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Revisiting Football Labor Disputes Decided In Minn.

Law360, New York (August 3, 2011) -- The dust has finally settled in the latest round of National Football League labor disputes. On July 25, 2011, the players agreed to accept a proposal to end the owners' lockout and guarantee a full 2012 regular season. As in previous disputes, an unlikely forum — the United States District Court for the District of Minnesota—played a central role in the dispute.

This article traces the history of NFL labor disputes in the District of Minnesota and the Eighth Circuit concluding with Brady v. NFL, and discusses how the resolution of these disputes has shaped professional football as we know it today.[1]

Mackey v. NFL

The district's experience with NFL labor disputes began in 1975. Shortly after the NFL Players Association ("NFLPA"), the exclusive bargaining representative of the players, and the NFL entered into their first collective-bargaining agreement ("CBA"), several players filed an antitrust lawsuit claiming that the "Rozelle Rule," which restricted free agency, violated Section 1 of the Sherman Act.[2]

The NFL argued that it was protected from antitrust liability by the nonstatutory labor exemption, which shields employers and management from antitrust claims where an employer is participating in collective bargaining with a union.[3] The Minnesota district court ruled that the rule was a per se violation of Section 1 as well as an invalid restraint of trade under the rule of reason, and the Eighth Circuit affirmed.[4]

The Eighth Circuit's opinion in Mackey set forth an early legal test for application of the nonstatutory labor exemption in the professional-sports context. The court based its ruling on a balancing of the competing policies underlying the labor laws, which generally seek to protect collective action by employees, and the antitrust laws, which generally seek to promote competition.[5]

Reynolds v. NFL

While the Mackey litigation was pending, the CBA between the players and the NFL expired, and the players filed another antitrust suit against the NFL.[6] In 1977, the owners and the players entered into a settlement agreement, pursuant to which a new CBA containing a revised system of free agency known as "right of first refusal/compensation" would be implemented and the NFL would withdraw its petition to the Supreme Court for a writ of certiorari in Mackey.[7]

In addition to clarifying the nonstatutory labor exemption, the courts' rulings paved the way for free-agency rights for NFL players. Free agency is now a player's strongest weapon to increase his compensation, and one of a team's most effective tools to strengthen its roster. And to this day, free agency — and trades prompted by looming free agency — are the most common forms of player movement in the league.

Powell v. NFL

After a 57-day strike by the players in 1982, the parties entered into another CBA, which superseded the 1977 CBA. This agreement included another revised version of the right of first refusal/compensation system and expired in 1987.[8] When negotiations failed to produce a new CBA, the NFLPA initiated another strike.[9] Unsuccessful, the players filed another antitrust action alleging that the free agency restrictions violated the Sherman Act.[10]

The Minnesota district court held that the nonstatutory labor exemption terminates with respect to a mandatory subject of bargaining after the expiration of a bargaining agreement if the employers and a union reach a bargaining impasse.[11]

Citing the Supreme Court's opinion Brown v. Pro Football Inc., the Eighth Circuit reversed the district court, holding that the nonstatutory labor exemption can extend beyond an impasse in negotiations and that, on the facts of that case, antitrust claims were not appropriate because the parties could still negotiate and labor policy favors "negotiated settlements rather than intervention by courts."[12]

Notably, however, the court stated that "[t]he League concedes that the Sherman Act could be found applicable, depending on the circumstances," such as a situation in which "the affected employees ceased to be represented by a certified union."[13]

McNeil v. NFL

In response to the Eighth Circuit's opinion in Powell, the NFLPA disclaimed its union status and the individual players filed an antitrust action against the NFL.[14] The Minnesota district court granted the players' motion for summary judgment, holding that the exemption terminated where no "ongoing collective bargaining relationship" exists because the union has dissolved.[15] Later, the players won at trial and the jury awarded them substantial damages.[16]

White v. NFL

Shortly after the McNeil case, other NFL players filed a class action lawsuit against the league seeking total or further modified free agency.[17] The players and the league ultimately entered into the White stipulation and settlement agreement ("SSA") and a new CBA in 1993.[18] The SSA "allowed for recertification of the [NFLPA] and the resumption of the collective bargaining relationship between the parties."[19]

In addition, under the SSA, the NFL agreed to waive any right in the future to assert the nonstatutory labor exemption, after the expiration of the CBA, on the ground that the players' disclaimer was an invalid attempt to end a labor exemption.[20]

The SSA further liberalized free agency, created the "franchise" tag that allows teams to restrict one player's free-agency movement, and instituted the salary cap which is widely credited with hastening teams' mobility from the bottom to the top of standings (and vice versa).[21] The SSA — which governed owner-player relations for 18 years — was overseen by the district court, which issued a handful of decisions interpreting its terms.

Brady v. NFL

In 2008, the NFL notified the players under the terms of the SSA that it was going to opt out of the final two years of the CBA. The parties then engaged in two years of unsuccessful negotiations to reach a new CBA. In the course of those negotiations, the NFL threatened a potential lockout to exert economic pressure on the players. On March 11, 2011, the CBA expired, and the NFLPA disclaimed the players' union.

That same day, several players commenced a lawsuit in the District of Minnesota, alleging that the NFL's planned lockout was an illegal group boycott and price-fixing arrangement in violation of Section 1 of the Sherman Act. On the next day, the NFL instituted the lockout it threatened. In court, Hon. Susan Richard Nelson agreed with the players and issued a preliminary injunction against the lockout.

The owners appealed to the Eighth Circuit, arguing that the Norris-LaGuardia Act ("NLGA"), which prevents courts from issuing injunctions "involving or growing out of a labor dispute,"[22] precluded the injunction. The Eighth Circuit first detailed the long history of lawsuits and collective-bargaining disagreements between the players and the owners, most of which were settled by negotiation after judicial decisions.[23]

The court then examined the provisions of the NLGA in detail, examined the legislative history of the NLGA, and ruled in favor of the owners and dissolved the district court's preliminary injunction. The court reasoned that the NLGA protects employer activity in ongoing labor disputes, and that the players' antitrust suit was truly an extension of a labor dispute. The decision has practical effects that may influence employer-employer relations inside and outside of professional sports.

The decision that federal courts cannot issue injunctions against either side in at least the early stages of labor negotiations does not deprive the courts of jurisdiction entirely. In this case, for instance, the district court, amid all the litigation, ordered the parties to keep negotiating, which in this case produced a mutually acceptable agreement in time to save the season.

Another practical effect of the Brady decision, of course, is that the players may look to find another home field for future antitrust litigation given their setback at the Eighth Circuit. If that happens, Minnesota's place in NFL history may once again be relegated to the Vikings' Super Bowl futility.

Nonetheless, even though the sides have reached a new collective-bargaining agreement, many of the features that arose out of earlier Minnesota cases — unrestricted free agency, salary caps and franchise tags — will remain a fixture of professional football for years to come.

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[1] No. 11-1898, 2011 U.S. App. (8th Cir. Jul. 8, 2011).

[2] Mackey v. NFL, 543 F.2d 606, 609 (8th Cir. 1976).

[3] Id. at 611-12.

[4] Mackey v. NFL, 407 F. Supp. 1000 (D. Minn. 1975), aff'd Mackey, 543 F.2d at 620-21.

[5] Id.

[6] Reynolds v. NFL, 584 F.2d 280, 282 (8th Cir. 1978).

[7] Id.; Alexander v. NFL, No. 4-76-123, 1977 U.S. Dist. (D. Minn. Aug. 1, 1977).

[8] Powell v. NFL, 930 F.2d 1293, 1295-96 (8th Cir. 1989); Powell v. NFL, 678 F. Supp. 777, 780-81 (D. Minn. 1988), rev'd, 930 F.2d at 1296.

[9] Powell, 930 F.2d at 1296.

[10] Id.

[11] Powell v. NFL, 678 F. Supp. at 788.

[12] Powell, 930 F.2d at 1296, 1303 (quoting Brown v. Pro Football Inc., 518 U.S. 231, 236-37 (1996) ("to give effect to federal labor laws and policies and to allow meaningful collective bargaining to take place, some restraints on competition imposed through the bargaining process must be shielded from antitrust sanctions").

[13] Id. at 1303, n. 12.

[14] McNeil v. NFL, 764 F. Supp. 1351, 1359 (D. Minn. 1991).

[15] Id. at 1358.

[16] McNeil v. NFL, No. 4-90-476, 1992 U.S. Dist. (D. Minn. Sept. 10, 1992).

[17] White v. NFL, 822 F. Supp. 1389, 1395 (D. Minn. 1993).

[18] White v. NFL, 836 F. Supp. 1458, 1456-66 (D. Minn. 1993); White v. NFL, 836 F. Supp. 1508, 1511 (D. Minn. 1993).

[19] Id.

[20] Brady v. NFL, No. 11-639, 2011 U.S. Dist., at *16 (D. Minn. Apr. 25, 2011) (citing Doc. No. 43-1 (Declaration of Barbara P. Berens, Ex. A (Amended SSA)) Art. XVIII § 5(b))).

[21] White, 822 F. Supp. at 1412-14.

[22] 29 U.S.C. § 101 et seq.

[23] Brady v. NFL, 2011 U.S. App., at *6-15.