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EMPLOYMENT LAW

MLB Strikes Out Seeking Minor-League Wage-and-Hour Suit Dismissal

BY SID STEINBERG

The average Major League Baseball salary in 2015 was $4.2 million. Assuming that major-league players work (generously) 10 hours per day, six days per week for nine months (February through October), they earn, on average, $1,795 per hour—well in excess of the $7.25 per hour minimum wage prescribed by the Fair Labor Standards Act.

Some minor-league players, on the other hand, earn as little as $3,000 per year despite, according to a class action wage-and-hour suit filed in the Northern District of California, working between 50-70 hours per week. In addition to the five-month minor-league season (the only time they are paid), the minor-league players are required to work in the off-season, as well as during spring training—all of which puts them well below the FLSA minimum wage and deprives them of overtime pay.

SALARIES AS LOW AS $3K/YEAR

In its recent decision in *Senne v. Kansas City Royals Baseball*, No. 14-cv-00608-JCS (N. D. Cal., Oct. 20, 2015), the U.S. District Court for the Northern District of California granted conditional certification to a class of all minor-league players who worked for Major League Baseball since February 2011 but who had not spent any time in the major leagues. The allegations are, as noted, that most of the (roughly 6,000) minor-league players gross only $3,000 to $7,500 over their five-month season, which is the only time during the year that they are paid. Although they work between 50 and 70 hours per week, arriving in the early afternoon and leaving sometimes as late as 11 p.m., with extensive work-related travel, they are not paid overtime, the plaintiffs alleged. Further, according to the complaint, the players work year-round, including mandatory attendance at spring training, instructional leagues and winter baseball. Plus, the players are expected to follow team-prescribed exercise regimens during the off-season without any compensation.

It is important to note that the merits of the case and whether the players are even "employees" under the FLSA (or whether they should be considered as "amusement or recreational establishment" workers) was not considered in the court's conditional certification decision. Rather,

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the court focused on whether potential opt-ins are similarly situated to the representative plaintiffs "for the sole purpose of sending notice of the action to potential class members." At this early stage, the plaintiffs are required to show only that there is a "reasonable basis for their claim of class-wide conduct."

'SIMILARLY SITUATED' TEST

The Senne court found two MLB documents provided the strongest

evidence that the proposed class was "similarly situated."

First, the MLB Rules provide that the 30 major-league franchises have what the court found to be "extensive control over minor league baseball, establishing rules ... under which minor league players are selected and advance, the minor league playing schedule and travel." Further, the rules state that the major-league franchises employ all minor-league coaches, managers and trainers.

Uniform Player Contract

Even more importantly, the rules require that every minor-league player sign the same employment contract—called the "Uniform Player Contract," which binds the player to the major-league club for seven years. All first-year players earn the same wages, although teams can give limited raises or require limited pay cuts in subsequent years. The UPC also provides that the players would be paid only during the course of the season when games were being played.

The players submitted declarations that they did "off-season" work for which they were not paid—which constituted "off-the-clock" work—further reducing their hourly rate below minimum wage. The clubs argued that the nature and quantity of the work was idiosyncratic based upon both the individual player and his or her team's demands and, as such, the players were not "similarly situated" so as to form a class. The court rejected these arguments as more properly addressed at the merits stage of the case—after conditional certification and discovery.

LONG HOURS FOR LOW PAY

The players also claimed that they worked in excess of 40 hours per week during the season and were not paid overtime. They argued for conditional certification based upon the contract—providing that all first-year players would be paid the same salary and the fact that the rules "establish guidelines as to scheduling and travel [which] show that the players are similarly situated as to the long hours they are required to work."

The court again rejected the clubs' defense that the players' hours may vary—such that some may not have worked more than 40 hours in a week. This was found to be an argument best addressed "at a later stage of the case, on a fully developed record."

Finally, the court granted conditional certification on the issue of whether, even during the season, the players did not receive minimum wage due to their long hours. Again, based upon the rules and the UPC, the court found that the players could be similarly situated.

ALLEGATIONS ENOUGH

The case speaks to the fact that at this preliminary stage—before substantive discovery—"courts require little more than substantial allegations, supported by declarations or discovery, that the putative class members were together victims of a single decision, policy or plan." Moreover, the court observed that competing declarations "will not, as a general rule, preclude conditional certification."

The most significant defense to the case will likely be that the FLSA simply does not apply to professional athletes under the "amusement or recreational establishment" exception to the FLSA (29 U.S.C. Section 213(a)(3)). The exception applies (in part) if the "establishment ... does not operate for more than seven months in any calendar year." Even here, however, the case law is mixed, as the U.S. Court of Appeals for the Eleventh Circuit has applied the exception to find that a minor-league groundskeeper was not entitled to overtime (*Jeffery v. Sarasota White Sox,* 64 F.3d 590 (11th Cir. 1995), while the Sixth Circuit held that the Cincinnati Reds could not take advantage of the exception because they were a year-round operation (*Bridewell v. Cincinnati Reds,* 68 F.3d 136 (6th Cir. 1995).

While it seems unlikely that we will see time clocks next to batting cages at minor-league parks across America, the case bears watching for either its settlement or for a long-term impact on the business of minor-league baseball.

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