9-28-2016

Out of Service: Does Service Time Manipulation Violate Major League Baseball’s Collective Bargaining Agreement?

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Abstract: Under the current Major League Baseball Collective Bargaining Agreement (“CBA”), professional players are eligible to file for salary arbitration or free agency once they reach certain thresholds of service time in the league. In recent years, however, Major League Baseball teams have taken advantage of the construction of service time rules in order to artificially keep players under their control at lower salaries for one year longer than the rules appear to contemplate. The controversy surrounding service time manipulation hit its apex in 2015, when Chicago Cubs prospect Kris Bryant was kept in the minor league system just long enough to ensure that his team would gain an additional year of control over his contract before he would be eligible to file for free agency. This Note discusses the potential for players like Bryant to allege violations of the current CBA for service time manipulation, and argues that the service time manipulation debate should set the stage for a reformed service time system in negotiations for the next CBA.

INTRODUCTION

After a record-breaking career at the University of San Diego, Kris Bryant was selected by the Chicago Cubs with the second overall pick in the 2013 Major League Baseball (“MLB”) first-year player draft. The Cubs rewarded Bryant with a $6.7 million signing bonus, and later assigned him to their low A minor league affiliate team. In his first one and one-half minor league seasons, Bryant hit for a .327 batting average, .428 on-base percentage, and .666 slugging percentage to go along with 52 home runs. Against major league

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2 See id. Every team in Major League Baseball (“MLB”) is affiliated with several minor league teams arranged in a hierarchy according to player skill level. See FAQs: The Business of MiLB, MiLB.COM, http://www.milb.com/milb/info/faq.jsp?mc=business [https://perma.cc/L5RU-LVY7] (last visited Aug. 14, 2016). Players that sign contracts with an MLB organization can be assigned to an affiliate in accordance with their skill level and number of years in professional baseball. See id. Players usually spend time in the minor leagues before being called up to play on a team’s major league roster. See id.

3 Cliff Corcoran, For Cubs, There’s No Longer a Reason Not to Call Up Top Prospect Kris Bryant, SPORTS ILLUSTRATED (Apr. 16, 2015), http://www.si.com/mlb/2015/04/16/chicago-cubs-kris-bryant-service-time-minor-leagues [https://perma.cc/49UR-L99D]. Batting average measures the percentage of qualified at bats in which a player is awarded a hit. See Batting Average (AVG),
competition in spring training before the 2015 season, Bryant led the Cubs with a .425 batting average, .477 on-base percentage, and 1.175 slugging percentage with nine home runs.4

Just before the close of spring training on March 30, 2015, the Cubs assigned their twenty-three-year-old star to their minor league camp instead of keeping him on the major league roster.5 Given Bryant’s utter dominance of pitchers at both the major and minor league levels, there seemed to be no baseball-related reason to keep Bryant off of the Cubs’ major league roster.6 In the wake of the decision, baseball pundits predicted that the wait for Bryant would not be long, and that he would be called up on a day in mid-April that happened to coincide with the day that marked exactly 171 days remaining in the 2015 regular season.7

On April 17, 2015, just as pundits predicted, Kris Bryant was officially called up to the Cubs’ active major league roster.8 By the end of the regular season, Bryant led all National League rookies in on-base percentage, slugging percentage, and home runs, proving to be an essential factor in the Cubs’ 97-win team.9 He went on to win the Sporting News’ National League Rookie


8 See Corcoran, supra note 3.
Player of the Year award, and became only the third unanimous selection since 2000 for the Baseball Writers’ Association of America’s National League Rookie of the Year award.\(^\text{10}\)

In isolation, the Bryant saga seems like a resounding success for the young star, the Cubs’ organization, and baseball fans alike.\(^\text{11}\) The discontent with Bryant’s late call-up before his breakout season, however, caused the Major League Baseball Players’ Association (“MLBPA”) to publicly forewarn litigation against the MLB and the Cubs.\(^\text{12}\) Practically, the reason the MLBPA

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\(^{10}\) Fagan, * supra* note 9 (discussing Bryant’s selection as the Sporting News National League Rookie Player of the Year); *Kris Bryant Named NL’s Top Rookie, supra* note 9 (same). Both of these awards honor the best individual first-year player from each league in the MLB on a yearly basis. *See Rookie of the Year Award by The Sporting News, BASEBALL ALMANAC, http://www.baseball-almanac.com/awards/aw_snrp3.shtml [(https://perma.cc/9VU9-5NW2) (last visited Aug. 14, 2016)]* (hereinafter *Rookie of the Year Award by The Sporting News*) (discussing the criteria for the Sporting News Rookie of the Year Award); *Rookie of the Year Award / Jackie Robinson Award, BASEBALL ALMANAC, http://www.baseball-almanac.com/awards/aw_roy.shtml [(https://perma.cc/DZL9-RL9N) (last visited Aug. 14, 2016)] (discussing the criteria for the Baseball Writers’ Association of America’s Player of the Year Award). The Sporting News is one of the most highly regarded sports magazines in the nation. *See Rookie of the Year Award by the Sporting News, supra* (“The Sporting News is nothing short of the most respected and legendary magazine/news newspaper in sports history. Their coverage of baseball has no rival and they are simply the most respected source of baseball statistics anywhere.”). The Sporting News National League Rookie of the Year Award is decided by a ballot of National League players. Fagan, *supra* note 9. The Baseball Writers’ Association of America (“BBWAA”) is an organization of nearly all of the credentialed writers who cover the MLB. *See About the BBWAA, BASEBALL WRITERS’ ASS’N OF AM., http://bbwaa.com/about/ [(https://perma.cc/2XHC-JRN4) (last visited Aug. 14, 2016)]* (discussing the criteria for membership in the BBWAA). In addition to voting for annual awards such as the Rookie of the Year award, the Most Valuable Player (“MVP”) award, the Cy Young award for pitching, and the Manager of the Year award, the BBWAA is also responsible for electing players to the National Baseball Hall of Fame. *Id.*

\(^{11}\) *See supra* notes 8–10 and accompanying text (discussing Bryant’s stellar performance and award recognition after his promotion in the 2015 MLB season).

\(^{12}\) *See Jason Wojciechowski, The Kris Bryant Situation, as Explained by a Labor Lawyer, VICE SPORTS* (Apr. 2, 2015), *https://sports.vice.com/en_us/article/the-kris-bryant-situation-as-explained-by-a-labor-lawyer* [(https://perma.cc/2YL3-PTXB) (discussing the fallout of Bryant’s late promotion and the contemptuous response from the Major League Baseball Players’ Association (“MLBPA”)). When Bryant was assigned to the Cubs’ minor league affiliate, the MLBPA posted the following message in a series of three tweets posted successively on the organization’s official Twitter account:

Today is a bad day for baseball. We all know that if [Kris Bryant] were a combination of the greatest players to play our great game, . . . and perhaps he will be before all is said and done, the [Cubs] still would have made the decision they made today. . . . This decision, and other similar decisions made by clubs will be addressed in litigation, bargaining or both.

and Bryant claim to be aggrieved is simple: Kris Bryant had the talent and production to start in the Cubs’ major league lineup, but was stashed in the organization’s minor league team long enough to ensure that Bryant and his team-friendly rookie contract would be exclusive to the Cubs for one extra year.13 Whether the MLBPA’s claims have legal merit, and if they will ever reach the courts, however, is a more contentious and nuanced issue.14

The MLBPA’s dispute with the Cubs’ treatment of Bryant revolves around the use of a measurement called “service time” to determine when a professional baseball player is eligible to submit his salary to arbitration, or alternatively to become a free agent and negotiate a contract with the team of his choosing.15 This Note will explore the concept of service time and its implications for rookie-contract players under the MLB and MLBPA’s collective bargaining agreement (“CBA”), and examine whether the MLBPA could present a valid claim against an MLB team for violation of the CBA for manipulating a player’s service time in the team’s favor, or whether there is some viable alternative to service time that may be negotiated when the current CBA expires in December 2016.16 Part I of this Note provides background information on collective bargaining, the MLBPA, and the CBA.17 Part II discusses the concept and incentives of service time manipulation and introduces several case studies of potential service time manipulation in recent history.18 Part III introduces the implied obligation of good faith in contract law and sets out the ways in which it may be violated.19 Finally, Part IV applies the implied obligation of
good faith to the context of service time manipulation, discusses potential roadblocks to a successful challenge of service time manipulation in the grievance-arbitration process, and analyzes potential alternatives to the service time system that may prevent manipulation when the CBA is renegotiated in 2016.20

I. A BRIEF HISTORY OF (SERVICE) TIME: FROM THE NLRA TO THE MLB

Though America’s pastime may seem like just a game, today’s professional baseball exists on a foundation of decades of conflict, labor law, and collective bargaining.21 Section A of this part gives a brief overview of relevant aspects of U.S. labor law, including the origins of collective bargaining, arbitration as an alternative to litigation, and judicial review of arbitration awards.22 Section B provides a history of the MLB, focusing on the formation of the league as it currently stands, the advent of collective bargaining, and the beginnings of free agency.23 Finally, Section C discusses several portions of the current MLB CBA that are necessary to examine the concept of service time manipulation.24

A. Collective Bargaining, Arbitration, and Judicial Review

The National Labor Relations Act (“NLRA”) was signed into law in 1935, and set out to protect the rights of workers to freely associate and organize into labor organizations (generally referred to as unions) and negotiate with their employers through the collective bargaining process.25 The NLRA de-

Faith in Contract Interpretation and Gap-Filling: Reviling a Revered Relic, 80 ST. JOHN’S L. REV. 559 (2006) (referring to the concept throughout as “the implied covenant of good faith”).

20 See infra notes 167–245 and accompanying text.
21 See Tom C.W. Lin, National Pastime(s), 55 B.C. L. REV. 1197, 1197–98 (2014) (describing baseball as “a morality play for the great issues facing our laws and our nation” and a reflection of conflicts between “individualism and collectivism” and “capital and labor”). See generally Joshua P. Jones, A Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime, 33 GA. L. REV. 639 (1999) (discussing the development of the MLB from its inception in the context of player unionization and antitrust challenges).
22 See infra notes 25–34 and accompanying text.
23 See infra notes 35–62 and accompanying text.
24 See infra notes 63–91 and accompanying text.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Id. at § 151.
fines “collective bargaining” as the obligation of employer and labor organization representatives to negotiate in good faith regarding any and all terms of employment, generally to be executed in a contract setting out the agreed-upon terms.26 The NLRA also codified the refusal by either an employer or an employee to engage in collective bargaining as one of many unfair labor practices whose prevention was entrusted to the newly-created National Labor Relations Board.27

Congress then passed the Labor Management Relations Act of 1947, more commonly known as the “Taft-Hartley” Act, which modified many provisions of the NLRA and created additional substantive law concerning labor management.28 Notably, Taft-Hartley declared that the preferred method of settling labor disputes is a grievance-arbitration procedure voluntarily agreed upon by the parties under a collectively bargained agreement.29 Because arbitration is a term agreed to as part of the negotiations for each individual collective bargaining agreement, parties are free to set their own specific arbitration rules and procedures.30

Though federal courts have jurisdiction to enforce collective bargaining agreements and review violations thereto under Taft-Hartley, the U.S. Supreme Court has held that any grievance and arbitration procedures in such a contract must be exhausted before parties can seek judicial review.31 When a court is

27 See Id. §§ 158(a)(5), 158(b)(3), 160(a).
29 See 29 U.S.C. §§ 171(c), 173(d); 48 AM. JUR. 2D Labor and Labor Relations § 353 (1979) (noting that Congress was encouraging arbitration in labor disputes with the Taft-Hartley Act). Since Taft-Hartley, the U.S. Supreme Court has recognized that “[c]ollective-bargaining agreements commonly provide grievance procedures to settle disputes between union and employer with respect to the interpretation and application of the agreement and require binding arbitration for unsettled grievances.” United Paperworkers Int’l Union v. Misc, 484 U.S. 29, 36 (1987).
30 See United Paperworkers, 484 U.S. at 38–39 (“Furthermore, it must be remembered that grievance and arbitration procedures are part and parcel of the ongoing process of collective bargaining. . . . The parties bargained for arbitration to settle disputes and were free to set the procedural rules for arbitrators to follow if they choose.”). A party to a collective bargaining agreement can even bargain away the neutrality of a supposedly “neutral” arbitrator. See Nat’l Football League Mgmt. Council v. Nat’l Football League Players Ass’n, 820 F.3d 527, 548 (2d Cir. 2016) [hereinafter Deflategate II]. In 2015, after an investigation into an alleged scheme by New England Patriots employees to intentionally deflate footballs used in professional competitions, National Football League (“NFL”) Commissioner Roger Goodell appointed himself as neutral arbitrator after handing out an initial disciplinary award. See id. at 532. By the terms of the NFL’s collective bargaining agreement with the NFL’s Players Association, the commissioner of the NFL may serve as the arbitration hearing officer at his or her discretion. See id. at 532, 548.
31 See 29 U.S.C. § 185 (placing suits for labor contract violations in the venue of any U.S. District Court with jurisdiction over the parties involved); United Paperworkers, 484 U.S. at 37 (holding that
asked to review an arbitration decision arising out of a collective bargaining agreement, it is not authorized to undertake de novo review of the facts and interpretations of the agreed-upon arbitrator. If it is at least arguable that the arbitrator is interpreting the collective bargaining agreement subject to the arbitrator’s delegated authority, courts are not authorized to second-guess the arbitration award. Unless the arbitration award reflects the arbitrator’s bias, the procedure followed by the arbitrator amounts to affirmative misconduct, or the arbitration award is so against public policy that it creates explicit conflict with other laws and legal precedents, the court should confirm the award.

B. The Fall of the Reserve System and the Development of Free Agency

In 1876, the National League of Professional Baseball Clubs opened for business. By 1883, the National League implemented the “reserve system,” in which players were permanently bound to the team with which they contracted, and other teams were prevented from negotiating for their services. In 1903, the National League and its main competitor, the fledgling American

a court with jurisdiction to review collective bargaining agreements must order parties to exhaust all grievance and arbitration procedures in a contract before the court can decide a case on the merits). See Major League Players Ass’n v. Garvey, 532 U.S. 504, 509 (2001) (discussing the lack of authorization that courts have to review decisions that arbitrators make on the merits, even when a party believes there was some error of fact or that its argument was misconstrued); United Paperworkers, 484 U.S. at 37–38 (discussing the extremely limited standard of review in judicial review of arbitration awards); United Steelworkers of Am. v. Am. Mfg. Co., 363 U.S. 564, 567 (1960) (holding that courts “have no business weighing the merits of the grievance” when reviewing arbitration awards).

Id. at 38 (“[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.”).

Id. at 36, 40 n.10, 43. Although the Federal Arbitration Act (“FAA”) does not apply to collective bargaining agreements coming under the jurisdiction of Taft-Hartley, federal courts often look to it for guidance in the creation of federal common law pertaining to labor. See United Paperworkers, 484 U.S. at 40 n.9. See generally Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2006) (containing the relevant portions of the FAA often used for guidance). The language concerning affirmative misconduct as a result of arbitration procedure is crafted from similar language in the FAA. See id. § 10; United Paperworkers, 484 U.S. at 40 nn.9–10. The New England Patriots “deflategate” case illustrates a rare example of an arbitration award actually being overturned upon judicial review. See Nat’l Football League Mgmt. Council v. Nat’l Football League Players Ass’n, 125 F. Supp. 3d 449, 463 (S.D.N.Y. 2015). In that case, the U.S. District Court for the Southern District of New York concluded that NFL Commissioner Roger Goodell’s denial of certain evidence’s admissibility amounted to procedural misconduct, and that his decision to uphold a four-game suspension of New England Patriots quarterback Tom Brady reflected “his own brand of industrial justice.” See id. at 466, 471. The U.S. Court of Appeals for the Second Circuit eventually reversed the District Court’s decision, concluding that “this case is not an exceptional one that warrants vacatur” under arbitration review’s “substantial deference” standard. Deflategate II, 820 F.3d at 532.

Jones, supra note 21, at 644, 647.

Id. at 644.
League, agreed to honor each other’s reserve systems and form the preliminary structure of today’s MLB.\textsuperscript{37}

Ten years later, anti-reserve system competitor the Federal League was created, and began to pilfer players from clubs in the National and American Leagues.\textsuperscript{38} In order to eliminate competition in the market for top players, the MLB agreed to pay the Federal League owners $600,000 to disband.\textsuperscript{39} After being excluded from this payment scheme, the Baltimore Terrapins, a Federal League team, sued the MLB for violating antitrust regulations.\textsuperscript{40} In 1922, in \textit{Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs}, the Supreme Court held that the MLB’s arrangement of games between teams from different cities and states was not enough to consider its activity interstate in nature, exempting the MLB from regulation under the Sherman Act.\textsuperscript{41}

In 1953, the Supreme Court was faced with another Sherman Act claim involving the MLB in \textit{Toolson v. New York Yankees, Inc.}\textsuperscript{42} In the years preceding the case, the New York Yankees of the American League attempted to assign the contract of player George Toolson to another team.\textsuperscript{43} Toolson, not wishing to report to his new team, sued the Yankees, claiming that the reserve system violated antitrust regulations.\textsuperscript{44} The Court held that it was bound by policy and stare decisis to the \textit{Federal Baseball} decision, and that the MLB would continue to be exempt from antitrust regulation unless Congress lifted the exemption.\textsuperscript{45} After the Court’s affirmation of the MLB’s antitrust exemp-


\textsuperscript{38} See Jones, supra note 21, at 645. Federal League teams offered players long-term contracts in lieu of a reserve system and were successful in luring many lower-paid players from the leagues. Id.

\textsuperscript{39} See id. (detailing the “bidding war for players” that broke out between the National and Federal Leagues and the National League’s subsequent dissolution agreement with the Federal League).

\textsuperscript{40} See id.

\textsuperscript{41} See 259 U.S. 200, 208–09 (1922); Jones, supra note 21, at 645–46. Notably, this case relies on a notion of interstate commerce as it was construed much more conservatively before the Supreme Court expanded it in 1942 with its decision in \textit{Wickard v. Filburn}. See Jones, supra note 21, at 647 (citing Wickard v. Filburn, 317 U.S. 111, 133 (1942)) (discussing the Supreme Court’s more liberal construction of the interstate commerce doctrine after \textit{Wickard}).

\textsuperscript{42} See 346 U.S. 356, 357 (1953) (comparing the antitrust issues at question to those presented to the Court before in \textit{Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs}); Jones, supra note 21, at 648 (discussing the Supreme Court’s revisiting the “exemption question” in \textit{Toolson v. New York Yankees, Inc.}).

\textsuperscript{43} See Jones, supra note 21, at 648.

\textsuperscript{44} See id.

\textsuperscript{45} See Toolson, 346 U.S. at 356–57 (citing the Court’s ruling in \textit{Federal Baseball} and the Court’s preference that any changes to baseball’s antitrust exemption come about by federal legislation);
toolson, it became clear that individual players would not be able to challenge the MLB status quo in courts of law.46

From 1885 until 1968, organizations of MLB players made several attempts to unionize, but were largely unsuccessful.47 The MLBPA was originally created not as a union, but instead as a fraternal organization.48 In 1966, however, the MLBPA hired former chief economist of the United Steel Workers, Marvin Miller, as its executive director.49 Soon after, high-profile players began to grow restless with the reserve system.50 In 1968, the Miller-led MLBPA was able to negotiate its first collective bargaining agreement, the first of its kind in professional sports.51

In 1969, veteran center fielder Curt Flood was traded from the St. Louis Cardinals to the Philadelphia Phillies.52 Citing his dozen years of service to the league under the reserve system, Flood refused to report to the team and filed suit against the MLB, alleging the reserve system was a collusive price-fixing

Jones, supra note 21, at 648 (discussing the MLB’s reliance on its antitrust exemption as a reason why the Supreme Court left the status of the exemption in Congress’s hands).

46 See supra notes 42–45 and accompanying text (discussing Toolson and the MLB’s powerful antitrust exemption).

47 See Jones, supra note 21, at 653 n.113 (discussing several of the players’ attempts to unionize from the 1880s until formation of the MLBPA); History of the Major League Baseball Players Association, MLB.COM, http://www.mlbplayers.com/ViewArticle.dbml?ATCLID=211042995&DB_OEM_ID=34000 [https://perma.cc/RKZ8-W5XB] (last visited Aug. 14, 2016) [hereinafter History of the Major League Baseball Players Association] (detailing attempts to unionize from Brotherhood of Professional Base Ball Player in 1885 until the formation of the MLBPA). Marvin Miller, the former chief economist of the United Steel Workers Union who became the executive director of the MLBPA in 1966, attributes the failure of MLB players to unionize for so long to the ignorance of the value of a union as well as hostility to the concept of unions in general. See Jones, supra note 21, at 654. Miller stated:

There was a reason for this attitude. From time immemorial, the baseball powers-that-be forced the players propaganda: The commissioner (although appointed and paid by the owners) represented the players; players were privileged to be paid to play a kid’s game; and (the biggest fairy tale of all) baseball was not a business and, in any case, was unprofitable for the owners.

Id.

48 Jones, supra note 21, at 653–54.

49 Id. at 653; History of the Major League Baseball Players Association, supra note 47.


51 History of the Major League Baseball Players Association, supra note 47. This first iteration of the Major League Baseball collective bargaining agreement (“CBA”) focused mainly on raising the minimum player salary. See id.

52 See Jones, supra note 21, at 655.
agreement in violation of the Sherman Act. In 1972, the Supreme Court held in *Flood v. Kuhn* that the MLB was, in fact, a business engaged in interstate commerce, but that *Federal Baseball* and *Toolson* created an anomalous exception that must continue to be observed.

Before *Flood* was decided, however, the MLBPA in 1970 negotiated its first impartial arbitration procedure for the resolution of player grievances under the CBA. After Flood’s attempt to destroy the reserve system failed in the Supreme Court, the MLBPA went on to leverage the arbitration process that it negotiated in order to challenge the system. In 1975, pitchers Andy Messersmith and Dave McNally filed grievances that charged they should no longer be bound by their contracts after having played out their terms. The arbitrator found that the reserve system was only valid if it were clearly and explicitly agreed upon within players’ contracts. Because no contracts included clear and explicit language binding players to the reserve system, this decision constituted the system’s de facto elimination.

The reserve system was officially eliminated in 1976, when the MLB and MLBPA negotiated a new CBA that created modern free agency, which provided that any player with six years of MLB experience would become a free

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53 See id. (discussing Flood’s discontent and his suit against the MLB).

54 See *Flood v. Kuhn*, 407 U.S. 258, 282, 285 (1972); Jones, supra note 21, at 656–57 (explaining that the Court “ostensibly disavowed the basic tenets of the *Federal Baseball* decision that created the antitrust exemption,” but still held that the exemption must stand). In *Flood*, Justice Blackmun, writing for the majority, reasoned:

> We continue to be loath, 50 years after *Federal Baseball* and almost two decades after *Toolson*, to overturn those cases judicially when Congress, by its positive inaction, has allowed those decisions to stand for so long and, far beyond mere inference and implication, has clearly evinced a desire not to disapprove them legislatively . . . . Accordingly, we adhere once again to *Federal Baseball* and *Toolson* and to their application to professional baseball . . . . Under these circumstances, there is merit in consistency even though some might claim that beneath that consistency is a layer of inconsistency.

407 U.S. at 283–84 (citing *Toolson*, 346 U.S. at 357).

55 Jones, supra note 21, at 659. In its original form, players could file grievances to be heard by a panel consisting of an impartial permanent arbiter employed by the MLB, an MLBPA representative, and a commissioner’s representative. Id.

56 See id. (characterizing the MLB’s victory in *Flood* as “short-lived” and discussing the 1970 CBA’s impartial grievance-arbitration process).

57 See id. at 659–60. Messersmith played in the 1975 season for the Los Angeles Dodgers after refusing to sign the contract that the team offered. Id. Once the season ended, he claimed that he should be declared free and clear of his contract, and filed a grievance. Id. Dave McNally, a pitcher for the Montreal Expos, had a similar claim. Id. at 660.

58 Id. at 660.

59 See id. at 660, 661. Although the arbitrator specifically stated that his decision did not declare the reserve system illegal or unable to be effectuated in a contract if clearly and explicitly stated, the decision had the effect of invalidating the reserve system for all existing player contracts. See id. at 660.
agent at the end of his contract.\textsuperscript{60} Though teams could no longer control players’ contracts for the duration of their professional baseball careers, owners were still able to maintain control for a player’s first six years in the major leagues regardless of contract length.\textsuperscript{61} Though players were not granted free agent status outright once their contracts ended, they were able to limit the free agent market each offseason, spurring demand for free agents and thereby drastically increasing free agent salaries.\textsuperscript{62}

C. The 2012–2016 Collective Bargaining Agreement

The current version of the CBA between the MLB and the MLBPA went into effect on December 11, 2011, and terminates on December 1, 2016.\textsuperscript{63} Subsection 1 of this section will provide an overview of player contracts, salary arbitration, and free agency in the current CBA.\textsuperscript{64} Subsection 2 will discuss in-depth the grievance-arbitration process under the current CBA.\textsuperscript{65}

1. Initial Contracts, Salary Arbitration, & Free Agency

In the annual first-year player draft, MLB clubs are slotted in reverse order of their standing from the previous season and allowed to select first-year players from the United States, Canada, and U.S. territories whose eligibility is based on various age and education requirements.\textsuperscript{66} After a club selects a player, it has a specified amount of time in which to negotiate a contract with the player or else lose exclusive draft rights.\textsuperscript{67} Under the current CBA, this negoti-
ation almost exclusively consists of reaching agreement on the bonus that the club will pay the player to sign a standard seven-year minor league contract. After signing his minor league contract, the player’s salary is determined by a fixed scale based on his level in the minor league system and his years of experience at that level. When a player in his initial contract is called up to his club’s active major league roster, his salary is determined by the club, subject only to the CBA’s minimum salary requirements.

When a player is called up to his club’s major league roster, he also begins to accrue “service time,” which is determined by the number of days that he spends on the twenty-five-man major league roster during the regular season. According to Article XXI of the CBA, one full year of major league ser-

68 See Eric Michel, Amateur Draft “Signing Bonus Pools”: The Latest Inequity Made Possible by Baseball’s Archaic Antitrust Exemption, 11 WILLAMETTE SPORTS L.J. 46, 52–53 (2013). Under the previous CBA, teams had the ability to offer draftees major league contracts. See id. at 53. These major league contracts allowed teams to specify yearly salaries as well as signing bonuses. See id. Under the 2012–2016 CBA, however, teams may only sign draft picks to minor league contracts, so the only real negotiation is over up-front signing bonuses. See id.

69 Jeff Blank, Minor League Salary, JEFF BLANK SPORTS LAW BLOG, http://www.sportslawblogger.com/baseball/salary-information/minor-league-salary/ [https://perma.cc/9YZB-56RN] (last visited Aug. 10, 2016). Minor league players are given monthly salaries. Id. Minor league players that are on a team’s forty-man roster, or who have previously been on the team’s major league roster, however, are given increased annual salaries. See id. (providing an overview of salaries for minor league players).


71 See 2012–2016 Basic Agreement, supra note 63, at 96 (“One full day of Major League service will be credited for each day of the championship season a Player is on a Major League Club’s Active List.”). Every MLB team has an “active roster” consisting of 25 players that are eligible to play in MLB games. Baseball Roster History, BASEBALL ALMANAC, http://www.baseball-almanac.com/articles/baseball_rosters.shtml [https://perma.cc/7RZG-KZ67] (last visited Apr. 12, 2016). In addition, each team has a forty-man roster, consisting of the 25-man active roster and additional players that are eligible to be added to the active roster. Baseball Roster History, supra; see also Theron Schultz, The 40-Man Roster: How Does It Work?, BREW CREW BALL (Jan. 4, 2009), http://www.brewcrewball.com/2009/1/4/703125/the-40-man-roster-how-does [https://perma.cc/B9J4-59AS] (providing a general overview of the forty-man roster concept in the MLB). A team may also be interested in adding a player to its forty-man roster in order to protect him from “Rule 5,” which is a special draft that is separate and distinct from the first-year player draft, in which players with certain years of minor
vice is credited to a player for every 172 “service days” that he accrues. If a player accrues three years (516 days) of service time or gets a special designation as a “Super Two” player in the top 22 percent of players with between two and three years of service time, Article VI of the CBA provides that he is eligible to file for salary arbitration. In the salary arbitration process, both the team and the player submit their preferred salary for the upcoming season and are able to argue their case to the arbitrator. After the arbitration panel has heard both sides, it must select one of the two salaries submitted to award the player for the upcoming season.

According to Article XX of the CBA, an MLB player is eligible to become a free agent at the end of the season in which he reaches at least six total league service who are not on a forty-man roster are eligible to be selected by other MLB teams if placed immediately on their forty-man roster. Schultz, supra. In general, once a player is added to a team’s forty-man roster, the team has the option of assigning him to a minor league affiliate as many times as it chooses and for so long as it chooses for three separate seasons. See Thomas Gorman, The BP Guide to Transaction Rules: Options, BASEBALL PROSPECTUS (Jan. 10, 2006), http://www.baseballprospectus.com/article.php?articleid=4700 [https://perma.cc/74SW-PVMP] (providing an in-depth explanation of the use of options in the MLB); Jonathan Mayo, ‘Options’ Abound: Common Term Explained, MLB.COM (Mar. 30, 2011), http://mlb.mlb.com/news/print.jsp?ymd=20110329&content_id=17188016 [https://perma.cc/CTS6-9X68] (providing simplified explanations and examples of the use of options in the MLB); Schultz, supra. If a player on the forty-man roster is assigned to a minor league affiliate for less than twenty days in a single season, however, the team is not considered to have used one of its three options. See Gorman, supra; Mayo, supra. Players who are assigned to the minor leagues for less than twenty days during a regular season while on a team’s forty-man roster are credited major league service time for each day that they were on their minor league assignment as well as each day they were on the twenty-five-man active roster. See Steve Adams, Service Time and the 40-Man Roster, MLB TRADE RUMORS (Apr. 15, 2013), http://www.mlbtraderumors.com/2013/04/service-time-and-the-40-man-roster.html [https://perma.cc/S24Q-UP86] (discussing the intricacies of service time when a player moves between the twenty-five-man and forty-man rosters).

See 2012–2016 Basic Agreement, supra note 63, at 96. A player can only earn a maximum of 172 service days per regular season. Id. If a player is on the major league roster for 182 days of the regular season, for example, he is only credited for 172 “service days” toward his required total for free agency. See id. (identifying 172 days as the maximum amount of service time earned in a single season).

See id. at 17–18. The CBA defines a “Super Two” player as follows:

[A] Player with at least two but less than three years of Major League service shall be eligible for salary arbitration if: (a) he has accumulated at least 86 days of service during the immediately preceding season; and (b) he ranks in the top 22% (rounded to the nearest whole number) in total service in the class of Players who have at least two but less than three years of Major League service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season. If two or more Players are tied at 22%, all such Players shall be eligible.

Id. at 18.

See id. at 19–20 (providing the form of submission of salary figures in arbitration). Id. at 22. The arbitrator has no authority to choose a salary other than one of the two that are submitted. Id. This system of arbitration is commonly referred to as “final-offer arbitration.” See David M. Frederick et al., Race, Risk, and Repeated Arbitration, in BASEBALL ECONOMICS 129, 130 (John Fizel et al. eds., 1996) (describing the final-offer arbitration model generally and discussing its use in baseball).
years of Major League service time. Therefore, if a player has been on a Major League active roster for a total of at least 1032 “service days” in his career at the end of any given season, he becomes a free agent and is allowed to negotiate a new contract with any team without any restrictions.

2. The Grievance-Arbitration Process

The grievance-arbitration process is covered by Article XI of the CBA. In “Step 1” of the traditional non-discipline-related grievance process, any player who believes he has a valid grievance for a violation of the CBA must hold a meeting on his potential grievance with his club. If the player and the club cannot come to an agreement on a resolution, the player must file the grievance with the club within forty-five days of the events that led to the grievance. At this point, the club has ten days to make a decision in writing on the grievance and supply copies of the decision to the player and the MLBPA.

The player or the MLBPA must then submit a written appeal to the MLB’s Labor Relations Department (“LRD”) within fifteen days of the club’s decision, or the grievance ends at Step 1. After an appeal is filed, “Step 2” begins, and representatives from the LRD and the MLBPA have thirty-five days to meet regarding the grievance and provide each other with any evidence relating thereto. No more than ten days after the meeting, the LRD must decide on the grievance and supply copies of the decision to the player and the MLBPA. If the player or the MLBPA decide not to appeal, the grievance process ends at Step 2. Upon further appeal, however, the arbitration process begins.

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76 2012–2016 Basic Agreement, supra note 63, at 86.
77 See supra notes 72–76 and accompanying text (discussing service time calculation and free agent eligibility).
78 See 2012–2016 Basic Agreement, supra note 63, at 38–48 (providing definitions, procedures, and miscellaneous terms of the MLB grievance-arbitration procedure). Appendix A to the CBA identifies rules of procedure for grievance hearings before an arbitration panel. Id. at 295–98.
79 Id. at 42. If the grievance involves more than one club or a player who is not under contract to a club, but is still party to the grievance, the grievance may skip “Step 1” and be filed initially in “Step 2.” Id. at 43.
80 Id. at 43 A player may also file the grievance within forty-five days of “the date on which the facts of the matter became known or reasonably should have become known to the player.” Id.
81 Id.
82 Id. at 42.
83 Id. Representatives from the related player and club may also be included at this discussion upon mutual agreement of the MLBPA and the MLB’s Labor Relations Department (“LRD”). Id.
84 Id. at 43.
85 Id.
86 See id. at 43 (providing guidelines for the transition from Step 2 to the arbitration process).
To begin the arbitration process, the player or the MLBPA must submit a written appeal within fifteen days of the LRD’s decision to a “Panel Chair,” which is an impartial arbitrator agreed upon by both the MLBPA and the LRD.87 The Panel Chair then schedules and presides over a hearing on the grievance.88 As soon as possible after the close of the hearing, the arbitral panel must issue a decision consistent with its authority on the grievance.89 After the decision has been issued, the grievance-arbitration procedures of the CBA are considered finalized.90 Parties can seek confirmation or appeal of this disposition in federal court.91

II. THE SERVICE TIME MACHINE

An MLB player becomes eligible for salary arbitration or free agency once he reaches certain thresholds of service time measured in service years, each consisting of 172 service days.92 This part will discuss the ways in which MLB teams utilize the service time accrued by players under team control to the team’s advantage.93 Section A of this part examines the method by which teams manipulate a player’s service time in order to prevent the player from reaching salary arbitration eligibility for one extra year.94 Section B of this part examines a separate method by which teams manipulate a player’s service time in order to prevent the player from reaching free agency eligibility for one extra year.95

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87 Id. at 41–43. If the MLBPA and the LRD cannot come to an agreement, the two parties can choose to request a list of “prominent, professional arbitrators” from the American Arbitration Association and strike names from the list one at a time until one arbitrator remains as the Panel Chair. Id. at 41–42. In advance of the arbitration hearing, either party can alternatively elect to commission a three-member panel consisting of the Panel Chair and one arbitrator appointed by each party. Id. at 42.
88 Id. at 43–44. Once the arbitration hearing has commenced, the arbitration panel must follow all the rules of procedure described in Appendix A of the CBA. Id. at 44. The Panel Chair or Arbitration Panel’s authority in the arbitration process is given by the CBA as follows:

With regard to the arbitration of Grievances, the Arbitration Panel shall have jurisdiction and authority only to determine the existence of or compliance with, or to interpret or apply agreements or provisions of agreements between the Association and the Clubs or any of them, or between individual Players and Clubs. The Arbitration Panel shall not have jurisdiction or authority to add to, detract from, or alter in any way the provisions of such agreements.

Id. at 44.
89 Id.
90 See id.
91 See supra notes 31–34 and accompanying text (discussing judicial review of labor-related arbitration awards in federal courts).
92 See supra notes 71–77 and accompanying text (providing an overview of service time).
93 See infra notes 96–109 and accompanying text.
94 See infra notes 96–109 and accompanying text.
95 See infra notes 110–140 and accompanying text.
A. Avoiding Salary Arbitration

Until a player reaches the salary arbitration threshold, his club is not required to pay him anything more than the minimum salary, which is currently set at $507,500 for the MLB and set at a significantly lower monthly scale for each level of the minor leagues. Once a player is determined to be eligible for salary arbitration by either reaching three full years of service time or qualifying as a Super Two player, he is able to petition for incremental increases in salary depending on his level of performance in the MLB. Though the salary arbitration process is not perfect at determining a player’s true value on the open free agent market, salaries agreed upon during or in advance of salary arbitration generally constitute a significant increase over the near-minimum salaries paid pre-arbitration. MLB teams, therefore, have an incentive to keep a player from salary arbitration eligibility for as long as possible.

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96 See MLB Minimum Salary Remains at $507,500 for 2016, ESPN (Nov. 18, 2015), http://espn.go.com/mlb/story/_/id/14161690/mlb-minimum-salary-remains-507500-2016 [https://perma.cc/5D5A-FU9N]; see also supra note 70 and accompanying text (discussing salaries for newly-promoted major league players on their rookie contracts).

97 See supra notes 73–75 and accompanying text (discussing the criteria for salary arbitration eligibility).

98 See, e.g., Justin Sievert, Breaking Down the MLB Salary Arbitration Process, SPORTING NEWS (Jan. 12, 2016), http://www.sportingnews.com/mlb-news/4690998-mlb-salary-arbitration-process-breakdown-spring-training-2016 [https://perma.cc/49BZ-B353]. At their hearings, players and teams are only able to use information specifically allowed by Article VI of the CBA, which includes player performance in the previous season, the consistency of such performance over a player’s career, the player’s previous salaries, any physical or mental injuries, the performance of the team itself, and salaries of other players. Id.; see also 2012–2016 Basic Agreement, supra note 63, at 20–21 (providing the allowable criteria for the arbitrator’s consideration in salary arbitration hearings). Arbitration panels themselves tend to be even more conservative than the CBA allows, focusing on traditional statistics and comparisons between performance and compensation of players. See Salary Arbitration, FANGRAPHS, http://www.fangraphs.com/library/business/mlb-salary-arbitration-rules/ [https://perma.cc/54AH-KADN] (last visited Aug. 10, 2016) (remarking on the “old school” tendencies and limited criteria used by arbitration panels in salary arbitration hearings). Because salary arbitration follows the final-offer arbitration model, players and teams have are disincentivized to make their offers too high or low, respectively. Frederick et al., supra note 75, at 130. In the absence of competitive offers from other teams that give players leverage during free agency, players will typically be awarded lower than their true free agent value. See Sievert, supra.

99 See supra notes 96–98 and accompanying text (identifying financial incentives to keeping a player from reaching salary arbitration). The performance and salary trajectory of Philadelphia Phillies’ first baseman Ryan Howard at the beginning of his career helps to illustrate this point. See Street Wins AL Rookie of Year; Howard Wins NL, ESPN (Nov. 7, 2005), http://espn.go.com/mlb/news/story?id=2216645 [https://perma.cc/P92A-82DX]. Howard debuted as a regular in the Phillies’ lineup in July 2005 after an injury to starting first baseman Jim Thome, and went on to win the National League Rookie of the Year award. Id. The next season, Howard earned only $355,000 en route to winning the 2006 National League MVP award. Rob Maaddi, Ryan Howard Beats Phillies in Arbitration and Will Earn $10 million, USA TODAY (Feb. 21, 2008), http://usatoday30.usatoday.com/sports/baseball/2008-02-21-1845392834_x.htm [https://perma.cc/9BJL-RRTV]. In 2007, the Phillies rewarded Howard with a raise to $900,000, which at the time tied the record for the largest one-year salary for a non-arbitration eligible player. Todd Zolecki, The $900,000 Man, PHILA. INQUIRER, Mar.
Of course, a team can choose to keep a player in the minor leagues during the seven-year minor league contract that he is required to sign upon being drafted. If, however, a player has the skill to play on the major league roster and the team wishes to utilize his services as such, the team may engage in service time manipulation by calling the player up late enough to prevent him from qualifying for Super Two status after his third season on the team.

Though the cutoff for the top twenty-two percent of service time between two and three years moves annually, a team can generally ensure that its prospect will never reach Super Two status if it promotes the player for the first time in mid-June, thereby giving the team a fourth year of the player’s services without the threat of salary arbitration.

The treatment of outfielder Gregory Polanco serves as an illustration of service time manipulation conducted to avoid salary arbitration by preventing a player from reaching Super Two status. Polanco was signed by the Pittsburgh Pirates as a free agent in 2009. Polanco struggled until he broke out in late 2012, going from an unranked prospect to the number fifty-one-ranked prospect by Baseball America in 2013 and their number ten-ranked prospect in 2014. In early 2014, Polanco was excelling at the Pirates’ AAA affiliate
while both of the Pirates’ major league right fielders struggled mightily.106 Through fans’ and pundits’ calls for promotion, the Pirates kept Polanco in the minor leagues until June 2014.107 In doing so, the Pirates were accused of manipulating Polanco’s service time so that he will fall short of Super Two status and salary arbitration eligibility at the end of his 2016 season.108 Polanco went on to record the longest hitting streak to begin a career in Pirates history after his promotion.109

B. Avoiding Free Agency

Though salary arbitration can increase a player’s salary incrementally, salaries and lengths of deals increase dramatically in the competitive nature of free agency.110 When a team allows a player to become eligible for free agency, it runs the risk of significant salary increases as well as the possibility of losing the player altogether.111 Therefore, a team’s greatest incentive is to keep a player from eligibility for free agency for as long as possible.112

106 See Wilmoth, supra note 101 (discussing Polanco’s experience with the Pirate’s minor league affiliate team).
108 See Bob Nightengale, Pirates Defend Gregory Polanco Move, But Will It Cost Them?, INDIANAPOLIS STAR (June 18, 2014), http://www.indystar.com/story/sports/baseball/minors/2014/06/17/gregory-polanco-caught-mlbs-super-rule/10716883/ [https://perma.cc/8RFA-BAFR] (discussing the accusations that the Pirates organization faced for its handling of Polanco); Wilmoth, supra note 101 (using Polanco’s situation with the Pirates to argue that MLB teams may be manipulating the service time and Super Two rules).
110 See Sievert, supra note 98 (explaining that any increases in salary as a result of salary arbitration “will still likely earn [a player] a salary lower than their true value on the free agent market”).
As with salary arbitration, the easiest way to prevent a player from reaching the free agent eligibility threshold is by keeping him in the minor leagues for as long as possible.113 Once a player has become too skilled to hold back any longer, teams typically engage in service time manipulation by waiting until there are less than 172 remaining service days to promote the player for the first time to the major league roster.114 If the player spends the remainder of his rookie season, as well as the entirety of the next five seasons on the major league roster, he will have five years and 171 days of service time at the end of his sixth season, falling just one day short of free agent eligibility.115 Practically, the player is prevented from becoming a free agent until he has accumulated six years and 171 days of service time.116

A comparison of the Houston Astros’ treatment of outfielder George Springer with that of first-basemen Jon Singleton provides a particularly interesting look into the problem of service time manipulation conducted to prevent a player from reaching free agency.117 George Springer was selected by the Houston Astros with the eleventh overall pick in the 2011 MLB first-year player draft.118 After receiving a $2.5 million signing bonus, Springer was assigned to Astros’ low A minor league affiliate Tri-City.119 By September 2013,
Springer had been escalated to the Astros AAA-level affiliate, and was thoroughly dominating minor league competition. Before even adding Springer to their forty-man roster, the Astros offered him a seven-year major league contract valued at a guaranteed $23 million. Had Springer accepted the deal, he would have been guaranteed a long-term deal, but also would have been put under guaranteed team control through all three years of his salary arbitration eligibility and his first year of free agency eligibility. Springer turned down the guaranteed contract, electing to play his trade at the league minimum salary until he reached salary arbitration and eventually free agency.

The surging twenty-four-year-old who was offered a $23 million major league contract, however, was not added to the Astros’ twenty-five-man active roster. Instead, he was kept in the Astros’ minor league system. When spring training began for the 2014 season, Springer was again assigned to minor league camp without being added to the team’s forty-man roster. Instead of playing for a guaranteed salary or even the league minimum salary on the major league roster, Springer toiled away at the Astros AAA affiliate, while accruing no service time that would inch him toward salary arbitration and free agency.

Just over two weeks into the 2014 MLB season, George Springer was called up to the Houston Astros major league roster. In response to Springer’s continued residence in the minor leagues, Fox Sports analyst Ken Rosenthal wrote, “[t]he obvious question: [i]f Springer was good enough to be offered $23 million, why isn’t he good enough to crack the 25-man roster of a team that has finished with the worst record in the majors in each of the past three seasons?”

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121 See id.

122 See id.

123 See id. (explaining that the Astros offered Springer a seven-year, $23 million contract in September 2014, but still had not added him to the Astros forty-man roster as of March 2014).

124 See id.

125 See id.

126 Townsend, supra note 120.

127 Id.

128 Id.

waited to call up Springer until mid-April, he was unable to earn a full year (172 days) of service time, which means that he will fall just short of the six-year service time free agency eligibility requirement at the end of his 2019 season.\textsuperscript{130} Effectively, the Astros guaranteed that Springer would remain under team control until the end of the 2020 season before having the ability to enter the free agent market.\textsuperscript{131} Springer finished 2014 with the second most Wins Above Replacement (“WAR”) of any position player on the Astros.\textsuperscript{132}

In contrast, Jon Singleton’s path to the MLB was very different from that of George Springer, his own teammate.\textsuperscript{133} Singleton was selected by the Philadelphia Phillies in the eighth round of the 2009 first-year player draft.\textsuperscript{134} He received only a $200,000 signing bonus and was assigned to the Phillies’ rookie league affiliate.\textsuperscript{135} Singleton worked slowly through the minors, progressing to high A level before he was traded to the Houston Astros in 2011.\textsuperscript{136} By 2013, Singleton, who worked his way up to be ranked the number twenty-seven prospect in all of baseball by Baseball America, joined Springer at the Astros AAA-level affiliate.\textsuperscript{137} In June 2014, Singleton accepted a contract similar in structure to the one Springer turned down; in exchange for giving up

\textsuperscript{130} See id. Because Springer was called up in April and not later in the season, he will still likely be eligible for Super Two status at the end of his third season and be able to submit to arbitration early. See Tyler Drenon, George Springer Call Up: Did the Astros Get Strong-Armed into this Promotion?, MLB DAILY DISH (Apr. 16, 2014), http://www.mlbdailydish.com/2014/4/16/5619644/george-springer-call-up-astros-bradley-diamondbacks [https://perma.cc/Z8EB-MBYZ]. There is speculation that the Astros called up Springer before assuring that he would not get Super Two status because his agent threatened to file a service time manipulation grievance. See Drenon, supra (speculating that Springer’s agent threatened to file a grievance and explaining the unorthodoxy of the promotion).

\textsuperscript{131} See Levine, supra note 129 (discussing the effects that the Astros decision will have on Springer’s career).


\textsuperscript{133} Compare supra notes 117–132 and accompanying text (discussing George Springer’s path to the MLB), with infra notes 134–140 and accompanying text (discussing Jon Singleton’s path to the MLB).


\textsuperscript{136} See Jon Singleton Register Statistics and History, supra note 134.

\textsuperscript{137} See George Springer Register Statistics and History, supra note 119 (showing Springer’s placement in the Astros’ AAA-level affiliate in 2013); Jon Singleton Register Statistics and History, supra note 134 (showing Singleton’s promotion to the Astros’ AAA-level affiliate in 2013).
potential earnings in salary arbitration, Singleton would be guaranteed $10 million spread over five years.\textsuperscript{138} Singleton’s deal also came with a promise that he would be promoted to the Houston Astros major league roster upon signing.\textsuperscript{139} Singleton played the rest of the season on the Astros’ major league roster, finishing with the team’s third lowest WAR.\textsuperscript{140}

III. THE IMPLIED OBLIGATION OF GOOD FAITH

The implied obligation of good faith and fair dealing is recognized as one of the foundational tools for post-execution contract interpretation.\textsuperscript{141} This Part provides an overview of the implied obligation of good faith doctrine in preparation for a discussion of its application to service time manipulation in Part IV of this Note.\textsuperscript{142}

The implied obligation of good faith can trace its genesis in American jurisprudence to the latter part of the Nineteenth Century.\textsuperscript{143} In order to avoid the heavy-handed consequences of strict formalist contract interpretation, the common-law doctrine was created to allow for courts to interpret the “spirit” of a contract and make decisions on the implied terms that embody that spirit.\textsuperscript{144} Since then, both the term “good faith” and the associated legal doctrine have grown significantly in definition and acceptance in American courts.\textsuperscript{145} In 1951, the implied obligation of good faith was incorporated into the Uniform Commercial Code.\textsuperscript{146} Later, the implied obligation of good faith became so

\textsuperscript{138} See Cliff Corcoran, Astros Sign First-Base Prospect Jon Singleton to Five-Year Deal, Call Him Up to Majors, SPORTS ILLUSTRATED (June 2, 2014), http://www.si.com/mlb/strike-zone/2014/06/02/astros-sign-jon-singleton-to-five-year-deal [https://perma.cc/AGR5-BK8P] (explaining the details of Singleton’s contract).


\textsuperscript{140} See 2014 Houston Astros Batting Statistics, supra note 132 (displaying the WAR of 2014 Astros batters, including Singleton’s third-lowest WAR of -0.8).

\textsuperscript{141} See Dubroff, supra note 19, at 559, 561 (explaining that the implied obligation of good faith has become a “fundamental concept” of contract law, especially in the context of post-execution contract interpretation).

\textsuperscript{142} See infra notes 143–166 and accompanying text.

\textsuperscript{143} Dubroff, supra note 19, at 559.

\textsuperscript{144} See id. at 562 (discussing the implied obligation of good faith’s role as a counterbalance to “conservative interpretation and gap-filling rules prevalent in the Nineteenth and early Twentieth centuries”).

\textsuperscript{145} See id. 559–61.

\textsuperscript{146} Id. The Uniform Commercial Code (“U.C.C.”), first published in 1951 by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, “is a comprehensive modernization of various statutes relating to commercial transactions including sales, leases, negotiable instruments, bank deposits and collections, fund transfers, letters of credit, bulk sales, documents of title, investment securities, and secured transactions.” Uniform Commercial Code, AM. LAW INST., https://www.ali.org/publications/show/uniform-commercial-code/ [https://perma.cc/Y28Z-EPCB] (last visited Apr. 12, 2016); see also Dubroff, supra note 19, at 609 (discussing the U.C.C.). Though
widely accepted in American jurisprudence that it was also adopted by the renowned *Restatement (Second) of Contracts*.\(^\text{147}\) Federal courts have recognized that the implied obligation of good faith is applicable to collective bargaining agreements.\(^\text{148}\) The doctrine is also used in arbitration proceedings regarding potential breaches of collective bargaining agreements.\(^\text{149}\)

As it now exists, the term “good faith” is used to refer to a multitude of contexts such that no one definition is all-encompassing.\(^\text{150}\) The *Restatement (Second) of Contracts* definition that applies most contextually with this Note defines good faith as “faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.”\(^\text{151}\) The popular treatise *American Jurisprudence* intuits that the implied obligation of good faith in this context prevents either party from “injuring the right of the other party to receive the fruits of the contract.”\(^\text{152}\)

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\(^\text{147}\) See *RESTATEMENT (SECOND) OF CONTRACTS* § 205 (AM. LAW INST., 1981); see also Dubroff, *supra* note 19, at 609.


\(^\text{149}\) See *ELKOURI & ELKOURI: HOW ARBITRATION WORKS* 9-50 to -51 (Kenneth May ed., 7th ed. 2012) (discussing the common use of the implied obligation of good faith in both judicial and arbitration settings); see also Int’l Bhd. of Teamsters, Local Union No. 439 v. Sierra Chem. Co., (CCH) 06-1 ARB ¶ 3390, 2005 WL 7992061 (2005) (Pool, Arb.) (“It has long been held that every CBA imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”).

\(^\text{150}\) See *RESTATEMENT (SECOND) OF CONTRACTS* § 205 cmt. a.

\(^\text{151}\) See *id*. Professor Robert Summers refers to good faith as a “highly versatile doctrine,” identifying the performance of contracts, the negotiation and formation of contracts, and the raising and resolving of contract disputes as the three broad categories in which it can be invoked. Robert Summers, “Good Faith” in *General Contract Law and the Sales Provisions of the Uniform Commercial Code*, 54 VA. L. REV. 195, 216, 220, 232, 243 (1968). Professor Summers further identifies several specific instances in which bad faith can be alleged:

[N]egotiating without serious intent to contract, abusing the privilege to break off negotiations, entering a transaction without intending to perform or in reckless disregard of prospective inability to perform, nondisclosure of known defects in the subject of a sale, abusing superior bargaining power, evading the spirit of a transaction, lack of diligence, willfully rendering only substantial performance, and abusing the power to specify terms or to determine compliance.

Summers, *supra*, at 216.

\(^\text{152}\) 17A AM. JUR. 2D *Contracts* § 362.
That the good faith doctrine is widely accepted does not mean that it is uniformly construed and applied. Scholars point to differing judicial interpretations, tests applied to establish breach of the obligation, and standards of review as the leading causes of shortcomings in the good faith doctrine. Still others refer to it as an “under-enforced legal norm,” or an “empty vessel.” When the good faith doctrine is applied at common law, however, there are two concepts that the courts seem to have generally agreed upon. First is that the implied obligation of good faith should be used only to protect the intents of each party as they expressed them in their initial contract. Second is that the good faith obligation requires that the party with the discretion to perform certain actions exercise that discretion in tune with the spirit of the contract.

An investigation into whether a party has violated the implied obligation of good faith flows from the second concept. In forming such an investigation, a factfinder must determine whether the discretionary party used its contractual discretion for reasons outside the justified and “reasonable expectations” of the parties when they entered into the agreement. The factfinder may also inquire into whether a party abused its discretion in order to obtain a result that should have been surrendered as a result of the contract. Essentially, if a party uses its discretion in order to avoid or subvert the express and implied terms and purposes of the contract, it should be found to have acted in violation of the implied obligation of good faith.

Several courts have limited the obligation of good faith by finding that the doctrine cannot be used to overrule a provision explicitly stated in the contract. It also may not be employed to add terms with new and reasonably


154 See id. at 2052–53.


157 Id.

158 Id.

159 See id. at 558–59.

160 Id. at 558.

161 Id. at 558–59.

162 See supra notes 159–161 and accompanying text (setting out the inquiry that leads to a finding of bad faith).

163 See Gen. Aviation, Inc. v. Cessna Aircraft Co., 915 F.2d 1038, 1041 (6th Cir. 1990) (noting that the “obligation of good faith cannot be employed, in interpreting a contract, to override express contract terms”); Grand Light & Supply Co. v. Honeywell, Inc., 771 F.2d 672, 679 (2d Cir. 1985) (finding that the implied obligation of good faith in the context of the U.C.C. “may not be used to
unexpected duties to a contract.\textsuperscript{164} Many jurisdictions have also found that the implied obligation of good faith does not create an independent cause of action for breach of a contract.\textsuperscript{165} That is, any party that wishes to seek respite for breach utilizing the implied obligation of good faith must accuse another party of violating an explicit term of the contract, not a term implied by the good faith obligation.\textsuperscript{166}

IV. GOOD FAITH SOLUTIONS TO THE SERVICE TIME PROBLEM

As recently as the 2015 season, players and the MLBPA have filed grievances regarding service time manipulation with the MLB.\textsuperscript{167} Section A of this part will discuss a potential grievance for service time manipulation in the context of the MLB’s grievance-arbitration procedures, analyzing both the strength of a player’s claim and the hurdles that he must overcome in succeeding with his grievance.\textsuperscript{168} Section B of this part will discuss potential alternatives to the MLB’s current formulation of service time that could mitigate service time manipulation claims in the next CBA.\textsuperscript{169}

A. Challenging Service Time Manipulation as a Violation of the CBA

Players have a colorable argument under the implied obligation of good faith that the manipulation of their service time violates the CBA between the MLB and the MLBPA.\textsuperscript{170} There is, however, no article of the CBA that sets, suggests, or even intimates rules that require an MLB club to assign players to various levels of professional baseball based on that player’s performance.\textsuperscript{171}
Because new draftees and minor league players that have yet to appear on a major league roster are not yet members of the MLBPA, the CBA does not even seem to cover their initial promotion into the major leagues.172

The first step in such a claim is identifying and defining the justified and reasonable expectations of the MLBPA in regards to its agreement with the MLB.173 The MLBPA’s argument should be based on the notion that the CBA and the competitive nature of professional baseball itself identify the goals that the MLBPA reasonably expects MLB clubs to pursue: fully developing young talent, competing for championships, and profiting from the benefits of success.174 The MLBPA can insist that the service time provisions of Article XXI, the salary arbitration provisions of Article VI, and the free agency eligibility provisions of Article XX of the CBA were negotiated with the expectation that clubs would act in concert with the goals that the MLBPA expected clubs to pursue.175 The MLBPA can assert that its reasonable expectation is that MLB clubs will assign players to the major league roster once club executives believe that players have reached full minor league development and can help the team compete for a championship.176

Once it defines its reasonable expectations in regards to the relevant portions of the CBA, the MLBPA can allege that MLB clubs that engage in service time manipulation are acting outside of those expectations, counter to their implied obligation of good faith.177 When an MLB club uses its discretion to keep a player off of the major league roster in order to prevent that player from accruing service time, it acts to prevent players from receiving the “fruits of their contracts” in the form of eventual salary arbitration and free agency eligibility.178 The MLB can then assert that, instead of acting in pursuit of competition and “let[ting] the service time chips fall where they may from

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172 See id. at 1 (identifying the MLBPA as the representative of “Major League Baseball Players and individuals who may become Major League Baseball Players during the term of this Agreement”).

173 See supra note 160 and accompanying text (discussing the first step in an inquiry into violation of the obligation of good faith).

174 See Wojciechowski, supra note 12 (discussing the competitive nature of baseball along with the express elements of the CBA giving rise to an implied obligation of good faith in player assignment). See generally 2012–2016 Basic Agreement, supra note 63 (the CBA agreement between the MLBPA and 30 Major League Clubs).

175 See supra notes 72, 73, 76 and accompanying text (discussing the relevant provisions of the CBA).

176 See supra notes 173–175 and accompanying text (developing the MLB’s reasonable expectations for the purposes of a claim for violation of the implied obligation of good faith).

177 See supra notes 159–162 (describing the inquiry into a violation of the implied obligation of good faith).

178 See supra notes 71–77, 100–102, 113–116, 152 and accompanying text (describing the Articles in question, the methods by which teams intentionally manipulate service time, and the protection against preventing a party from receiving the “fruits of a contract” inherent in the implied obligation of good faith).
those baseball decisions” as the MLBPA reasonably expects, MLB clubs engaging in service time manipulation act in pursuit of an unexpected goal: using service time as a tool to artificially lengthen the amount of time a player is under team control at the lowest possible salary.179

Though it seems obvious in some of the service time manipulation case studies that MLB clubs are acting with the goal of preventing a player from accruing service time, it may be difficult to allege that the club did not still act within the MLBPA’s reasonable expectations.180 Assignment to the major league roster involves discretion that is exercised by highly sophisticated player personnel departments.181 Alleging that a club used this vast discretion for unexpected reasons may be a daunting task unless a club official clearly admits to ulterior motives.182 Likely cognizant of this, club officials in the case studies examined in this Note vehemently deny that a player’s assignment to the minor league roster has anything to do with service time.183

In many cases of service time manipulation, however, the MLBPA would be able to use circumstantial evidence place serious doubt on the presumption that personnel departments of MLB clubs are acting in pursuit of non-service
time-related agenda.\textsuperscript{184} In cases where teams attempt to avoid free agent eligibility, the MLBPA should point to the fact that a player was promoted to the major league roster just after he could no longer accrue a full 172 days of service time in his first major league season.\textsuperscript{185} Though service time manipulation pursued to avoid salary arbitration eligibility may be more difficult to specifically refute, statistical analysis would allow the MLBPA to identify trends in player promotion that lead to avoidance of Super Two status.\textsuperscript{186} The MLBPA can also question and pursue definitive answers from coaching or scouting staff on whether there was any true development that was expected or that occurred in the time that a player like Bryant, Polanco, or Springer was kept in the minor league system.\textsuperscript{187} Furthermore, each case of service time manipulation is likely to have its own player and team-specific circumstantial evidence that refutes club claims that service time was not a factor in player promotion.\textsuperscript{188}

After taking all of these aspects into consideration, it seems the MLBPA has an argument that is at least believable if not moderately strong.\textsuperscript{189} The claim’s viability, however, enters the great unknown when it is brought into the practical reality of the MLB grievance-arbitration procedures.\textsuperscript{190} At the many levels before a player or the MLBPA’s grievance reaches an arbitrator, the two

\textsuperscript{184}See\ \textit{Davis, supra} note 114. Davis posits that the MLBPA would not need “substantial proof,” but rather that it would need only to convince arbitrators that there is enough circumstantial evidence to support the notion that a delayed promotion was for the purpose of manipulating service time. \textit{Id.}

\textsuperscript{185}See\ \textit{supra notes} 113–116 and accompanying text (discussing the service time manipulation method by which teams prevent players from reaching free agency).

\textsuperscript{186}See\ \textit{Levine, supra} note 129 (noting spikes in the top-ten prospect promotion between days sixty and ninety of the regular season, and suggesting that teams to do so as a way to avoid the Super Two cutoff); \textit{see also supra} note 102 and accompanying text (pointing out that the cutoff for Super Two status moves every year).

\textsuperscript{187}See\ \textit{Davis, supra} note 114 (noting the type of evidence that may be useful to claim that a club was not forthcoming about their intentions with a player); Wojciechowski, \textit{supra} note 12 (discussing the questions that the MLBPA or affected players could ask team executives and coaches to point out a disparity between what clubs say and what they actually do).

\textsuperscript{188}See, \textit{e.g.}, \textit{supra notes} 106, 121–128, 133–140 and accompanying text (describing specific pieces of relevant circumstantial evidence in the Gregory Polanco and George Springer sagas). In Polanco’s case, such evidence may include the abysmal performance of all of the Pirates’ outfielders as the Pirates were involved in a close playoff race. \textit{See supra} note 106 and accompanying text. Springer could introduce evidence regarding his being kept in the minor leagues after turning down a lucrative contract that likely would have guaranteed his promotion. \textit{See supra} notes 121–128 and accompanying text. Springer would also have the ammunition of the Astros’ dealings with Jon Singleton, who was promoted immediately after signing his long-term contract. \textit{See supra} notes 133–140 and accompanying text.

\textsuperscript{189}See\ \textit{supra notes} 173–188 and accompanying text (developing the MLBPA’s potential claim against the MLB).

\textsuperscript{190}See \textit{infra} notes 191–200 and accompanying text (discussing the various potential outcomes in the grievance-arbitration process).
sides can reach a resolution that prevents the case from going to arbitration.\(^{191}\) If the grievance eventually makes it through to a neutral arbitrator or arbitration panel, the outcome of the grievance is almost entirely up to the judgment of the arbitrators.\(^{192}\)

The difficulty in analyzing the potential outcome of a service time manipulation grievance if it ever reached a neutral arbitrator comes from both the MLB’s grievance-arbitration procedure and federal case law concerning arbitration awards.\(^{193}\) First, the MLB does not significantly outline the procedures or precedent that an arbitrator must follow.\(^{194}\) An arbitrator is not bound to use legal precedent that may lend support to an MLBPA claim that the implied obligation of good faith is generally found to exist in contracts at common law or that the implied obligation of good faith applies specifically in this situation.\(^{195}\) At least one baseball analyst suggests that arbitrators often specifically avoid construing contracts using such uncertain legal doctrines.\(^{196}\) The widely regarded treatise, *Elkouri & Elkouri: How Arbitration Works*, however, explicitly calls out the implied obligation of good faith as a frequently used arbitration tool, and encourages its use as a means of making fact-specific judgments on contract breach issues.\(^{197}\) The treatise encourages the use of the doctrine to uncover bad-faith abuses of contractual discretion.\(^{198}\)

Even if the MLBPA did succeed in convincing an arbitrator of these two necessary pillars of its argument, there is no indication of the standard of deference that the arbitrator would have to give to the explanations that clubs put forward for a player’s assignment, or how much evidence the arbitrator would allow into the case to refute such an explanation.\(^{199}\) If the arbitrator were to use

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\(^{191}\) See Davis, *supra* note 114 (noting that Kris Bryant’s grievance will only lead to impartial arbitration if the MLBPA and the MLB do not settle beforehand); Passan, *supra* note 114 (noting that open grievances concerning service time manipulation may never reach an arbitration panel, and that they could even be resolved in the bargaining process).

\(^{192}\) See Davis, *supra* note 114 (noting that arbitrators are not required to follow precedent, and that decisions are ultimately theirs to make freely); Wojciechowski, *supra* note 12 (noting that an arbitrator would likely give some deference to teams’ reasons for delayed promotions, and that arbitrator’s decision-making processes are difficult to predict).

\(^{193}\) See *infra* notes 194–200 and accompanying text (discussing the lack of guidance for arbitrators in the grievance-arbitration process and the vast deference given to arbitrators in federal courts).


\(^{195}\) See Davis, *supra* note 114 (pointing out that arbitrators are not required to follow precedent).

\(^{196}\) See *id.* (quoting analyst Ryan Davis of Baseball Prospectus who points out that “spirit of the contract” violations are generally a “slippery slope” that arbitrators tend to avoid).

\(^{197}\) *ELKOURI & ELKOURI: HOW ARBITRATION WORKS*, *supra* note 149, at 9-50.

\(^{198}\) See *id.* at 9-51 (“Thus, the covenant serves as the basis for the proposition that managerial discretion must be exercised reasonably and discretionary management decisions will be reviewed to determine if they were arbitrary, capricious, or discriminatory.”).

\(^{199}\) 2012–2016 Basic Agreement, *supra* note 63, at 296 (noting that the Arbitration Panel Chair rules on the “relevancy and materiality” of evidence, and that it need not utilize formal legal rules of
its discretion and rule in favor of an MLB club accused of service time manipulation, it is unlikely that the aggrieved party could find any respite in judicial review due to the immense deference given to arbitration awards in federal courts.\textsuperscript{200}

\section*{B. Service Time Alternatives}

Given the difficulty and uncertainty of winning a grievance based on service time manipulation, pundits have suggested that the recent service time manipulation grievances will work more effectively as a bargaining chip to revamp the service time rules when the current CBA expires in December 2016.\textsuperscript{201} A fix to the service time rules is not as simple as scrapping it in favor of immediate free agency, however, because of the value placed on competitive balance in the MLB.\textsuperscript{202} By depressing the salaries of young, talented players and keeping those players under team control for long periods of time, the service time rules allow for small-market teams to compete with large-market big spenders.\textsuperscript{203} The service time rules thereby help to maintain competitive balance in a non-salary-capped league that would otherwise allow teams with the most money to run roughshod over those that may not be as flush with disposable income.\textsuperscript{204} According to one analyst, officials from both the MLB and the MLBPA concede that the current service time rules need to be altered, but none can figure out how to fix them.\textsuperscript{205} This section will discuss several alternatives


\textsuperscript{201}See Brown, supra note 167 (noting that the difficulty of proving service time manipulation should shift the MLBPA’s focus toward better-bargained service time manipulation and free agency rules); Davis, supra note 114 (insisting that mainstream publicity and open grievances regarding service time manipulation give the MLBPA leverage to find a solution in the collective bargaining process).


\textsuperscript{203}See id. (explaining that the current service time rules allow well-managed teams with less spending power to develop and field young talent at an affordable price, allowing for a more competitive MLB).

\textsuperscript{204}See id. (“If baseball were some sort of Milton Friedman hellscape, with players becoming free agents after every season, it really would be the rich teams that won it all, every year.”).

to the current service time rules, analyzing which may be the best candidates for the next CBA.\footnote{See infra notes 207–245 and accompanying text.}

1. The Petriello Model

One alternative model put forth by Mike Petriello of FanGraphs suggests changing the conception of a service year and reducing the number of days a player must accrue to constitute a year of service time.\footnote{See Mike Petriello, \textit{It’s Time to Fix Baseball’s Broken Service Time System}, FANGRAPHS (Mar. 16, 2015), http://www.fangraphs.com/blogs/its-time-to-fix-baseballs-broken-service-time-system/ [https://perma.cc/CH5C-7RAX] (discussing the inequities of the MLB’s current service time system and proposing a new conceptual model).} Petriello’s conception of a full year of service time focuses primarily on “qualified seasons” instead of a running accumulation of service days.\footnote{See id.} In Petriello’s model, a player must be on a major league roster for one hundred days of a single regular season to accrue one “qualified season” of service time.\footnote{See id. For example, if a player is on the major league roster for thirty days in season one, eighty days in season two, and ninety days in season three, he has accumulated two hundred total service days, but has still yet to accrue one qualified season of service time. See id.}

As in the current model, players are required to accrue three years of service to be eligible for salary arbitration and six years of service to be eligible for free agency.\footnote{See id.} In order to take into account “replacement players,” who move from the major to the minor leagues for short periods of time for most of their careers, Petriello also suggests that a secondary running accumulation qualifies a player for free agency once he has reached one thousand service days, even if he has not yet reached six qualified seasons of service.\footnote{See id.} This, he says, would allow owners some flexibility to use part-time players for almost the same number of service days as the current service time rules allow, while also not allowing a single team to control part-time players for more than ten years.\footnote{See id. (acknowledging that part-time players may not reach the requisite threshold for a qualified season, and devising the one-thousand-day fallback option).}

Petriello’s alternative model of service time, conceptualized in the days after the Bryant saga began, makes a good deal of sense to remedy the issue of promoting a player just after he can no longer accrue 172 days of service time.\footnote{See Petriello, \textit{supra} note 207; Rosenthal, \textit{supra} note 205 (expressing limited approval of Petriello’s model).} For a team that has made a commitment to competing for a championship and that has a star like Kris Bryant waiting in the minor leagues, the potential consequences of waiting until late June to promote him in the Petriello model seem to significantly outweigh the benefits of added years of team con-

\footnote{206 See infra notes 207–245 and accompanying text.}
\footnote{208 See id.}
\footnote{209 See id.}
\footnote{210 See id. (acknowledging that part-time players may not reach the requisite threshold for a qualified season, and devising the one-thousand-day fallback option).}
\footnote{211 See id. (expr
trol.214 If a team is in the midst of a losing season or the prospect is less of a juggernaut than someone like Bryant, however, there seem to be few consequences for waiting the additional seventy days in the Petriello model.215

There is also, however, an advantage to the concept of the “qualified season” for mid-level prospects or for prospects on non-competing teams.216 Under the current model, a losing team or a team with a mid-level prospect with some upside is incentivized to keep prospects in the minor leagues until it is willing to start the clock on service time.217 Though teams in this situation will continue to be incentivized to keep players in the minor leagues for a certain amount of time under the Petriello model, there are few consequences to promoting a player after the one hundred days deadline has passed.218 Though the clock will start on the potential for a player to reach the secondary requirement of one thousand service days to be eligible for free agency, the player will not accrue a qualified season.219 He will, however, have the opportunity to show his skill against major league competition and have an opportunity to learn what it is like to play on a major league team for at least a short amount of time.220

2. The Rosenthal Model

Fox Sports Analyst Ken Rosenthal suggests that the current service time system can remain intact with only one small change.221 In this model, a club that promotes a rookie to its major league roster on Opening Day is granted a seventh year of control over the player in exchange for salary arbitration eligibility after the player’s second year in the major league.222 Though Rosenthal’s idea makes sense in theory—both the club and the player benefit in some way—it only seems to address a Bryant-like situation, and fails to take into account the possibility that a player will be returned to the minor leagues for

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214 See Petriello, supra note 207. Petriello posits that, “for a player of Braynt’s caliber, it would be far more difficult for the Cubs to weather three months of public angst—not to mention a real, actual hit to playoff hopes—than it would be form them to do it for under two weeks.” Id.

215 See Rosenthal, supra note 205 (explaining that service time manipulation would likely still be a problem in different situations or for lesser prospects under the Petriello model).

216 See infra notes 217–220 and accompanying text.

217 Cf. supra notes 96–99, 110–112 and accompanying text (discussing the incentives for players to keep prospects in the minors under the current service time system).

218 See Petriello, supra note 207 (noting that players will accrue time toward a potential one thousand service day free agency threshold, but that they will not accrue “qualified seasons” if promoted with less than one hundred days left in the season).

219 See id.


221 See infra note 222 and accompanying text.

222 Rosenthal, supra note 205 (discussing Rosenthal’s conceptual model of service time).
any period of time. Rosenthal admits as much, adding that neither the players nor the owners would likely be open to the concessions.

3. The Age Model

Another potential model ties salary arbitration and free agent eligibility directly to a player’s age, eliminating the conception of service time altogether. Because there is nothing a team can do about a player’s age, it follows that all decisions to assign a player to the major or minor league roster would necessarily be purely performance-based. No matter whether it is formulated as a strict age rule or a sliding scale of years from signing, however, an eligibility age negatively impacts players who are drafted young and quickly make it to a major league roster. And in the opposite scenario, when a player takes a long period of time to develop, eligibility ages negatively impact clubs that have put in significant work to mold a prospect into an MLB player.

4. The Promotion Review Models

Other models turn away from the service time rules and toward methods of reviewing player promotions in order to curb service time manipulation. After Kris Bryant was placed in the minor leagues to begin the 2015 MLB season, agent Scott Boras began a public rally against the current reality of service...
time manipulation. To prevent service time manipulation, Boras suggested that a process be put in place in which the MLBPA or a player formally file a claim that a player should be placed on a club’s major league roster. If an objective panel with scouting experience decides that a player is too advanced for the minor leagues, the player is placed on the major league roster. Alternatively, MLB players have suggested that a special post-promotion grievance procedure could be created to allow them to challenge decisions made in pursuit of service time manipulation.

Boras’s formulation of a promotion review panel seems to tamper too much with a club’s discretion to evaluate talent and make roster decisions. A post-promotion review procedure, similar to what the players suggest, however, seems to be an ideal solution. In that type of model, once a player is promoted to the major league roster, he should be allowed a certain period of time to file a grievance alleging his promotion date was intended to circumvent good faith adherence to the CBA’s service time rules. Because this grievance process would specifically address the fact that service time manipulation exists and does so in violation of the implied obligation of good faith, the mystery of the arbitration procedure would be greatly reduced. If a player can convince a neutral arbitrator that a team’s behavior was based on service time concerns (which is still no easy task), he can be eligible to be credited service days and possibly even back pay for a certain period of time. This model seems to be beneficial for both parties, keeping service time intact while allow-

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230 See Boras: Resolve Bryant-like Service-time Disputes with Review System, supra note 181 (recounting Boras’s conversations with reporters on the inequities of service time manipulation).
231 Id.
232 See id. (explaining that an objective panel would have to perform a “talent evaluation” and determine to what degree a player is ready for the major leagues).
233 See Rosenthal, supra note 205 (describing this type of procedure that would allow players to submit roster decisions to review).
234 See Boras: Resolve Bryant-like Service-time Disputes with Review System, supra note 181 (pointing out flaws in Boras’s model for interfering with roster decisions).
235 See Rosenthal, supra note 205 (discussing the players’ suggestion that a specific grievance process be created for service time manipulation claims).
236 Cf. Wojciechowski, supra note 12 (noting that a player alleging service time manipulation “would be in the strongest position to win after the inevitable call-up” because he would have more evidence of the manipulation at this point).
237 See supra notes 192–200 and accompanying text (discussing the difficulty of predicting the outcome of a service time manipulation case once it reaches arbitration under the current arbitration procedures).
238 See Wojciechowski, supra note 12 (noting that the MLBPA can attempt to seek back pay and service time credit in Kris Bryant’s grievance); 2012–2016 Basic Agreement, supra note 63, at 48, 94 (governing scenarios in which players can be awarded back pay as a result of team misconduct); see also supra notes 173–188 and accompanying text (discussing methods of proving that a team violated the implied obligation of good faith by intentionally engaging in service time manipulation).
ing for players to more easily challenge their alleged bad treatment at the hands of MLB clubs.\textsuperscript{239}

5. Toward an Ideal Hybrid Model

Of the models suggested thus far, the Petriello model and the players’ post-promotion review model stand out as the most sensible and practical, and may be combined to create the MLB’s best solution.\textsuperscript{240} Although teams would likely have to give up some of their current tactics under the Petriello model’s reduced service time system, they are still able to keep players under control for up to six years in the major league, as is currently allowed by the CBA.\textsuperscript{241} Teams also have the added advantage of being able to showcase talent at the end of the regular season without too much consequence to a player’s service time clock.\textsuperscript{242} Though some players who do not mean as much to their teams or who play for teams that do not have playoff hopes may still suffer service time manipulation consequences, high-profile cases of manipulation like those of George Springer and Kris Bryant would likely be eliminated.\textsuperscript{243} A hybrid would combine the Petriello model with the player-friendly post-promotion review model in which a player has the ability to assert a service time manipulation claim after he has been promoted to a club’s major league roster.\textsuperscript{244} Though this hybrid model would have to employ a standard of post-promotion review that would likely make it difficult for a player to prove manipulation, it still has the potential to provide an outlet for all of those athletes who may miss the benefits of the shortened service year rules created by the Petriello model.\textsuperscript{245}

\begin{footnotesize}
\textsuperscript{239} See supra notes 235–238 and accompanying text (noting that the players would receive a specialized grievance-arbitration procedure to address service time manipulation that would not require owners to agree to a fundamentally different concept of service time).

\textsuperscript{240} See Petriello, supra note 207 (discussing Petriello’s “qualified season” conceptual model of service time); Rosenthal, supra note 205 (discussing the players’ post-promotion review procedure for service time manipulation).

\textsuperscript{241} See Petriello, supra note 207 (noting that teams would be disincentivized to delay promotions and manipulate service time for top prospects, but that they would still control players for six seasons). See generally 2012–2016 Basic Agreement, supra note 63 (providing the entire CBA agreement between the MLBPA and 30 Major League Clubs).

\textsuperscript{242} See supra notes 218–220 and accompanying text (discussing incentives to call up players late in the season under the Petriello model).

\textsuperscript{243} See supra notes 214–215 and accompanying text (discussing potential differing treatment of players with different talent levels under the Petriello model).

\textsuperscript{244} See supra notes 229–233 and accompanying text (describing the basics of the post-promotion review model).

\textsuperscript{245} See supra notes 180–183 and accompanying text (discussing the difficulties of proving that a team violated the implied obligation of good faith by intentionally engaging in service time manipulation); supra notes 214–215 and accompanying text (discussing scenarios in which some players’ service time may still be manipulated under the Petriello model).
\end{footnotesize}


CONCLUSION

Since its inception, the MLB has employed a system in which clubs are allowed to reserve the rights to players for long periods of their careers in order to promote player development and competition. In recent years, however, MLB clubs have utilized deficiencies in the service time system to gain extra years of control not contemplated by the MLBPA in their CBA. MLB teams’ service time manipulation of players like Gregory Polanco, George Springer, and most recently Kris Bryant has been met with outrage from players, pundits, and fans. Whether the seemingly unfair treatment of these players can constitute a breach of the CBA between the MLB and the MLBPA, however, is a difficult issue to solve. The MLBPA has a moderately strong argument that service time manipulation violates the CBA by violating the implied obligation of good faith. On the other hand, the many unknown aspects of the MLB’s grievance processes and arbitration procedures, as well as the vast deference given to arbitration awards by federal courts, make it difficult to determine whether the MLBPA or any of its members would be able to succeed with a service time manipulation claim. With the dawn of a new CBA on the horizon, the MLB and MLBPA would be best served by negotiating a new model of service time that disincentivizes delayed promotions and affords a remedy to players whose service time has been manipulated, while still allowing teams to develop home-grown talent at affordable costs.

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