbitrator says, "I have a question. The goalie, do you count him as a defenseman?" And then you have your client there

and he says, "Of course, maybe I will bring a settlement in the next hour."

But you—it's pretty hard to tell that to your client—you say, "Who the hell chose that person to be on the board?" "I don't know. Not me."

And so it's not a matter of being a fan or someone who knows everything about the sport. But I think you need a minimum of knowledge. Otherwise, we're talking of issues that are pretty specialized, and the person who is listening to you may not even know the general principles of the game.

Gary: From the perspective of the player, the only question that a player has ever asked me, really, about the arbitrator or arbitrators is, "Do they know the game?" And that's really the biggest concern. And anybody who sits as an arbitrator does know the game, whether it's baseball or hockey. And that's been clear in the decision and the opinions that have been written.

Brogan: Michel, did you want to add anything?

Picher: Well, I would just say that, and we touched on it earlier, those of you who have done hospital, police, fire—interest arbitrations—would be right at home in the hockey salary arbitration process. It's absolutely parallel. I mean, if the Toronto Police want to put the Vancouver Police contract in front of you and the Montreal contract—and that's the kind of comparables that happen—you're into the same kind of process here. I don't think you have to have played the game to do it well.

Brogan: Okay. I need a baseball perspective.

Halem: All right. I'll start. Michael and I interview potential arbitrator candidates before they're appointed to the panel. And we certainly ask if they have a working knowledge of the game. We ask them if they know what an RBI is. There's certainly a baseline of knowledge, I think, that you need in order to perform the role effectively. With that being said, you certainly do not have to be a baseball junkie, be into sabermetrics. In fact, that may be a bad thing. Just to give you a little perspective of the complexity of the process: I did my first salary arbitration as an advocate representing the Montreal Expos—when you had the Montreal Expos—against a player named Javier Vazquez. And I was a knowledgeable baseball fan. And I spent months and months preparing for this, my first arbitration. And I thought I knew everything about this player and baseball. And I walked into the hearing room and presented my case, which went as planned. And then we got the rebuttal. And then Michael Weiner started throwing things around. And I

was sitting there and I didn't know what was going on and I was the advocate. [Laughter.]

So you could imagine the difficulty that arbitrators face, even those who do have a good understanding of baseball, once you get into this crazy process. So what we're really looking for is a working knowledge of baseball, straight shooters, people who can digest a large amount of information quickly, and reach the right result.

Weiner: I think, simply put, we need people with a working knowledge of the game. We do not need people who are fans of the current game. And as a matter of fact, we have an unwritten rule that's been followed for many years, that we will not assign to an arbitrator a case involving a team or player from the town or the metropolitan area that that arbitrator is from because we don't want Margie Brogan to have her own personal view of a Phillies player or Rich Bloch to have his own personal view of a Nationals player. Because we really want it to be as close to a blank slate as possible.

As far as women are concerned, maybe it's because our agent core are relatively progressive people, but they trust that we will only hire arbitrators who have that working knowledge of baseball. I cannot recall a complaint from anyone because of the women we've had on a panel.

Brogan: Michel was just talking about how this is like interest arbitration. Well it may be, to a point, except we're not allowed to look at the ability of the employer to pay and other factors dealing with the financial condition of the club or player. I find that very interesting. It was glaring to me when I began doing this work. And I've found interesting the parties' perspective as to why they take that money aspect out of it. Michael, did you want to respond?

Weiner: Again, you have to understand the role that arbitration has in our collective agreement. It's a substitute for free agency and it's a statistical comparison. So for as long as there has been salary arbitration, the financial condition of the player and the club are not admissible. Otherwise, you'd have a club coming in saying, "We had a bad year. We can't pay this player." Or they might come in and say, "This player made $5 million the year before. He doesn't need his money." Both sides agree that that should not be what the arbitration is about.

As far as the overall economics of the game? We could have that debate for quite some time. I will say this: The price of tickets at Wrigley Field, like the price of any goods, is a function of the sup-

ply and demand for that good. And it is not a function of what the player costs are. So as long as there are people willing to pay the additional dollars, the demand for those bleacher seats at Wrigley field, the Cubs will sell them. And I don't think there's any club that would honestly say that the salaries that they have to pay the players, for example, in salary arbitration have any real impact on what they charge in terms of ticket prices.

Brogan: Daniel, did you want to talk on the hockey point of view about the issue of financial condition?

Dumais: With the new collective bargaining agreement there is a salary cap in hockey. So at the end of the day, maybe the impact is not as important because there are X dollars to be spent on salaries. And whether you pay Player A or Player B, the money will be spent at the end of the year. But in the collective bargaining agreement there is a section that says that all the financial conditions of the club do not count or cannot be brought. And we really go by the market for the players. And of course a club might say, "I don't spend much money on salaries. Maybe my friend, the other team, does." But you drafted Player A. Why should Player A be penalized versus Player B who's then drafted by a club with more money?

Brogan: We have come to the end of our session. I just want to thank this great panel.