

Now, It's the Owners' Move

Written by {ga=gdbenz}

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To NFL owners, the U.S. District Court in Minneapolis, Minnesota is what Three Rivers Stadium used to be to Cleveland Browns fans—an automatic loss. With Judge Susan Richard Nelson's decision late Monday to enjoin the owners from locking out the players, the losing streak continues and it isn't looking good for the rest of the legal action the owners are facing in her court, either.

The dispute between the owners and the players is complex but can be boiled down to a few key points in terms of understanding Judge Nelson's ruling.

The owners and the NFLPA were engaged in collective bargaining for a new labor contract. Just before the old contract expired, the NFLPA decertified as the official bargaining representative for the players, meaning that they immediately disclaimed any right to bargain with the owners on the players' behalf. Meanwhile, when the old contract actually expired, the owners imposed a lockout, which is the management equivalent of the employees exercising their right to strike.

In anticipation of the lockout, a group of players, led by Tom Brady, the quarterback for the New England Patriots, filed a lawsuit alleging that the impending (and, ultimately, the actual) lockout constituted illegal concerted action by 32 separate businesses that served to deny the players the economic right to make a living playing professional football. (There were numerous other, similar allegations regarding illegal concerted activity, but for purposes of Judge Nelson's decision, the lockout was at issue.) They also asked the judge to stop the owners from imposing that lockout. The judge granted that request. She hasn't yet ruled on the underlying merits of the players' main contention, that the owners committed numerous other violations of federal anti-trust statutes.

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The owners fought that injunction on a couple of fronts, but mainly argued that the players' action in decertifying as a union was essentially a sham. The owners have filed a charge with the National Labor Relations Board, the federal agency with exclusive jurisdiction over those kinds of disputes, making just that claim, that the decertification was a sham. That charge has not yet been resolved.

Thus, the gist of the owners' argument, and stripping away the legalese, is that unless and until the NLRB rules on their charge, federal labor law prevents the judge from issuing such an injunction.

Because this is professional sports, it seems as if the issues become unnecessarily complex and harder to grasp. A better way to think about the arguments taking place is to put the dispute in a more typical scenario.

If the owners of a local steel mill were bargaining with their employees for a new contract and then the union struck once the contract expired, federal labor law under almost all circumstances would prohibit a judge from issuing an injunction to stop that strike. The same rules apply when there's a lockout.

So why is this dispute any different? Well, it isn't and it is.

It isn't any different because the same laws govern the NFL's labor problems as the labor dispute at the local mill. It is because the union here did something that no other union would typically contemplate—it decertified. As soon as that happened, at least according to the judge, it turned this into more of a commercial and less of a labor dispute and hence, in her view, the governing labor laws preventing injunctions didn't apply.

Not surprisingly, the owners are going to immediately appeal this ruling to the Eighth Circuit Court of Appeals. Whether that court grants the owners an expedited review of the case isn't yet known, but it's certainly not a given. What is certain, though, is that eventually that court will have to issue a decision on all of this litigation if the parties continue down this insane path of self destruction much longer.

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Although some commentators suggest that the owners stand a better chance at the court of appeals than they ever did in the district court, the real problem the owners face is the death grip control the Minnesota courts have over the league in the first place. For this the owners have essentially only themselves to blame when they agreed to allow the court to maintain that control as part of the settlement the last time these parties went to the mattresses to resolve their differences.

The other problem for the owners is that they really have very little room to maneuver from a legal standpoint, even if their arguments make practical sense. Federal labor law supports the ability of a certified bargaining representative to give up that status at their discretion, assuming it's done in good faith. In the past, good faith has been defined to mean simply that the members of the union unequivocally voted to decertify. That was certainly the case here.

So much of the owners' position before the NLRB and hence in the district court as well hinges on trying to make the argument that despite the players voting to decertify, the decertification wasn't in good faith. If the decertification is a sham, the argument, goes, then the law absolutely prohibits a judge from enjoining a lockout.

Unfortunately for the owners, there's very little authority for their view, as the judge noted. Thus, she didn't believe the federal labor law preventing injunctions applied.

As the judge noted in her opinion, past strikes have failed the players, although such a finding is of dubious legal relevance. Nonetheless, given that the only effective way for the players to balance the perceived imbalance of power between them and the owners is for them to bargain and, failing that, decertify to prevent the owners from imposing new working conditions. If the owners know that the union can decertify at any time, they will effectively be forever precluded from locking out the players again. In the judge's view, this is a perfectly acceptable strategy. She's right, but so what?

This is where the short-sightedness of all this really bubbles to the surface. The threat of decertification to prevent a lockout only works when it's the owners trying to extract economic concessions. It is of no consequence and indeed harmful if it's the union seeking economic gains because the owners in that situation would love nothing more than to preserve the status quo.

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Issues change over the years and eventually what does around does come around. When the economy does improve, the players will want a bigger piece of the pie and it will be the owners that will sit back and not lift a finger to give it to them.

Moreover, and perhaps more to the point, the union's pursuit of legal leverage is ultimately what is preventing these parties from reaching a meaningful agreement. As long as the players continue to live under the misguided notion that a court will force the owners to withdraw their demands for economic realignment they will never sit down and engage in meaningful bargaining. Indeed, they players and their representatives have yet to approach these negotiations in a meaningful way.

The legal machinations between the owners and their employees here are about as exciting as watching televised chess to the average fan. What fans want to know is whether or not there will be football come this fall. Right now it's looking better but that could change with the next pawn-to-queen's-rook-four move that gets made in the form of the owners' next legal filing.

Keep in mind, though, that however long any or all of this legal process takes, the ultimate truth is that NFL football being played each and every fall is only possible for as long as reasonable parties with shared interests want to see that happen and that can only happen with a new agreement. The owners grasp that point. I'm not so sure the players or their misguided advisers ever will.