Arbitration in the MLB: a Case Study on ADR Strategy and Human Psychology

By Peter Bruno

I. Introduction

Arbitration has played a transformative role in shaping labor relations across industries, and its adoption in Major League Baseball (MLB) stands as one of the most significant innovations in baseball's storied history.[1] Over the last half-century, MLB's unique system of arbitration—particularly Final-Offer Arbitration (FOA)—has become a defining feature of salary negotiations between players and teams. Emerging amidst the upheaval of the reserve clause's demise and the rise of free agency, FOA offered MLB a structured mechanism to balance fairness, efficiency, and competitive stability in a rapidly changing labor environment.[2] Its implementation not only reflected the evolving power dynamics between players and owners but also underscored the league's ability to adopt innovative dispute-resolution methods to meet its economic and organizational needs.

MLB's arbitration system is particularly notable within the broader landscape of Alternative Dispute Resolution (ADR). While traditional arbitration often allows the arbitrator discretion to "split the difference" between two competing proposals, FOA imposes a stark constraint: the arbitrator must select one of the two final salary figures presented—nothing more, nothing less. This binary structure creates a high-risk, high-reward dynamic that incentivizes both players and teams to submit reasonable, defensible offers rooted in objective evidence such as performance metrics, player comparables, and market conditions.[3] By design, FOA curtails the tendency for extreme or exaggerated proposals, promoting a more transparent and data-driven negotiation process.

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[1] Historicbaseball.com, "Baseball in the 1970s: Free Agency and Player Rights"
[2] Edna Sussman, "Everyone Can Be a Winner in Baseball Arbitration: History and Practical Guidance," NYSBA *New York Dispute Resolution Lawyer* Vol. 12 Page 31 (2019)
[3] Danilo Ruggero Di Bella, "Final Offer Arbitration: a Procedure to Save Time and Money" (2019)

The adoption of FOA by the MLB was not just a pragmatic solution to salary disputes. Its roots can be traced to broader legal and economic developments, including the Federal Arbitration Act of 1925, the National Labor Relations Act of 1935, and the landmark "Steelworkers Trilogy" decisions of the 1960s, which cemented arbitration's central role in labor disputes. At the same time, MLB's arbitration system emerged as a direct response to the reserve clause—a contractual provision that, for decades, tethered players to their teams indefinitely, suppressing salaries and limiting player mobility.[4] The dismantling of the reserve clause, highlighted by Curt Flood's legal challenge in *Flood v. Kuhn* and the pivotal Seitz decision in 1975, ushered in a new era of player bargaining power and economic opportunity. Salary arbitration, particularly FOA, became the compromise solution, providing players with a fairer mechanism for determining salaries while helping owners retain some cost control during the early years of a player's career.

While FOA has been praised for its efficiency and fairness, it also raises intriguing theoretical and psychological questions. From an ADR perspective, FOA challenges conventional assumptions about arbitrator discretion, redefining the neutral's role as a "chooser" rather than a "designer" of outcomes. Simultaneously, behavioral economics offers valuable insights into the cognitive biases—such as anchoring effects and loss aversion—that influence player and team strategies under FOA's binary framework. These perspectives allow for a deeper understanding of why FOA succeeds in producing rational outcomes, promoting settlements, and maintaining labor peace in a high-stakes, adversarial environment like MLB.

This article explores the history, mechanics, and theoretical implications of MLB's Final-Offer Arbitration system. Beginning with the legal and economic foundations of arbitration in the United States, the analysis moves through the downfall of the Reserve Clause, the

[4] Stew Thornley, "The Demise of the Reserve Clause: The Player's Path to Freedom" (2006)

emergence of free agency, and MLB's adoption of FOA. It then examines FOA through the lens of ADR theory and behavioral economics, demonstrating how its design aligns with both legal principles and psychological dynamics to foster fair, efficient outcomes. By weaving historical, legal, and theoretical perspectives, this paper highlights why MLB's arbitration system remains one of the most innovative and enduring models of labor dispute resolution in professional sports.

II. Development of Arbitration in the MLB

A. The Federal Arbitration Act and National Labor Relations Act

Arbitration, as a method of private dispute resolution, has a long history in the United States, though its role was limited prior to the 20th century. By the early 20th century, courts across the country were facing mounting backlogs as industrialization, economic growth, and an increasingly complex commercial landscape led to a surge in litigation. Businesses, particularly in sectors requiring quick and efficient resolution of disputes, grew frustrated with the slow, costly, and unpredictable nature of traditional court proceedings.[5] They sought alternatives that would allow them to resolve disputes promptly while maintaining control over the process. Arbitration, with its informality and efficiency, emerged as a practical solution to these challenges, but there was a significant legal barrier: courts were hesitant to enforce arbitration agreements or awards, viewing them as an improper ouster of judicial authority.[6] This skepticism slowed arbitration's growth and frustrated its usage as a streamlined dispute-resolution tool.

However, the passage of the Federal Arbitration Act (FAA) in 1925 addressed these concerns and marked a transformative moment in American law. The FAA was designed to

[5] *Kulukundis Shipping Co., S/A, v. Amtorg Trading Corp.*, 126 F.2d 978, 985 (2d Cir. 1942) (This 2nd Circuit case was one of the first cases to bless arbitration as an alternative to traditional litigation; where the circuit judge emphasized the growing agitation surrounding litigation costs and delays.)

[6] *Tobey v. Cnty. of Bristol*, 23 F. Cas. 1313, 1320 (C.C.D. Mass. 1845) (Mid-Nineteenth Century case in which the judge expressed his clear dissatisfaction with the notion of arbitration, and his reluctance to compel arbitration under the common law.)

elevate arbitration from a mere contractual arrangement to an enforceable legal process, thereby ensuring parties could rely on arbitration agreements and awards. Prior to the FAA, U.S. courts were largely unwilling to compel arbitration or enforce arbitration outcomes because of the prevailing view that such agreements stripped courts of their jurisdiction.[7] This perspective reflected the broader common law tradition, inherited from English jurisprudence, which disfavored arbitration on the grounds that it undermined judicial authority and public oversight of legal disputes.[8]

The FAA overcame this skepticism by establishing a statutory framework for arbitration agreements. Section 2 of the FAA is the cornerstone of the legislation, providing that arbitration agreements in contracts involving interstate commerce are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[9] This provision ensured that arbitration agreements would be treated like any other contract, enforceable in court except under limited circumstances, such as fraud, duress, or unconscionability. By elevating arbitration agreements to the same legal standing as other contracts, the FAA is a reflection of Congress's intent to respect the freedom of parties to choose arbitration as a binding and final method for resolving commercial disputes.[10]

The FAA's adoption was not merely a reflection of procedural efficiency but also a recognition of the economic realities of the time. Arbitration offered businesses a way to resolve conflicts efficiently without the burden of prolonged litigation. Congress saw arbitration as a means to foster commercial stability and reduce the costs of dispute resolution, particularly in

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[7] *See Id.*
[8] *See Id.*
[9] 9 U.S.C.A. § 2 (West)
[10] Maureen Weston, "Arbitration: Law, Policy, and Practice," Carolina Academic Press (2018), 13

industries requiring fast and flexible outcomes.[11] This approach aligned with broader trends that sought to modernize and streamline legal processes to accommodate the demands of a rapidly evolving economy. One of the most significant impacts of the FAA was its emphasis on the finality of arbitration awards. Section 10 of the FAA established narrow grounds for judicial review of arbitral decisions, allowing courts to vacate awards only in cases of corruption, fraud, evident partiality, arbitrator misconduct, or where the arbitrator exceeded their powers.[12] By strictly limiting judicial intervention, the FAA reinforced arbitration's purpose as a final and binding process. This deference to arbitration decisions, codified in the FAA, laid the foundation for arbitration's acceptance as a legitimate and enforceable alternative to litigation.

The FAA also signaled a broader philosophical shift in the American legal system. By granting parties the autonomy to resolve disputes privately, the FAA aligned with the principle of freedom of contract, which is a deeply rooted notion in American political theory. Arbitration agreements reflect the parties' intent to bypass the formalities of litigation and rely instead on a mutually agreed-upon process. It is clear that this emphasis on party autonomy became a defining feature of arbitration under the FAA and remains central to its application today. And while the FAA initially focused on commercial disputes, its impact extended far beyond its original scope. Over the decades, arbitration became a preferred method of resolving labor, employment, and consumer disputes, driven in part by the FAA's legal framework.[13]

In the context of labor relations, arbitration emerged as a critical tool for resolving grievances and contract disputes between unions and employers, particularly under the National Labor Relations Act. The Supreme Court's subsequent decisions in cases like the *Steelworkers*

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[11] H.R. REP. 97-542, 13, 1982 U.S.C.C.A.N. 765, 777 ("The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties")
[12] 9 U.S.C.A. § 10 (West)
[13] Daniel Centner, "A Brief History of Arbitration," *The Brief* (2019)

Trilogy reinforced arbitration's role in labor law, establishing that courts must defer to arbitration as the preferred mechanism for resolving labor disputes. These legal milestones not only shaped the collective bargaining process in traditional industrial sectors but also laid the groundwork for adopting arbitration as a key dispute resolution mechanism in professional sports, including Major League Baseball (MLB).

Before the NLRA, labor relations in the United States were adversarial and contentious. Employers commonly resisted union organizations, and courts frequently issued injunctions to curtail strikes and picketing.[14] This judicial hostility toward organized labor left workers with few reliable mechanisms to secure fair wages and working conditions. Against this backdrop, Congress enacted the NLRA, also known as the Wagner Act, a statute that profoundly altered the balance of power between labor and management. The NLRA granted employees the right to organize, join labor unions, and collectively bargain through representatives of their own choosing.[15] For the first time, federal law recognized collective bargaining not merely as a tolerated practice but as a statutory right, backed by the power of the state.

Critically, Section 7 of the NLRA protects employees' rights to engage in "concerted activities" for mutual aid or protection.[16] This broad language encompasses not only unionization and collective bargaining but also the pursuit of peaceful means to resolve workplace disputes. Employers now had a legal obligation to bargain in good faith over terms and conditions of employment. In turn, unions could negotiate contracts that included mechanisms for resolving disputes efficiently and with finality. Arbitration clauses now found a home within the framework of collectively bargained agreements.

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[14] "Pre-Wagner Act Labor Relations," National Labor Relations Board.
[15] 29 U.S.C. §§ 151-169
[16] 29 U.S.C. § 157

In the decades following the NLRA's passage, it became increasingly common for CBAs to contain arbitration provisions. Typically, these provisions addressed "grievance arbitration," the process by which disputes involving the interpretation or application of contract terms were submitted to a neutral arbitrator rather than litigated in court. "By 1944, the Bureau of Labor Statistics reported that 75 percent of collective bargaining agreements designated arbitration as the 'terminal point' in their grievance-resolution framework. By 1988, labor cases comprised nearly two-thirds of the AAA's caseload."[17]

Although the Federal Arbitration Act (FAA) of 1925 had established a strong federal policy favoring arbitration, its application in the labor arena still required judicial refinement, especially when disputes centered on the meaning and scope of federally protected labor rights. The Supreme Court provided this refinement in a trio of landmark cases decided in 1960, collectively known as the *Steelworkers Trilogy*: *United Steelworkers v. American Manufacturing Co.*, *United Steelworkers v. Warrior & Gulf Navigation Co.*, and *United Steelworkers v. Enterprise Wheel & Car Corp*. These cases, all arising out of disputes between steelworkers and their employers, addressed fundamental questions about arbitration's place in the collective bargaining process and the appropriate level of judicial scrutiny for arbitral decisions.

In *American Manufacturing*, the Court confronted the threshold question of whether a court should consider the merits of an underlying grievance before compelling arbitration.[18] The union sought to arbitrate a dispute over an employee's reinstatement, and the employer argued that the grievance was without merit.[19] The Supreme Court, in a short and decisive opinion, held that courts should not inquire into the merits of the grievance when deciding whether it is subject

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[17] Daniel Centner, "A Brief History of Arbitration," *The Brief* (2019)
[18] *See United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564 (1960)
[19] *Id.*

to arbitration.[20] As long as the arbitration clause in the CBA arguably covered the dispute, the court's role was limited to enforcing the agreement to arbitrate.[21] By declining to assess the strength of the grievance, the Court reaffirmed that the purpose of arbitration was not to duplicate the judicial process but to provide a separate, contractually agreed-upon forum for resolving disputes.[22]

The Court's reasoning in *Warrior & Gulf Navigation Co.* further solidified the principle of arbitral primacy in resolving questions of contract interpretation. The employer argued that "matters which are strictly a function of management shall not be subject to arbitration."[23] The Supreme Court, however, took the stance that any doubts concerning the scope of an arbitration clause should be resolved in favor of arbitration by stating, "if courts, in order to determine arbitrability, were allowed to determine what is permitted and what is not, the arbitration clause would be swallowed up by the exception."[24] The reasoning here was critical; the CBA represented the parties' chosen framework for governing their employment relationship. By agreeing to arbitration, the parties essentially signaled their preference to have disputes settled by a neutral arbitrator rather than a judge. The Court emphasized that arbitration was a means of effectuating the parties' intent and maintaining industrial peace, and stressed that courts should not second-guess the procedural choices the parties made in their CBAs.[25] The legal reasoning here hinged on the fact that CBAs are unique forms of contracts, reflective of industrial self-government; and because grievance procedures are the product of the continuous collective

[20] *Id.*
[21] *Id.*
[22] *Id.* at 568.
[23] *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960)
[24] *Id.*
[25] *Id.* at 578.

bargaining process, the Court concluded that it was more consistent to encourage the arbitration of any dispute that was not specifically excluded from the agreement's arbitration clause.[26]

The final piece of the trilogy, *Enterprise Wheel & Car Corp.*, dealt with the scope of judicial review over an arbitrator's award.[27] Here, the employer challenged the arbitrator's decision to reinstate discharged employees, arguing that the award lacked a basis in the contract.[28] The Supreme Court held that courts must grant substantial deference to an arbitrator's interpretation of a CBA, even if the arbitrator's reasoning is terse or the decision might have been different if examined anew by a judge.[29] The Court made it clear that the arbitrator's award need not be a mirror image of judicial reasoning or legal strictures.[30] Instead, as long as the arbitrator's decision "draws its essence from the collective bargaining agreement," it is not the court's place to substitute its judgment for that of the arbitrator.[31] This reasoning underscored the notion that arbitration is fundamentally contractual in nature. The parties had bargained for a system in which a neutral third party would resolve their disputes under the terms of their agreement, and the Court recognized that the legitimacy and stability of labor arbitration depended on finality and minimal judicial interference.

Taken together, the *Steelworkers Trilogy* established an enduring legal principle: arbitration was to be treated as a foundational element of the collective bargaining process. Arbitrators were the primary interpreters of agreements that governed the relationship between management and labor, and their decisions would be respected by courts as long as they were within the scope of the contract. By diminishing the role of judicial oversight and encouraging a policy of non-intervention, the Supreme Court aligned labor arbitration with the objectives of the

[26] *Id.* at 580-81.
[27] *See United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593 (1960)
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* at 597.

NLRA—fostering self-governing labor relations and reducing industrial strife. This judicial embrace of arbitration not only bolstered the bargaining power of unions and facilitated more predictable relationships between employers and employees, but it also provided a template for other fields to follow. Over time, the neutrality, efficiency, and finality offered by arbitration appealed to a wide spectrum of industries, including those with unique labor markets, like the MLB.

Professional sports, and MLB in particular, exemplify how the principles underlying the NLRA and the *Steelworkers Trilogy* influenced the adoption of arbitration in non-traditional labor arenas. Historically, MLB players faced a restrictive system dominated by the "reserve clause," which tethered a player to a team indefinitely, severely limiting player mobility and earning potential.[32] For decades, this system skewed bargaining power heavily toward team owners, stifling any meaningful negotiation over salary or conditions.[33] Players lacked the leverage that industrial unions possessed in the manufacturing sector because baseball did not initially recognize them as collective bargaining partners until 1968.[34] However, as the MLB Players Association (MLBPA) formed and gained strength, the legal environment created by the NLRA allowed players to assert their rights as workers entitled to collective bargaining protections.

B. History of the MLB Labor Market

For much of the twentieth century, the dynamics of player-employer relations in Major League Baseball (MLB) were heavily affected by a single contractual provision that tightly restricted player mobility: the reserve clause. Introduced in the late nineteenth century, the reserve clause bound a player to one team indefinitely, renewing his contract year after year at

[32] Thornley, "The Demise of the Reserve Clause: The Player's Path to Freedom"
[33] *Id.*
[34] The first ever collective bargaining agreement between the owners and players in the MLB was struck in 1968.

the club's sole discretion.[35] Although this arrangement stemmed initially from a desire to maintain competitive balance and control spiraling player salaries, it effectively granted team owners near-absolute power over their players' careers, limiting players' ability to negotiate fair contracts or move to teams willing to pay higher salaries.[36] Unsurprisingly, this archaic system appeared increasingly at odds with the evolving principles of American labor law and collective bargaining rights. The eventual dismantling of the reserve clause, brought to a head by the Curt Flood case and ultimately undone by the 1975 Messersmith-McNally (Seitz) decision, not only liberated players to achieve free agency but also paved the way for the adoption of arbitration as a cornerstone of MLB labor relations.[37]

For decades, the reserve clause's legality went largely unchallenged.[38] Baseball's unique antitrust exemption, first recognized in *Federal Baseball Club of Baltimore v. National League*, and reaffirmed in subsequent cases such as *Toolson v. New York Yankees*, protected the structure of MLB's labor market from the judicial scrutiny that other industries faced.[39] Owners justified the clause by arguing that it preserved competitive balance, prevented the wealthiest clubs from hoarding all the talent, and sustained fan interest in local teams.[40] Yet, from the players' perspective, the reserve clause was little more than a chain. A player under the clause could be traded or released at any time, but he had no parallel freedom to leave a team or test the open market.[41] His salary was determined unilaterally by the club, and his only options were to accept

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[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *See Fed. Baseball Club of Baltimore v. Nat'l League of Pro. Base Ball Clubs*, 259 U.S. 200 (1922); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953)
[40] Jake Kobrick, "Baseball's Reserve Clause and the Antitrust Exemption," Federal Judicial Center.
[41] Thornley, "The Demise of the Reserve Clause: The Player's Path to Freedom"

whatever was offered or hold out for an indeterminate period of time.[42] This power imbalance contributed to player dissatisfaction and steadily mounting pressure for reform.

C. Replacement of the "Reserve Clause"

As labor rights gained traction in other industries, baseball players began to recognize that their predicament was salvageable. The establishment of the MLB Players Association in the mid-1960s gave players a unified voice and a vehicle to assert their interests. Under the leadership of Marvin Miller, a former steelworkers' union economist, the MLBPA transformed from a weak advisory group into a formidable bargaining unit. Miller recognized that the reserve clause, coupled with baseball's entrenched antitrust exemption, confined players to a sub-market that bore little resemblance to a modern, competitive labor arena.[43] He understood that legal challenges and collective bargaining efforts would be necessary to overturn it.

One of the first major legal assaults on the reserve clause came from an unexpected source: Curt Flood, a center fielder for the St. Louis Cardinals. In 1969, Flood was traded to the Philadelphia Phillies without his consent. Outraged, he refused to report to his new team and instead wrote a letter to Commissioner Bowie Kuhn declaring that he was "not a piece of property to be bought and sold regardless of [his] wishes."[44] With the backing of the MLBPA, Flood sued Major League Baseball, arguing that the reserve clause violated antitrust laws and infringed upon his rights to fair employment. His case, *Flood v. Kuhn*, reached the Supreme Court. There, Flood advanced the argument that baseball should no longer enjoy its antitrust exemption and that the reserve clause constituted an unreasonable restraint of trade.[45]

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[42] *Id.*
[43] *Id.*
[44] Letter from Curt Flood to the Commissioner of Baseball, Bowie K. Kuhn, 1969, National Archives 278312
[45] *See Flood v. Kuhn*, 407 U.S. 258 (1972)

Justice Harry Blackmun's majority opinion in *Flood v. Kuhn* famously began with a lengthy commendation of baseball's storied history, underscoring the sport's cultural significance. The Court, however, declined to overturn the antitrust exemption, stating that any such dramatic shift in policy should come from Congress rather than the judiciary.[46] However, Justices Douglas and Brennan acknowledged in their dissent the peculiarity of baseball's antitrust exemption and even conceded that the reserve clause could seem unfair by modern standards.[47]Although Flood lost his case, the Court's hesitation and nuanced critique of the exemption signaled shifting judicial sympathies. More importantly, Flood's challenge brought the reserve clause into the national spotlight and galvanized player solidarity, laying crucial groundwork for future reforms.[48]

The Flood case, while unsuccessful, sparked a broader dialogue. In its aftermath, negotiations between owners and the MLBPA became more intense. Players gained an awareness of their collective power and the efficacy of collective bargaining. By the early 1970s, the MLBPA had secured limited gains, including the right to have grievances arbitrated by a neutral decision-maker rather than unilaterally decided by the Commissioner.[49] This was a critical step in embedding arbitration as a legitimate dispute resolution mechanism in baseball's labor relations. It meant that disputes were no longer resolved solely through the lens of MLB management, and it provided a forum for players to argue their grievances before an impartial third party.

The tipping point came in 1975 with the grievance cases of pitchers Andy Messersmith and Dave McNally. Both players had played the previous season without signing a new contract—an unprecedented loophole that placed them in a unique position to challenge the

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[46] *See Id.*
[47] *See Id.*
[48] Thornley, "The Demise of the Reserve Clause: The Player's Path to Freedom"
[49] *Id.*

reserve clause.[50] Under the reserve clause, a team could renew a player's contract for one year without his consent, but it had never been clear what would happen if a player refused to sign in subsequent years. Messersmith and McNally's decision to play out their renewed contracts without signing them created a legal loophole.[51] When the following season ended, they argued that they were no longer bound to any club because they had not signed a contract for the new year.[52]

The resulting grievance was heard by arbitrator Peter Seitz, a respected labor arbitrator drawn from the ranks of the American Arbitration Association.[53] The arbitration panel included representatives of both the owners and the MLBPA, but Seitz held the decisive vote. In a landmark decision, popularly known as the Seitz decision, he ruled in favor of the players.[54] Seitz determined that, according to the contract language and established labor principles, a team could not unilaterally renew a player's contract indefinitely.[55] Once a player fulfilled the first unilaterally renewed year, he became a free agent, free to negotiate with any team.[56] Effectively, this decision struck down the perpetuity of the reserve clause and ushered in the era of free agency. The legal reasoning behind the Seitz decision was anchored not merely in contract interpretation, but in the evolving norms of labor law and collective bargaining. The MLBPA's collective strength and the existence of a neutral arbitration process ensured that the dispute was heard on its merits, rather than being dismissed by unilateral league fiat. Seitz looked at the language of the agreement and concluded that owners had overreached by treating the reserve clause as a crutch. Once the clause was exposed to impartial scrutiny, it could not survive the

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[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] Ed Edmonds, "Dave McNally and Peter Seitz at the Intersection of Baseball Labor History" (2020)
[54] Thornley, "The Demise of the Reserve Clause: The Player's Path to Freedom"
[55] *Id.*
[56] *Id.*

standards of fairness expected in modern labor relations. The decision by Seitz paralleled principles endorsed by the National Labor Relations Act and cases like the *Steelworkers Trilogy*. Arbitration would treat players and owners as parties to a contract, bound by its terms and subject to reasoned interpretation, rather than a relationship defined by unilateral control.

The dismantling of the reserve clause had profound consequences. Players were now free to sell their services to the highest bidder after a period of team control, dramatically increasing their bargaining power and salaries.[57] The league's economic landscape changed overnight, as players and owners negotiated the structure of free agency and other critical terms in subsequent CBAs.[58] Significantly, while the reserve clause had allowed owners to set salaries essentially by fiat, the new environment incentivized all parties to find a more balanced, legally sound approach to determining player compensation.

It was in this transformed environment that arbitration took on a new and crucial role. Prior to free agency, arbitration primarily addressed disciplinary grievances or interpretation of CBA provisions. Now, arbitration could be extended to salary disputes, providing a structured forum in which players and teams could determine a fair compensation level without resorting to either unilateral owner decrees or the chaos of unfettered bidding wars. Arbitration's neutrality and finality make it an attractive mechanism for both sides, offering an alternative to the uncertain outcomes of litigation or the public relations damage of protracted disputes. Just as arbitration had soothed labor-management relations in traditional industrial settings by providing a known and respected dispute resolution path, so too would it help maintain industrial peace in baseball.

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[57] *Id.*
[58] *Id.*

The owners, who had lost the shield of the reserve clause, grew more willing to rely on arbitration to set controlled parameters for player salaries.[59] This was likely because free agency introduced a risk that bidding wars could drive up salaries for star players. For players, arbitration offered a significant improvement over the previous regime. Even if they had not yet achieved full free agency rights, they could at least have their salaries determined by an impartial arbitrator, who would weigh performance metrics, player accomplishments, and comparable salaries to arrive at a fair figure. In this sense, arbitration served as a logical and legally consistent progression from the enforced servitude of the reserve clause era to a balanced system reflecting both parties' negotiated interests.

As the MLB moved beyond the era of the reserve clause and into a system where players had substantially more autonomy, the need arose to ensure that arbitration was not only fair but also efficient and conducive to quick settlements. Protracted negotiations or arbitrary decisions would not serve either party's interests. This development eventually led to further refinements in the arbitration process, including the adoption of Final-Offer Arbitration in 1974.[60] FOA, sometimes called "last-best-offer" arbitration, requires each side to submit its final salary proposal, and the arbitrator must choose one figure or the other without compromise. This structure encourages both sides to be reasonable and often motivates them to settle before the hearing to avoid an all-or-nothing risk.

The old order—in which owners wielded near-absolute power under the reserve clause—had been dismantled by a combination of legal challenges, union strength, and the arbitration process itself. In its place stood a new framework aligned with modern labor law principles and the spirit of collective bargaining enshrined in the NLRA. Just as the *Steelworkers*

[59] Maury Brown, "Who's Winning The MLB Salary Arbitration Game? Here's Data From 1974 to 2015" *Forbes* (2015)
[60] *Id.*

Trilogy had guided traditional industries to accept arbitration as a central component of labor relations, MLB adapted arbitration to the unique economics of professional baseball.

III. How Salary Arbitration in the MLB Works

A. Mechanics of MLB Salary Arbitration

Salary arbitration in Major League Baseball (MLB) is available to players who have accumulated between three and six years of Major League service time (MLST), as stipulated in Article VI of the MLB Basic Agreement.[61] An exception exists for a subset of players referred to as "Super Twos." Super Twos are those with at least two but less than three years of MLST who rank in the top 22% of service time within that category and have at least 86 days of service time in the preceding season.[62] These players gain early arbitration eligibility, granting them additional bargaining power and higher earning opportunities compared to other players with similar tenure. Once a player becomes arbitration-eligible, the salary negotiation process begins. Either the player or the team may initiate arbitration if they fail to reach a mutual agreement on the player's compensation for the upcoming season.[63] Importantly, players who reach six years of service time become eligible for free agency, which marks the end of the arbitration process.

The arbitration process begins with the formal submission of a salary figure by both the player and the club to the arbitration panel. According to the Basic Agreement, these figures are exchanged prior to the hearing on what is known as the "Exchange Date[OBJ]."[64] Both parties submit their "last-best-offer" salary figures for the panel's consideration. However, if a mutual agreement is reached before the arbitration hearing, the case may be withdrawn.[65] This structure incentivizes the parties to negotiate in earnest and settle before resorting to arbitration.

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[61] *See* MLB 2022-2026 Basic Agreement, Art. VI (E)(1)(a)
[62] *Id.* Art. VI (E)(1)(b)
[63] See *Id.*
[64] *Id.* Art. VI (E)(2)
[65] *Id.* Art. VI (E)(3)

Arbitration hearings are conducted before tripartite panels composed of three professional arbitrators. Each year, MLB's Labor Relations Department (LRD) and the Major League Baseball Players Association jointly select arbitrators. If the two sides cannot agree, the American Arbitration Association provides a list of arbitrators, and names are selected by alternately striking from the list.[66] One arbitrator is designated as the panel chair to oversee proceedings.[67] Arbitration hearings are held in a predetermined neutral location. Preferences are given to Tampa/St. Petersburg, or Phoenix, where many teams conduct Spring Training.[68]

Arbitration hearings are private and confidential. Each party has a structured timeline to present its case. Specifically: Each side is allocated one hour for an initial presentation, 30 minutes for rebuttal and summation, and cross-examinations are permitted but do not count against time limits.[69] The order of presentation typically begins with the player, followed by the club, with rebuttals in the same order. Surrebuttals are permitted in response to new issues raised during rebuttal, though these are brief and discretionary. Unlike traditional trials, MLB salary arbitration hearings do not require formal legal burdens of proof; rather, the arbitration panel considers all relevant evidence to determine the outcome.[70]

The arbitration panel is tasked with evaluating specific admissible criteria to determine the player's fair salary. These criteria include: player performance, career contributions, comparative salaries, past compensation, and club performance.[71] While these factors are admissible, specific categories of evidence are excluded: the financial position of either the player or the club, press commentary or media reports, except recognized player awards, offers exchanged during pre-arbitration negotiations, costs of legal representation or arbitration

[66] *Id.* Art. VI (E)(5)
[67] *Id.*
[68] *Id.* Art. VI (E)(6)
[69] *Id.* Art. VI (E)(7)
[70] *Id.*
[71] *Id.* Art. VI (E)(10)(a)

preparation, and salaries in other sports or occupations.[72] Additionally, publicly available statistics (e.g. Baseball Prospectus) are admissible, but advanced performance technology data such as "STATCAST" metrics are excluded.[73]

The arbitration process operates under a strict timetable. After the Exchange Date, arbitration hearings are scheduled and must proceed without unnecessary delays. Once the hearing concludes, the arbitration panel endeavors to issue a decision within 24 hours.[74] Crucially, the panel is restricted to selecting one of the two submitted figures (Final-Offer Arbitration), with no modifications or compromises permitted.[75] This binary structure encourages both parties to present reasonable salary proposals. The panel does not issue written opinions or explanations for their decisions, which adds a degree of opacity to the process. The absence of formal reasoning, however, preserves efficiency and expedites the resolution of disputes. This strict timetable and binary final-offer structure, with strict deadlines for submission and hearings, can play a critical role in encouraging settlements. Knowing that a hearing outcome is binary often compels both sides to negotiate more seriously beforehand.

Evidenced by the most recent MLB Collective Bargaining Agreement, MLB salary arbitration is a meticulously organized process designed to balance efficiency, fairness, and impartiality. By establishing clear eligibility rules, strict timelines, and defined evidentiary criteria, the system provides an effective mechanism for resolving salary disputes while avoiding prolonged negotiations. At its core, the arbitration process reflects MLB's efforts to uphold labor stability and ensure players receive fair compensation commensurate with their contributions to the game.

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[72] *Id.* Art. VI (E)(10)(b)
[73] *Id.* Art. VI (E)(10)(c)
[74] *Id.* Art. VI (E)(13)
[75] *Id.*

B. How Players Have Benefitted from Salary Arbitration

Major League Baseball (MLB) players have seen substantial increases in salaries since the introduction of salary arbitration in 1974.[76] Prior to its implementation, players bound by the reserve clause had little to no bargaining power and were often paid salaries far below their market value. The adoption of arbitration as part of the collective bargaining process transformed the compensation structure for arbitration-eligible players, enabling significant raises over pre-arbitration levels.[77] More recently, the introduction of the Pre-Arbitration Performance Bonus Pool has further enhanced financial benefits for young players, ensuring more fair compensation for their contributions early in their careers.[78]

For arbitration-eligible players—those with three to six years of Major League Service Time (MLST)—arbitration often represents their first chance to challenge their team's salary offer. Historically, players entering arbitration have received significant raises after earning close to the league minimum salary during their pre-arbitration years. A widely cited example of arbitration's impact is Ryan Howard, the former Philadelphia Phillies first baseman. Howard made his MLB debut in 2005 and was named the league MVP in 2006, quickly establishing himself as a top player.[79] In 2007, Howard qualified for arbitration as a Super Two player. When Howard and the Phillies failed to agree on a salary, the arbitration panel awarded him $10 million for the 2008 season.[80] This represented an astronomical increase from the $900,000 Howard earned the previous year.[81] In contrast, Prince Fielder, a similarly accomplished player for the Milwaukee Brewers, missed the Super Two cutoff and earned just $670,000 in the same

[76] Thornley, "The Demise of the Reserve Clause: The Player's Path to Freedom"
[77] Brown, "Who's Winning The MLB Salary Arbitration Game? Here's Data From 1974 to 2015"
[78] Mark Feinsand, "MLB distributes first bonuses through Pre-Arb Pool Program" MLB.com (2022)
[79] "Howard's $10M win in arbitration sets new high-water mark" ESPN.com (2008)
[80] Id.
[81] Id.

season[OBJ].[82] Howard's case highlights the dramatic salary growth that arbitration can provide for players who perform at elite levels.

The overall trend confirms that arbitration-eligible players receive substantial raises. According to Forbes, players' salaries under arbitration have consistently increased every year since 1974, despite the fact that owners have won the majority of arbitration hearings every year since that time.[83] This trend could reflect the upward pressure that free agency salaries exert on arbitration outcomes.[84] Players with five years of service time can compare themselves to free agents, while those with four or fewer years can draw comparisons to players one class above them[OBJ].[85] This trickle-down effect ensures that arbitration-eligible players benefit indirectly from the competitive salaries negotiated in free agency.[86]

While arbitration provides substantial salary growth for players with at least three years of service time, the system previously left pre-arbitration players—those with fewer than three years of MLST—earning close to the league minimum regardless of performance. Recognizing this disparity, the 2022-2026 MLB Basic Agreement introduced the Pre-Arbitration Performance Bonus Pool, a $50 million annual fund to reward top-performing pre-arbitration players.[87] Because it is limited to pre-arbitration players, the Pre-Arbitration Pool specifically benefits players who excel early in their careers. Bonuses are allocated based on two criteria: award recognition and statistical performance.[88] For example, players who win prestigious awards like the Most Valuable Player (MVP), Cy Young, or Rookie of the Year receive substantial bonuses.[89] An MVP award winner earns $2.5 million from the pool, while second and third-place finishers

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[82] Lance Leque, "Milwaukee Brewers Lock up Prince Fielder Through 2011" *Bleacher Report* (2009)
[83] Brown, "Who's Winning The MLB Salary Arbitration Game? Here's Data From 1974 to 2015"
[84] Craig Edwards, "Service Time, Salaries, and the Reliance on Free Agents" Fangraphs.com (2017)
[85] Id.
[86] Id.
[87] Dan Schlossberg, "Witt, Skenes And 99 Other MLB Stars Collect Pre-Arbitration Bonuses" *Forbes* (2024)
[88] MLB 2022-2026 Basic Agreement, Art. XV(D)(3)
[89] *Id.*

receive $1.75 million and $1.5 million, respectively.[90] This structure ensures that the league's young stars are given a little extra compensation based on their contributions, even before they reach arbitration eligibility.

Beyond awards, the remaining pool funds are distributed based on player rankings in Wins Above Replacement (WAR), a widely accepted measure of player value.[91] Players who rank in the top 100 in WAR for their respective service groups receive bonuses based on their relative standing.[92] For example, a new player who delivers exceptional performance, ranking among the league's best, can now supplement their base salary with a bonus commensurate with their value. This program addressed a longstanding flaw in MLB's compensation system, where rookie players would get paid practically nothing compared to their contributions on the field. Previously, players like Aaron Judge, who hit 52 home runs in his rookie season, earned only $544,500—barely above the league minimum in 2017.[93] Under the new bonus pool system, such a player would earn millions in additional compensation, narrowing the gap between pre-arbitration earnings and performance-based value. By supplementing salaries for young top performers, the Pre-Arbitration Pool ensures a fairer distribution of MLB revenues to the players driving the league's success.

Salary arbitration has dramatically increased player salaries in MLB, bridging the gap between pre-arbitration pay and free agency. Players entering arbitration for the first time frequently receive substantial raises, as exemplified by cases like Ryan Howard's historic award. Arbitration-eligible players benefit from comparisons to their peers, while the system encourages teams and players to settle disputes efficiently. The recent addition of the Pre-Arbitration

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[90] *Id.*
[91] Id.
[92] Id.
[93] According to Spotrac.com, a database which tracks player salaries throughout their careers, Judge earned a salary of $544,500 in 2017. However, this does exclude the $1.8 million signing bonus he received a few years prior.

Performance Bonus Pool further enhances these benefits, ensuring that young, high-performing players are rewarded for their contributions. Together, these mechanisms create a more equitable compensation structure, reflecting the market value of players' talents while maintaining the competitive integrity of MLB.

IV. How the MLB's "Final-Offer Arbitration" Method Differs from Conventional ADR Norms

Arbitration has long occupied a central space within the broader realm of Alternative Dispute Resolution, serving as an efficient, party-driven mechanism to settle conflicts outside of traditional courtroom litigation. ADR theory commonly stresses values such as cost-effectiveness, efficiency, finality, and increased party autonomy—values that resonate strongly in the context of professional sports labor disputes. However, arbitration's variants are far from uniform. Major League Baseball's embrace of Final-Offer Arbitration provides a revealing departure from conventional arbitration models, challenging foundational assumptions about arbitrator discretion, party incentives, and strategic behavior.

Traditional "conventional" arbitration grants the arbitrator substantial discretion. The neutral decision-maker may craft an award lying anywhere between the proposals of the disputants (or even outside them, depending on the agreement's scope). This model often encourages parties to stake out positions more extreme than their sincere valuation, anticipating that the arbitrator will "split the difference."[94] Such a dynamic can chill settlement efforts. Parties may have a rational incentive to avoid moderate proposals if doing so yields a more favorable median point once the arbitrator intervenes.[95]

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[94] Charles W. Adams, "Final Offer Arbitration: Time for Serious Consideration by the Courts" *Nebraska Law Review*, Vol. 66 Art. 2 (1987) at 214
[95] *Id.*

FOA, by contrast, constrains the arbitrator's discretion to a binary choice: selecting either the player's or the team's last offer in its entirety. This structural feature inverts the conventional approach. While typical arbitration frameworks rely on the arbitrator's broad discretion to guide parties toward moderation, FOA relies on the fear of losing outright. Because the arbitrator cannot craft a compromise award, each disputant is incentivized to present a figure that appears objectively more justifiable and reasonable than the opposing side's final offer. Parties know that any proposal too far from a plausible salary for the player risks immediate rejection, no matter how persuasive their arguments might otherwise be.

Within ADR theory, FOA in salary negotiations stands as a mechanism aimed at producing convergence rather than allowing dispersion. It implicitly rejects the arbitrator's role as a wise, all-powerful figure who can carefully craft a nuanced award. Instead, the arbitrator is cast in the more passive role of a "chooser" rather than a "designer" of outcomes.[96] The FOA model capitalizes on a game-theoretic insight: by removing the arbitrator's creative latitude, disputants are forced to internalize the costs of their extremism.[97] From an ADR perspective, this is a remarkable innovation. It aligns closely with interest-based bargaining principles that encourage compromise and rational decision-making, albeit through an all-or-nothing enforcement mechanism.

Interestingly, the FOA process also challenges the notion that arbitrators need to be highly activist or guided by deeply elaborated legal standards. MLB's system relies on arbitrators who frequently consider performance metrics, comparable player salaries, and various forms of evidence to determine which offer is more reasonable. Their role is less about crafting a just wage and more about ensuring that the chosen figure is the less unreasonable of two competing

[96] "Literature Review: Final Offer Arbitration," State of California Department of Industrial Relations.
[97] Id.

visions. This reduces the complexity that can be associated with arbitration awards. It also suggests that while FOA has a foundation within the ADR framework, it advances a distinctive version of it—one that relies on strategic self-correction by the parties rather than on the arbitrator's professional expertise or equitable balancing powers.

By reframing arbitrator discretion, FOA may also affect perceptions of neutrality and legitimacy. Part of what makes arbitration palatable is the belief that the neutral has a duty to bring wisdom, fairness, and a calm balancing hand to the process.[98] FOA reduces this image of the arbitrator as an all-powerful neutral and instead creates an environment where disputants discipline themselves. The arbitrator therefore becomes less a figure of equitable justice and more of an umpire, ensuring that both parties respect the gravity of their proposals. Under FOA, the parties largely determine their own fates, with the arbitrator merely enforcing the consequences of their proposals.

V. Final Offer Arbitration: Taking Advantage of Human Psychology

While FOA's structural features align with principles of fairness and core ADR values like efficiency and finality, real-world disputants are not purely rational actors. Behavioral economics and law scholarship have long underscored the relevance of cognitive bias in decision-making processes. MLB players, agents, and team executives negotiate in an environment replete with social pressures, reputational concerns, and ever-changing market conditions. It would be foolish to assume cognitive bias does not play at least a small role in decision-making in this type of environment. To understand FOA's full significance, one must consider how these human elements interact with Final-Offer Arbitration.

According to Britannica, cognitive bias is a predictable pattern of human error that forms as a result of the brain's effort to simplify information processing. These biases can occur when

[98] "Ethical Considerations in Arbitration" *Arbitration Monitor* (2024)

humans rely on mental shortcuts when making decisions.[99] There are many different types of cognitive biases, including two that are directly applicable to FOA: anchoring effects and loss aversion.

A. Anchoring Effects

One key bias relevant to FOA is the concept of anchoring. Anchoring occurs when individuals rely too heavily on an initial piece of information ("the anchor") when making subsequent judgments, even if that anchor is arbitrary.[100] A real-world example of this could be a store artificially raising its prices ahead of a big sale event, thereby "anchoring" the customers on the higher price to make the sale look more attractive. In MLB arbitration, the parties anchor each other with their submitted salary figures. The player's demand and the team's offer both serve as reference points, and the arbitrator's decision is influenced by the relative distance between these anchors and what is perceived as a fair market value. While FOA discourages extreme anchors by heightening the risk of losing, the presence of any number still creates a focal point for the arbitrator's evaluation. Even in a system that mandates rational positioning, the arbitrator's perception can be susceptible to anchoring effects.

However, FOA mitigates the worst excesses of anchoring because the arbitrator does not split the difference. In a conventional scenario, a player who anchors high and a team that anchors low might simply guide the arbitrator to a midpoint. FOA, by contrast, forces both sides to calculate not only what a reasonable figure is but also where the arbitrator's internal anchor might lie. If a party presents an inflated figure—say, grossly higher than what the arbitrator had in mind—he risks making the opposing disputant's more moderate anchor look more attractive

[99] "Cognitive Bias" *Britannica*.
[100] Bryce Hoffman, "The Anchoring Effect: What it is and How to Overcome it" *Forbes* (2024)

by comparison. This interplay encourages both parties to set anchors closer to what they believe to be objective reality, minimizing the distortion caused by anchoring biases.

B. Loss Aversion

Another cognitive phenomenon that shapes FOA decision-making is loss aversion, the idea that people tend to fear losses more acutely than they value equivalent gains.[101] Under FOA, both the player and the team risk losing outright if their figure is not chosen. This all-or-nothing structure accentuates the psychological impact of a potential loss. Players, for instance, might feel that missing out on a fair salary by overreaching is more painful than gaining a slight incremental gain through inflating their initial figure. Similarly, teams may fear the financial blow of having the arbitrator choose a higher figure if presented with a lowball number. Such fear of losing pushes both sides toward more moderate proposals. Loss aversion thereby complements the rational principles of FOA.

Taken together, these behavioral considerations enrich our understanding of FOA beyond the purely strategic or economic dimension. FOA's success in MLB arises not just from legal structure or ADR theory but also from the interplay of cognitive biases, risk perception, and emotional undercurrents in negotiation. The carefully crafted high-risk environment encourages disputants to confront their own irrational tendencies head-on. Rather than indulging in the illusion of control or succumbing to unrealistic optimism, both sides must realistically assess their positions. Moreover, the clarity and finality of FOA align with the way humans often prefer resolutions that feel definitive rather than ambiguous. For this reason, parties to an arbitration dispute may find closure appealing, even if they must accept a suboptimal outcome because it frees them from ongoing uncertainty and negotiation costs.

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[101] Shahram Heshmat, "What Is Loss Aversion? Losses attract more attention than comparable gains." *Psychology Today* (2018)

In MLB, parties know that if they fail to settle prior to the hearing, FOA will impose a decisive conclusion. This can reduce the psychological wear and tear of protracted negotiations, letting both sides move forward without lingering doubts—either celebrating a win or regrouping after a loss.

By embedding these psychological insights into the analysis of FOA, one gains a fuller appreciation of why MLB's adaptation of this system has persisted and thrived. It is not merely an organizational quirk or a historical accident. Rather, FOA combats psychological tendencies and cognitive biases, channeling them into constructive negotiation outcomes. Additionally, the MLB's unique environment—where data, statistics, and measurable performance outcomes are abundant—further supports this method of arbitration. The prevalence of objective metrics can guide participants away from purely emotional bargaining and toward more rational calculation.

VI. Conclusion

Emerging as a compromise solution following the demise of the oppressive reserve clause, Final-Offer Arbitration has become a cornerstone of MLB's labor relations, balancing the competing interests of players and team owners. Salary arbitration offered players, particularly those in their mid-career years, an opportunity to challenge unilateral salary determinations and receive compensation aligned with their on-field contributions.

MLB's adoption of FOA, in particular, stands out as a significant innovation in the broader landscape of Alternative Dispute Resolution. Unlike traditional arbitration models, FOA's binary structure removes the arbitrator's discretion to "split the difference," incentivizing players and teams to submit reasonable, data-driven salary proposals. This all-or-nothing mechanism encourages both sides to internalize the temptation to make outrageously high or low

proposals, promoting rational self-assessment and compromise. The result is a system that not only resolves disputes efficiently but also incentivizes early settlements.

The historical trajectory of MLB arbitration is also inseparable from the broader legal developments that shaped labor relations in the United States. The passage of the Federal Arbitration Act and the National Labor Relations Act provided the legal foundation for arbitration's legitimacy as a dispute resolution mechanism. Landmark cases such as the ones within the *Steelworkers Trilogy* solidified arbitration's role in collective bargaining agreements, influencing MLB's adoption of salary arbitration as part of its own CBA framework. Similarly, the challenge to the reserve clause, from Curt Flood's efforts to the pivotal Seitz decision, demonstrated the power of arbitration to redress systemic inequities and usher in a new era of player negotiating power.

Ultimately, MLB's arbitration system can serve as a model for labor relations, demonstrating how thoughtfully designed dispute resolution mechanisms can balance competing interests, encourage cooperation, and promote stability. By providing a forum for salary disputes that emphasizes fairness, efficiency, and neutrality, arbitration has strengthened the relationship between players and owners while maintaining the competitive balance essential to the league's success. Its continued durability highlights its effectiveness in addressing the unique challenges of professional sports labor markets, proving that innovation, when grounded in legal precedent and economic rationale, can lead to lasting stability.

As MLB continues to evolve, the lessons from its arbitration system remain relevant not only within baseball but also for other industries seeking efficient and equitable solutions to labor disputes. The success of FOA underscores the value of compromise, rational negotiation, and structured incentives in fostering agreements that serve the interests of all stakeholders. In

this way, arbitration in MLB is not just a labor tool—it is a testament to the transformative power of collaboration, fairness, and innovation in resolving conflicts.