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9B21C029

Negotiating A New Agreement (A): The NFLPA and NFL Owners[[1]](#endnote-2)

Justin Patterson and Professor Ann Frost wrote this exercise solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.

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This exercise takes the form of a role play in which participants adopt roles in a fictional labour negotiation. Although the background and context for the exercise were based on published sources relating to the National Football League (NFL) and the NFL Players Association (NFLPA), the teams and individuals used in the role play were created solely for the purposes of this exercise. These teams and individuals are wholly fictitious creations and not in any way associated with the NFL or the NFLPA. Any resemblance to actual NFL or NFLPA teams or individuals is unintentional and purely coincidental.

Background[[2]](#endnote-3)

The NFL Collective Bargaining Agreement (CBA) was the labour agreement between the NFLPA and the NFL. When the NFLPA was established in 1956, it became the second-oldest labour union to represent players in one of the big four professional sports leagues: the National Basketball Association (NBA), the Major League Baseball (MLB) organization, the National Hockey League (NHL), and the NFL. The National Basketball Players Association was the first to do so, in 1954. Before the NFLPA was formed, players were expected to negotiate for themselves, leading to very unfavourable working conditions for players.

After the establishment of the NFLPA, players were provided with formal representation in negotiations that eventually led to the terms included in the current NFL CBA. The first CBA was reached in 1968, after the NFLPA went on strike against the NFL owners in order to secure increased salaries, pensions, and benefits. Eventually, negotiations between the NFLPA and the NFL expanded to include collective agreements on a number of other issues that affected the business of the NFL, including injury grievances, the expansion of free agency, and guarantees regarding the portion of league revenues that players would receive.

One of the more significant issues introduced in 1994 was how the league’s salary cap would be handled. A salary cap was an agreement between the league and the players that limited the amount of money teams were allowed to spend on player salaries. The NFL was one of the few professional sporting leagues to use a hard cap, which meant that no team was allowed to exceed the cap limit for any reason. As of 2019, the salary cap per team was US$188 million.[[3]](#endnote-4) However, this number usually increased every year: as league revenues increased, so did the cap.

When the most recent round of bargaining had occurred, almost 10 years ago, not only had the NFL owners locked the players out but a court-ordered meditator had also eventually been assigned to work with the parties to reach a deal. It was only after substantial work by the mediator that the two sides reached an agreement.

The current CBA was set to expire after the current season wrapped up in March 2020. Both the NFLPA and the NFL owners were eager to get a deal done to avoid another work stoppage. However, early comments heard throughout the league suggested that getting a deal done would not be a simple task.[[4]](#endnote-5) One NFLPA representative stated, “I’ve got a feeling it won’t be as simple as it was last time, just because you have more players like myself who have been through the lockout before, saw how the NFLPA leadership handled that into where we are now, which I don’t think was a bad deal but there is a lot that I feel like we want to get back as players, or get as players.”[[5]](#endnote-6) Unfortunately, the NFLPA president was presenting a similar message: “I’m not saying we are sitting here waiting for a lockout, hopefully down the road we can figure something out, but at the end of the day, to me, it would be malpractice if we weren’t ready. It happened before, it can happen again.”[[6]](#endnote-7)

The CBA negotiations were historically complex, with a number of different parties having competing as well as overlapping areas of interest. This complexity was compounded by significant changes in circumstances since the ratification of the last CBA, nearly 10 years ago. In this context, it would be a mistake to enter these negotiations with a single make-or-break issue in mind; the negotiations were ongoing, and new issues and priorities arose each day. Both the NFLPA and the NFL owners were aware that everything had a price, and both knew that they needed the other to succeed. This was why getting a fair deal in place was imperative for both parties.[[7]](#endnote-8)

Controversy

The NFL had faced ongoing controversy since its formation in 1920. One recent controversy involved protests during the playing of the national anthem, beginning in 2016. A number of players from all 32 teams had begun to kneel during the anthem to protest police brutality and racial inequality, and this had led to a drop in television ratings as well as criticism not only from fans but also from then President Donald Trump. As a result, the NFL introduced a national anthem policy to curb such behaviour; however, because this infringed on players’ rights to free speech, it was eventually removed.[[8]](#endnote-9)

Today was no different, as the league was now assailed by controversy over several other issues. One such issue was the link between repeated head trauma and chronic traumatic encephalopathy (CTE), which was made in 2002.[[9]](#endnote-10) Those suffering the effects of CTE were plagued by depression, memory loss, and dementia and had a frighteningly high rate of suicide.[[10]](#endnote-11) The general public learned about CTE and how it related to football players for the first time with the release of 2015 movie *Concussion*. Following the movie’s release, reports began to surface about the sheer number of former NFL players who had developed CTE. In 2017, Ann McKee, a neuropathologist, examined the brains of 111 former NFL players. Of those 111 players, 110 were found to have CTE.[[11]](#endnote-12) Eventually, the NFL could no longer deny the evidence, and in a formal statement, it acknowledged the link between the repeated head trauma associated with football and CTE.[[12]](#endnote-13)

Unfortunately, for players in the league, despite the risks associated with playing football, they were compensated relatively poorly compared to players in the other three professional sports leagues. While NFL players earned an average salary of $2.1 million, NBA players earned on average $6.2 million and MLB players earned an average $4.4 million.[[13]](#endnote-14) Moreover, NFL players had the shortest professional careers—averaging only 3.3 years, compared to 4.8 years in the NBA and 5.6 years in MLB.[[14]](#endnote-15) NFL careers were even shorter for players who were hit most often during games (i.e., running backs, wide receivers, and cornerbacks).[[15]](#endnote-16)

Given the health concerns now associated with the sport, the public had also begun to question the fairness of the NFL owners. This was especially true considering that the NFL was the most profitable professional sporting league of the major four, with nearly $13 billion in revenue per year. Baseball came in at a distant second, with $10 billion in revenue per year.[[16]](#endnote-17) With all these facts having come to light in recent years—and with the progressiveness of many other sporting leagues with regard to player safety, rights, and compensation—it was not surprising that the NFLPA would be looking to make gains and secure protections for its members in the new CBA.

Negotiators

Lawrence Bell

Bell was the star running back for the Gotham Rogues. He had been to the all-star game four times in his six NFL seasons and was a very vocal advocate for player safety, as he was well aware that his position made him one of the most vulnerable players, due to repeated hits to the head.

Robert Williams

Williams was a second-year quarterback for the Metropolis Knights. He was drafted in the third round of last year’s NFL draft; however, he had already established himself as a top quarterback by leading his team to a Super Bowl championship in his first season. Based on this success, he should have been paid significantly more than his current salary. However, due to the existing rookie wage scale, he was not eligible for a big pay day for another three seasons. Williams would be pushing the other NFLPA representatives hard to get them to raise the rookie wage scale, as he wanted it fixed immediately.

Mike Donaldson

Donaldson was a veteran safety for the Blue Mountain Goats. He had been in the league for 10 seasons but had never been selected for the Pro Bowl, and he consistently moved from team to team. Donaldson chafed at the current NFL discipline system, which he thought was overly draconian. In 2018, he faced an eight-game suspension for getting into an altercation with a security guard at a nightclub in the off-season. The suspension meant that he missed half of the 2018 season and, with it, half of his salary.

John Jackson

Jackson had owned the Compton Clovers, the most profitable team in the NFL, since 1989. He was a 77-year-old US business owner and former college football player, and he was extremely conservative politically.

Mindy Fitzgerald

Fitzgerald was the owner of the Milwaukee Bobcats, the NFL team with the most politically liberal fan base. Fitzgerald had made regular donations to the Democratic Party since making her fortune in an aerospace staffing company. She would be pushing for a change to the NFL’s current drug testing policies, specifically with regard to the use of cannabis.

Marcus Tatum

Tatum was the owner of the San Antonio Sharks and the son of former NFL player Alex Tatum. Following his father’s lead, Marcus Tatum continued his hands-on style of management with regard to players. Tatum has also been pushing for a relocation of the Sharks, as attendance has been steadily declining in Orlando for a number of years. San Antonio, Texas, was the city selected to be the new home for the Sharks, and the team would be moving there in the coming year.

Key Issues

The upcoming negotiations would need to address several monetary and non-monetary issues, as outlined below.

Non-monetary Issues

Drug Testing

With attitudes toward cannabis changing and cannabis use now allowed in other professional sports leagues such as the NHL and NBA, players would be actively pushing for the league to be more lenient. The acceptance of cannabis in other sporting leagues did not extend to players using it as a recreational drug; instead, the leagues were more accepting of players using cannabidiol oil, which was a beneficial pain management and anxiety treatment.[[17]](#endnote-18) Both owners and players in the NFL seemed to agree that the current punishments in the CBA for cannabis violations were extreme and outdated. Some owners even suggested eliminating cannabis testing altogether; however, other owners felt the punishments were appropriate.[[18]](#endnote-19) In addition, cannabis use was still illegal in some states, and owners believed that the league could be setting players up for failure if it became more lenient about cannabis.[[19]](#endnote-20) However, it was worth noting that tetrahydrocannabinol (THC), the main psychoactive compound in cannabis, was legal for both medicinal and recreational uses in 25 of the 32 NFL cities (78 per cent), and additional states had been legalizing it every few months. For comparison, the NHL and NBA had both been progressive in their cannabis drug testing policies, and THC was legal in 28 of 31 NHL cities (90 per cent) and 22 of 30 NBA cities (73 per cent). This suggested that it was not necessary for cannabis use to be legal in every city in which the NFL operated, since this was not the case for either the NHL or the NBA, and both leagues had seen success with and acceptance for their drug testing policies.[[20]](#endnote-21)

Expansion of the Regular Season

The NFL currently had four pre-season games and 16 regular-season games. If the regular season were expanded to 18 games from the current 16, the number of pre-season games would be reduced to two. This would allow NFL teams to make more money, as pre-season games did not generate nearly the amount of money that regular-season games did; this, in turn, would mean a bigger revenue pool in the end. However, it was not clear that this would mean more money for the players. Taking into account all of the different revenue streams for NFL teams—ticket sales, television and media rights, merchandise, and so on—an 18-game regular season would increase total revenue by 5.67 per cent. Revenue would not increase from the players’ perspective, however, as players would actually be making over 6 per cent less, on a per-game basis, than they would make in a 16-game season.[[21]](#endnote-22) Moreover, an 18-game regular season would reduce the average career length by 15 per cent, from 3.3 seasons to 2.8 seasons. This was a major concern, as it would drop the average career length below the three credited seasons players needed in order to receive the majority of retirement benefits.[[22]](#endnote-23) However, there was a price for everything.

Commissioner Discipline

Over the last several years, players had been very upset that NFL commissioner Roger Goodell had complete control over player discipline. In other sports leagues, a commissioner typically had little say with regard to how players would be punished for on- or off-field infractions; however, the current NFL CBA gave Goodell full control over how players were punished, and many actions he had taken had been seen to be unjust. Unfortunately, the NFLPA had not made this a high-priority issue in the past, as only a small number of players had run into disciplinary issues during their careers.[[23]](#endnote-24) However, both owners and players believed that the current state of commissioner discipline was in need of a change, one way or another.[[24]](#endnote-25) Other professional sports leagues dealt with player discipline through a panel of adjudicators. These panels typically consisted of several individuals drawn from a range of backgrounds and often included one or more former players.[[25]](#endnote-26) The NFL’s current system of leaving all disciplinary measures to one individual, the commissioner, was fraught with controversy.

Fully Funded Rule

Guaranteed contracts were highly sought after by players, as guaranteed money would be paid to them even if they could not play due to injury. However, the fully funded rule, created in an earlier era, was getting in the way of players being able to negotiate guaranteed contracts. Today, though, there was no modern reason for the rule to exist. The rule required teams to hold in escrow any portion of a player’s contract that was fully guaranteed.[[26]](#endnote-27) For example, when quarterback Baker Diggs signed a four-year $90 million contract that paid him $30 million in the first year, the Smallville Senators had to deposit the remaining $60 million into an escrow account (making it untouchable) to show that they would be able to pay the guaranteed amount when the time came. Teams commonly used the fully funded rule as an excuse when they told agents that they could not guarantee more money, as teams did not want to deposit millions of dollars into accounts that could not be touched until the contracts were complete. The rule had been established decades earlier, when the league was not as financially healthy and players had serious concerns about whether or not teams would be able to pay their players. As league revenues were now around $15 billion per year and teams were sold for more than $2 billion, teams no longer had to worry about not being able to pay players their guaranteed salaries.[[27]](#endnote-28) If the fully funded rule were eliminated, owners would no longer be able to use it as an excuse not to guarantee players more money. Without the rule, more players than ever would be getting a higher portion of their contracts in guaranteed money, which would be a big gain for players.

Franchise Tag

A franchise tag allowed a team to hold one player per year off the free agency market and keep him for another season. Each team got one franchise tag per year, which meant they could technically tag the same player over and over again (to a maximum of three times). In some cases, a player who was unhappy with this situation would sit out for the season to protest the tag.[[28]](#endnote-29)

When a team applied the franchise tag, the player was paid the average of the top five salaries at the player’s position in the league, or 120 per cent of the player’s previous salary—whichever was greater. This might have sounded great for the player; however, the team had all the leverage, as the player was barred from negotiating with other teams. In other professional sport leagues, when the player’s contract ended, the player negotiated with other teams in the free agent market to earn what was then his market rate. However, when a player was franchise-tagged, he was not able to decline the tag or negotiate with other teams to get more money. If that player suffered an injury or had a bad season while franchise-tagged, this would negatively affect his value when he finally did get out to the free agent market.

The franchise tag was created to help small-market teams compete with big franchises by locking up their prospective free agents for an additional year and keeping their salaries unnaturally capped. Since many of these athletes faced the prospect of a relatively short playing career, they wanted to get as much money as possible while they could. With the franchise tag in place, they were not able to maximize their potential earnings.

Monetary Issues

Revenue Split

The current CBA provided players with 47 per cent of league revenue and owners with 53 per cent. This was one of the issues where the players made a concession in the last negotiation, and they now felt strongly that they deserved a higher percentage, as they were the reason why fans watched the sport.[[29]](#endnote-30) This was an extremely important issue for both parties, as a higher revenue split for either party meant that they took home a bigger share of total league revenue, currently around $15 billion per season.

Stadium Credits

The CBA had allowed NFL owners to take a percentage of total revenue for new stadium construction or stadium renovations before splitting the remaining revenue with players. The league wanted these stadium credits to help finance expensive new stadiums, instead of the owners having to pay the majority of the cost. For example, if the players’ share of revenue was 53 per cent, but the owners were allowed to take 3 per cent off the top for stadium credits, that would bring the players’ share of the total pool down to about 51 per cent.[[30]](#endnote-31) With many teams relocating and needing considerable funds to build new stadiums, this was an important issue for many owners.[[31]](#endnote-32) However, players saw the value in stadium construction and renovations, as these were good for the fans and, ultimately, for the players as well; this was why the players might make a concession here.

Rookie Wage Scale

The last CBA had dramatically reduced salaries for rookie players, especially first-round draft picks. This was illustrated by a comparison of the salaries for first-overall picks in the year before the last CBA was signed and the year after it was signed. The first-round pick in the earlier period made about $80 million during the six years of his rookie deal, even though he missed nearly two seasons due to injury. The first-round pick of the later period made only $37 million during the four years of his rookie deal. Currently, all contracts—not only for first-round draft picks but also for any player chosen in the NFL draft—were four years in length, and this was proving to be detrimental: some players became superstars during their first two years but were not able to get huge paydays until after their fourth years.[[32]](#endnote-33) This set-up also had implications for veteran players, as rookie players were significantly cheaper than they were, and this left many older players struggling to find teams. Many ideas for adjusting the rookie wage scale had been discussed. Some suggestions were (a) to shorten the length of rookie contracts from four years to three or even two years, or (b) to allow players on their rookie contracts to renegotiate their deals before their contracts expired—for example, to renegotiate after their second year. A complete overhaul of current rookie compensation was not necessary; however, modifications seemed likely.

upcoming Negotiations

Negotiators for the NFL owners and the NFLPA will work toward a new CBA through a series of three negotiations.

Part I: Intra-Team Negotiation

This negotiation will take place within each of the respective teams: the NFLPA representatives and the NFL owners. Teams should discuss all issues previously mentioned to gain an understanding of what all team members value and what possible concessions they would be willing to make. By understanding each other’s interests and pain points, your team will be better equipped to handle the negotiation with the other party. By the end of this negotiation, your team should have a united position on the issues you have decided matter most to your side.

Part II: First Team-on-Team Negotiation

This negotiation will be the first opportunity for both parties to meet and begin preliminary discussions. By the end of this negotiation, you should have a good understanding of where the two sides stand and what potential trade-offs exist. However, it is important to note that things could change when more information is revealed in the next negotiation. This is why both parties should be prepared to make new concessions in order to reach a final agreement.

Part III: Final Team-on-Team Negotiation

This final negotiation will allow both parties to meet once more to reach an agreement. In this last negotiation, you should be prepared to discuss both monetary and non-monetary issues again. Take this opportunity to create a post-settlement settlement. Have you identified all possible ways to create value for the parties involved? By the end of this negotiation, the two parties should attempt to reach a final CBA. If you cannot reach an agreement, then a work stoppage—either a strike by the NFLPA or a lockout by the owners—will occur.

ENDNOTES

1. The background and context of this exercise have been written on the basis of published sources. Consequently, the interpretation and perspectives presented in this exercise are not necessarily those of the National Football League, its employees, or the National Football League Players Association and its members. [↑](#endnote-ref-2)
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27. Graziano, op. cit. [↑](#endnote-ref-28)
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29. Graziano, op. cit. [↑](#endnote-ref-30)
30. As an example, if the revenue to be split was $100 million, with no stadium credits, players would receive $53 million and owners would receive $47 million on a 53/47 split. However, with 3 per cent stadium credits, the new revenue to be split would be $97 million ($100 million less 3 per cent or $3 million). With a 53 per cent share, players would receive only $51.4 million. [↑](#endnote-ref-31)
31. Graziano, op. cit. [↑](#endnote-ref-32)
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