

**PROFESSIONAL BASEBALL’S MODERN DAY SERF SYSTEM: AN ARROGANT ATTEMPT
TO GAIN AN EXEMPTION FROM MINIMUM WAGE AND OVERTIME LAWS**

A White Paper

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“The relative calm that has prevailed in Washington with respect to Minor League Baseball is about to end. Like the 17-year locusts, the legislative cycle affecting minor league baseball is about to return.”

Stan Brand, Vice President and lobbyist, Minor League Baseball¹

1. Executive summary: Baseball arrogantly seeks an FLSA exemption.

This spring, thousands of minor league baseball players have reported to spring training. While there, they will work tirelessly for several weeks without a day off—often in excess of 50 hours per week. Yet like every spring, they will be working without pay because Major League Baseball and its teams do not pay minor league players their salaries during spring training, or during some other required work periods throughout the year.

Spring training is just one example of the many egregious wage practices that MLB and its teams force upon minor league players. Most minor league baseball players earn salaries placing them not only below this country’s minimum wage but also below the poverty line, with *the majority earning salaries of less than \$7500 per year*. Minor league baseball players work long hours for these salaries, often around 70 hours per week during the season.

Such pay practices are deplorable in an industry of riches. Franchise values and revenues have skyrocketed in recent decades, with many franchises worth in excess of a billion dollars. New television contracts now provide MLB teams with hundreds of millions of dollars annually. Yet the owners, awash in cash, exploit youths with dreams by paying them pennies. And now the industry has the audacity to ask Congress for a special exemption from minimum wage and overtime laws to bless this exploitation.

In February of 2014, former minor leaguers filed a lawsuit, *Senne v. Office of the Commissioner of Baseball*, that seeks to better the working conditions of minor league baseball players. Specifically, these former players are asking that MLB and its teams simply abide by minimum wage and overtime laws such as the Fair Labor Standards Act. The effort is akin

to recent efforts by low wage workers in other industries, such as workers for Wal-Mart and McDonald's, which recently resulted in slight pay increases for these workers.

In response, MLB is utilizing minor league team owners—who do not even pay the minor league players (the MLB teams pay the players)—to lobby Congress to pass a special exemption to the Fair Labor Standards Act. Perhaps worried about the perception of ultra wealthy MLB owners asking for an exemption to minimum wage laws, the MLB owners are having the also affluent minor league owners present their case in the nation's capital. In particular, the industry would like to exempt minor league baseball players from minimum wage and overtime requirements. As one executive stated, **the industry intends to descend on Congress “[l]ike the 17-year locusts.”**²

But there is no reason to provide the baseball industry with such special treatment.

First, the arguments raised by owners of minor league franchises are based on a false premise: the minor league franchises do *not* pay minor league baseball players salaries. Instead, minor league baseball players sign their employment contracts with MLB teams, and the MLB teams at all times pay the salaries and control the players. Thus, applying minimum wage laws to minor league baseball players will not affect minor league owners.

Second, the industry can certainly afford to pay players the minimum wage. MLB, its teams, and even Minor League Baseball have seen unprecedented revenue growth in the last two decades. MLB's revenue recently surpassed \$9 billion. Nearly all factions in the industry have enjoyed the benefits of this tremendous growth, as MLB owners, MLB players, coaches, and minor league owners have all benefited.

Yet the riches have not reached minor league baseball players, whose wages have remained stagnant. The minor league players have no union, and they are often young, uneducated, and desperate to enter the industry. For instance, 40% of minor leaguers are Latino, and they sign contracts as early as age 16.

MLB teams exploit this discrepancy in bargaining power, and, as a result, many minor league players live in squalor, cramming 5 or 6 into a 2-bedroom apartment, sleeping on air mattresses to cut costs, resorting to credit card debt or borrowing money from parents just to pay rent. After all, the guy selling hotdogs at minor league games usually makes more than the guy playing first base.

Given the growing riches in the industry, simply requiring teams to comply with basic wage laws—the same laws McDonald's or Walmart must comply with—would in no way hinder it. Granting a special exemption would merely bless the exploitation that should instead be cursed.

2. MLB and its teams control a vast minor league system.

MLB and its teams collectively operate a vast minor league baseball system throughout the United States. In the hopes of developing major league players, all MLB teams sign many minor league players to employment contracts and assign them to work in their minor league system. It is estimated that each MLB team has between 150 and 250 minor league players under contract.³

Often the MLB team does not own some of its minor league affiliates. Instead, the MLB team signs a standard agreement with a minor league team. Per the terms of these agreements and MLB's internal rules, the MLB team at all times controls the employment of the minor league players. The MLB team pays the player's salary, controls where the player works, hires the coaches overseeing the player's work, and makes all other employment decisions. On the contrary, the minor league team's main role is to simply operate the stadium.⁴

Thus, the minor league teams *do not pay the minor league players' salaries*. Instead, the MLB teams employ the minor leaguers and pay their salaries. Yet, inexplicably, the minor league teams are the ones doing the lobbying. Likely because the MLB teams and their billionaire owners knew they would generate little sympathy themselves, they are instead enlisting the minor league teams—and their millionaire owners—to lobby on their behalf.

One journalist for NBCSports immediately identified the shameful and fallacious nature of this lobbying, saying the position “is total crap given that the minor league operators ... do not pay the salaries of minor league baseball players. MLB teams do that... But yes, **let's have Congress step in and protect these guys from the insane demands of the 20-year-old kids who live on baloney sandwiches all year and spend the winter sleeping on air mattresses.**”⁵

3. The egregious wages: most minor leaguers earn less than \$7500 per year.

The one-sided contract. Any discussion of minor league baseball salaries must begin with the unfair, uniform contract that MLB and its teams force minor league players to sign. MLB's internal rules contain a uniform minor league contract, and all minor league players must sign the uniform contract without altering the contractual language.

In many ways, it is a contract stuck in the 1890s. For a player's first contract, the length of the contract must be seven years. During that period, the team can demote, promote, or fire a player at any time for any reason. The player cannot play for any other baseball organization during that time—whether the organization is in the United States, Mexico, Taiwan, Italy or any other place in the world—unless the player receives permission from

the MLB team. The player cannot play other sports recreationally, and even a player's retirement must be approved by the Office of the Commissioner.⁶

This one-sided contracting process is possible largely because minor league baseball players lack union representation. The Major League Baseball Players Association does not represent minor league players, and it has actually taken steps detrimental to minor league players during the last two rounds of collective bargaining in the industry.⁷

Lacking a collective voice, MLB can exploit minor league players. MLB and its owners are large, sophisticated entities with omnipotent control over the entry point into professional baseball, and they also enjoy an antitrust exemption. Minor league players, however, are usually between 16 and 21 when signing contracts. Many lack even a high school education—especially the Latino workers who comprise over 40% of minor league players. And these players are desperate to enter the industry, making for a perfect recipe for exploiting workers.

The low salaries. No matter the MLB team and no matter the player, all minor league players' salaries must begin at \$1,100 per month. The contract and MLB's rules only allow the player to be paid during the actual season, which excludes spring training. Yet the same uniform contract requires the minor league player to work for the team throughout the calendar year—whether during spring training, instructional leagues, or other training periods—without pay.

Table 1: Estimated Minimum Minor League Salaries Per Level

	Rookie	A-Level	AA	AAA
Monthly	\$1,100	\$1,250	\$1,500	\$2,150
Annually	\$3,000	\$6,250	\$7,500	\$10,750

Thus, the majority of minor league players are paid salaries of *less than \$7,500 for the entire year*, which is below the poverty line. In fact, it's far less than what fast food workers at McDonald's make. Even many players in Triple-A, which is one step from the major leagues, make only a little over \$10,000 for an entire year. Other players at lower levels of the minor leagues make less than \$5,000 for an entire year.⁸

The players work extremely long hours, often for no salary at all. During spring training, for instance, players often work over 50 hours per week, yet they do not receive their salaries during spring training (often 4 weeks or longer). They also work without pay during instructional leagues, during winter training periods, and during other periods.

Even during the season (when salaries are actually paid), the wage amounts to only a few dollars per hour for most players. The typical minor league player works either 6 or 7 days per week during the season, and generally works around 10 hours per day. Extensive travel on team buses is also required, so it is not unusual for a minor leaguer to work 70 hours per week while only earning a few hundred dollars per week in salary.

4. The riches of the industry enjoyed by billionaire owners.

While minor league players have no union, major league players do have a union. Since achieving free agency in 1976, MLB players' salaries have skyrocketed. In fact the minimum MLB player's salary has risen from \$16,000 in 1976 to over \$500,000 in 2015—a growth of over 2400%. Meanwhile minor league wages have remained stagnant, increasing by only around 70% since 1976, which is far below the over 400% inflation that has taken place since that time. Figure 1 illustrates this enormous disparity in wage growth.⁹

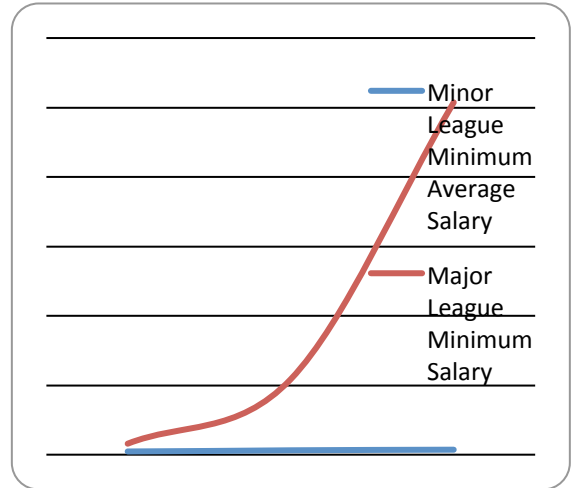


Figure 1: Minor Versus Major League Salaries Since 1976

The tremendous increase in MLB salaries has followed exponential growth in the industry as a whole. In 1995, MLB revenue was at \$1.4 billion.¹⁰ Since then, revenue has risen each year, reaching \$9 billion in 2014.¹¹

As new television deals take effect, this remarkable revenue growth is expected to continue. In recent years, several teams have signed their own regional television deals that will pay over \$1 billion for television rights. The Texas Rangers' regional television contract, for instance, will now pay the Rangers an average of \$85 million per year. The New York Yankees received over \$100 million in television money last year, a number that is expected to continue to grow. Other MLB teams' television contracts are similar, and they are in addition to the \$12.4 billion national television deal MLB signed on behalf of all the teams.¹² Figure 2 provides a further illustration.¹³

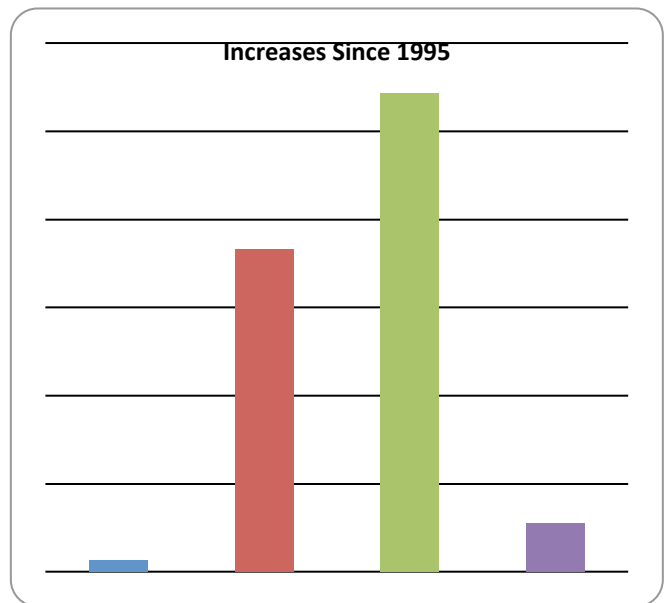


Figure 2: Percent Increases Since 1995

The growth is not isolated to MLB, however, as minor league teams have enjoyed similar growth in recent decades. Last year, over 42 million fans attended minor league baseball games.¹⁴ The ten highest attendance totals in minor league baseball have all occurred in the past decade. Fifty-eight new minor league parks have been built since 2000. And, like MLB teams, franchise values of minor league teams have skyrocketed. One minor league team recently sold for \$40 million.¹⁵

Because the MLB team—not the minor league team—pays the salaries of the minor league players, coaches, and other developmental staff, the minor league team is not responsible for many costs often associated with owning a sports team. This factor has led Warren Buffett and other billionaires to recently invest in minor league teams.¹⁶ Given the growth in the industry and minimal commitment towards salaries, these billionaire investors expect to earn a significant return on their investments.

Thus, the entire industry has benefited from sustained, exponential growth for decades, yet these benefits have not trickled down to the minor league players. While all those around them are getting rich, minor leaguers remain paupers.

5. Wage-and-hour violations are “endemic” to the industry.

Despite the riches in the game, wage-and-hour violations are rampant in the industry. Perhaps because they enjoy an antitrust exemption, the industry often operates as if elevated on sacrosanct ground—above the law.

In recent years, the Department of Labor has announced numerous investigations into MLB teams for persistent violations of wage-and-hour laws. It termed such violations as “endemic” to the industry.¹⁷ The DOL has twice investigated the San Francisco Giants, the reigning World Series champs, in the last three years, reaching settlements of \$544,715 in 2013 and \$220,793 in 2014 for mistreatment of clubhouse attendees and other workers. The DOL has also reached settlements with other MLB teams, and its investigations into the industry continue.¹⁸

After one settlement, the head of the DOL’s Wage-and-Hour Division stated the following:

Whether in America’s factories, fields or ball parks, a fair day’s work deserves a fair day’s pay. Unfortunately, in our recent investigations of Major League Baseball teams, we found employees not being paid the minimum wage and overtime to which they are legally entitled. That’s unacceptable...¹⁹

MLB and its teams' egregious wage practices are therefore not isolated to minor league players. They instead extend to the treatment of many other lower-level employees.

6. Baseball's ultra rich shamefully seek a new exemption from minimum wage and overtime laws so they can become even richer.

At baseball's 2014 Winter Meetings, industry leaders announced their intention to lobby Congress to exempt their industry from wage-and-hour laws, and to specifically exempt minor league baseball players. Stan Brand, a vice president for Minor League Baseball and their chief lobbyist, stated: "Just as we did in the 1990s to save the antitrust exemption, we will need your help to explain to our legislators the importance of this issue to the future of minor league baseball and their communities' investments in stadia and infrastructure...I think my honest assessment is that it is equally perilous for our future as the antitrust repeal was in the 1990s."²⁰ He added, "The relative calm that has prevailed in Washington with respect to Minor League Baseball is about to end. Like the 17-year locusts, the legislative cycle affecting minor league baseball is about to return."²¹

Media reports were quick to identify the misguided nature of Brand's statement. As an NBCSports article clarified, the statement "is total crap given that the minor league operators to whom Brand was speaking do not pay the salaries of minor league baseball players. MLB teams do that."²² The same article discussed the amount of drinks being consumed by industry executives at the Winter Meetings, saying, "I would not be shocked if many of their tabs for the week exceeded the annual salary their parent clubs pay some of their players. But yes, let's have Congress step in and protect these guys from the insane demands of the 20-year-old kids who live on baloney sandwiches all year and spend the winter sleeping on air mattresses...." Other media stories echoed similar sentiments, pointing to the hardships suffered by minor leaguers and the huge sums of money available in the industry, with one concluding that "providing a livable wage for minor leaguers would hardly be a burden."²³

7. There is no need to create a new exemption, and the cost of compliance would be minimal in an industry with exponential growth.

MLB, its teams, and Minor League Baseball already enjoy an antitrust exemption. That exemption already allows them to collude in ways that would be illegal in other industries operating within a competitive market. When it comes to minor league salaries, MLB and its teams have abused the antitrust exemption by depressing wages below the poverty line.

Now, in addition to the antitrust exemption, baseball wants another special exemption from the laws that all other businesses must routinely follow. But where will the special

exemptions end? Will baseball next ask for exemptions from civil rights acts? Or from social security taxes or immigration laws?

Despite Mr. Brand's rhetoric, there is no need for an exemption to wage-and-hour laws for baseball or for minor league players. Minor league players are not going to become rich by earning minimum wage, so the cost of compliance would be minimal—especially in an industry with skyrocketing revenue. A full-time minimum wage worker earns around \$15,000 per year,²⁴ or about twice what most minor league players earn. If each MLB team paid 150 minor league players an extra \$7500, it would cost each MLB team just over \$1 million. Given that the average MLB salary is over \$4 million and payrolls for MLB teams exceed \$100 million—and given the huge influx of money from new TV contracts—the MLB team could easily absorb the increase in cost. It will hardly be a blip on the MLB team's bottom-line.

Thus, the industry's concerns are overblown and unwarranted. MLB teams need the minor league teams to assist in the development of their players; they will not push costs onto the minor league teams in a manner that will jeopardize the survival of any minor league teams. After all, the relationship between MLB and Minor League Baseball is too symbiotic: the parent will not allow the death of the child.

The industry's call for lobbying is not only misguided, but it's also arrogant and shameful. No exemption from the FLSA should be provided. Instead, MLB and its teams should answer for their pervasive mistreatment of workers.

¹ Josh Leventhal, *MiLB Opposes Players, Supports MLB In Lawsuit*, Baseball Am. (Dec. 11, 2014), <http://www.baseballamerica.com/minors/milb-opposes-players-backs-mlb-lawsuit/>.

² *Id.*

³ See Garrett R. Broshuis, *Touching Baseball's Untouchables: The Effects of Collective Bargaining on Minor League Baseball Players*, 4 Harvard J. Sports & Ent. L. 51, 53 n.8 (2013) (stating that MLB teams “typically employ 150 or more minor league players”).

⁴ *Id.* at 62.

⁵ Craig Calcaterra, *Baseball will lobby to have Congress exempt minor leaguers from the Fair Labor Standards Act*, NBCSports, Hardball Talk (Dec. 19, 2014), <http://hardballtalk.nbcsports.com/2014/12/19/baseball-will-lobby-to-have-congress-exempt-minor-leaguers-from-the-fair-labor-standards-act/>.

⁶ See James T. Masteralexis & Lisa P. Masteralexis, *If You're Hurt, Where Is Home? Recently Drafted Minor League Baseball Players Are Compelled to Bring Workers' Compensation Action in Team's Home State or in Jurisdiction More Favorable to Employers*, 21 Marq. Sports L. Rev. 575, 590–91 (2011).

⁷ See generally Broshuis, *Touching Baseball's Untouchables*, *supra* note 2.

⁸ See *Frequently Asked Questions*, MiLB.com, <http://www.milb.com/milb/info/faq.jsp?mc=business#5> (stating that salaries begin at \$1100 per month); see also Broshuis, *Touching Baseball's Untouchables*, *supra* note 3, at 93.

⁹ See Broshuis, *Touching Baseball's Untouchables*, *supra* note 3, at 93 (comparing 1975 salaries to those in 2013). Given that historical data on minor league salaries is difficult to find, many of the statistics rely on estimates from former players.

¹⁰ Maury Brown, *MLB Revenues Grown from \$1.4 Billion in 1995 to \$7 Billion in 2010*, Biz of Baseball (Apr. 14, 2011), http://bizofbaseball.com/index.php?option=com_content&view=article&id=5167:mlb-revenues-grown-from-14-billion-in-1995-to-7-billion-in-2010&catid=30:mlb-news&Itemid=42.

¹¹ Maury Brown, *Major League Baseball Sees Record \$9 Billion in Revenues for 2014*, Forbes (Dec. 10, 2014),

<http://www.forbes.com/sites/maurybrown/2014/12/10/major-league-baseball-sees-record-9-billion-in-revenues-for-2014/>.

¹² Mark Newman, *MLB reaches eight-year agreement with FOX, Turner*, MLB.com (Oct. 2, 2012), <http://m.mlb.com/news/article/39362362/>.

¹³ For MLB revenue figures, see Maury Brown, *MLB Revenues Grown from \$1.4 Billion in 1995 to \$7 Billion in 2010*, Biz of Baseball (Apr. 14, 2011),

http://bizofbaseball.com/index.php?option=com_content&view=article&id=5167:mlb-revenues-grown-from-14-billion-in-1995-to-7-billion-in-2010&catid=30:mlb-news&Itemid=42; Maury Brown, *Major League Baseball Sees Record \$9 Billion in Revenues for 2014*, Forbes (Dec. 10, 2014),

<http://www.forbes.com/sites/maurybrown/2014/12/10/major-league-baseball-sees-record-9-billion-in-revenues-for-2014/>. For inflation figures, see CPI Inflation Calculator, Bureau of Labor Statistics, <http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100&year1=1995&year2=2014>.

¹⁴ *Record crowds attend MiLB games in 2014*, MiLB.com (Sept. 10, 2014),

http://www.milb.com/news/article.jsp?ymd=20140910&content_id=94032760&fext=.jsp&vkey=pr_milb&sid=milb.

¹⁵ Bruce Schoenfeld, *Minor league teams, but mighty big numbers as franchise values soar*, Sports Bus. J. (Aug. 4, 2014), <http://www.sportsbusinessdaily.com/Journal/Issues/2014/08/04/Franchises/Minor-league-teams.aspx>.

¹⁶ Chris Smith, *How Billionaires Like Warren Buffett Profit From Minor League Baseball Ownership*, Forbes (June 8, 2012), <http://www.forbes.com/sites/chris-smith/2012/06/08/billionaires-like-warren-buffett-profit-from-minor-league-baseball-ownership/>.

¹⁷ Memorandum from Robert D. Manfred, Jr. to MLB Presidents and Club Counsel (Sept. 12, 2013), <http://www.fairwarning.org/wp-content/uploads/2013/10/Sept-12memo.pdf>.

¹⁸ See Michael Arria, *Major League Baseball Has a Wage Theft Problem*, In These Times (Oct. 15, 2014), http://inthesetimes.com/working/entry/17261/major_league_baseball_s_wage_theft_problem.

¹⁹ Myron Levin & Stuart Silverstein, *Investigation of Pay Practices Targets Two More Major League Teams, the Orioles and A's*, FairWarning (May 22, 2014), <http://www.fairwarning.org/2014/05/investigation-pay-practices-major-league-baseball-expands-two-teams/>.

²⁰ Marissa Payne, *Baseball officials to lobby Congress to help MLB avoid paying minor league players minimum wage*, Wash. Post (Dec. 20, 2014), <http://www.washingtonpost.com/blogs/early-lead/wp/2014/12/20/baseball-officials-to-lobby-congress-to-help-mlb-avoid-paying-minor-league-players-minimum-wage/>.

²¹ Josh Leventhal, *MiLB Opposes Players, Supports MLB In Lawsuit*, Baseball Am. (Dec. 11, 2014), <http://www.baseballamerica.com/minors/milb-opposes-players-backs-mlb-lawsuit/>.

²² Craig Calcaterra, *Baseball will lobby to have Congress exempt minor leaguers from the Fair Labor Standards Act*, NBCSports, Hardball Talk (Dec. 19, 2014), <http://hardballtalk.nbcsports.com/2014/12/19/baseball-will-lobby-to-have-congress-exempt-minor-leaguers-from-the-fair-labor-standards-act/>.

²³ Josh Leventhal, *MiLB Opposes Players, Supports MLB In Lawsuit*, Baseball Am. (Dec. 11, 2014), <http://www.baseballamerica.com/minors/milb-opposes-players-backs-mlb-lawsuit/>.

²⁴ David Cooper, *The Minimum Wage Used to Be Enough to Keep Workers Out of Poverty—It's Not Anymore*, Econ. Policy Inst. (Dec. 4, 2013), <http://www.epi.org/publication/minimum-wage-workers-poverty-anymore-raising/>.