

It's Time to Retire the NBA's Rookie Salary Scale

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I. Introduction

Kawhi Leonard was the 2013-2014 NBA Finals Most Valuable Player—but his value to the San Antonio Spurs went well beyond his play on the court. The third-year player earned a salary of about \$1.9 million that year, making him the lowest paid Finals MVP in over twenty years.¹ Nobody would complain about making \$1.9 million at twenty-two years old, but it pales in comparison to the average salary of \$14.8 million for the previous twenty Finals MVPs. Moreover, the average NBA salary in 2013-2014 was about \$5 million, and eight out of twelve teammates on the Spurs roster earned more than Leonard that season. This inequitable relationship between pay and performance is largely due to the rookie salary scale—a labor condition limiting the amount and length of contracts for rookie players based on when they are selected in the NBA Draft.

II. Background

Following the 1994 draft, the Milwaukee Bucks signed its first overall pick, Glenn Robinson, to the largest ever contract for a rookie worth \$67.5 million over ten years.² Veterans became concerned that young, unproven players signing large contracts would affect their job stability, and owners were hesitant to make long-term investments worth several million dollars on players who had yet to play a single NBA game. As part of the 1995 CBA negotiations the next year, the NBPA, led mostly by veteran players, agreed with the NBA and the owners to implement a rookie salary scale and other contract restrictions for newly drafted first-round picks. When discussing this decision, long-time sports

¹ <http://www.sports-reference.com/cbb/>

² Jeremy Schmidt. "How Glenn Robinson Changed the NBA." *Bucksketball*. 23 June 2009. Web. 10 Oct. 2015. <<http://www.bucksketball.com/2009/06/how-glenn-robinson-changed-the-nba/>>.

agent David Falk stated that “renegotiating the rookie wages was a cosmetic victory and neither side understood the future result of their actions.”³

Twenty years later, the results show that players on rookie contracts are significantly underpaid compared to veteran players based on their performance and contribution to team wins. With a seven-year, \$24 billion television deal set to take effect in the 2016-2017 season—increasing the salary cap from \$64 million to approximately \$95 million⁴—the scale amounts must at least increase relative to the overall salary cap increase to prevent even more inequitable conditions. The current CBA provides a clause for either side to opt out following the 2016-2017 season, and many experts believe the NBPA will activate this clause, leading to a potential player lockout and the opportunity for changes to the 2011 CBA.⁵

III. Legal Analysis

The Eighth Circuit’s 1976 decision in *Mackey v. NFL* later that established the three-part test for when the exemption applies.⁶ The *Mackey* test considers whether “(1) the trade restraint affects primarily only the parties to the collective bargaining relationship; (2) the agreement concerns a mandatory subject of collective bargaining; and (3) the agreement is a product of *bona fide*, arm’s-length bargaining.”⁷ The NBA became the first professional league to face a challenge invoking the *Mackey* test in *Wood v. NBA*.⁸ The court took a broad view, granting significant discretion to the NBPA as the exclusive bargaining representative for the players.⁹ Similarly, the NFL has faced a number of antitrust

³ See Schmidt, *supra* note 2.

⁴ Marc Stein. "League to Teams: Significant Salary Cup Jump Looms." ESPN, 15 Apr. 2015. Web. 11 Oct. 2015. <http://espn.go.com/nba/story/_/id/12711616/teams-told-nba-salary-cap-hit-100m-2017-18-season>.

⁵ *Id.*

⁶ *Mackey* at 608.

⁷ *Id.*

⁸ *Wood* at 955.

⁹ *Id.*

challenges in *Zimmerman v. NFL*,¹⁰ *Brown v. Pro-Football, Inc.*,¹¹ and *Clarett v. NFL*,¹² and the courts have favored a labor law analysis instead of antitrust.

Ford Motor Co. v. Huffman establishes the judicial definition on what qualifies as fair representation and determines to whom it must be provided. Essentially, a union must: (1) represent all members; (2) of a bargaining unit; (3) making an honest effort to serve interests, without hostility to any; and (4) always subject to good faith and honesty of purpose in the exercise of its discretion.¹³ Since “complete satisfaction of all members is hardly to be expected,” the court acknowledges the existence of differences between members and does not impose a duty on the union to treat every member the same. Although *Huffman* laid the foundation for the duty of fair representation, there was little direction for determining what constituted a breach of this duty. The first post-*Huffman* case to begin filling in the gaps was *Vaca v. Sipes*.¹⁴ The Supreme Court provided that a union breaches the duty of fair representation when its conduct towards a member of the bargaining unit is “arbitrary, discriminatory, or in bad faith,” but it did not elaborate.¹⁵ Several cases followed *Vaca* that would help clarify each of these requirements of the duty of fair representation.

In *Air Line Pilots*, the Supreme Court defined union conduct as arbitrary “only if, in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior is so far outside a ‘wide range of reasonableness’ as to be irrational.”¹⁶ *Marquez v. Screen Actor’s Guild* elaborated and held that union conduct is only classified as arbitrary if it is “without a rational basis or explanation,” further noting that this deferential standard “gives the union the room to make discretionary decisions and choices, even if those judgments are ultimately wrong” or turn out to be a “bad deal for the

¹⁰ *Zimmerman v. NFL*, 632 F. Supp. 398 (D.D.C. 1986).

¹¹ *Brown* at 324.

¹² *Clarett v. NFL*, 369 F.3d 124 (2d Cir. 2004).

¹³ *Id.*

¹⁴ *Vaca v. Sipes*, 386 U.S. 171 (1967).

¹⁵ *Id.* at 182.

¹⁶ *Air Line Pilots Ass’n, International v. O’Neill*, 499 U.S. 65 (1991).

employees.”¹⁷ *Steele* and *Lockridge* determined what constitutes “unlawfully discriminatory” conduct, deciding that some forms of discrimination would be permitted so long as they were based on “relevant differences” such as seniority, rather than “irrelevant and invidious” conditions such as race.¹⁸ To succeed, a plaintiff must provide “substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives.”¹⁹ Finally, in order to prove a breach based on “bad faith,” a claimant must provide “substantial evidence of fraud, deceitful action or dishonest conduct” on the part of the union.²⁰

Although the court has stated that particular provisions related to rookies and prospective players could be challenged on the grounds of a breached duty of fair representation, it appears clear that the court considers prospective players to be part of the bargaining unit and finds the players association to be an adequate representative of their rights and interests. There have not been any legal challenges in professional sports based on the duty of fair representation since the *Clarett* court mentioned the possibility, but a recent article in the Spring 2014 *Sports Lawyers Journal* applies this analysis for the NBA’s minimum age rule.²¹ While this article concludes that a legal challenge to the minimum age rule would likely be ineffective, the issue is far from settled and does not say anything about how a challenge against the rookie salary scale might play out.²²

¹⁷ *Marquez*, 525 U.S. at 45-46 (citing *Air Line Pilots Ass’n*, 499 U.S. at 78-81)

¹⁸ *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192, 203 (1944)

¹⁹ *Amalgamated Ass’n of Street, Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 301 (1971).

²⁰ *Id.* at 299; *See also, Ryan v. N.Y. Newspaper Printing Pressmen’s Union No. 2.*, 590 F.2d 451, 455 (2d Cir. 1979) (stating that seniority provisions satisfied legitimate long-range objectives without animus or ill will).

²¹ *See Brooks*, *supra* note 65.

²² *See Brooks*, *supra* note 65 at 115 (citing Michael McCann, *Justice Sonia Sotomayor and the Relationship and the Relationship Between Leagues and Players: Insights & Implications*, 42 CONN. L. REV. 901, 918 (2010)).

IV. Economic Analysis

Economists have long studied the relationship between pay and performance in various markets, finding that strong correlations between pay and performance within an organization leads to more financially stable markets. Sports economists have also tackled this concept, but the research on the impact of individual performance on team success in basketball was hardly settled until 2006 when Berri, Schmidt, and Brooke published “*The Wages of Wins*.”²³ They created a “win share” statistic, derived from a regression analysis of a wide variety of individual performance metrics that do not directly involve scoring points but still affect the outcome of a game.

A 2007 study by Chad Turner and John Hakes, *The Collective Bargaining Effects of NBA Player Productivity Dynamics*, uses data from the 1985-1986 through the 2005-2006 seasons to measure the relationship between pay and productivity in the NBA.²⁴ Using a slight variation of the win share statistic, Turner and Hakes found that, on average, salary peaks between 2.5 to 3.1 years *after* performance peaks for NBA players.²⁵ Another study ran regressions of salaries on performance statistics and years of experience in order to estimate the market value of a player with “x” years of experience given his performance measures.²⁶ Using a sample of all NBA players on active rosters during the 2001-2002 season, they found that players earned more than their market value in their first two seasons, but then teams reaped a surplus the next two seasons for a net benefit of \$1.3 million over the first four years of a player’s career.²⁷ Although these studies discuss the critical points between the second and fourth years of a player’s career, they don’t discuss the rookie scale in great detail as the

²³ David J. Berri, Martin B. Schmidt, and Stacey L. Brook. *The Wages of Wins: Taking Measure of the Many Myths in Modern Sport*. Stanford, Calif: Stanford Business Books, 2006. Print.

²⁴ See Turner & Hakes, *supra* note 84.

²⁵ *Id.*

²⁶ See Groothius, Hill, & Perri, *supra* note 84.

²⁷ *Id.*

driving factor for these results, nor does they compare results with data before the scale was implemented.

To support these earlier studies, I compiled and analyzed a data set that combines aspects of these previous but attempts to specifically measure the relationship between pay and performance as it relates to the league before and after the rookie salary scale was implemented. My data includes the salary, experience level, and win share statistic for each player in the set. Explaining the formula for calculating the win share statistic is complex, but the concept is pretty simple. Essentially, a player’s win share is the total number of his teams’ wins that he is responsible for producing. Just like a team shares its total amount of salary paid among its players, the win share statistic equates the breakdown of the total wins produced by a team among its players. This facilitates my study by allowing me to calculate a “dollars per win” number for each player in my data set. I used two separate three-year periods—one with players from the 2011-2012 season through the 2013-2014 season, and one with players from the 1992-1993 season through the 1994-1995 since the rookie salary scale was introduced in 1995.

Figure 1.1 summarizes my results from the 1992-1995 set of players, where the market value of a win was approximately \$405,000.

Year in League	Total Win Shares	Total Salary	\$/WS	% of Market Value
1	216.5	\$99,709,724	\$460,553	113.5%
2	318.2	\$126,843,898	\$398,629	98.3%
3	326.7	\$128,309,000	\$392,743	96.8%
4	356.0	\$128,107,305	\$359,852	88.7%
5	358.5	\$132,454,300	\$369,468	91.1%
6	389.1	\$129,765,900	\$333,503	82.2%
7	263.2	\$104,113,585	\$395,568	97.5%
8	282.2	\$106,156,000	\$376,173	92.7%
9	269.8	\$102,369,900	\$379,429	93.5%
10	194.9	\$95,919,000	\$492,145	121.3%
11+	295.6	\$173,000,950	\$585,254	144.3%
<i>Average Value of a Win (\$/WS)</i>			\$405,647	100.0%

Although veterans were concerned that young, unproven players were earning excessive contracts, the data suggests that this wasn't the case. Perhaps the most notable result from this data summary is how accurately and evenly distributed the salaries matched performance before the scale was implemented. Although teams still faced uncertainty due to injuries, the cost of evaluating and developing young players was very reasonable and fair before the rookie salary scale was implemented placing restrictions on free agency. Now, just twenty years after the rookie salary scale was implemented, its effects are beginning to reach alarming levels. *Figures 1.2 and 1.3* summarize results from the 2011-2014 seasons.

Figure 1.2

Year in League	Total Win Shares	Total Salary	\$/WS	% of Market Value ('11-'14)
1	213.7	\$263,290,451	\$1,231,987	82.6%
2	325.3	\$254,879,935	\$783,574	52.5%
3	400.3	\$287,923,600	\$719,188	48.2%
4	416.3	\$327,242,030	\$786,101	52.7%
<i>Average Value of a Win (\$/WS)</i>			\$1,491,685	100.0%

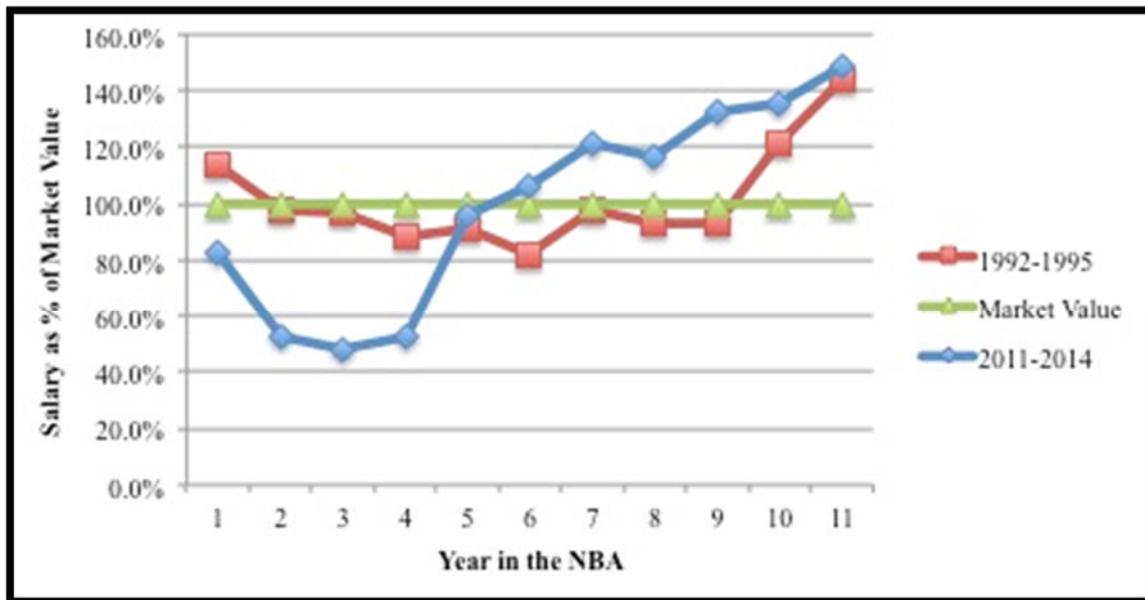
Figure 1.3

Year in League	Total Win Shares	Total Salary	\$/WS	% of Market Value ('11-'14)
5	340.4	\$487,734,356	\$1,432,980	96.1%
6	313.3	\$499,030,199	\$1,592,819	106.8%
7	282.5	\$512,131,432	\$1,812,660	121.5%
8	308.7	\$535,405,545	\$1,734,439	116.3%
9	265.9	\$526,547,808	\$1,980,405	132.8%
10	243.1	\$492,959,927	\$2,027,731	135.9%
11+	619.1	\$1,374,720,358	\$2,220,569	148.9%
<i>Average Value of a Win (\$/WS)</i>			\$1,491,685	100.0%

Using data from the most recent seasons, we see that rookies are already being underpaid, but the most worrisome numbers are during the second through fourth seasons. In these seasons of a player's career, teams are able to essentially pay this group of players half of their market value. Moreover, starting in the sixth season and continuing until retirement, the average veteran player is overpaid. Veterans are earning approximately three times what second through fourth year players are earning for the same amount of performance.

Figure 2.1 graphs both data sets together to show how the relationship between pay and performance has dramatically changed so much from before the implementation of the rookie salary scale until now.

Figure 2.1



While the percentage of win shares from young players has stayed about the same, the amount they are being paid for that production has been reduced to one-third of pre-rookie scale values. This suggests that the fear from veteran players that rookies would start to receive unreasonable contracts might have been unfounded. The league capitalized on this fear in order to create a cost structure that

chooses four years as the amount of time for a rookie contract and sets scaled wage amounts far below the average market value of these players. Although a legal challenge against the rookie salary scale would probably be ineffective, there are economic justifications for creating better, mutually beneficial solutions for the NBA and all of its players.

V. Solutions for 2017 CBA Negotiation

1. Basic Changes to Length, Amount, and Negotiating Range

The NBA and NBPA should eliminate the fourth year team option, decreasing the maximum length of rookie contracts from four to three years. This would essentially revert back to the way it was first implemented in 1995 when first-round draft picks could become free agents after their third season.²⁸ Employees in any industry should not have to work longer than the average career just to get paid what they are worth—eliminating the fourth year team option would preserve many of the benefits and true purpose of the rookie scale to the league, owners, and veterans, while providing younger players with a more attainable opportunity to be adequately compensated for their services.

An even simpler adjustment would be to increase the scale amounts or simply increase the range of negotiation. A “max” deal is something that should only be attained by the most deserving players—but this “max” offer has basically become automatic for all first round draft picks. By allowing players and teams to negotiate within a wider range, teams could pay players up to 150% of the scale amount, while maybe paying others less than the 120% they are currently receiving. Moreover, this could even be something that doesn’t kick in until the second year—giving teams will a full season of results to

²⁸ *Id.*

bring to the negotiation. From 1992-1995, immediately before the rookie salary scale was implemented, the lowest a group of players was paid was 82% of their value. Now, however, we have three years in a row from the second through fourth seasons when the average player earns below 53% of his true market value.

2. Fourth-year Player Option and Performance Clauses

Similarly, this alternative proposes changing the fourth year team option to a player option. Just like player options in veteran contracts, the player would have to make a decision preceding the option year whether to opt in, or become a free agent.²⁹ The team would still have the same control over a player during his first three seasons, but rather than allowing the team to once again decide if they will re-sign the player for the fourth year, a player option puts the ball in his court. He can either accept the contract as it would have been offered under the previous team option, or, he can opt-out and become a free agent—at which point he could end up earning more, less, or nothing at all based on negotiations with other teams. The player’s original team could even have the right to match other offers, essentially giving the team that drafted the player the option for a fourth year with him, but instead, at a salary negotiated in the free agent market.

The NBA uses “starter criteria”³⁰ and other performance metrics when determining the maximum contract that players can sign in their fifth season and beyond, but does not use the same idea for adjusting rookie scale contracts. For example, a player drafted between picks 10-30 who meets starter criteria is treated as if he was the ninth overall pick for the purposes of determining his maximum qualifying offer following the rookie contract.³¹ Additionally, players who achieve certain accolades—NBA MVP, All-NBA 1st, 2nd, or 3rd team at least twice, or All-Star game starter at least twice—are able

²⁹ *Id.*

³⁰ *See* Coon, *supra* note 8.

³¹ *Id.*

to earn a maximum 30% increase over their previous year's salary, rather than the 25% maximum applied to all other players.³² Clearly the CBA acknowledges the need for making adjustments to future contracts based on early career performance, but it should approach this need with more urgency by allowing players on rookie scale contracts to renegotiate based on certain performance measures, especially during an age of advanced analytics.

VI. Conclusion

There are several ways to improve salary inequity through changes the rookie salary scale, but so few voices calling for change. The history of the NBA and the development of antitrust and federal labor law in the professional sports context have combined in a way that eliminates most legal challenges to NBA labor conditions. Regardless of the projected outcome in a legal setting, this is an issue that the NBA and the NBPA must address in the upcoming round of CBA negotiations in 2017. They must, at least, agree to basic adjustments to the number of years or scale amounts in accordance with the anticipated salary cap increase to prevent an even wider gap in salary inequity. But more creative and effective alternatives are also available and should be explored alongside and just as extensively as issues like the minimum age rule. If nothing changes with the rookie salary scale in 2017, the two sides will likely have to wait until 2021 before having another opportunity—and four years is a long time, way too long for a rookie contract.

³² *Id.*