A Major-League Changeup: Should Pitchers Have Their Own Craft Labor Unit Representation?

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INTRODUCTION

Sports are unique enterprises. Millions of people attend or watch sporting events every year, making professional sports a multi-billion dollar global industry.[1] As a result, athletes are able to obtain multi-million dollar salaries from their bosses – the owners. Salaries paid to professional athletes were not always as high as they are now.[2] In fact, for decades, salaries for baseball players were quite meager compared to today's standards.[3]

Baseball players' salaries increased from a minimum of $7,000 per year in 1968[4] to an astounding $316,000 per year in 2005.[5] Many interpret this increase as a result of the profits brought in by teams through ticket prices and broadcasting rights, however, many scholars believe the credit should go to the players' union.[6] The Major League Baseball Players Association (MLBPA; Players Association) is largely responsible for establishing a minimum salary for players and creating a system where players are free to bargain with teams for salaries above the league minimum.[7]

The Players Association has historically consisted of a single bargaining unit made up of all Major League Baseball players.[8] While this arrangement makes sense,[9] there are questions as to whether it is appropriate. More specifically, is there a better way to organize Major League Baseball players to better benefit the players? A split of the Major League Baseball Players Association would be extremely difficult to enact and would expand statutory and common law rules regarding unions further than ever. However, the purpose of this article is to explore other options for Major League Baseball players to demonstrate that there is a more advantageous method of representation that takes into account the inherent differences between players. This article will explore the reasons that the current system of representation for Major League

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[1] Michael Ozanian, *The Business of Baseball*, FORBES.COM, (April 4, 2006), http://www.forbes.com/2006/04/17/06mlb_baseball-team-valuations-cx_mo_0420sports.html (last visited April 4, 2008). For example, in 2006 the average operating income of a Major League Baseball team was $360 million dollars.

[2] *See infra* notes 4,5.

[3] *Id.*

[4] Roger I. Abrams, Legal Bases: Baseball and the Law 82 (Temple Univ. Press 1998).

[5] Major League Baseball Salaries, Baseball Almanac, available at http://www.baseball-almanac.com/charts/salary/major_league_salaries.shtml (last visited Feb. 23, 2008).

[6] Abrams, *supra* note 4 at 73-90 (detailing the creation and the bargaining history of the Major League Baseball Player's Association).

[7] *Id.* at 83.

[8] Abrams, *supra* note 4 at 82-90 (explaining the history of the players' union).

[9] For instance, it ensures basic rights for all players, keeps all players on equal footing, prevents infighting among the players on each team, and keeps the conflicting interests of opposing unions out of baseball.

Baseball players is inadequate for a large percentage of the workforce. If Major League Baseball players were to take advantage of this option, this is the route they would likely have to take.

This article will argue that the MLBPA should split up its single unit to create a craft unit for pitchers, separate from position players. Craft units are better suited for baseball players' unions because they will provide a more specialized representation that will cater to the inherent differences between pitchers and position players. A separate craft unit for pitchers would be beneficial because of the inherent differences in the job responsibilities and physical strain that pitchers must endure. Furthermore, pitchers' rights are currently subverted below those of position players in the current system.

BACKGROUND

Labor Law

Because sports law is not its own body of jurisprudence, it is necessary to explore the area through other topics of law. This article will analyze a particular aspect of sports law through an investigation of labor law and how it applies to the sporting world. Specifically, the focus will be on the creation of craft units in a workplace with an already established bargaining unit encompassing all employees.

Like other areas of law, labor law was created out of necessity. During the first half of the twentieth century, disputes between employers and employees became quite hostile, with the employer often taking advantage of the employee who held a much weaker position in negotiations.[10] In 1935, Congress passed the National Labor Relations Act (NLRA; the Act), often known simply as the Wagner Act.[11] Congress listed the express purpose of the institution as promoting industrial peace.[12] Some historians, however, believe that many members of Congress saw the legislation as a means to fight the Great Depression by extending more bargaining power to the much weaker employees, and attempting to distribute the wealth of the nation to the blue collar workers.[13] In order to accomplish its purpose, the NLRA set forth many regulations restricting the actions of the three parties involved: the employee, the employer, and the union.[14]

Some sections of the NLRA restrict each party individually, while others restrict all three parties at once. One section that sets out to restrict the actions of all three parties concerns the appropriateness of the bargaining unit.[15] Section 9(b) of the Act explains that the National Labor Relations Board (NLRB) has the power to determine what constitutes an appropriate bargaining

[10] David Brody, Section 8(a)(2) and the Origins of the Wagner Act Restoring the Promise of American Labor Law (Sheldon Friedman, et al. eds., 1994).
[11] *Id.*
[12] *Id.*
[13] Christopher L. Tomlins, The State And The Unions: Labor Relations, Law, And The Organized Labor Movement In America, 1880-1960 103-40 (Cambridge University Press 1985).
[14] Employees are provided certain rights under 29 U.S.C.A. § 157 (2002), employers are regulated by 29 U.S.C.A. § 158(a) (2002), and unions are regulated by 29 U.S.C.A. § 158(b) (2002), not to mention the multitude of other provisions setting forth the procedures and rights guaranteed to employees.
[15] Black's Law Dictionary defines "bargaining unit" as "A group of employees authorized to engage in collective bargaining on behalf of all the employees of a company or an industry sector." 159 (8th ed. 2004).

unit in a particular situation.[16] The NLRB determines the appropriate unit from a list in the NLRA, which consists of "the employer unit[17], craft unit[18], plant unit[19], or a subdivision thereof."[20] The NLRA then contains a proviso stating that "the Board shall not . . . (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit votes against separate representation . . ."[21] One feature of the NLRA is that it leaves to the NLRB and the federal appellate courts the power to interpret the NLRA to more closely fit its purposes.[22] The modern interpretations and limits of the rules in the NLRA are now found within the common law.[23]

The NLRB interpreted section 9(b) of the NLRA to conclude that a bargaining unit does not have to be the most appropriate unit possible in the situation, but rather, it simply must be an appropriate unit.[24] This means that an appropriate proposed bargaining unit should not be denied simply because other, more appropriate units are possible.

The NLRB has not explicitly set forth an exact test to determine the appropriateness of a proposed bargaining unit.[25] Researchers, however, compiled a list of factors used by the NLRB in making an appropriateness determination.[26] These factors are referred to as the "community of interest test."[27] While the common law history and interpretations of the Act on this subject have changed drastically over the years,[28] the common law approach has remained steady after

[16] 29 U.S.C. § 159(b) (2002).
[17] An employer unit consists of all employees of the employer.
[18] A craft unit consists of one subset of employees with common job responsibilities, such as plumbers or a certain type of mechanic.
[19] A plant unit consists of all employees at a particular plant.
[20] *Id.*
[21] *Id.*
[22] 29 U.S.C. § 160 (a)-(e) (2002).
[23] *Id.* The shift of responsibility to the NLRB and the Circuit Courts, along with the wording of the statutes, demonstrate that the interpretations of the rules are now found in the common law.
[24] Morand Bros. Beverage Co., 91 NLRB 409, 417-18 (1950).
[25] Douglas L. Leslie, *Labor Bargaining Units*, 70 Va. L. Rev. 353, 383 (1984).
[26] *Id.* These factors include:

1. Similarity of pay and method of computing pay (e.g., weekly salary, hourly, piece-work).
2. Similarity of benefits (e.g., common pension plan, vacation schedule).
3. Similarity of hours of work.
4. Similarity of kind of work performed.
5. Similarity of qualifications, skills, and training.
6. Physical proximity and frequency of contact and transfers.
7. Functional integration of the firm.
8. The firm's supervisory structure (common supervision) and organizational structure, especially as it relates to setting and applying labor relations policies.
9. Bargaining history.
10. Employee desires.
11. Extent of union organization within the firm.

[27] Sara Lee Bakery Group, Inc. v. NLRB, 296 F.3d 292, 298 (4th Cir. 2002).
[28] *See* American Can Co., 13 NLRB 1252 (1939) (holding that bargaining history alone could provide basis for denial of a craft bargaining unit); *see also* National Tube Co., 76 NLRB 1199 (1948) (holding that bargaining history can only be a factor used in making a craft unit appropriateness determination).

the NLRB's decision in *Mallinckrodt*.[29] In that decision, the NLRB partially restricted the community of interest test and maintained a multi-factor analysis to uphold the severance of craft bargaining units from larger employer bargaining units.[30] The standard, however, remained extremely difficult for employees to meet.[31]

In *Mallinckrodt*, the NLRB denied separate union representation to a group of instrument mechanics working at a uranium processing facility.[32] The NLRB created a more refined version of the community of interest test that applied to the severance of a group of craft employees from a pre-existing bargaining unit and was limited to six factors.[33] These factors include: (1) the level of integration of proposed craft employees, (2) bargaining history, (3) whether proposed craft employees maintain a separate identity from other employees in the current unit, (4) bargaining history in industry, (5) the level of integration of the employer's production processes, and (6) the qualifications of the proposed union.[34] The NLRB went on to say that these factors were not all-inclusive and that other factors could be taken into consideration.[35]

The Fifth Circuit Court of Appeals later interpreted this case to say that "[t]he *Mallinckrodt* factors typically apply in a situation where a single employer operates a "wall-to-wall" manufacturing or processing facility, and where the respective trade craft employees' own interests have been largely submerged in the broader community of interests shared by all plant employees."[36] Thus, the "*Mallinckrodt* factors concentrate on the bargaining unit's history and community of interests, as well as the nature of the employer's operations."[37] This standard has become so difficult for employees to overcome that one scholar observed, "[t]he Board's reluctance to disrupt an established stable bargaining relationship will generally prevail over a claim that a separate craft unit is entitled to different representation."[38]

Major League Baseball: The way it is and how it came to be

Major League Baseball, like labor law, grew out of a battle of competing interests. With Major League Baseball, however, the conflict of interest was not between workers and employees, but between two separate leagues. In the late nineteenth and early twentieth century, the Western League[39] began stealing players from the more established National League.[40] It was not until 1903 that the two competing leagues decided that it was in their best interests to

[29] Mallinckrodt Chemical Works, Uranium Division, 162 NLRB 387 (1966).
[30] *Id.* at 396-99.
[31] *Id.*
[32] *Id.* at 388-90; *see also* NLRB v. Catalytic Indus. Maintenance Co., 964 F.2d 513, 519 (5th Cir. 1992) (explaining the holding of *Mallinckrodt*).
[33] *Mallinckrodt*, 162 NLRB at 397.
[34] *Id.*
[35] *Id.*
[36] *Catalytic*, 964 F.2d at 519.
[37] *Id.*
[38] *Catalytic Indus. Maintenance Co.*, 964 F.2d at 519 (*quoting* C. Morris, Developing Labor Law: The Board, The Courts, and the National Labor Relations Act 430-31 (BNA Books1983).
[39] Later renamed the American League.
[40] Mark Edelman, *Can Antitrust Law Save the Minnesota Twins? Why Commissioner Selig's Contraction Plan Was Never a Sure Deal*, 10 Sports Law. J. 45, 47 (2003); *see also* Jerold J. Duquette, Regulating the National Pastime: Baseball and Antitrust 7 (Greenwood Publ'g 1999).

form a single league to avoid competition for players.[41] The two sides agreed to accept each other's reserve clauses[42] and created a three-person committee consisting of the commissioner from each league and one neutral party to arbitrate disputes.[43] The three-person committee was later determined to be ineffective, therefore, in 1921 a single commissioner was selected to bring stability into the executive of baseball.[44]

In 1954, baseball players formed a union, The Major League Baseball Players Association (MLBPA; Players Association). The Players Association was created because players were dissatisfied with the financial treatment by their employers – Major League Baseball and the team owners.[45] Specifically, players were concerned that the league-wide pension plan did not adequately meet their needs.[46] Over time, the athletes noticed the increase in profits brought in by the league and the ever-increasing value of the teams and felt that they deserved more compensation for their services.[47] The Players Association lacked a central figurehead and leader until 1966 when the Players Association elected Marvin Miller as executive director.[48] Soon after Miller took over, the owners and the Players Association came together and implemented a collective bargaining agreement.[49]

By 1969, the NLRB asserted jurisdiction over Major League Baseball so as to effectuate its regulations into the bargaining process between the Players Association and the owners.[50] This decision stemmed from a petition filed by the recently formed umpires' union to conduct an election for the umpires of the American League.[51] This marked the first time that the players were protected by a force stronger than the owners, as the NLRB could protect the rights of the players in the bargaining process and was backed up by the power of the law.[52]

The Players Association, backed by the strength of the NLRB, helped significantly raise both the bargaining position and the salaries of the players.[53] By 1976, the Players Association secured free agency for the players, and by 1981 Dave Winfield became the first player to earn

[41] Edelman, *Can Antitrust Law Save the Minnesota Twins? Why Commissioner Selig's Contraction Plan Was Never a Sure Deal*, 10 Sports Law. J. 45, 47 (2003) (*citing* Jerold J. Duquette, Regulating the National Pastime: Baseball and Antitrust 7-8 (Greenwood Publ'g 1999)).
[42] Baseball's Reserve Clause "centers in the uniformity of player contracts; the confinement of the player to the club that has him under the contract; the assignability of the player's contract; and the ability of the club annually to renew the contract unilaterally, subject to a stated salary minimum." Flood v. Kuhn, 407 U.S. 258, 260 (1972).
[43] Jerold J. Duquette, Regulating the National Pastime: Baseball and Antitrust 8 (Greenwood Publ'g 1999).
[44] Mark Edelman, *Can Antitrust Law Save the Minnesota Twins? Why Commissioner Selig's Contraction Plan Was Never a Sure Deal*, 10 Sports Law. J. 45, 47-48 (2003); *see also* Jerold J. Duquette, Regulating the National Pastime: Baseball and Antitrust 29-30 (Greenwood Publ'g 1999).
[45] William B. Gould IV, *Globalization in Collective Bargaining, and Matsuzaka: Labor and Antitrust Law on the Diamond*, 28 Comp. Lab. L. & Pol'y 283, 286 (2007).
[46] *Id.*
[47] Abrams, *supra* note 4 at 82.
[48] *Id.*
[49] *Id.*
[50] *American League of Professional Baseball Clubs*, 180 NLRB 190, 191 (1969).
[51] *Id.*
[52] Abrams, *supra* note 4 at 82; Marc Edelman, *Can Antitrust Law Save the Minnesota Twins? Why Commissioner Selig's Contraction Plan Was Never a Sure Deal*, 10 Sports Law. J. 45, 50 (2003).
[53] Abrams, *supra* note 4 at 82 (Explaining the almost immediate increase in salary after the implementation of the first collective bargaining agreement).

more than one million dollars in a season.[54] The baseball-almanac.com explicitly demonstrates this drastic increase in salaries seen in Major League Baseball.[55] In 1970 the average player's salary was $29,303.[56] The average salary for Major League Baseball players in 2005, only 35 years later, was $2,362,655.[57] In fact, the league minimum wage in 2005 was $316,000, more than ten times the average salary in 1970.[58] Baseball player's salaries increased astronomically after the implementation of the union.

Analysis

While the MLBPA has been successful in raising players' salaries, the question remains whether it can be more efficient. Since its implementation, the Players Association has been a single blanket union representing all players participating in Major League Baseball.[59] There are, however, problems with the effectiveness of the Players Association in its representation of pitchers. Pitchers could improve the effectiveness of their overall representation by establishing their own craft unit, separate from that of position players, through which they can bargain with the team owners. Under the auspices of labor law set down by the NLRA, the NLRB, and the federal courts, the players should come together and determine that the single blanket union is not efficient and a more specialized representation is necessary to best represent the interests of the players.

An example of how it will work

The NLRB has historically been hesitant to grant craft unit status to groups of employees that want to break away from their traditional single bargaining unit covering all employees.[60] Though the standard is difficult to surpass, it is not impossible. This analysis will now look at an instance where a group of craft employees of a single employer put forth a successful bid for a craft unit under the auspices of a larger multi-craft unit. This case provides a roadmap that Major League Baseball players should use to develop craft oriented units.

In *Catalytic Industrial Maintenance Co.*, a group of electricians attempted to split from a single union representing all employees of the employer.[61] The employer (CIMCO) provided maintenance work to industrial facilities across the United States.[62] CIMCO had a national collective bargaining agreement in place (GPA), which involved multiple trade unions in the negotiation process.[63] Because of disagreements regarding the expansion of services to two new

[54] Marc Edelman, *Can Antitrust Law Save the Minnesota Twins? Why Commissioner Selig's Contraction Plan Was Never a Sure Deal*, 10 Sports Law. J. 45, 51 (2003).
[55] Abrams, *supra* note 4.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] Abrams, *supra* note 4 at 82-90 (explaining the history of the player's union).
[60] *NLRB v. Catalytic Indus. Maintenance Co.*, 964 F.2d 513, 519 (5th Cir. 1992) (explaining the holding in Mallinckrodt and its application to later cases).
[61] 964 F.2d at 515-16.
[62] *Id.* at 515.
[63] *Id.*

plants, the electrician's union withdrew as a participant in negotiations and as a representative in the two plants.[64]

While the electricians at these two plants were still represented by the multi-craft unit under the GPA, a new electrician's union attempted to obtain certification as the bargaining representative for the electricians.[65] The NLRB, in determining the appropriateness of the proposed craft unit, held that the electrician's union was entitled to severance from the blanket multi-craft unit in place.[66] The proposed union went on to win a certification election and became the bargaining representative for the electricians.[67]

The Fifth Circuit upheld NLRB's grant of craft unit status.[68] The Court used the *Mallinckrodt* factors, *supra*, to determine that the severance of the craft unit was appropriate,[69] and reasoned that "the crucial consideration is the weight or significance, not the number, of factors relevant to a particular case."[70] The Court upheld NLRB's decision to create a separate craft unit largely because CIMCO lacked an integrated production process. The electricians had a history of separate representation, and without craft representation the electricians would be without any real representation.[71] The Court also stated that the employer's fear of instability amongst its workforce by its breaking into separate craft units was an untenable argument because it contained no basis in fact.[72]

Applying the Standards to Major League Baseball

If pitchers ever desire to break from the Players Association, they will have to follow the model set forth in *Mallinckrodt* and applied in *Catalytic*. While the *Mallinckrodt* factors are a good starting point for the analysis, they are not the only factors worthy of consideration.[73] It is still important to analyze all aspects of the status of the proposed craft unit employees.[74] Using the community of interest test and the factors set forth under *Mallinckrodt*, a strong argument can be made that baseball players should be broken up into separate craft units of pitchers and position players.

A More Tailored Representation

The purpose of creating a craft unit for pitchers is to assert their rights, which have largely dissipated and been slowly submerged beneath the collective rights of position players. As was previously stated, the *Mallinckrodt* analysis applies in situations where an employer operates a "wall-to-wall" enterprise and the rights of a particular group or craft of workers have

[64] *Catalytic*, 964 F.2d at 516.
[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Catalytic*, 964 F.2d at 519-20.
[69] *Id.* at 519.
[70] *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153, 1156 (5th Cir. 1980).
[71] *Catalytic*, 964 F.2d at 519-20.
[72] *Id.*
[73] *Mallinckrodt*, 162 NLRB at 398.
[74] *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153, 1156 (5th Cir. 1980) (explaining that the community of interest test is still relevant to the inquiry).

been overlooked to better represent the group as a whole.[75] The *Mallinckrodt* analysis applies to pitchers because Major League Baseball operates a wall-to-wall business, as the owners employ all of the players and all of these employees belong to the single unit.

Pitchers' rights have been submerged in three primary ways. First, there is a major difference in pay between pitchers and position players in Major League Baseball. On average, pitchers make less money than position players.[76] For instance, starting pitchers make about half of what designated hitters make, and relief pitchers make about one quarter of that amount.[77] While the league minimum salary is the same across positions, the collective bargaining agreement has created a setting that allows for larger salaries for position players than pitchers. The difference in pay is important as it creates the implication that, under the representation of the MLBPA, the interests of position players trump those of pitchers.

Second, pitchers, on average, have shorter careers than position players. This fact demonstrates the ineffectiveness of the current bargaining unit because an effective bargaining unit would compensate pitchers with higher salaries to make up for the likelihood of a shorter career. A recent study found that the average career length for Major League Baseball position players is 5.6 years.[78] The study did not look into the average career length for pitchers. Pitchers were excluded from the study because they "are more prone to injuries and have volatile careers."[79] While the study does not expressly state that pitchers have shorter careers than position players, it creates a strong inference that this is the case.[80]

The nature of a pitcher's job places great strain on his throwing arm and shoulder in a manner that that contributes to injuries much different, and often more severe, than those suffered by position players.[81] A successful players' union should take these facts into account in considering compensation for pitchers that would be equal to or more than what position players make.

Third, a craft unit for pitchers is appropriate because the arbitration process often used by professional athletes to increase their compensation under their contracts often involves the comparison of the athlete directly to other players of that respective position. This practice is widely used by numerous professional sports leagues. For example, the National Hockey

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[75] *Catalytic*, 964 F.2d at 519.

[76] Ronald Blum, *Average MLB salary up 4.6 pct to $2.82M; Yankees at $7.47M top for 9th straight year,* Associated Press, available at http://sports.yahoo.com/mlb/news?slug=ap-salaries (last viewed on March 2, 2008). "Designated hitters had the highest average at $8.49 million, followed by third basemen ($5.75 million), first basemen ($5.68 million), outfielders ($5.54 million), shortstops ($4.96 million), starting pitchers ($4.26 million), second basemen ($2.91 million) and relievers ($1.66 million)."

[77] *Id.*

[78] Sam Roberts, *Just How Long Does the Average Baseball Career Last?*, The New York Times, July 15, 2007, available at http://www.nytimes.com/2007/07/15/sports/baseball/15careers.html?em&ex=1184644800&en=209466539d3863f8&ei=5087%0A (last viewed on March 9, 2008).

[79] *Id.*

[80] Those players that are more prone to injury tend to have shorter careers and those with volatile careers don't end up staying very long in the league.

[81] Allan Schwarz and Gina Kolata, *A Biomechanical Wonder, 100 Times a Game*, The New York Times, March 31, 2007, available at http://www.nytimes.com/2007/03/31/weekinreview/01pitch.html?ex=1332993600&en=c2ad1a74b20f30dc&ei=5088&partner=rssnyt&emc=rss (last viewed on October 22, 2008).

League bore witness to this practice in 1993 when one of its premier defensemen, Ray Bourque, demanded more money than the Boston Bruins were willing to offer him.[82] In determining the appropriate salary for Bourque, the arbitrator compared Bourque's overall career performance with that of other athletes playing the same position who had similar careers.[83] This manner of comparison within arbitration demonstrates that players are compared to other players of the same position to determine an appropriate salary. While it is usually the individual player's agent who is involved in the arbitration process and not the Players Association,[84] this process demonstrates that it is often most appropriate to compare a player with those who play the same position. "In actual practice, the determining criterion is the compensation of other ballplayers comparable to the player whose case is in arbitration."[85] The only players comparable to pitchers are other pitchers, as the profession of pitcher is inherently different than that of position player.[86]

Bargaining History

Since the inception of the Players Association, the players have been represented by only one union and have remained a single unit throughout its entire history.[87] There exists no relevant bargaining history in Major League Baseball that contained the use of craft units separate from the single bargaining unit.[88] Under *Mallinckrodt*, this factor may cut against the likelihood that the NLRB would grant severance to a proposed craft unit.

Arguments exist, however, that render bargaining history less important. First, no single *Mallinckrodt* factor is dispositive by itself.[89] Further, it can be argued that this factor has been rendered unnecessary by subsequent changes to the statute and through common law interpretation. The statute expressly states that the "the Board shall not" determine a proposed craft unit inappropriate simply because a different, broader unit is already in place and was approved by the NLRB.[90] Thus, the presence of a NLRB approved bargaining unit alone cannot deter the formation of an appropriate craft unit.

Second, if bargaining history becomes a dispositive factor, change will never occur in the organization of bargaining units. Bargaining history is problematic because in the face of a request for craft unit status, in light of changes in the employees' work conditions, an employer whose employees historically enjoyed only a single multi-craft unit will simply rely on bargaining history to effectively quash the implementation of a craft unit. An employer can then maintain the status quo even if it would be beneficial for the employees for a change to occur.

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[82] Raymond Bourque and Boston Bruins (NHL Arbitration, 1993) (available in Paul C. Weiler & Gary R. Roberts, *Sports and the Law: Text, Cases, Problems (3rd ed.)* 377-83, Thomson/West (2004)).
[83] *Id.*
[84] Abrams, *supra* note 4 at 83.
[85] *Id.* at 88.
[86] The same argument cannot be made of individual position players and their respective positions. Outfielders are often interchangeable between positions and most infielders have played more than one position in the infield. It is also not uncommon for infielders to spend time playing in the outfield or for catchers to become first basemen later in their careers. Pitchers, on the other hand, (except in extraordinary situations) remain pitchers.
[87] *Id.* at 73 (explaining the history and transformative power of the player's association).
[88] Id.
[89] *Mallinckrodt*, 162 NLRB at 398. Stating that the NLRB's "determinations will be made only after a weighing of all relevant factors on a case-by-case basis . . ."
[90] 29 U.S.C. § 159(b) (2002).

Third, the dissent in *Mallinckrodt* argues that bargaining history, by itself, should not be enough for the employer to overcome its burden of showing that a craft unit is inappropriate.[91] The dissent would require a showing that the multi-craft unit provides benefits to both the members of the proposed craft unit and to all of the employers under the larger unit.[92] Here, those supporting a craft unit for pitchers could introduce the statistics presented above to demonstrate that, while pitchers have benefited from the Players Association, their level of benefits are much lower than those obtained by position players. Thus, a proposed craft unit in baseball should not fail simply because bargaining history lends itself to a single unit.

Separate Identity

While *Mallinckrodt* does not expressly use the community of interests test as part of its analysis, many of its factors are found in the case's holding; and subsequent cases continue to apply these factors in their analyses.[93] More specifically, the *Mallinckrodt* factors relating to a separate identity between employees and integration call into question numerous factors of the community of interest test.

Pitchers maintain a separate identity from position players that stems from the inherent differences in their work. Pitchers spend considerable time during Spring Training and practice working separately from the rest of the team so as to more carefully refine their techniques. They tend to have their own "pitching coach" who spends all his time working with them on their craft. The presence of the pitching coach and the different position coaches for position players demonstrates a difference in supervision, another factor in the community of interests test.

The work conducted by pitchers differs on the field as well. Pitchers must throw a ball to the catcher during every play while on the field. Position players on the other hand, may not be involved in a play for an entire inning. The job descriptions differ drastically between the two groups as pitchers are expected to deliver the ball to the catcher with the expectation of getting the batters from the other team out. Position players, by contrast, are expected to help the team by batting and by fielding their positions. While pitchers in the National League bat and pitch, and pitchers in both leagues field their positions, they are not expected to contribute greatly at the plate. Furthermore, the manner in which they field their position is quite different than how position players field their positions.

Along these same lines, the qualifications, skills, and training of pitchers differ from those of position players. Most position players lack the arm strength and endurance to be a Major-League pitcher. Further, position players would not be able to throw the off-speed pitches that often make a pitcher successful. While many position players have strong arms, pitchers require a subset of skills that cannot be found in position players. As result of the difference in

[91] Leslie, *supra* note 25 at 403.
[92] *Id.*
[93] *Catalytic*, 964 F.2d at 519. As a reminder, the community of interest factors are: similarity of pay and methods of pay, similarity of benefits, similarity of hours of work, similarity of work performed, similarity in qualifications, skill, and training, physical proximity and contact; integration of business; supervisory structure; bargaining history; employee desires; and union organization within business. *Purnell's Pride*, 609 F.2d at 1156 (explaining that the community of interest test is still relevant to the inquiry).

skills, techniques, and overall work between pitchers and position players, it logically follows that the training of pitchers differs drastically from that of position players.

There is also a difference between pitchers and position players in hours of work. While there are no set hours for baseball players besides mandatory practice and game times, pitchers are held to different standards than position players. Pitchers are expected to report to Spring Training earlier than most other position players[94] and are also expected to spend less time on the field during games. A starting pitcher is generally expected to last about six innings, while relief pitchers generally pitch between one and three innings. Position players, on the other hand, usually play the entire game. Also, pitchers often have multiple days off between appearances, while position players tend to play every day. These differences accurately demonstrate the separate identities of pitchers and position players.

Integration

Integration of the employer's business is an important factor in the analysis.[95] A high level of integration would tend to show that a single multi-craft unit is inappropriate because the individual jobs of all employees are inseparable from the whole, creating an inference of a community of interests between all employees.[96] The team owners will argue that Major League Baseball is highly integrated, making the creation of a craft unit inappropriate, because all players come together on the field to put forth the single product of a baseball game to be sold to the masses.

This argument, however, forgets the result of *Catalytic*. In *Catalytic*, the electricians were employees of a firm that provided maintenance work to other companies.[97] The electricians were one subset of the overall employee population that contributed to the overall goal of providing maintenance work.[98] The court in *Catalytic* determined that the integration of the electricians was very weak because employees were split into four distinct groups.[99] Like *Catalytic*, baseball is broken up into subsets of employees who come together to put forth a product. Baseball is split between pitchers and position players. The players each contribute to the end result of creating a game, but they do so rather independently. A rule prohibiting the creation of a craft unit simply because different groups of employees contribute pieces to the overall whole product produced by the employer, would prohibit most craft units from severance.

Pitchers satisfy the community of interest test found within the *Mallinckrodt* factors because pitchers do significantly different work, have different supervisors, and have different work schedules. Integration of the employer's business is also quite weak. While all players contribute to the end result of producing a baseball game, they do so in completely different manners. In any industry, craft employees contribute parts of the whole that eventually come

[94] Pitchers and catchers generally to Spring Training report on the same day.
[95] *Mallinckrodt*, 162 NLRB at 397; *see also Catalytic*, 964 F.2d at 519-20 (finding that the level of integration is key in determining the appropriateness of a proposed craft unit).
[96] *Mallinckrodt*, 162 NLRB at 398-99 (finding a high level of integration as a factor supporting the denial of craft unit status).
[97] *Catalytic*, 964 F.2d at 515.
[98] *Id.*
[99] *Id.*

together to make the product. In baseball, pitchers contribute their part of the whole, separate from the contributions of position players.

CONCLUSION

Baseball has historically witnessed only one players' union. The MLBPA has been successful in raising salaries for players and shrinking the bargaining power gap between players and owners. It could be more effective if it split into two craft units so as to better represent the players and their differing interests. A proposed craft unit of pitchers would satisfy the standards set forth by the NLRA and the common law. This proposed craft unit would better represent pitchers because it could cater more specifically to their needs, such as better representation, as they are drastically underpaid in comparison to position players and their job descriptions differ greatly from those of position players. While implementation of these craft units may not be in the immediate future of Major League Baseball, there is no reason to think that it could not or should not be.