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David L. Snyder

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AUTOMATIC OUTS: SALARY ARBITRATION (参稼報酬(年俸)調停)IN NIPPON PROFESSIONAL BASEBALL (日本野球機構)

DAVID L. SNYDER*

I. INTRODUCTION

Major League Baseball (MLB) has experienced a dramatic increase in the influx of Japanese players following Hideo Nomo's (野茂英雄) defection to the MLB in 1995.¹ One consequence of this phenomenon is that interest in Japanese baseball among non-Japanese researchers has increased significantly over the past decade. However, relatively little scholarship outside of Japan has been produced on the business of Japanese professional baseball. Cultural and language barriers, coupled with the highly confidential nature of data regarding the business operations of Nippon Professional Baseball (NPB) (日本野球機構), have created imposing challenges for Western scholars interested in this subject.

The purpose of this article is to highlight the fundamental components of salary arbitration (参稼報酬(年俸)調停) in Japanese baseball, and provide an overview of all the salary arbitration cases in Japan to date. The research presented herein is based upon original source documents in Japanese, coupled with secondary sources in English.

Since this paper is written primarily for a North American audience, labor relations and salary arbitration in the NPB is compared and contrasted with the MLB. At the outset, a brief overview of labor relations and salary arbitration in the MLB is presented, followed by a description of labor relations and salary arbitration in the NPB. Next, a detailed examination of all the salary arbitration cases in the NPB is provided. The article concludes with an analysis of the possible reasons for the differences in labor relations and salary arbitration between the leagues, along with speculation regarding the possible

* David L. Snyder is Full Professor in the Sport Management Department at the State University of New York at Cortland, and a part-time Full Professor of Sport Management at Tompkins Cortland Community College. He has been a member of the New York bar since 1986. Prior to arriving at SUNY Cortland, he was president of a sports marketing company based in Tokyo, Japan. This article was based, in part, on research conducted in partial satisfaction of the author's PhD requirements at the Deutsche Sporthochschule Köln.

1. ROBERT WHITING, *THE SAMURAI WAY OF BASEBALL: THE IMPACT OF ICHIRO AND THE NEW WAVE FROM JAPAN* 205, 207 (2004).

future of salary arbitration in the NPB.

Because this paper was written primarily for a North American audience, Japanese names have been Romanized and Westernized (given name first, family name second). However, Japanese names and key terms that appear in this article are also followed by the Japanese versions, which appear in parentheses.

With respect to translations, functional equivalents have been used for Japanese terms in lieu of literal translations. For example, in the NPB, the Japanese word for the head of the Central and Pacific Leagues has been translated as "president," but the actual literal meaning is closer to "chairman." The designation "president" was used because in the MLB, the head of the American and National Leagues is referred to by that title, so the same terminology was used for the NPB.²

II. LABOR RELATIONS AND SALARY ARBITRATION IN MAJOR LEAGUE BASEBALL

While unions have existed in professional baseball in the United States since the 1800s, the origins of the current union, the Major League Baseball Players' Association (MLBPA), only came about in 1954.³ Initially, the MLBPA's influence was limited to issues such as insurance and pensions, but that quickly changed when Marvin Miller, formerly a negotiator for the United Steelworkers of America, assumed the mantle of MLBPA executive director in 1966.⁴

As a result of collective bargaining, the power structure in the MLB realized a fundamental shift from a system in which the owners and the commissioner had absolute power, to a structure, forged under the auspicious of labor law, in which power is shared between the players and owners.⁵ Through the collective bargaining process, the terms and conditions of employment were negotiated between the players and owners, with the ultimate goal of entering into a collective bargaining agreement (CBA).⁶ The first CBA in MLB, which was the first such agreement in any sports league,

2. The author would like to express his appreciation to his wife, Mari Takeishi Snyder, and Kensuke Nakata (中田健介), an undergraduate student in the Sport Management Department at the State University of New York at Cortland, for their help and assistance with the Japanese translations provided herein.

3. ROBERT C. BERRY ET AL., *LABOR RELATIONS IN PROFESSIONAL SPORTS* 52 (1986).

4. YOSHIRO MASUMOTO, *PLAYER AGENTS SYSTEM UNDER U.S. AND JAPANESE LAW* 14 (2000).

5. *Id.*

6. *Id.*

was entered into in 1968.⁷

MLB has experienced a checkered history of labor strife, particularly over the past half decade, punctuated by five player strikes, the first of which occurred in 1972, and three lockouts initiated by the owners.⁸ In recent years, it appears, at least ostensibly, from the approach taken by the parties to collective bargaining that they have come to the realization that the business of professional baseball is a partnership, albeit an uneasy one, between the players and the owners.

Since 1970, arbitration has been the designated means of resolving various grievances that can arise between players and owners in the MLB.⁹ Arbitration, the product of collective bargaining,¹⁰ is used in the MLB to review disciplinary determinations,¹¹ to resolve ambiguities in the CBA, and to determine fair and equitable means for establishing the salaries of players who are eligible for arbitration.¹² The salary arbitration provision was negotiated into the 1973 CBA between the MLB clubs and the MLBPA¹³ and first implemented in 1974.¹⁴

Free agency was first introduced into the MLB in 1975 through the Messersmith/McNally arbitration decision.¹⁵ In the MLB, “[a] player with six or more years of Major League service who has not executed a contract for the next season is eligible to become a free agent.”¹⁶

By contrast, salary arbitration enables a player to re-negotiate his salary with his team prior to becoming eligible for free agency.¹⁷ The purpose of salary arbitration is to allow players whose salaries are not commensurate with

7. Major League Baseball Players’ Ass’n, *MLBPA Information: Frequently Asked Questions*, MLBPLAYERS.COM, <http://mlbplayers.mlb.com/pa/info/faq.jsp> (last visited June 30, 2009) [hereinafter *MLBPA Information*].

8. *Id.*

9. Major League Baseball Players’ Ass’n, *History of Major League Baseball Players Association*, MLBPLAYERS.COM, <http://mlbplayers.mlb.com/pa/info/history.jsp> (last visited June 30, 2009).

10. RAY YASSER ET AL., *SPORTS LAW: CASES AND MATERIALS* 471 (2006).

11. *Id.*

12. *Id.* at 504-07.

13. *Id.* at 504.

14. Rich Lederer, *Comparing First-Year Eligible Arbitration Signings*, BASEBALLANALYSTS.COM, Feb. 23, 2009, http://baseballanalysts.com/archives/2009/02/_birthdate_ml_s.php.

15. BERRY ET AL., *supra* note 3, at 56-58.

16. *MLBPA Information*, *supra* note 7; THE MAJOR LEAGUE CLUBS AND THE MAJOR LEAGUE BASEBALL PLAYERS’ ASSOCIATION (MLBPA), 2007-2011 BASIC AGREEMENT Article XX - Reserve System; Section B. Free Agency; (1) Eligibility, at 70 (Dec. 20, 2006).

17. YASSER ET AL., *supra* note 10, at 544.

their performance the opportunity to argue for an increase in their salary so that their compensation is consistent with other comparable players in the league.¹⁸

The CBA specifies when players are eligible to apply for salary arbitration. In the MLB,

A player with three or more years of service, but less than six years, may file for salary arbitration. In addition, a player can be classified as a “Super Two” and be eligible for arbitration with less than three years of service. A player with at least two but less than three years of Major League service shall be eligible for salary arbitration if he has accumulated at least 86 days of service during the immediately preceding season and he ranks in the top 17 percent in total service in the class of Players who have at least two but less than three years of Major League service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season.¹⁹

The type of salary arbitration used in the MLB is distinct from other North American professional sports leagues. The MLB uses a form of salary arbitration referred to as “final offer” arbitration, also known as “high/low” arbitration.²⁰ Under this format, both the player and the club submit a figure to the arbitration panel, and the panel must select one of the two figures.²¹ No compromise or modification is permitted.²²

Salary arbitrations in the MLB are decided by neutral third party arbitrators.²³ Under the terms of the CBA, the MLBPA and the MLB clubs annually select the arbitrators who hear salary arbitration grievances.²⁴ In the event they are unable to agree, the parties then jointly request that the American Arbitration Association (AAA) furnish them with lists of prominent, professional arbitrators from which the arbitrators are then selected by

18. BERRY ET AL., *supra* note 3, at 58.

19. Lederer, *supra* note 14; THE MAJOR LEAGUE CLUBS AND THE MAJOR LEAGUE BASEBALL PLAYERS' ASSOCIATION (MLBPA), 2007-2011 BASIC AGREEMENT Article VI - Salaries; Section F. Salary Arbitration; (1) Eligibility, at 14 (Dec. 20, 2006).

20. BERRY ET AL., *supra* note 3, at 58.

21. YASSER ET AL., *supra* note 10, at 544.

22. *Id.* at 505.

23. *Id.* at 544.

24. *Id.*

alternately striking names from the lists.²⁵ All cases are assigned to three-arbitrator panels, with each party designating one arbitrator to serve as the panel chair.²⁶

While under the terms of the National Labor Relations Act, unions are the “sole bargaining units” for unionized employees, the MLBPA permits its members to be represented by agents in a variety of labor-related matters, including contract negotiations and salary arbitration hearings.²⁷ While agents were virtually non-existent in the MLB prior to the late 1960s, the use of agents quickly became the norm in the 1970s and 1980s, and now, widespread use of agents by players is commonplace.²⁸

III. LABOR RELATIONS AND SALARY ARBITRATION IN NIPPON PROFESSIONAL BASEBALL

The Nippon Baseball Players Association (JPBPA) (日本プロ野球選手会) was first established in 1980 to promote friendship among players.²⁹ The organization later evolved into a union in 1985.³⁰ Unlike the MLB, there is no collective bargaining agreement in the NPB.³¹ Rather, the players’ terms and conditions of employment are unilaterally set by agreement among the owners, as embodied in the *Yakyu Kyoyaku* (日本プロフェッショナル野球協約), which contains the rules that govern Japanese professional baseball.³²

Japanese teams are owned by large corporate conglomerates, with the baseball club being a subsidiary of the larger parent organization.³³ As a result, all the elements of a traditional Japanese business, such as lifetime employment, are present among professional baseball teams in Japan.³⁴ The

25. *Id.*

26. THE MAJOR LEAGUE CLUBS AND THE MAJOR LEAGUE BASEBALL PLAYERS’ ASSOCIATION (MLBPA), 2007-2011 BASIC AGREEMENT Article VI - Salaries; Section F. Salary Arbitration; (7) Selection of Arbitrators, at 17 (Dec. 20, 2006).

27. *Id.*

28. MASUMOTO, *supra* note 4, at 15.

29. *Id.* at 14.

30. Certificate of Unionization - Japan Professional Baseball Players’ Association (Nov. 5, 1985).

31. MASUMOTO, *supra* note 4, at 13, 15.

32. NIPPON PROFESSIONAL BASEBALL, YAKYU KYOYAKU, (JAPANESE PROFESSIONAL BASEBALL BASIC AGREEMENT) (1995) [hereinafter NIPPON PROFESSIONAL BASEBALL]. The translations have been taken from the 1995 *Yakyu Kyoyaku* since the research conducted has not revealed any substantive changes since 1995 to the articles or provisions examined in this study.

33. WHITING, *supra* note 1, at 89-90.

34. ROBERT WHITING, THE CHRYSANTHEMUM AND THE BAT: BASEBALL SAMURAI STYLE 20-

relationship between the owners and players has a very strong paternalistic component to it, which former NPB Commissioner Ichiro Yoshikuni (吉國一郎) described in the following terms: “[w]e don’t think of the relationship between owners and players as a labor issue It’s more like the relationship between a parent and child.”³⁵

For much of the early history of the JPBPA, its members openly expressed a general unwillingness to ever resort to going on strike.³⁶ This sentiment reflects several dominant Japanese cultural values including the sublimation of self in favor of the group, deference to, and implicit trust of, authority, and a strong desire to avoid confrontation and conflict.³⁷ Yomiuri Giants (読売ジャイアンツ) captain Kiyoshi Nakahata (中畑 清) once stated on national television, “[a]lthough we hope to work for higher pay and better working conditions, we could never strike like the U.S. union has. It would not be right.”³⁸ These sentiments have been echoed by many other players over the years, such as slugger Kazuhiro Kiyohara (清原和博), who once exclaimed, “A strike wouldn’t be fair to the fans or the owners.”³⁹

It was not until they formally become a union in 1985 that the players even had the right to strike.⁴⁰ There has only been one strike in Japanese baseball, which occurred in 2004 and it lasted only two days.⁴¹ Free agency was not introduced in Japanese baseball until 1993.⁴²

In 2001, Japanese owners gave players permission to be represented by an agent in contract negotiations.⁴³ However, the use of agents in Japan remains extremely circumscribed. Agents must be Japanese attorneys and Japanese citizens, and each agent is limited to representing only one player.⁴⁴

Unlike the MLB, salary arbitration (参稼報酬(年俸)調停) in the NPB is

21 (1977).

35. *In Japan, Baseball is the Art of War*, Apr. 21, 1991, L.A. TIMES, available at http://articles.latimes.com/1991-04-21/sports/sp-906_1_japanese-baseball.

36. WHITING, *supra* note 1, at 88.

37. CHIN-NING CHU, *THE ASIAN MIND GAME: UNLOCKING THE HIDDEN AGENDA OF THE ASIAN BUSINESS CULTURE: A WESTERNER’S SURVIVAL MANUAL* 116-7 (1991).

38. WHITING, *supra* note 1, at 88.

39. *Id.* at 68.

40. *Id.* at 88.

41. ALAN M. KLEIN, *GROWING THE GAME: THE GLOBALIZATION OF MAJOR LEAGUE BASEBALL* 156 (2006).

42. The Baseball Hall of Fame and Museum, *A History of Japanese Baseball*, BASEBALLHALLOFFAMEANDMUSEUM.COM, <http://english.baseball-museum.or.jp/showcase/storage/history.html> (last visited June 30, 2009).

43. WHITING, *supra* note 1, at 93-94.

44. *Id.*

not the product of “good faith, arms length bargaining.” Rather, like the other rules governing the NPB, it was unilaterally instituted by the member clubs.⁴⁵ Since the owners created salary arbitration in Japan, the system heavily favors management. Also, unlike the MLB, because there is no CBA in the NPB, salary arbitration is embedded in Article 94 of the *Yakyu Kyoyaku*.⁴⁶ Article 94, as amended on September 14, 1973, states, “If a player is dissatisfied with the terms of his contract for the upcoming season, and he and the team cannot reach an agreement on a salary figure, then the player can petition the league president for salary arbitration.”⁴⁷

While Major League Baseball players have a right under the CBA to file for salary arbitration, in Japanese baseball salary arbitration is more properly characterized as a privilege that may be requested by a player, but that does not have to be granted. This distinction was strikingly illustrated in the 2008 case of Takahiko “G.G.” Sato (佐藤 隆彦). Sato was the first Japanese player to request salary arbitration since Tsuyoshi Shimoyanagi (下柳剛) in 2001, and his would have been only the seventh salary arbitration case in the history of Japanese baseball.⁴⁸ However, Pacific League (パシフィック・リーグ) President Tadao Koike (小池唯夫) refused to accept Sato’s application for salary arbitration, instead instructing Sato to continue negotiations with his team, the Saitama Seibu Lions (埼玉西武ライオンズ).⁴⁹ Koike justified his decision stating, “I concluded that there was room for talks. The general rule is that players and clubs set annual salary through negotiations”⁵⁰

As mentioned previously, Major League Baseball Players are eligible for salary arbitration after a certain number of years of service. However, in Japanese baseball, players are theoretically eligible for salary arbitration every year, assuming that a Japanese player is unable to reach terms and conditions

45. NIPPON PROFESSIONAL BASEBALL, *supra* note 32, at art. 94. The literal English translation of this document can be confusing. This document is an agreement among the clubs in Japanese baseball, and is not a collective bargaining agreement between the players and the clubs. In that sense, this document is more properly characterized as the rules of Japanese Professional Baseball, which have been unilaterally promulgated by the owners.

46. NIPPON PROFESSIONAL BASEBALL, *supra* note 32, at art. 94.

47. *Id.* Article 94 of the *Yakyu Kyoyaku* indicates that this article was “amended” in 1973. A copy of the basic agreement prior to that date could not be obtained. Consequently, it is unclear whether salary arbitration was introduced in the NPB in 1973 or if it existed prior to that date and the terms of that article were amended in 1973. See Table 1.

48. Kyodo News Service, *Lions’ Sato Seeks Salary Arbitration*, JAPAN TIMES, Jan. 9, 2008, available at <http://search.japantimes.co.jp/cgi-bin/sb20080109j2.html> [hereinafter *Lions’ Sato*].

49. *G.G. Sato in Limbo Over Salary*, JAPAN TIMES, Jan. 24, 2008, available at <http://search.japantimes.co.jp/cgi-bin/sb20080124j1.html>.

50. *Id.*

of his contract with his club.⁵¹

To appreciate this concept, it is important to understand that until very recently, most Japanese players, even superstars like Sadaharu Oh (王貞治) and Shigeo Nagashima (長嶋茂雄), played under one-year renewable contracts.⁵² The pressure imposed by the threat of players defecting to the Major Leagues has forced some Japanese owners to agree to longer term contracts, but the vast majority of Japanese players still sign contracts on a year-by-year basis, negotiating a new deal with their clubs prior to the commencement of each season. However, while it may be the case that a Japanese player could potentially request salary arbitration every year, a player's ability to do so is extremely limited for a number of reasons.

First, within Japanese baseball, there is both an implicit and tacit understanding that the player must first exhaust every possibility to reach an agreement with his team before requesting arbitration. In fact, in many circumstances, even after a player has requested arbitration, the arbitration panel will ask the player to continue negotiations with his team, as highlighted in the aforementioned Sato case.⁵³ In 1996, after a tearful statement in which he asked to be released or traded, disgruntled first baseman Hiroo Ishiii (石井浩郎) of the Kintetsu Buffaloes eventually settled his contract dispute with his club, rather than choosing to pursue salary arbitration.⁵⁴ A year later, Ishiii's teammate Shigeeki Sano (佐野慈紀) applied for salary arbitration after failing to reach an agreement with the Buffaloes for the upcoming season.⁵⁵ However, after repeatedly being steered back to negotiations with his club, Sano reluctantly agreed to terms with his team.⁵⁶ These examples reflect the notion that at least in Japanese baseball, the cultural value in Japan of settling disputes through compromise and consensus, as opposed to adversarial proceedings, is still the norm.

Second, pursuing individual interests is often characterized as selfish behavior in Japanese society, and speaking on behalf of one's own personal interests and needs is widely regarded as an undesirable trait. Hiromitsu

51. Gary Garland, *What Is the Difference Between Japanese and American Baseball Arbitration?*, BASEBALLGURU.COM., <http://baseballguru.com/ggarland/bbread14.html> (last visited Nov. 10, 2009).

52. *Id.*

53. *G.G. Sato in Limbo*, *supra* note 49.

54. FSJ Sports, *Ishii and Buffaloes - Still Fighting*, JBASEBALL NEWS, Dec. 13, 1996, available at <http://www.fsjsports.com/jbaseball/basnews/ishiprob.html>.

55. FSJ Sports, *Sano Goes to Arbitration* JBASEBALL NEWS, Feb. 1, 1997, available at http://www.fsjsports.com/jbaseball/97news/0201_sano.html.

56. FSJ Sports, *Sano Agrees to Contract Before Arbitration*, JBASEBALL NEWS, Feb. 12, 1997, available at http://www.fsjsports.com/jbaseball/97news/0212_sano.html.

Ochiai (落合博満), the first Japanese player to ever request salary arbitration, experienced enormous social pressure when he made his request, even though he declared that his objective in seeking salary arbitration was to promote an increase in all players' salaries.⁵⁷

Finally, Japanese players realize that the likelihood that they will prevail in a salary arbitration case is extremely remote, for reasons that will become apparent later in this article. Therefore, while many players may feel dissatisfied about their contract negotiations with their team, they do not pursue salary arbitration because of the social and institutional pressures placed upon them, coupled with the pragmatic reality that they have little chance of prevailing.

The main reason salary arbitration offers little hope to Japanese players relates to the structure of salary arbitration in the NPB. Unlike the MLB, which employs neutral third party arbitrators for its salary arbitrations, salary arbitrations in Japan are reviewed by a three-person panel consisting of the NPB commissioner and the two league presidents pursuant to Article 95 of the *Yakyu Kyoyaku*.⁵⁸ Article 95 states, "Once the league president receives a salary arbitration request from a player, he shall set-up an arbitration panel. The arbitration panel shall consist of the commissioner and the two league presidents. The chairman of the panel shall be the commissioner."⁵⁹

The individuals selected to fill the positions of commissioner and league presidents are chosen by the Japanese club owners, who pay their salaries, and to whom they are accountable for their actions.⁶⁰ Consequently, the widespread view among the players is that they have little or no chance of prevailing in salary arbitration. This perception is supported by the data. As described in greater detail later in this article, only one Japanese player has ever prevailed in a salary arbitration case before the panel.⁶¹

In response to lopsided composition of the salary arbitration panel, the JPBPA has attempted to change the structure of salary arbitration to allow a representative selected by the players to serve on the panel,⁶² but thus far, these efforts have been unsuccessful.

Compounding the difficulties associated with facing a decidedly pro-

57. James B. Dworkin & Gregory S. Jelf, *Labor Relations in Japanese Baseball*, *BASEBALL ECONOMICS: CURRENT RESEARCH* 204 (1996).

58. *Id.* at 201-02.

59. NIPPON PROFESSIONAL BASEBALL, *supra* note 32, at art. 95.

60. Dworkin & Jelf, *supra* note 57, at 202.

61. *Lions' Sato*, *supra* note 48.

62. Kyodo News Service, *Baseball Players Want Representation in Pay Arbitration*, *JAPAN ECONOMIC NEWSWIRE*, Mar. 18, 1996 [hereinafter *Baseball Players Want Representation*].

management arbitration panel, players were not permitted to be represented by an agent in contract negotiations and salary arbitration until 2001.⁶³ Japanese management contended that the use of agents would create a contentious atmosphere that would undermine the spirit of cooperation in negotiations with players.⁶⁴ Also, the act of hiring an agent by a player was viewed by the clubs as a breach of the trust relationship between the team and player.⁶⁵

Despite the rule allowing agents, some Japanese owners have made it clear that they will not negotiate with player agents under any circumstances. For example, Tsuneo Watanabe (渡邊恒雄), the autocratic leader of Japan's most prominent team, the Yomiuri Giants (読売ジャイアンツ), stated emphatically, "If one of my players brings an agent into contract negotiations, then we'll cut his salary."⁶⁶

Salary arbitration decisions in the NPB are purportedly based upon a 250-point checklist system that not only takes into consideration individual statistics to measure player performance, but also more abstract qualities such as team play and mental sharpness on the field as well.⁶⁷ It is the opinion of many on the side of management that this diagnostic tool for assessing a player's value obviates the need for agents and salary arbitrations.⁶⁸

Pursuant to Article 96 of the *Yakyu Kyoyaku*, "The arbitration panel gives suggestions about salary and the dispute must be heard (settled) within thirty days of receipt of the salary arbitration request by the league president."⁶⁹

Article 97 specifies that, "If the team refuses salary arbitration, they lose the rights to the player. If the player refuses salary arbitration, the league president shall announce that the player has voluntarily retired from the game."⁷⁰

The following chart summarizes some of the hallmark dates and key facts in labor relations in the NPB and MLB:

63. WHITING, *supra* note 1, at 93.

64. *Id.* at 87-95.

65. *Id.*

66. WHITING, *supra* note 1, at 94.

67. Kenneth L. Shropshire, *Baseball Salary Arbitration in Japan*, 9 ENT. & SPORTS LAW. 17, 18 (1992).

68. *Id.*

69. NIPPON PROFESSIONAL BASEBALL, *supra* note 32, at art. 96.

70. NIPPON PROFESSIONAL BASEBALL, *supra* note 32, at art. 97; Ted Brock, *The Japanese Put the Arbitrary in Baseball Wage Arbitration*, L.A. TIMES, Mar. 6, 1991, at 2.

TABLE 1:

Event	Major League Baseball	Nippon Professional Baseball
Labor Union Established	1966	1985
Number of Strikes	5	1
Number of Lockouts	3	0
First Strike	1972 ⁷¹	2004
First CBA	1968	NA
Free Agency Established	1975	1993
Salary Arbitration Established	1973	1973 ⁷²
Player Agents Introduced	c 1967	2001

IV. JAPANESE SALARY ARBITRATION CASES

To date, there have only been six decisions by the salary arbitration panel in Nippon Professional Baseball. By contrast, from 1974 to 2008, arbitrators have ruled on behalf of the players 206 times and clubs 280 times, with many more disputes settling before the arbitration panel made any determination.⁷³

Two of the salary arbitration decisions in Japanese baseball involved foreign players. The first salary arbitration in Japanese baseball, which occurred in 1973, involved Leon McFadden (レオン・マックファーデン), a former Major League player with the Houston Colt .45s and Astros.⁷⁴ McFadden played one season in Japan with the Hanshin Tigers (阪神タイガース) in 1972, and requested salary arbitration for the following year.⁷⁵ In 1998, Dominican Alfonso Soriano (アルファンソ・ソリアーノ) became another foreign player (外国人選手) playing in Japan to request salary arbitration.⁷⁶ In both instances, these players lost their arbitrations, resulting in their retirements from Japanese baseball.⁷⁷ In McFadden's case,

71. This was the year of the first strike in professional baseball under the modern union. Ty Cobb orchestrated a one day "strike" among his teammates on the Detroit Tigers in 1912, but this was not a true labor strike. Also, the Brotherhood of Ball Players orchestrated a strike in the late 1800s, but they were not part of Major League Baseball. BERRY ET AL., *supra* note 3, at 58.

72. Data insufficient to determine whether salary arbitration was instituted in the NPB in 1973, or if it existed prior to that date and was amended in 1973.

73. Maury Brown, *Arbitration Scorecard*, BIZOFBASEBALL.COM, Feb. 20, 2009, http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=719&Itemid=116; see also *MLBPA Information*, *supra* note 7.

74. *Leon McFadden Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/mcfadle01.shtml> (last visited Nov. 11, 2009).

75. *Arbitrators to Rule on Ochiai's Contract*, JAPAN ECONOMIC NEWSWIRE, FEB. 14, 1991.

76. CODY MONK, ALFONSO SORIANO: THE DOMINICAN DREAM COME TRUE 73 (2003).

77. *Id.* at 73-74.

the decision spelled the end to his professional baseball career, while Soriano went on to star in MLB.

Soriano played for the Hiroshima Toyo Carp (広島東洋カープ) from 1996-1997, after having been signed at the age of seventeen out of one of the many Dominican baseball academies run by Japanese teams.⁷⁸ After the 1997 season, Soriano was approached by agent Don Nomura (団野村), who represented Nomo and Hideki Irabu (伊良部秀輝), among others.⁷⁹ Nomura used the press to expose to the public what he viewed as a system of exploitation through which Japanese teams took advantage of inexpensive Dominican labor to fill their rosters.⁸⁰ Nomura sought a salary for Soriano that was comparable to, but still considerably less than, what other foreign players were making in Japan.⁸¹ When contract negotiations with the Carp reached a stalemate, Soriano's case went to the arbitration panel, which ruled for the club.⁸² Nomura was not permitted to appear on Soriano's behalf. Subsequently, as the result of clever strategic maneuvering by Nomura, Soriano was declared a free agent by his team, thus clearing the path for his career in MLB.⁸³

The other four arbitrations have involved Japanese players. The first of these, in 1991, involved three-time NPB triple crown winner Hiromitsu Ochiai (落合博満).⁸⁴ Prior to his salary arbitration, Ochiai was infamous for notoriously making a "pay me or trade me" demand to his previous club, the Lotte Orions (ロッテオリオンズ).⁸⁵ The Orions granted his request and traded him to the Chunichi Dragons (中日ドラゴンズ) in 1987.⁸⁶

In a society that does not value individualism, Ochiai was scornfully viewed by some Japanese as a rebellious individual hero, while to others he came to represent a fundamental paradigm shift in societal attitudes and national cultural values.⁸⁷ Ochiai, who represented himself during his hearing

78. Marty Kuehnert, *Japan Baseball So Lame Even Imports Leave*, JAPAN TIMES, Aug. 21, 2002, available at <http://search.japantimes.co.jp/print/sp20020821mk.html>.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*; see also WHITING, *supra* note 1, at 141-45.

84. Shropshire, *supra* note 67, at 17.

85. Kuehnert, *supra* note 77.

86. Dworkin & Jelf, *supra* note 57, at 203.

87. Michael Shapiro, *Designated Rebel*, WORLD MONITOR, Apr. 1993, at 52; Michael Shapiro, *Japanese Hero Doing Things His Way*, N.Y. TIMES, Feb. 11, 1987, at D27, D29; Michael Shapiro, *Japanese Baseball Star Risks Acceptance with Individualism*, KANSAS CITY STAR, Feb. 24, 1987, at 5.

before the arbitration panel,⁸⁸ lost his case.

Ochiai's arbitration was followed in 1993 by the salary arbitration of Yokohama Bay Stars (横浜ベイスターズ) infielder Yutaka Takagi (高木豊).⁸⁹ The same panel that had found against Ochiai also decided against Takagi.⁹⁰

The 1996 salary arbitration decision in favor of the Orix Blue Wave, and against player Takahito Nomura (野村貴仁), prompted the JPBPA's aforementioned failed request for a player representative on the salary arbitration panel.⁹¹ The ruling against Nomura was the fourth decision rendered by the panel, all of which favored the clubs. It was the third decision against a Japanese player in five years. Convinced that the process was unfair and that the panel was disproportionately composed in favor of the owners, the union attempted to persuade the owners of the need for player representation on the panel, but to no avail.⁹²

The last salary arbitration decision in the NPB came in 2001.⁹³ That case, involving Tsuyoshi Shimoyanagi (下柳剛) of the Nippon Ham Fighters (日本ハムファイターズ), was significant for two reasons. First, it was the only time a Japanese player prevailed in a decision by the three-person salary arbitration panel.⁹⁴ Second, it marked the first time a player was represented in a salary arbitration case before the arbitration panel by an agent, with Japanese attorney Masataka Uesugi (上杉昌隆) representing Shimoyanagi.⁹⁵

However, while Shimoyanagi's arbitration was groundbreaking for those reasons, it would be misleading to characterize that decision as having a significant impact upon subsequent salary arbitrations disputes within the NPB. Since that decision in 2001, there have been no further rulings by the salary arbitration panel.

The following table provides a comprehensive overview of all the salary

88. Actually, it could be said that Ochiai did have an "agent" of sorts, in the person of his wife, Nobuko Ochiai (落合信子). Like her husband, she was flamboyant and outspoken, and used the press to openly pitch her husband's case for a higher salary, among other things. Jonathan Friedland, *Mrs. Baseball*, 157 FAR EASTERN ECON. REV., May 19, 1994, at 66.

89. Dworkin & Jelf, *supra* note 57, at 204.

90. *Id.* As Table 2 reflects, the arbitration panel actually awarded Takagi slightly more than what the team had offered, but in Japanese yen, this amount was so minimal, particularly considering what the player was requesting, that it is considered insignificant.

91. *Baseball Players Want Representation*, *supra* note 62.

92. *Id.*

93. *Id.*

94. *Shimoyanagi Makes Final Appeal*, JAPAN TIMES, Feb. 2, 2001, available at <http://search.japantimes.co.jp/cgi-bin/sb20010202a1.html>.

95. *Id.*

arbitration decisions in the NPB:

TABLE 2:⁹⁶

Year	Player	Team	Amount desired by player	Amount Offered by Team	Arbitration ruling by panel
1973	Leon McFadden レオン・マックファーデン	Hanshin Tigers 阪神タイガース	¥900万	¥600万	¥600万
1991	Hiroimitsu Ochiai 落合博満	Chunichi Dragons 中日ドラゴンズ	¥2億 7000万	¥2億 2000万	¥2億 2000万
1993	Yutaka Takagi 高木豊	Yokohama Bay Stars 横浜ベイスターズ	¥1億 263万	¥9330万	¥9840万
1996	Takahito Nomura 野村貴仁	Orix Blue Wave (オリックス・ブルーウェーブ)	¥6500万	¥3900万	¥3900万
1998	Alfonso Soriano アルファンソ・ソリアーノ	Hiroshima Carp (広島東洋カープ)	¥2145万	¥585万	¥585万
2001	Tsuyoshi Shimoyanagi 下柳剛	Nippon Ham Fighters 日本ハムファイターズ	¥1億 5000万	¥1億 3750万	¥1億 4000万

The data in this table reveals another distinction between salary arbitration in MLB and NPB. As both the Takagi and Shimoyanagi decisions indicate, unlike its United States counterpart, the Japanese arbitration panel is not limited to selecting one of the two figures presented to them in the arbitration.

V. CONCLUSION

It could be said that the differences in labor relations and the approach to salary arbitration in the NPB and MLB are the result of cultural differences. But which culture? One could argue that the practices in Japanese professional baseball are not influenced as much by national culture as they are by the organizational culture within the NPB. The NPB is a patriarchal organization, steeped in tradition, and run by willful, autocratic owners who are used to getting their way.

96. Japanese Professional Baseball Players' Ass'n (JPBPA) (日本プロ野球選手会), JPBPA.NET, <http://JPBPA.net/index.htm> (visited June 30, 2009); Michael Westbay, *Individual Players*, JAPANESEBASEBALL.COM, <http://japanesebaseball.com/players/index.jsp> (visited June 30, 2009); Legend: "Man" (万) yen (¥) and "Oku" (億) yen (¥) are units used for discussing salaries. 1万(man)=10,000. 1億(oku) = 10,000万 = 100,000,000.

While there has been some gradual change in the NPB, largely caused by the pressure on the NPB from the exodus of Japanese stars to the MLB, the JPBPA still has nowhere near the power wielded by the MLBPA. Although competition for Japanese baseball players on the global market place has increased, the NPB owners have steadfastly adhered to their dogmatic, insular approach, continuing to be grudgingly stingy in acquiescing to the requests of the Japanese players, even while the league deteriorates around them. While events like the first strike in the history of the NPB in 2004, and the first player victory in salary arbitration in 2001, are significant, there was little momentum built around those isolated successes. Professional baseball in Japan is changing, but at an excruciatingly sluggish pace. Consequently, it is unlikely, in the current environment, that there will be any dramatic change to the current status of salary arbitration in Japanese baseball at anytime in the near future.

