Major League Baseball Anti-Trust Immunity: Examining the Legal and Financial Implications of Relocation Rules

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Abstract

Major League Baseball (MLB) rules restrict the movement of any franchise into another's territory. These territorial rules are designed to protect each team's potential local revenue sources as well as to provide stability throughout the league. Recently, Major League Baseball approved financial compensation for the Washington Nationals move into the Baltimore Orioles' territory – primarily because it was in the best interest *of MLB even though it hurt the Orioles. However, the Oakland Athletics were unable to even negotiate a potential compensation plan for a move into the San Francisco Giants territory, despite the apparent financial benefit the move could have provided for every other league franchise. The Athletics are already located within 15 miles of the Giants, and their potential 40 mile move to San Jose, California would not add a new team to the San Francisco Bay Area; rather, it would simply be a move of a current team to a different location within the metropolitan area. The refusal of the Giants or MLB to negotiate a potential compromise has kept the Oakland Athletics in a substandard facility and has led to their potential move to Fremont, CA – a less desirable location than San Jose.*

This paper investigates the legal, policy, and financial considerations concerning Major League Baseball's territorial rules. Specifically, it addresses antitrust law as it pertains to American professional sport, relative sport franchise relocation cases, financial arguments why leagues desire to control relocation, financial components of MLB's current Collective Bargaining Agreement, and the legal and financial impact of a challenge to MLB's territorial rules – an option the Oakland Athletic initially investigated prior to their decision to pursue a potential move to Fremont.

Key Words

Antitrust law - Collective Bargaining Agreement - Franchise Relocation - Major League Baseball - Revenue Sharing - Territorial Rights

Introduction

This agreement, I believe, satisfies the competing interests with which we've had to contend to place a team in the nation's capital. From the very beginning, we were deeply concerned by the potential material effect this move to Washington D.C., which is in proximity to Baltimore, would have on the Orioles, its ownership and its fan base. - MLB Commissioner Allen H ‘Bud’ Selig (‘MLB, Orioles reach compensation agreement,’ 2005, para. 3)

The 2005 move of the Montreal Expos to become the Washington Nationals was discussed almost immediately after Jeffrey Loria sold the team to Major League Baseball (MLB) owners on February 12, 2002 (‘Relocation process expos-ed’, 2004). Although MLB did not begin accepting formal bids from cities for the Nationals until February 2003 (King, 2003), the speculation that the team would be moved to Washington D.C. and the resistance from Orioles owner Peter Angelos began almost immediately. Angelos noted on March 21, 2002, ‘The simple economics of baseball say that to put two major league franchises so close together would detract from each other very substantially and make both of them incapable of generating the revenues necessary to provide competitive teams for their fans’ (‘Relocation process expos-ed,’ p. 38). During the two-and-one-half years between the Nationals sale and the official announcement of the move to Washington D.C., compensation for financial losses Angelos might face due to the infringement on his *territory* and the potential for a lawsuit were prominent topics in the press (Neyer, 2003). Angelos defined his territory as extending from Pennsylvania to North Carolina, while MLB countered that it owned all territories and licensed them to individual teams (Fisher, 2005b).

Major League Baseball initially proposed a financial plan to compensate Angelos for the presence of a team in the Orioles territory and, according to one MLB official, the plan was so close to being accepted that he 'didn't see anything that could gunk this up' (Stark, 2004, para 8). Despite guaranteeing Angelos a yearly minimum revenue figure and a promised franchise price upon sale, Angelos initially did not accept MLB's offer and threatened litigation (Stark).

Even though the matter between Angelos and MLB was unresolved, on December 3, 2004 MLB formally approved the Nationals move from Montreal to Washington D.C. (Blum, 2004). As MLB owned the Nationals and were losing money despite playing home games in Montreal and San Juan, Puerto Rico, they were determined to relocate the franchise to a sustainable market. The lone vote against the move to Washington D.C. was Baltimore Orioles owner Peter Angelos (Blum). Once the move was approved, MLB only had to resolve its issues with Angelos, finalize stadium construction plans, complete negotiations with minor league affiliates and find a buyer for the team – issues that took considerable time and effort.

The resolution to the territorial dispute between Angelos and MLB was finalised March 31, 2005. MLB and the Baltimore Orioles arranged a compensation agreement that permitted the Nationals' games to be seen on regional television in Baltimore and Washington D.C. (Fisher, 2005b). The agreement established the Mid-Atlantic Sports Network (MASN), which serves as the regional cable home of the Nationals and will eventually become the cable home of the Orioles (Fisher, 2005b). Orioles owner Peter Angelos will control MASN while paying the Nationals a yearly rights fee of $25-$30 million (the amount will be reviewed after a five year period) (Fisher, 2005b). The owners of the Nationals (initially MLB but now Theodore Lerner) will receive an initial 10% minority share of MASN that will gradually increase to 33% after 20 years (Fisher, 2005a; Heath, 2005).

In addition to the cable television component, the agreement also guarantees Angelos $365 million if he ever elects to sell the franchise, though Angelos was unable to secure a guarantee for his yearly local revenues (Fisher, 2005b, Heath, 2005). Bob DuPuy, MLB President and COO noted, ‘We were dealing with essentially the intersection of the Orioles' need to be protected coupled with our absolute demand that such protection come from the industry in general and not at the expense of the Nationals,’ (Fisher, 2005b, para 11).

Steve Schott, former owner of the Oakland Athletics (A’s), had monitored the move of the Nationals into the Orioles’ territory as he had desired to potentially move to Santa Clara County, specifically San Jose, California (Newhouse, 2004b). Santa Clara County was once the territory of the A’s, but in 1992, the A’s permitted the rights to the county to be transferred to the San Francisco Giants with the expectation that the Giants would move (‘San Jose would like…,’ 2004). Although the Giants twice were unsuccessful in their attempt to garner a tax-payer funded facility in the South Bay, they have remained steadfast in their belief that Santa Clara County is their territory and therefore forever off-limits to the Oakland franchise (Weiner, 2006).

Despite San Jose's population making it the largest city in the San Francisco Bay Area, its position as the capital of the Silicon Valley computer industry, the marketing success of the National Hockey League's (NHL) San Jose Sharks, and Santa Clara county's preliminary support for pursuing the A's ('San Jose would like…,' 2004), the A's were not even permitted an opportunity by MLB to negotiate a compensation package with the Giants for a move to San Jose (Ostrom & Lynch, 2006). Rebuffed in his efforts to explore San Jose as an option, new A's owner Lewis Wolff elected to pursue a move to Fremont, CA – a smaller city with less business development than San Jose, but one located within the A's territory of Alameda County ('Reports: Athletics will build…,' 2006). Since San Francisco is closer to Fremont (36 miles) than San Jose (47 miles), the A's inability to even pursue a San Jose stadium appears to pose potential contradictions – especially in light of MLB's negotiations with Peter Angelos when the Expos moved more than 600 miles into the Baltimore Orioles' territory.

This paper investigates pertinent sport franchise relocation cases and examines the legal basis for the current territorial rights in MLB. This paper also investigates some of the financial implications of restricting the A's from negotiating and potentially moving to San Jose. Specifically, the paper reviews: a) antitrust law as it pertains to North American professional sport leagues b) pertinent league relocation cases, c) MLB territorial rules, d) financial arguments why leagues desire to control relocation, e) financial components of

MLB's Collective Bargaining Agreement, and f) the legal and financial impact of a challenge to the San Francisco Giants' territorial rights to San Jose.

Antitrust Law applied to North American Professional Sports

The primary law governing antitrust activities in the United Stated is the 1890 Sherman Antitrust Act (15 U.S.C.) which was passed as a response to the anti-competitive practices of large firms forcing out smaller competitors (Moynihan, 1980). The Sherman Act established absolute laws and cited equity powers of the federal courts to stop violations of the act and established that violators must pay treble damages (Freedman, 1987). Section 1 prohibits conspiracies or coordinated group activity designed to restrain trade between those who would otherwise be competitors, while Section 2 prohibits monopolization through price fixing or similar activities (15 U.S.C. § 1 & § 2).

The courts have adopted three tests to evaluate whether a defendant unreasonably restrained trade and therefore violated Section 1 of the Sherman Act (Wolohan, 2007). The *per se rule* will be applied when any anti-competitive activity involving price fixing, market division, tying arrangements, or group boycotts occurs and the violating activity has no benefit to competition in the industry (Masteralexis, 2001). If the practice is determined to be illegal per se, the court does not have to examine the practice's impact on the market before finding the practice violated antitrust law (Wolohan, 2007). For example, in *Radovich v. National Football League* (1957) 352 U.S. 445, a professional American football player challenged a league rule which would only allow him to sign a contract with the team that held his playing rights. Radovich contended that the league rule resulted in his being blacklisted and that the blacklist was a group boycott in violation of Section 1 (U.S.C. 15) and the U.S. Supreme Court agreed (*Radovich*).

The *rule of reason* will be applied when a violation of Section 1 might possibly result in a benefit to consumers or when it is conducted as a necessary business practice (Freedman, 1987). To apply the rule of reason, an analysis of the restraint's effect on competition must be performed; therefore, an economic and legal analysis must be conducted on a case-by-case basis to determine if Section 1 was violated (Wolohan, 2007). In *NCAA v. Board of Regents of the University of Oklahoma* (1984) 468 U.S. 85, the Supreme Court of the United States ruled that the National Collegiate Athletic Association (NCAA) violated Section 1 of the Sherman Act as its college football (American football) television plan was anticompetitive using the rule of reason. The Supreme Court held that the NCAA television plan was a restraint on the operation of the free market with the relevant market being college football (*NCAA*). In its analysis, the court examined the markets and parties affected and determined that the rule had an adverse effect on the college football market, and was not a necessary business practice. Evidence that the plan protected live attendance or maintained competitive balance was not found.

The *quick look rule of reason* will be applied when a practice has obvious anticompetitive effects. In these cases, the court determines if pro-competitive justifications for the restraint outweigh the anticompetitive effects (Wolohan, 2007). In *Law v. National Collegiate Athletic Association* (1998) 134 F.3d 1010 (10^{th} Cir.), the court found that evidence not in dispute by either party demonstrated an anticompetitive effect. The NCAA had created a classification of coaches, called *restricted earnings coaches*, for all Division I sports other than football. These were entry level coaching position with the coach's salary limited to $12,000 for the academic year and $4,000 for the summer. The court found that the salary set by the NCAA clearly had an anticompetitive effect in restricting salaries. Further, the court found that the NCAA's justifications for the salary restrictions had no procompetitive value. These justifications included the retention of entry level positions, cost reduction, and maintaining competitiveness (*Law*).

In North American professional sports, the athlete and the franchise owner have been treated differently than other business people under the Sherman Act (Freedman, 1987). The unique nature of professional sports operations, where franchises compete against each other in some aspects while working together in others, makes the adaptation of the traditional forms of the Sherman Act difficult (Rosenbaum, 1987). This has resulted in some confusion about antitrust assumptions and the nature of sports league organization and team operation. These assumptions have created inconsistency in the application of antitrust law to professional sport (Rosenbaum).

In *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs* (1922) 259 U.S. 200, the United States Supreme Court unanimously upheld a lower court's ruling that professional baseball was immune from antitrust laws. Justice Oliver Wendell Holmes reasoned that professional baseball was not engaged in interstate commerce or trade within the meaning of the Sherman Act (Rosenbaum, 1987). Major

League Baseball's antitrust exemption was upheld in future cases (*Flood v. Kuhn* (1972) 407 U.S. 258; *Toolson v. New York Yankees* (1953) 346 U.S. 356), though the courts repeatedly remarked that it was Congress' responsibility to alter MLB's antitrust standing. In 1998, Congress passed the Curt Flood Act (15 U.S.C. § 27), which established that baseball would retain its antitrust standing for all matters except those involving player employment. The Curt Flood Act did not address minor league operations, franchise ownership issues, as well as expansion and relocation of MLB franchises (Masteralexis, 2001).

Despite the perceived structural and operational similarity of various professional sports leagues, Major League Baseball is the only United States professional sports league to be granted antitrust immunity (Fein, 2005). In *Radovich v. National Football League* (1957) 352 U.S. 445, professional football became subject to antitrust law when the United States Supreme Court refused to expand professional baseball's antitrust exemption to professional football because the court determined that the amount of interstate commerce in organized professional football places it within the authority of the Sherman Act. Similar cases involving other professional sports leagues have upheld MLB's sole standing as immune to antitrust laws (*Haywood v. National Basketball Association* (1971) 401 U.S. 1204; *Peto v. Madison Square Garden Corp.* (1958) 384 F2d. 682 (2nd Cir.); *International Boxing Club of New York v. United States* (1955) 358 U.S. 242.

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North American professional sport leagues have been successful in lobbying the U.S. Congress for specific immunity to anti-trust laws-particularly for television broadcasts (Masteralexis, 2001). In 1961, Congress passed the Sports Broadcasting Act (15 U.S.C. §§ 1291-1294) which granted professional sports leagues a limited antitrust exemption to permit them to negotiate television contracts (initially for over-the-air, but now includes cable broadcasts) as a league, rather than as individual teams (Masteralexis; Weiler & Roberts, 1993). Prior to the Act, the right to broadcast a game was held by either team playing in the game, which threatened the territorial rights of weaker franchises as successful teams could broadcast their games into the territory of unsuccessful teams. The Sports Broadcasting Act allowed professional sports league member clubs to *black out* telecasts of games within their home territory when playing home games (Bauer, 1993; 15 U.S.C § 1292). Additionally, sports leagues use this exemption to reach television agreements without violating Section 1 of the Sherman Act as they can act as a *single entity* (15 U.S.C. § 1291; Rosenbaum, 1987).

League Relocation Cases

The Cleveland Rams of the National Football League (NFL) became the first major North American professional franchise to move to the west coast of the United States in 1946 (Gietschier, 1995). Owner Dan Reeves provided an additional $5,000 to teams having to incur additional travel costs for the prolonged trip (Gietschier). As more Western and Midwestern United States' cities continued to grow, some teams began to move to burgeoning areas – with or without league or local municipality permission. The first such legal challenge to franchise relocation came in *State of Wisconsin v. Milwaukee Braves* (1966) 144 N.W.2d 1. The State of Wisconsin sued the Milwaukee Braves of MLB to prevent the team's movement to Atlanta. MLB argued that the regulation on movement was necessary to preserve the quality of its product and that franchise stability was a key factor for a league's success (Campbell, 1983). The Wisconsin Supreme Court reversed a lower court finding in favor of the State of Wisconsin because the state's antitrust laws were in conflict with federal antitrust law and the policies of the United States Congress (*State of Wisconsin*).

In *San Francisco Seals, Ltd. v. National Hockey League* (1974) 379 F.Supp 966, plaintiffs sued after the league's Board of Governors refused to approve the Seals' move to Vancouver. The plaintiffs stated that the NHL violated Section 1 of the Sherman Act as their ruling was anti-competitive. The trial court rejected the plaintiff's claim finding that teams within a league cannot collude as the league is a single entity (*Seals*).

The single entity defense operates in situations where the party against whom a Section 1 claim is made appears to reflect a group of separate entities; however, the group is actually one integrated group without the ability to conspire with itself (*Fraser v. Major League Soccer* (2000) 97 F. Supp. 130; Rosenbaum, 1987). The defense begins with the idea that the league is an indivisible product, and without the structure and governing rules of enforcement which create a marketable enterprise, the consumer would have no interest in the results of any contest between two independent teams unaffiliated with league play (Rosenbaum). Therefore, the leagues argue that since they are a single entity, there can be no illegal activity under Section 1 of the Sherman Act as Section 1 requires a conspiracy by two independent actors (Freedman, 1987). In *Fraser*, professional soccer players unsuccessfully sued Major League Soccer (MLS) for unfair restrictions on potential player compensation. The courts ruled that the MLS practice of signing players to league, rather than team contracts, was permissible since the league was formed specifically as a single-entity and that the formation of the league increased rather than decreased employment opportunities for professional soccer players.

The single entity defense, though used successfully in *Seals* and later in *Fraser*, has not become precedent. In *North American Soccer League v. National Football League* (1982) 670 F2d 1249, the court ruled the single entity defense does not exempt the NFL from the Sherman Act. If it were to do so, a loophole in the law would be created allowing all professional leagues to be exempt from Section 1 of the act. This case was the first appellate ruling on the use of the single entity defense by a North American professional sports league (*North American Soccer League*; Weiler & Roberts, 1993).

Another ruling on the movement of professional sports franchises came in *Los Angeles Memorial Coliseum Commission v. National Football League* (1984) 726 F2d 1381. The plaintiffs argued that the Los Angeles market could support an additional team and that there would be no television revenue decrease (Ross, 2000). The court allowed the Oakland Raiders to move from Oakland to Los Angeles because the move to Los Angeles promoted competition between the Raiders and Los Angeles Rams (*Los Angeles Memorial Coliseum*). This competition increased consumer choice requiring competitors to improve service quality and to potentially lower ticket prices. As a result of the court's decision, the three-quarter rule required for NFL team relocation was deemed to violate the Sherman Act (*Los Angeles Memorial Coliseum*). In ruling for the plaintiff, the court again rejected the use of the single entity defense by the NFL (Rosenbaum, 1987).

Further court regulation regarding franchise movement was established in *Oakland Raiders, Ltd. v. NFL* (1986) 791 F.2d 1356 (9th. Cir.), *NBA v. San Diego Clippers Basketball Club, Inc.* (1987) 815 F.2d 562 (9th Cir.), and *St. Louis Convention and Visitors Commission v. NFL* (1998) 154 F.2d 851 (8th Cir.). In *Oakland Raiders, Ltd.*, the court ruled that a relocating franchise can be required to compensate the leagues other financially harmed clubs. *NBA* reaffirmed the right for the National Basketball Association (NBA) to require league approval before a team relocates. In *St. Louis Convention and Visitors Commission* the league argued that the relocation of the Los Angeles Rams to St. Louis resulted in an adverse affect on league rivalries and television revenue. To offset these losses, the league imposed a $29 million relocation fee on the Rams. The single entity issue was bypassed and the league could have potentially barred the move based on *Oakland Raiders Ltd*. However, the time needed to potentially fight the relocation as well as public relations ramifications may have contributed to the NFL's decision to take the initially stated compensation rather than restrict the Rams' move.

An additional case has indirect impact upon the discussion of franchise relocation. In *Piazza v. Major League Baseball* (1993) 831 F. Supp. 420 (E.D. Pa.) a group of investors tried to purchase the San Francisco Giants and move the team to Tampa, Florida. MLB refused to approve the sale, and Piazza filed a lawsuit against the league. MLB filed a motion to dismiss citing the antitrust exemption. The court denied the motion claiming that the exemption is restricted to the reserve clause. At that point, the parties settled out of court (*Piazza*). If retried today, the Curt Flood Act of 1998 (15 U.S.C. § 27) would reinforce MLB's legal position that it is exempt from antitrust laws on issues of relocation, but the *Piazza* court's possible examination of MLB's antitrust exemption potentially was cause for concern and may have impacted the decision to settle with Baltimore Orioles owner Peter Angelos after he threatened a lawsuit during the Expos relocation discussions (Brown, 2006). Major League Baseball may have been concerned that its territorial rules, though 'legal' given earlier court cases reinforcing its antitrust exemption, may have been exposed to intense public and congressional examination if challenged by Angelos in court. The continual modification and inconsistent application of its territorial rules would certainly elicit varied responses if discussed in a lawsuit by the Orioles, Athletics, or any other team.

History of MLB territorial rules

Because of MLB's longstanding exemption from antitrust regulation, the league has crafted its rules on franchise movement outside the court's jurisdiction, and, in most cases, away from media scrutiny. MLB territorial rules date to 1876 when the initial National League constitution established a team's control of a five mile radius around its city (Witt, 2005). After the 1903 establishment of the American League as a viable second major league, teams in New York, Boston, St. Louis, Chicago and Philadelphia created potential competition with established National League clubs. MLB owners realised that they needed specific rules to (in theory) provide a fair financial playing field for each of the 16 clubs and to protect each owner's interests in the event of franchise movement.

The importance of team territories would become especially vital as some MLB owners purchased minor league teams and as numerous United States cities rapidly increased in population in the 1940s and 1950s (Blake, 1991). In 1953, both the St. Louis Browns and the Boston Braves desired to move to Milwaukee, Wisconsin. The Braves held the option for Milwaukee (since their owner Lou Perini owned a minor league club in the city) and became the first MLB team to move since 1903 ('New York Yankees…,' 2005). The St. Louis Browns then attempted to move to Baltimore, but were denied as at the time the American League required a three-quarter majority for any club to move (Veeck, 1962). The vote against the Browns move was 6-2 (Veeck). The league's refusal to allow the Browns to move eventually forced maverick owner Bill Veeck to sell the team, whereupon MLB owners unanimously approved the Browns move to Baltimore on September 28, 1953 ('Orioles timeline,' 2005).

The rapid population explosion in the western United States in the 1940s and 1950s and the development of airplanes as viable rapid transportation options spiked a demand for professional sports in the Pacific time-zone. After the Cleveland Rams became the first major professional franchise to move to California in 1946, MLB's New York Giants and Brooklyn Dodgers moved to California in 1958 ('Los Angeles Dodgers…,' 2005; 'Giants

Timeline,' 2005). When the issue of expanding an American League team into the Los Angeles market for the 1961 season arose, MLB inconsistently applied their territorial rules. In 1960, MLB rule 1(c) stated '…the circuit of either Major League shall not be changed to include any city in the circuit of the other Major League except by the unanimous consent of the clubs constituting both Major Leagues' (Veeck, 1962, p. 360). Despite this rule, Commissioner Ford Frick had repeatedly noted that both Los Angeles and New York were 'open cities' (Veeck). Although the American League, and specifically the New York Yankees, voiced no opposition to the expansion Mets in Queens, at the last minute, Los Angeles Dodgers owner Walter O'Malley opposed expansion in the Los Angeles area. Even though his earlier proclamations were that territories were open, Commissioner Frick did not intervene in the dispute between the potential owners of the Los Angeles Angels, and O'Malley and the American League (Veeck).

The opposition to the initial expansion into Los Angeles was more likely focused upon who the potential new owner would be, rather than the actual presence of a franchise. Hank Greenberg held the option for the new Los Angeles franchise, but his close relationship with Bill Veeck likely encouraged the other owners to stymie his opportunities to craft a workable lease arrangement that would enable him to be financially successful. Once Greenberg relinquished his option for a Los Angeles franchise, Gene Autry was unanimously accepted as the owner of the expansion Angels ('Angels timeline,' 2005). Autry had considerably greater financial resources than

Greenberg and was able to handle the initial financial difficulties imposed upon the Angels by the Los Angeles Dodgers (Veeck, 1962).

After the 1960 expansion, MLB relocation rules were changed to establish power with the individual leagues (Witt, 2005). The National League determined territories to be 10 miles beyond a team's city limits, while the American League established a one hundred mile radius around a team's home ballpark (Witt). Each league required a three-fourths vote to permit a team to move, but neither league could stop the other from relocating into the other's territory (Brown, 2004; Witt). Although they had earlier been denied a potential 1962 move from Kansas City to Dallas, the A's were approved a move into Oakland in 1968 ('A's timeline,' n.d.). At the time, San Francisco Giants owner Horace Stoneham noted, 'Certainly the move will hurt us. It is simply a question of how much and if both [sic] us can survive' (Witt, 2005, para 12). Current MLB Commissioner Bud Selig noted,

> When Charlie Finley moved the A's to Oakland, the American League didn't care about the National League and vice versa. That was sad because the A's hurt the Giants. At the time the theory was, 'so what, that's the National League.' Well, come on. This is baseball. (Brown, 2004, para 21).

Despite years of coexistence in the United States' fourth largest metropolitan market, by the late 1980s, the long-term financial survival of the A's and Giants in the Bay Area was in question-primarily because of their stadium agreements (*Piazza v Major League*

Baseball (1993) 831 F. Supp. 420 (E.D. Pa.). During the 1980s, the Oakland A's experienced success on the field and at the box office, while the San Francisco Giants played home games in antiquated Candlestick Park ('Oakland Athletics attendance,' 2005; 'San Francisco Giants attendance,' 2005). Hoping to build a stadium in the South Bay, the Giants solicited MLB for expansion of their territory into Santa Clara and Monterrey Counties (Witt, 2005). A request for expansion was solicited as it is an easier process than submitting for relocation (Witt). Steve Schott, former Oakland A's co-owner, recently commented on the Giants 1990 efforts to potentially move to San Jose,

> I believe that when Charlie Finley moved the A's out here, and the Giants were already here, there was no question and no discussions about territorial rights. The only way the Giants ended up with territorial rights was because they were going to build a stadium in San Jose (Brown, 2004, para 10).

On June 14, 1990, the expansion was approved unanimously as the A's voted to approve the Giants' move because it would have allowed the A's to potentially attract the majority of baseball customers from Northern Bay Area counties such as Marin, Sonoma, and Napa (Figure 1). An anonymous A's executive noted, 'We were reasonably happy and would have been reasonably happier if the Giants had moved to San Jose. Why would we get in the way?' (Witt, 2005, para 19). However, San Jose voters rejected the Giants proposal for a tax-payer funded facility in November 1990 and an additional one in 1992 (Witt). Bob Lurie, then owner of the Giants, sold the team to a group of investors headed by Peter Magowan in 1993 (Witt). Magowan *recently* (author's emphasis) noted that one of the reasons he pursued the purchase of the Giants was the understanding that Santa Clara and Monterrey Counties were off limits to other MLB teams (Witt). Unable to acquire public financing in the South Bay, the Giants eventually privately financed the 2000 construction of SBC Park in San Francisco though the city did assist with infrastructure improvements and zoning modifications (Gordon, 2004). The new facility was closer to the A's home stadium than Candlestick Park and the Giants did not relinquish territorial rights to the South Bay Area counties-facts not lost on former A's co-owner Steve Schott,

> There was no question about whose territory it was. They had to get permission from the A's…They didn't pay for those territorial rights, by the way. Now, in the meantime, they built a stadium closer to Oakland than they were before. And now, if we talk about another stadium down in that area, they go berserk… (Brown, 2004, para 11).

In December 1994, after failed attempts by the Giants to build in San Jose, MLB amended its territorial rules (Witt, 2005). Currently, teams may only move to a new territory if three-fourths of the league clubs and one-half of other league clubs approve the relocation (Pappas, 2002a). In addition, MLB Rule 52[i] established territorial counties for each MLB franchise (Pappas, 2002a). Clubs may not invade within 15 miles of another club's established territory unless the 'invaded' team grants permission. No area may have more than two franchises and no playing facilities may be closer than five miles from one another (Pappas, 2002a).

The current territorial rules contain some unique provisions for teams in shared areas. For the American and National League franchises in New York, Chicago, and Los Angeles, the defined counties are the same, but in the case of the A's and Giants, the San Francisco Bay Area has been divided disproportionately (Pappas, 2002a). The Giants territory includes San Francisco, San Mateo, Santa Clara, Santa Cruz, Monterey, and Marin Counties, while the A's territory only includes Alameda and Contra Costa counties (Pappas, 2002a; Witt, 2005) (Figure 1).

The issue of the Nationals invasion of the Washington D.C. area (prior to the agreement with Peter Angelos and the Orioles) could have taken an interesting twist if the Nationals had elected to build a facility in certain parts of Washington D.C. or in the Virginia suburbs (Pappas, 2002a). A 15 mile extension from the established Baltimore Orioles' counties (Baltimore, Anne Arundel, Howard, Carroll, and Harford) extends roughly to the center of Washington D.C., but certainly does not extend beyond that to Virginia suburbs (Pappas, 2002a). However, considering the public relations furor which would have surrounded a protracted legal fight, MLB owners (who, at the time of the move, owned the Nationals) chose to settle with Angelos (Stan Kasten, Personal Communication, April 22, 2005).

Financial Arguments why Leagues Desire to Control Franchise Relocation

Some would question why a league would prevent a franchise from relocating if it did not immediately and obviously harm the league in some way? Personality issues aside, there are a number of financial reasons to restrict franchise movement. Many of these fall under the rubric of an *externality* – in this case a spillover effect or impact on the league when a team relocates. If franchise relocation had no financial impact on the league, then there would be no externality. If franchise relocation benefits the team, but harms the league, then the league is being affected by a negative externality.

For instance, the city that loses the team could have fans who stop being customers of the league, or who might even be unwilling to support a future new replacement franchise in that area. Thus, the relationship between the league and customers in this area would be harmed. Traditional rivalries, that are often geographically based, could also be harmed. The NFL made this claim when the Los Angeles Rams moved to St. Louis, potentially harming its rivalry with the San Francisco 49ers (*St. Louis Convention and Visitors Commission v. NFL* (1998) 154 F.2d 851 (8th Cir.). If the market potential is smaller in the new location, it could lower shared revenues for the rest of the league and lower future revenues from the league's national television contract, even if the team increased its own revenues (perhaps through a better stadium deal). The NFL also made these arguments in the Raiders and Rams' relocation cases (*Oakland Raiders, Ltd. v. NFL* (1986) 791 F.2d 1356 (9th. Cir.); *St. Louis Convention and Visitors Commission*). Overall, the league brand could also be damaged if one move leads to continual relocations as fans may become frustrated as teams constantly vie for better stadium deals in different municipalities.

Another important argument made by sports leagues is that the opportunity value of an open market for an expansion team, and thus a franchise fee (potentially in the hundreds of millions of dollars) is lost if a franchise relocates to that market. The league, as well as individual teams, negotiates with local governments in the hopes that municipalities will spend hundreds of millions of dollars building sports facilities. Individual franchises could interfere with league negotiations and long-term marketing strategies if they act independently for their own interests rather than the interests of the overall league.

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In some cases franchise relocation may create positive externalities for the entire league. In those cases, the league should work to assist the moving franchise (assuming it would like to relocate) as the overall league will benefit financially. In theory, it would not be financially beneficial to restrict a team's relocation if the overall league would benefit.

Components of Major League Baseball's Current Collective Bargaining Agreement

In order to conduct a financial cost-benefit analysis of the league's relocation rules, the collective bargaining agreement (CBA) of the league must be analyzed. Pertinent financial components of the MLB 2002-2006 CBA include contraction, luxury tax, and revenue sharing.

The CBA mandated that no clubs could be contracted until after the 2006 season (Wittenmyer, 2006). Prior to the completion of the CBA, the Oakland A's as well as the Minnesota Twins, Kansas City Royals, and Tampa Bay Devil Rays were mentioned as contraction candidates (Neyer, 2002). The players insisted that no teams be contracted as that would have resulted in a decrease in employment opportunities. Their desire was to see distressed teams have an opportunity to improve their financial standing. Specifically for the A's, the new CBA provided time to move to another viable market or to a better facility within the Bay Area.

The luxury tax was imposed as a method to contain team payroll costs (see Table 1). To date, this tax has only been imposed on three teams: New York Yankees, Boston Red Sox, and Los Angeles Angels of Anaheim ('Lap of Luxury,' 2004). The luxury tax is based on the 40-man roster payrolls and includes approximately $8 million per team for benefits ('Yankees receive…,' 2003). It was initially anticipated that the Yankees would pay $26 million in 2003 (O'Keefe, 2002), but their eventual bill was 'only' $11.82 million for 2003. In 2004, the Yankees paid just over $25 million, while the Boston Red Sox and Anaheim Angels each paid approximately $4 million ('Lap of Luxury'). The distributed revenue sharing money does not go to individual teams, but instead is used by MLB for player benefits, future industry growth, or development of players in countries without organised high school baseball programs ('Lap of Luxury').

Of greater concern for the Oakland A's and MLB is revenue sharing. Under the prior CBA, $169 million in local revenue was shared in 2002. This represented 20% of total local revenue. Under the CBA which commenced in 2003, 34% of local revenue sources were to be shared, totaling $258 million in 2003 and increasing to over $300 million in 2006 (estimate) (Kaplan, 2003). Teams pay into the revenue sharing pool or receive money from it based upon their distance from the average revenue figure. The average estimated team revenue for 2003 was $94 million. Table 2 contains a list of MLB revenue sharing figures by team for the 2001-2003 seasons ('MLB revenue sharing in 2002 and 2003,' 2004; Pappas, 2002b). According to MLB, the 2004 and 2005 figures will not be reported to the public and the 2003 figures were leaked improperly.

A cursory analysis of the Table 2 data shows that four teams which opened stadia or moved from 2003-2005, Cincinnati Reds, Philadelphia Phillies, Washington Nationals, and San Diego Padres, received a collective $58,249,000 in 2003 from revenue sharing. After opening a new stadium in 2003 the Reds decreased the amount of shared revenue they received by $3,338,244. Since revenue sharing figures are not available for 2004, the net change for the Philadelphia Phillies, Washington Nationals, and San Diego Padres cannot be calculated. There are many factors that contribute to a team's local revenue such as quality of team, management decisions, marketing activities, etc. However, stadium revenues certainly have played a prominent role in a team's revenue generation capability. The movement of MLB teams to new facilities during the last 10 years has been a prominent sport business topic as teams in financial toil turn to new facilities or new municipalities (Howard & Crompton, 2004). For instance, the Seattle Mariners increased revenues over $20 million their first season after moving into Safeco Field, resulting in the team becoming one of the most valuable in MLB (Snel, 1999).

Since the 1994 baseball work stoppage, the Oakland Athletics have had mixed success on the field and limited success on their income statement (Shea, 2003). The A's have diminished potential financial losses by refusing to bid for top earning players. They have lost prominent players such as Johnny Damon, Jason Giambi, Keith Folke, and Miguel Tejada to free agency and have traded away other players nearly eligible for free agency, such as Tim Hudson and Mark Mulder, for lesser priced players. Long time owner Walter Haas sold the club to Steve Schott in 1995. Haas, owner of Levi Strauss, had consistently fielded a competitive team, often through his own financial wherewithal. Steve Schott and current owner Lewis Wolff have not been as willing as Haas to personally cover team financial losses. As a result, the A's payroll has not been in the top half of the league ('*USA Today* salaries databases,' n.d.). Despite success on the field with younger (thus usually less expensive) players, the A's have been unable to retain many of their best players due to the financial costs of free agency. The A's have been limited in their revenue generating capability since the return of the Oakland Raiders NFL team in 1996. The Raiders, co-tenants in McAfee Coliseum, demanded and received structural changes to the facility that made it less appealing to baseball fans ('History of McAfee Coliseum,' 2005).

Table 2 displays the A's financial condition as a result of these limitations on the franchise. In 2001, the team received $10.5 million in revenue sharing proceeds which was eighth highest in baseball. The following season, the A's received $9.2 million (tenth highest). By 2003, revenue sharing proceeds for the team grew to $11.7 million, eleventh highest in the league. Over the three years, the A's were subsidised with $31.4 million from the clubs generating the most revenue in baseball.

Legal and Financial Implications

Major League Baseball's antitrust exemption and the Curt Flood Act legally permit the league to control franchise location. Where other leagues, such as the NFL or NBA, must have criteria (such as a loss of overall league revenue) to interfere with franchise relocation, MLB has no such requirements. However, MLB was willing to negotiate a settlement with Peter Angelos, when, under the law, it could have changed its relocation rules to move the Expos to Washington D. C. despite the Orioles' protests. The league may have had some concerns that a protracted legal battle with one of its members could result in antitrust scrutiny. However, those concerns seemed to evaporate in the A's situation – perhaps because the A's owners did not have the extensive legal acumen of Peter Angelos (who is a legendary trial lawyer) or because they did not pursue a legal challenge beyond initial investigations (Ostrom & Lynch, 2006).

In addition to the legal contradictions MLB displayed during the Expos relocation and the A's attempt to move to San Jose, there have certainly also been unusual financial inconsistencies. The Expos move to Washington was a tremendous financial benefit for every MLB owner. The franchise had long been the lowest revenue generating club in the league and during one season did not even have an English language radio contract (Leahy, 2000). The move to Washington resulted in a tremendous increase in franchise value that eventually led to the $450 million sale to Theodore Lerner ('Owners approve Nationals sale,' 2006). In the Expos' case, the league should have insisted upon the move and should have utilized its antitrust exemption to operate in the best interests of the league. Instead, the league elected to provide the Orioles a tremendous financial compensation package while playing 'hardball' with the A's – a team that not only already operated in the same metropolitan market as the San Francisco Giants but had also once worked to *help* the Giants improve the overall financial situation in the Bay Area. The Giants never built a stadium in Santa Clara County – the primary reason MLB and the A's voted to enhance their territory in 1990. In an additional irony, MLB worked, at its potential financial detriment since the A's have been luxury tax recipients for years, to protect the potential interest of Giants owner Peter McGowan – a man viewed with distaste by many other MLB owners because in 2000 he elected to privately finance the majority of the costs for the Giants new facility (Gordon, 2004).

Certainly, some MLB owners may have feared future invasions of their territories if they voted against the Giants, as Peter McGowan noted, 'owners…do know that if they turn over our rights, they face the prospect of losing their rights in a future vote. No owner would do that' (Hamm, 2005, para 11). Despite McGowan's claim, some owners facing similar financial situations as the A's (untenable facility, low revenues, barrier to unused potential market that could change the financial fortunes of the team and the league, etc.) may actually prefer a situation where they have the freedom to seek a better host community without interference. In addition, many of those owners would likely also want the enhanced revenue sharing payments an A's club relocated in San Jose would provide.

In addition to the owners, current players have a vested interest in the future movement of MLB franchises. For many years, the A's have been unable to bid for prominent free agents, lowering by one the number of potential suitors for certain player's services. The Major League Baseball Players Association (MLBPA) certainly should have shown nearly as much concern in the A's being allowed to pursue San Jose as they demonstrated during team contraction discussions. Restricting a team from potential financial success hurts the players as salaries across the entire industry are lowered.

The inconsistent application of MLB's relocation rules in the Orioles and A's situations is actually not the first time MLB has appeared to act against its own financial interest. After MLB owners rejected the St. Louis Browns 1953 move to Baltimore, Browns' owner Bill Veeck retained lawyers to prepare a legal challenge to the American League and Major League Baseball's relocation rules (Veeck, 1962). Veeck was forced to sell the Browns before he sued MLB, but he noted the legal and financial basis of his potential case:

> Since it was evident on the face of the situation that it was in their (other owners) self-interest to have me in Baltimore and against their self-interest to have me in St. Louis – i.e., they would all make money in Baltimore and lose money in St. Louis – it was obvious that they were keeping me in St. Louis only because they did not like me personally…It is illegal…for a group of individuals to get together to cause injury or loss to any other individual. It is not only illegal to do it, it is illegal to discuss it. That is what the laws against restraint of trade – the monopoly laws – apparently are all about (p. 289-290).

In the Browns' case, the owners dislike for Bill Veeck's revolutionary promotional tactics and his public comments against MLB likely fueled their decision to block his move to force him to sell. However, since the majority of today's MLB's owners have obtained their fortunes outside of baseball they usually have much greater non-baseball financial resources than owners during the 1950s. Today, an owner willing to fight relocation rules and the antitrust exemption would require significant financial compensation to settle the dispute – as the Orioles compensation agreement demonstrates.

Although it appears that the A's have found a new home in Fremont, no one knows exactly how the ballpark will be financed and how much additional revenue the A's will generate ('A's seek tax increment financing,' 2006). Certainly, the potential move to San Jose had many questions that remained unanswered when the A's began to shift their attention to a potential move to Fremont. However, at some point in the future, a MLB owner will be confronted with the inconsistent application of the relocation rules and will seek redress through the courts. In addition, an owner could solicit aid through Congress – which could remove the antitrust exemption. Given the potential future dismissal of its antitrust exemption by legal action or political lobbying, MLB should attempt to establish guidelines and implement actions that are fair and financially beneficial for all teams. If, in the future, an owner may not be easily compensated or willing to look elsewhere for a new location, the legal system could remove all aspects of the antitrust exemption to the detriment of the entire baseball industry.

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Table 1
Major League Baseball Luxury Tax Schedule

Year	Threshold ($ in millions)	Offense 1-2-3-4 may want to break out into separate columns
2003	117	17.5%
2004	120.5	22.5%-30%
2005	128	22.5%-30%-40%
2006	136.5	0%-30%-40%-40%

Note: Team pays % on total salary compensation exceeding threshold

Source: Summary of the [2002] Collective Bargaining Agreement

Table 2
MLB Revenue Sharing Figures

Team	2001	2002	2003
Anaheim	9,594,000	(1,303,070)	1,874,000
Arizona	(4,432,000)	(3,255,682)	1,456,000
Atlanta	(10,647,000)	(9,753,575)	(11,291,000)
Baltimore	(6,807,000)	(5,337,479)	252,000
Boston	(16,438,000)	(17,896,820)	(38,692,000)
Chicago (AL)	(4,201,000)	(3,823,142)	(4,833,000)
Chicago (NL)	(6,568,000)	(8,280,260)	(16,731,000)
Cincinnati	13,404,000	9,807,244	6,469,000
Cleveland	(13,254,000)	(10,612,923)	(4,828,000)
Colorado	(6,029,000)	(5,127,222)	2,469,000
Detroit	5,127,000	11,615,688	16,738,000
Florida	18,561,000	20,946,573	21,030,000
Houston	(5,185,000)	(4,326,392)	1,182,000
Kansas City	15,997,000	16,629,872	19,042,000
Los Angeles	(9,107,000)	(9,278,555)	(9,490,000)
Milwaukee	1,744,000	8,502,007	16,555,000
Minnesota	19,089,000	12,977,421	17,249,000
Montreal (DC)	28,517,000	28,493,994	29,517,000
New York (AL)	(26,540,000)	(26,640,289)	(52,650,000)
New York (NL)	(15,669,000)	(17,366,067)	(21,473,000)
Oakland	10,520,000	9,201,545	11,756,000
Philadelphia	11,752,000	9,834,124	9,013,000
Pittsburgh	1,782,000	6,400,652	13,299,000
St. Louis	(8,229,000)	(8,385,888)	(9,202,000)
San Diego	8,668,000	6,283,572	13,250,000
San Francisco	(6,308,000)	(9,638,790)	(12,959,000)
Seattle	(18,791,000)	(19,877,788)	(31,023,000)
Tampa Bay	12,384,000	14,724,463	20,464,000
Texas	(8,744,000)	(8,205,165)	(7,162,000)
Toronto	9,830,000	13,691,953	18,735,000

Note: Parenthesis denotes a revenue sharing payment.

Sources: ‘MLB revenue sharing in 2002 and 2003,’ 2004; Pappas, 2002b

Figure 1
San Francisco Giants and Oakland Athletics Territories

Source: Pappas, 2002a

[i] MLB does not make Rule 52 (as well as some others) available to the public and no other citation for them is available. The only reason the details of the rule are known is because Doug Pappas had brief access to them. A note posted on his website (Pappas, 2002) before his recent, untimely death discusses this issue.