

## The Controversy Continues: Kaepernick Files Grievance Against NFL

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*Labor and Employment Alert*  
10.18.17

Colin Kaepernick, former quarterback for the San Francisco 49ers, protested against racial oppression in 2016 by sitting and eventually kneeling during the playing of the National Anthem before his NFL football games. This act has inspired other players from other teams to do the same in 2017. After a short period of acquiescence, Dallas Cowboys owner Jerry Jones threatened to discipline any of his players who did not stand at attention during the playing of the anthem. This threat led to last week's filing of an unfair labor practice charge against the Cowboys.

It is now reported that Kaepernick, an unsigned player without a team, filed a grievance against the NFL and Commissioner Roger Goodell under the collective bargaining agreement's "anti-collusion" provision. As with last week's filing with the National Labor Relations Board (NLRB), the union which represents the players and Kaepernick, known as the NFL Players Association (NFLPA), was not involved; Kaepernick's private attorney filed the grievance.

The anti-collusion provision states that no team can agree with the NFL, or any other team, to restrict or limit any team's decision-making, including whether any team will choose to sign any player to a contract. The apparent motivation behind Kaepernick's filing is his belief that he has been "blackballed." No team has signed him since his protests began last year.

Critics of Kaepernick's position take the view that his relatively lack-luster performance and eroding skills are the reason for his being out of a job. Complicating this dispute is that it has become a hot-button political issue. For the NFL's part, the teams are protected by language in the collective bargaining agreement which states that they have the right to manage and direct their operations "in any manner whatsoever." Both sides will soon have the opportunity to present their arguments.

It is noteworthy that the NFLPA did not file this grievance. One could surmise that Kaepernick no longer has the support of the NFLPA. What we do know is that there is a key provision in the collective bargaining agreement granting the NFLPA the power to terminate any collective bargaining agreement immediately if there is a violation of the anti-collusion provision. Without a contract, the players could strike or be locked out, and the NFLPA may not be ready for that.

The next step in this case is a grievance hearing before an arbitrator. We will continue to monitor this standoff between employee protests and management's rights, since it is likely that this sports-related issue will eventually cross over into all other businesses.

If you have any questions related to the NLRB or labor law, please contact John K. Baker ([bakerj@whiteandwilliams.com](mailto:bakerj@whiteandwilliams.com); 610.782.4913) or any member of our Labor and Employment Law Group for further assistance.

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