

Baseball's Minor Leaguers Seek Major Pay Increase

by Dennis J. Merley - Monday, March 20, 2017



It is spring training for Major League Baseball (MLB), a time when dreams of glory are rekindled for every baseball player lucky enough to have even a remote shot at the big time.

Of course, only a few will actually get their shot. Statistics tell us that only one-half of one percent of all high school baseball players will even be drafted by a major league team, and very few of those players will even get a glimpse of life in the Majors.

The rest will toil in relative anonymity in the minor leagues, where endless bus rides, sparse accommodations and meager pay are endured in the hope of one day making it to "The Show."

Field of Dreams But No Revenue Streams

The average minor leaguer earns less than minimum wage, and minor league pay has grown only 75% in over 40 years. Meanwhile, inflation has jumped 400% in that time and the average

major league salary has increased a whopping 2,000%. The **Major League Baseball Players' Association (MLBPA)** plays no role in any of this since they only bargain on behalf of players that have signed a Major League Baseball Uniform Player Contract with a major league team.

In 2014, a group of former minor league players filed a class action lawsuit in federal court seeking to raise the salaries for minor leaguers by including them under the **Fair Labor Standards Act (FLSA)**. Although class certification was initially denied, U.S. Magistrate Judge Joseph Spero has now reversed that ruling and **recertified** the case as a class action on behalf of “any person who, while signed to a Minor League Uniform Player Contract, participated in the California League, or in spring training, instructional league, or extended spring training, on or after February 7, 2011, and who had not signed a Major League Uniform Player Contract before then.”

MLB Makes Its Pitch

MLB opposes this action, claiming that minor league players are seasonal workers and creative professionals, which renders them exempt from coverage under the FLSA. They deem them “short-term seasonal apprentice(s)” where they either make it to the big leagues or move on to another occupation.

Further, MLB notes that baseball players are salaried employees similar to artists, musicians and other creative professionals who are exempt from the FLSA. They contend that it would be difficult to treat them as hourly employees whose pay would depend on how long the games last, how much practice they need and whether they make promotional or charitable appearances on behalf of the team.

While this case is only at the very initial steps, the class certification ruling is a big win for the players. It allows them to proceed in arguing that they are covered by the FLSA, which would then put MLB in the position of having to actually show that the players meet the exemption test or else pay them at least minimum wage and overtime.

The FLSA Scorecard

To fall under the “**creative professional**” exemption, an employee must meet three requirements: (1) the employee must be compensated on a salary basis; (2) the employee be paid not less than a specified minimum salary level (currently \$455.00 per week); and (3) the employee’s primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The Department of Labor states that this includes such fields as, for example, music, writing, acting and the graphic arts.

Let’s start with the salary test. On average, minor league ball players earn far less than the \$455.00 per week threshold for professional exemption. A typical minor leaguer earns about \$1,200 per month and is only paid during the 4-5 months in which they are actually playing; they get nothing for offseason and spring training work. Therefore, while some highly prized prospects would meet the salary threshold because they signed big time contracts, the majority

of players – the “career minor leaguers” – would not.

Moreover, can it really be said that ball players exercise the degree of artistic or creative endeavor that musicians or artists demonstrate? There is no question that they are very highly skilled because, as the old saying goes, the hardest thing to do in sports is to “take a round ball and a round bat and hit it square.” In reality though, success in baseball often rests on the absence of the need to be creative. A great hitter practices over and over again to make sure he applies the same batting fundamentals regardless of what the pitcher offers up. Fielders work tirelessly to make the difficult plays look routine. In essence, baseball players work very hard to minimize the number of times they have to be creative, and while their strength and agility are often idealized in artistic terms, they seem to present more as exceptionally skilled technicians than as creative artists.

The issue has never been considered in a court of law, but with [college athletes seeking to unionize](#) and [pro football players receiving workers compensation benefits](#), the application of the FLSA to minor league baseball may not be all that far outside the strike zone. Meanwhile, MLB and several individual teams have filed for an appeal.

Bottom Line

This case is in its early days and it will be a long time before we learn if this case will be a game changer for MLB. But for the moment, those languishing in the minors have another flicker of hope for a better future, even if they never make it to the big leagues.

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