

Chicago Daily Law Bulletin®

Volume 157, No. 233

Tuesday, November 29, 2011

Sporting Judgment

NBA players, owners prepare to salvage season with new agreement

By Robert T. Shannon

Instead of watching Carlos Boozer box out for the past two months, Chicago's pro basketball fans have been forced to focus on the NBA lockout. It's hard to believe but the lockout was into its fifth month before the framework for a tentative deal was struck early Sunday morning. Here's the play-by-play on how the dispute unfolded and a summary of what's involved in the tentative deal.

Leading up to Thanksgiving, it appeared that the National Basketball Players Association (NBPA) and team owners ended all efforts to come up with a new collective bargaining agreement. Hopes of saving the 2011-2012 season looked bleak. The league canceled games through Dec. 15, but more concerning was the NBPA's decision to disband the players' union. That compelled NBA Commissioner David Stern to forecast that the NBPA's actions would lead to a "nuclear winter."

The NBA grossed approximately \$4.3 billion last year, but it actually lost money. Some estimate league-wide losses to be in excess of \$300 million. Only eight teams were profitable and able to offset some of the losses of the 22 unprofitable teams. With that background, three issues dominated the discussions between the league and the players.

The first issue involved the distribution of basketball-related income (BRI). BRI is defined as the

comprehensive sum of all income that basketball teams generate and includes money from items such as television contracts, ticket sales, concessions and parking. The collective bargaining agreement in place last year, which has since expired, provided players with 57 percent of all BRI.

Given the lack of league profitability, the NBPA previously agreed to lower its demand of BRI to 52.5 percent. However, the owners were holding firm — demanding that it drop to 50 percent (Charlotte Bobcats owner Michael Jordan reportedly pushed for an even lower number). To provide some perspective, it is estimated that two percentage points could amount to \$100 million per year.

The second issue was the status of the luxury tax related to the league salary threshold. Last year, the NBA had what is known as a "soft cap" that allowed teams to exceed the salary cap, but imposed consequences. One consequence of exceeding the salary threshold is the luxury tax. Under the old arrangement, any team exceeding the salary threshold receives a "luxury tax" penalty. Once the penalty is paid to the league, the NBA evenly distributed those proceeds to all teams that did not exceed the threshold. The old system required teams to pay \$1 for every \$1 over the salary threshold.

The league at one point pushed for a hard cap that could not be exceeded, but subsequently backed off that stance as the NBPA reinforced that it was an unworkable position. In an effort to dissuade owners from engaging in bidding wars over "average" players, the owners then pushed to implement a graduated luxury tax system. That approach worked on the theory that the higher the penalty on teams exceeding the luxury tax threshold, the closer teams will stay to the cap, resulting in better competitive balance across the league.

Under that approach, owners demanded a \$1.75 "penalty" per dollar over the threshold as well as some graduated escalations (for example, 50 cents for every dollar above \$5 million over the threshold and so on). The NBPA countered with a \$1.25 "penalty" per dollar spent over the threshold with slow escalations.

To crystallize the issue, the payroll for the Los Angeles Lakers was \$90.3 million last year. The salary threshold was \$70.3 million. The Lakers paid a \$20 million penalty for being \$20 million over the salary threshold. Under the owners' earlier proposal for next season, the Lakers' penalty, or luxury tax, would have increased to approximately \$50 million.

The third issue focused on the players' complaint before the National Labor Relations Board (NLRB). While everyone involved in the negotiations knew that the two issues above were sure to be hotly contested, there was hope that the NLRB complaint would provide momentum for negotiation.

The players' complaint was filed in May and alleged the following: 1) In the early stages of the NBA lockout, the owners were not interested in making an agreement and were not negotiating in good faith; 2) there was a deliberate agreement among ownership to lockout the players' association as early as possible to exert pressure on the finances of the players; and 3) the owners' financial position is different than that which they were representing.

The NLRB dealt with a somewhat similar situation with the Major League Baseball (MLB) strike in 1994. In that case, the NLRB ruled in favor of the players.

At the time, MLB's owners attempted to restructure free agency and the arbitration process and sought to reshape the business side of baseball. The NLRB's ruling was a victory for baseball

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players and eventually helped end the strike.

The NBPA surely hoped for a similar ruling from the NLRB to bring the sides closer together and end the lockout. For a while, it looked as if that might happen.

In October, with the possibility of an NLRB ruling on the players' complaint hanging out there, the negotiations picked up. However, no ruling came.

Subsequently, with the players missing their first paychecks for the season, a group of player representatives voted unanimously to reject the owners' "take it or leave it" offer. At that time, the players also moved to disband the union. That move had the incidental effect of forcing the union to withdraw its pending NLRB complaint, as it no longer had standing. Things were not looking good for the 2011-12 season.

It is believed that the NBPA moved to disband the union as part of its effort to get into court quickly. With that move, the NBPA essentially stated that it no longer represented the players in collective bargaining negotiations. As a result, players

were able to file antitrust lawsuits against the NBA.

One suit was filed in the U.S. District Court for the Northern District of California by attorney David Boies (of *Bush v. Gore* fame). New York Knicks player Carmelo Anthony is the lead plaintiff in that lawsuit.

A separate lawsuit was filed in the U.S. District Court for the District of Minnesota. Detroit Piston (and former Chicago Bull) Ben Gordon is one of the named plaintiffs in that case. It was predicted that the players would seek treble damages measured in the multimillions of dollars as part of the antitrust litigation. Both suits were recently consolidated in Minnesota.

Collectively, the events leading up to Thanksgiving caused many to predict the end of the 2011-12 season, but not so fast.

Here are the highlights of the tentative deal that could lead to a Bulls v. Lakers opener on Christmas Day.

This NBA season is to be shortened to 66 games. Training camp and free agency will open up Dec. 9. The new agreement is for 10 years, but either side can opt out of

it after six years. The players' share of BRI will be between 49 and 51 percent, depending on league revenue.

The formula for the salary threshold and the related luxury tax is more complicated. In Years 1 and 2, the penalty for teams is \$1 for every \$1 above the threshold.

Beginning in Year 3 of the new agreement, the penalty will be \$1.50 for every dollar over the threshold for the first \$5 million, but goes up to \$3.25 for every dollar between \$15 million and \$20 million over the threshold. There also are proposed provisions to add penalties to teams that repeatedly violate the cap.

As it stands, there are issues that still must be worked out like drug testing, a player conduct code and the minimum draft eligibility age. The players also must dismiss their lawsuits and the players' union will have to be reconstituted. A majority of the owners and players then will have to approve the new collective bargaining agreement.

All in all, though, it looks as if we may be watching professional basketball in December.