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Teammates in Growth

An Examination of the NFL's 1982, 1987, and 2011 Work Stoppages: How Collaborative Strategies Can Aid In the Future Growth of the NFL

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Introduction

Professional athletics labor relations have increasingly become an ancillary interest among fans, the media, scholars, and the business world. With the pervasiveness of professional sports in American culture, the employment relationship between the players as employees and the owners as employers has dramatically changed as professional sports developed into a sizable business.

Because of the enormous popularity of professional athletics, it is not uncommon for players and owners to differ over how a particular sports league should operate and how much of the benefit each side should receive. After all, both the players and owners are partners in creating a product that millions of fans crave, producing a wealth of profits. No doubt both sides have significant claim to the vast revenue of a sports league.

Labor strife can impact the league's success. This paper will focus on the relationship between team owners and executives of the National Football League (NFL) and players and labor representatives of the National Football League Players Association (NFLPA) in order to show how the NFL's labor relations climate developed through the use of various negotiation strategies. This paper will show that the dominance of adversarial, competitive bargaining strategies throughout the 1980s may have hampered the growth of the NFL and how the recent adoption of collaborative bargaining strategies may offer opportunities to facilitate the future growth of America's most popular and profitable sport. Both the NFL owners and the players should jointly benefit from the increased revenues generated from a more cooperative employment relationship.

In order to illustrate the difference between the use of hardline competitive bargaining techniques and more cooperative collaborative bargaining techniques, I will compare the players' strikes of 1982 and 1987 with the recent owners' lockout of 2011. Each work stoppage influenced the ability of the NFL and NFLPA to maximize each side's benefit from the massive revenue pie the NFL produces.

The strikes of the 1980s exhibited the players' use of a hardline stance in order to obtain concessions from the NFL owners. In each strike, the players were unable to sustain the strike and failed to gain any major concession. The short duration of time between each strike demonstrates the pervasiveness of labor turbulence that the league experienced until the mid-1990s, when a series of threats and legal action enabled the players to obtain the benefits they wanted from the 1980s strikes.

The lockout of 2011 occurred during a period of extreme growth for the NFL, a period that seems to have no end in sight.[1] Both sides exhibited signs of a competitive negotiation, but ultimately were able to make integrative concessions in order to preserve the popularity of the league and benefit each side in the future. It was clear that neither side was willing to allow games — and consequently fans — to be lost and thus worked together to ensure the season began on time. In this negotiation, there was no desire to risk harming the massive popularity the NFL was enjoying.

The next section of the paper explains how sports collective bargaining relates to the current industrial relations model. It is useful to understand how collective bargaining occurs in professional sports to show how similar sports labor relationships are to their non-athletic counterparts in other industries.

The following section discusses the history of the labor relationship between the NFL and the NFLPA, which is essential to understand how and why the NFLPA formed, how and why the

[1] The total revenue generated by the NFL grew from approximately $400 million in 1993 to $9.0 billion in 2009. In 16 years, the NFL's revenue stream grew by 2,150 percent.

NFL combats the NFLPA, and the legal contexts in which the NFL and NFLPA must negotiate. The paper delves into the structure of the negotiation parties because it is important to know the sources of inter-party and intra-party conflict within a negotiation, followed by a discussion of competitive and collaborative negotiation strategies.

The paper then examines the 1982 and 1987 strikes and the 2011 lockout in terms of the negotiation strategies that were employed and their effects on the league. Particular focus is given to the use of competitive versus collaborative bargaining strategies to show why the eventual use of collaboration in the 2011 lockout worked better than the competitive bargaining that characterized the 1980s strikes. It is the intention of this paper to leave the reader with the impression that collaborative negotiation in collective bargaining is an effective substitute for competition for the NFL and NFLPA.

Application of the Industrial Relations Model to NFL-NFLPA Labor Relations

The industrial relations model assumes conflict between labor and management naturally rises from the labor relationship. In this mainstream model, which describes today's labor relations, employees attempt to secure the highest wages, most benefits and employee involvement in decision-making. Owners attempt to achieve cost discipline by containing wages and benefits and restricting the scope of union involvement in decision-making. Because of the generality of the industrial relations theory of collective bargaining, "most of the broad issues that professional sports unions face" could comfortably fall within today's model (Hill and Taylor, 2007, p. 67).

For the most part, the labor relationship in professional football is like most other unionized industries in the industrial relations model. Hill and Taylor state that "the primary objective of any union — sports or otherwise — is the same: the monopoly seller of labor wants to extract as large a share as possible of the firms' economic rents to return to the workers" (Hill and Taylor, 2009, p. 57). This means that the NFLPA will attempt to allocate as much of the NFL's total revenue toward the players as possible through salaries, bonuses and benefits, while the owners will attempt to keep that revenue for themselves.

Sports collective bargaining agreements are remarkably similar, particularly with respect to non-financial issues (Hill and Taylor, 2007). Grievance procedures are included in the CBAs of all professional sports, with "few grievances [occurring] over the interpretation of the contract language, but most involv[ing] discipline imposed by the Commissioner" (Hill and Taylor, 2007, p. 63). Like their non-athletic counterparts, professional sports unions initiate grievances mostly in response to the perception of unfair punishment coming from the league office.

Another non-financial similarity between sports and non-athletic CBAs comes in terms of seniority, where more veteran players benefit from a higher minimum salary. In professional sports, however, a higher wage is obtained both through an increase in pay grade and through the attainment of free agency.[2, 3] If a player shows exceptional skill on the field, he will most likely make more money through these mechanisms.

One difference between sports unions and other unions comes with respect to the goal of wage compression. In a "traditional" or non-sports union, wage compression within and across firms is typical because the paramount goal of today's labor unions is to take wages out of competition, or to have wages the same for similar employees in similar jobs across an industry. However, "the victories of professional sports unions…have led to vast growth in wage

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[2] A player's increase in pay grade would occur through receiving a higher minimum salary that corresponds to his credited years in the league (Breaux, 2010, p. 102).

[3] In the 2011 NFL CBA, a player obtains the right to free agency, the ability to freely contract with another team at the expiration of his current contract, after playing four seasons in the League. Through free agency, the player would be able to negotiate a potentially higher salary or use other teams as leverage to obtain a higher salary from his current team (2011 NFL-NFLPA Collective Bargaining Agreement).

inequality in professional athletics" between the star players and the role players (Hill and Taylor, 2007, p. 61).

In short, sports unions have not taken wages out of competition. Instead they have made "haves" and "have nots" within their unions, which, coincidentally, came into play in the 1982 strike when the players failed to keep solidarity between those who could afford a prolonged strike and those who could not. That said, the most striking difference between sports unions and their non-athletic counterparts is how antitrust law influences the labor-management relationship.

Role of Antitrust and Labor Law in the NFL-NFLPA Labor Relationship

To understand the core of many labor disputes between ownership and the players, one must know how "contract, antitrust, and labor law have shaped the legal framework for professional sports" (Berry, Gould, and Staudohar, 1988, p. 23). Almost every player-management conflict involves whether or not the owners colluded to prevent the players from acting in their best interest by creating "restrictive" rules and how the collective bargaining agreement — the contract — relates to the conflict.

The Sherman Antitrust Act of 1890 prevents companies from controlling a large sector of the economy. There are two sections of the Sherman Act that define antitrust violations. Section One prevents two or more persons/business entities from acting together to restrain trade. Section Two prevents one person/business entity from obtaining a monopoly that would harm the market.[4] The majority of sports antitrust disputes are brought under Section One of the Act, as players attempt to convince the courts that the rules imposed on them by the league create

[4] Sherman Antitrust Act 15 U.S.C. 1-7

"anticompetitive effects [which] outweigh the procompetitive effects" and place unfair restrictions on the players.[5]

Professional sports leagues like the NFL are unique in that they are comprised of teams that both compete and cooperate with each other. The nature of the business requires the clubs to work together to set schedules, determine the game rules, and make other arrangements to benefit the league.

The leagues attempt to skirt antitrust law by claiming they are single entities. However, teams are in separate cities and compete with one another both on the field and in the business ledger, particularly in the acquisition of professional athletes. The courts have largely disagreed with the sports leagues' stance and consistently have ruled that the professional sports leagues are made up of separate entities. Certain rules of a sports league will be found to violate antitrust law if they unreasonably restrain trade through the member clubs' collaborating to impose rules on the players.

The NFL has been found to be a joint venture with the member clubs "with distinct legal identities that maintain their own separate books and have different profits and losses" (Staudohar and Mangan, 1991, p. 143). Because of this designation the NFL is vulnerable to losing an antitrust suit from the players against any employment rule it sets. However, the presence of labor law and the ability of an employee group to freely contract in a CBA allows for the NFL to avoid consistent antitrust litigation in the form of the non-statutory antitrust labor exemption.

A non-statutory exemption means the court rather than Congress has created an exemption from law through judicial interpretation instead of having a legislature — whether it

[5] Gabe Feldman, "Legal Analysis of the Issues Behind the NFL Collective Bargaining Agreement Negotiations," The Huffington Post, February 10, 2011.

be federal Congress or state congresses — create the law. This exemption "allows the terms of a CBA to be exempt from antitrust law" because union and management have willingly entered into the agreement through good-faith bargaining (Breaux, 2010, p. 55). In order to promote the entering into labor relationships and labor law, the exemption is necessary because on its face, the terms agreed to in a CBA could be "viewed as a possible violation of antitrust law" (Breaux, 2010, p. 55).

The courts have stated as long as a labor relationship exists between the players and owners, the professional leagues are immune from antitrust action. According to *Powell v. National Football League* (1987), a "labor relationship" has been determined to exist as long as the players are unionized, even if a CBA has expired. This means that if the players wish to sue the league under antitrust law as a bargaining tool — when collective bargaining has reached impasse and a strike will not work — they must decertify the union.

Decertification is the most significant threat other than striking that players possess for obtaining leverage in a collective bargaining negotiation. If the union is decertified, the labor relationship no longer exists, allowing the players to initiate an antitrust lawsuit against the League. Before the 2011 lockout, the NFL players successfully used decertification once, being the only major professional players union to do so.

Decertification presents substantial risks to the players. If the NFLPA is decertified as the players' union, all players lose benefits contained in the CBA, including pensions, insurance benefits and medical benefits.[6]

Today's dominance of the interplay between antitrust and labor law is owed "to the groundwork laid by the early contract and antitrust disputes" (Berry, Gould, and Staudohar,

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[6] Gabe Feldman, "Legal Analysis of the Issues Behind the NFL Collective Bargaining Agreement Negotiations," The Huffington Post, February 10, 2011.

1988, p. 23). The next section will show how contract law, antitrust law, and labor law have had a "roughly chronological pattern" of influence on the sports industry: "first contracts, then antitrust, and then today, labor" (Berry, Gould, and Staudohar, 1988, p. 23).

History of NFL Labor Prior to 1982

NFL labor history illustrates the context in which the NFL and NFLPA operate today. Like other major professional sports, the early NFL "implemented various restrictions to prevent players from changing teams" (Breaux, 2010, p. 85). This restriction became known as the reserve clause, the provision included in a player contract that prohibited the player from contracting with another club without the consent of the player's current team (Breaux, 2010, p. 54).

To accomplish this, in 1947 the NFL inserted into every player's contract a one-year team renewal option (Lipskey and Donn, 1987, p. 206). The player essentially was forced to re-sign with his team until "he was either traded or sold outright," almost like a commodity (Lipskey and Donn, 1987, p. 191).[7]

The reserve system enabled the NFL, as well as the other sports leagues in their early histories, to develop what economists refer to as "monopsony power" (Clark, Delaney, and Frost, 2002, p.29). In a monopsonistic market, there is one buyer (NFL) and many sellers (players), which drives down the price of labor. Sports labor unions formed in order to reduce the monopsony power of the sports leagues. [8]

In response to the monopsonistic NFL labor market, the NFLPA formed in 1956. Like management of other non-sports industries, the NFL attempted to ignore the new players' union

[7] Monopsony power was strong for sports leagues because players had no reliable BATNA, or Best Alternatives to a Negotiated Agreement. A player could not threaten to play for another team, leverage other salary offers as proof of his athletic value, or threaten to play in rival leagues. A player could leave the sports industry; however, that was rarely an attractive alternative (Clark, Delaney, and Frost, 2002, p. 225).

[8] The players as the employees "sell" their labor to the owners as the employer.

for as long as possible. It would be almost 10 years after the 1969 strike before a collective bargaining agreement would be reached (Berry, Gould, and Staudohar, 1988).

In fact, it was an individual player's antitrust lawsuit 11 years earlier in *Radovich v. NFL* (1957) that sparked the NLFPA's activity. In *Radovich*, the U.S. Supreme Court ruled that the Sherman Antitrust Act applied to professional football and that players could not be subject to the reserve clause. Seeing the success an antitrust suit provided against the NFL, the *Radovich* decision "prompted the union to threaten the owners with a $4.2 million antitrust suit" to obtain certain benefits for the players (Staudohar, 1996). [9]

In 1968, after a brief boycott of summer workouts over pension contributions and health care for retired players, the NFLPA negotiated its first official CBA with the NFL and became registered with the U.S. Department of Labor as the exclusive bargaining representative of the NFL players (Staudohar, 1996).[10] In 1970, the players' association of the competing American Football League (AFL), the American Football League Players Association, merged into the NFLPA when the NFL and AFL merged into a single league (Berry, Gould, and Staudohar, 1988). It was not until 1970 that the NFL recognized the newly-merged and NLRB-certified NFLPA as the exclusive bargaining representative of the players (Berry, Gould, and Staudohar, 1988).

The union's inability to force the owners to designate free agency rights enabled the owners to enact the "Rozelle Rule," named after legendary Commissioner Pete Rozelle. The Rozelle Rule allowed players to freely contract with other teams, but required that

[9] Without an official CBA or even being registered with the National Labor Relations Board (NLRB), the NFLPA was able to get the owners to agree to a $5,000 minimum salary, $50 for each exhibition game played, an injury protection clause in player contracts, and expenses for medical care. A couple years later in 1959, the players were able to obtain a pension plan. This demonstrates the fear the NFL had of losing an antitrust suit (Staudohar, 1996, p. 65).

[10] "NFL has a long history of labor battles" Joe Platania, CSNBaltimore.com

"compensation had to be paid by the acquiring team to the team losing the player" (Breaux, 2010, p. 85).[11] The compensation usually was high enough to scare teams from contracting players from other teams. As a result, too few players switched teams under this system.

The inability of players to find teams to give them contracts caused them to strike in 1974, which was unsuccessful in obtaining gains for the players, and to file an antitrust lawsuit against the NFL in 1976. In *Mackey v. NFL* (1976), the court ruled that the Rozelle Rule violated antitrust law, and the "right of first refusal" was written into the 1977 CBA as a tradeoff for "contributions to [the players'] pension fund" (Gorman, Calhoun, and Rozin, 1994, p. 162).

The right of first refusal established an "objective formula" that determined the compensation that was awarded to the team losing a player (Breaux, 2010, p. 86). The player's current team had the first option to match the offer of another team attempting to contract the player or receive compensation based on the formula. However, "although several hundred players were 'free agents,' only [two] players changed teams at the end of their contract" when the right of first refusal was in effect between 1977 and 1987 (Breaux, 2010 and Gorman, Calhoun, and Rozin, 1994, p. 161).

The player's fight for free agency extended into the 1990s, when a series of player-initiated court antitrust suits fought against "Plan B," another free agency-restricting plan that allowed teams to designate 37 players on their reserve list. Once on the reserve list, players were prevented from contracting with other teams unless his current team chose not to match the new offer (Breaux, 2010). These court battles led to the 1993 CBA which, finally, included free agency rights for players (Breaux, 2010).

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[11] Compensation came in the form of draft picks, player trades, or monetary payments, determined by the Commissioner (Breaux, 2010, p. 85).

By looking at the history of the NFL and NFLPA's labor relationship, it is clear that it has been checkered with immense hostility. Over the years, players have enjoyed more benefits and higher pay because of gains made through union representation. Through a mixture of battles within the contexts of labor and antitrust law, one can see the framework in which NFL collective bargaining negotiations occurred in the past and how the current relationship is influenced by the same factors.

Structure of the Negotiation Parties and Intraparty Conflict

The structure of the two sides of the labor relationship offers an interesting dynamic to how the NFL and the NFLPA negotiate during collective bargaining. Examining parties in the conflict enables an understanding of intraparty conflict which plays a pivotal role within negotiations.

The main parties in NFL bargaining negotiations are the players and the owners. Within these groups, however, there are sub-groups that add dynamic aspects. The sub-groups can both aid and hinder the attainment of an agreement.

The players' side is divided into the NFLPA and individual players. The NFLPA is further divided into the executive director, the negotiation team, the executive committee, and player representatives. The executive director is the NFLPA's principle administrative officer and chief spokesman.[12] Although different executive directors have differed in bargaining philosophy, every executive director has played a prominent role in negotiations.

The executive committee is comprised of 11 members selected from the bargaining unit to transact the business affairs of the NFLPA.[13] Each of the NFL's 32 teams selects one player representative, which are the NFLPA's version of union stewards. The player reps serve as the

[12] National Football League Players Association (https://www.nflplayers.com/About-us/History/)
[13] National Football League Players Association (https://www.nflplayers.com/About-us/History/)

liaison between the executive committee and players. It is the role of the leadership of the NFLPA to select the appropriate negotiation team to bargain on the players' behalf, whether it is the executive director, attorneys, negotiation professionals, or the players themselves.

The players also naturally are divided into two groups: the superstars and the rank-and-file. The difference between superstars and the rank-and-file has been the source of rifts among the players' side throughout the history of NFL labor relations. This is seen clearly in the player's strikes of the 1980s, when star players such as Lynn Swann crossed the picket line.

The ownership side is divided into the commissioner, NFL management council, and individual owners. The NFL Commissioner is "an employee of the owners who typically has broad powers" to make decisions that facilitate league growth (Lipskey and Donn, 1987, p. 198). Different commissioners have "tended to disagree over their proper role in labor relations," some choosing to play a prominent role, others less so (Lipskey and Donn, 1987, p. 198).

Just as NFL players formed the NFLPA to represent them in collective bargaining, the owners have formed the management council to deal with labor relations matters (Lipskey and Donn, 1987). The management council is the owners' primary bargaining apparatus and is headed by a leading owner and the NFL's executive vice president of labor relations. The NFL uses its general counsel as its chief negotiator.

Other owners not directly involved in the negotiations are an essential part of the owners' side. Any deal must be approved by two-thirds of the owners, with every owner having a voice in the finalized collective bargaining agreement.

The different layers of the parties are fertile ground for conflict. Intraparty conflict can be a severe hindrance to reaching an agreement, especially if both parties experience it during the negotiation. In recent NFL labor history, one can see how intraparty conflict influenced the negotiations, especially during the '80s strikes.

The Transformation from Competitive to Collaborative Bargaining

Parties essentially adopt either a competitive or collaborative approach to collective bargaining. Competitive negotiation styles exhibit a focus on obtaining as much of the pie as possible while not worrying about the needs of the other party, as well as taking hardline stances on issues and being difficult to work with in negotiation discussions.

Competitive negotiations occur within the parameters of each side's bargaining range, which consists of starting points that are usually exaggerated, target points that represent what the parties hope to achieve, and resistance points that represent the minimum outcome a party is willing to accept without resorting to its best alternative to a negotiated agreement (BATNA). Agreement is possible in competitive negotiations only if the negotiating parties have overlapping resistance points, otherwise an impasse occurs and one (or both) of the parties resorts to its BATNA, usually a strike or a lockout.

Even when there is an overlapping bargaining zone in competitive negotiations, the relative bargaining power of each side usually determines the eventual agreement. The 1980s strikes exhibit the players possessing little bargaining power relative to the owners, a situation that prevented any type of mutually-beneficial deal from being produced.

In contrast, collaborative negotiations leverage creative opportunities to enlarge the pie available to the parties in a negotiated settlement. The goal is to prevent as many resources from being left on the bargaining table as possible (Thompson, 2009). Essential to the collaborative process is that both sides share enough information on interests, requiring the parties to understand and accept the goals of their negotiation partners. Collaborative negotiations require a higher level of trust and cooperation.

Throughout the NFL's labor history, many CBA negotiations have been adversarial and largely dominated by competitive bargaining. Consequently, both parties failed to create opportunities for joint gain and left resources on the bargaining table. This result was characteristic of negotiations throughout the 1980s, although there appears to be a shift toward a more collaborative approach in recent years, particularly 2011. Players and owners realized it was possible to leverage the massive growth of the NFL into mutual benefit.

1982 Strike: The Chilling Effect

The 1982 players strike was characterized by constant adversarial bargaining and it failed to produce a CBA which provided labor peace and league growth. Although players won an in-court victory in *Mackey*, the players were still seething from a largely unsuccessful 1974 strike over "freedom issues," such as the Rozelle Rule (Staudohar, 1996, p. 71).[14] When the 1977 CBA expired on July 15, 1982, it was evident the players wanted to improve their financial standing through obtaining a percentage of league gross revenues rather than seeking a change in the player movement system.

The core issue was the players' demand for 55 percent of NFL gross revenues. Other minor issues, such as "insurance, working conditions, pensions and player rights" were sought. The demand for a percentage of gross revenues was tweaked a few times during bargaining, but the 55 percent target demand dominated the heated negotiations (Staudohar, 1982).

[14] Although the *Mackey* case ended the Rozelle Rule, the 1974 strike — and subsequent CBA — only produced irritation among membership and minimal benefit additions for the players. As discussed earlier, there still existed a strong restriction on player movement and player salaries did not significantly increase. As an example of the players' irritation with their union, less than half of NFLPA members paid dues the year after the strike (National Football League Players Association; https://www.nflplayers.com/About-us/History/).

The NFLPA outlined its reasoning for requesting the percentage of gross revenues in a memo dispersed to NFLPA members entitled "Why a Percentage of the Gross? Because We Are the Game." The document served as a rallying point for the players and as proof that the players' union representation was up to the challenge of improving their financial situation.

In "Why a Percentage of the Gross?" the NFLPA outlined the percentage of the gross demand would encompass a package of issues demanded during the 1982 negotiations. The NFLPA argued that "individual contract negotiations in the NFL haven't, don't, and won't work" to benefit players and a "true collective bargaining approach" was needed (NFLPA, "Why A Percentage of the Gross? Because We Are the Game," 1981, p. 3).

This true collective bargaining approach meant the NFLPA would demand that "55 percent of the gross revenues in the NFL be placed in a fund for distribution [by the NFLPA] to them [the players] in salaries in pensions" (Staudohar, 1996, p. 72). The NFLPA also proposed that the fund would be distributed from the players' association to the players via a wage scale based on seniority and that a player could individually negotiate his salary above the wage scale with his team.[15] The 55 percent demand would have effectively doubled the average player wage to $150,000, placing the NFL average salary above the National Hockey League (NHL), yet substantially lower than Major League Baseball (MLB) and the National Basketball Association (NBA) average salary.[16]

Because of NFLPA's failure to obtain free agency in the past, the union decided the best strategy to improve the players' financial standing was receiving a set percentage of the NFL revenue rather than pursue liberalized free agency. The NFLPA reasoned that "as long as

[15] Gerald Eskenazi, "N.F.L. Pay Average of $150,000 Is Proposed," The New York Times, June 8, 1982.
[16] Gerald Eskenazi, "N.F.L. Pay Average of $150,000 Is Proposed," The New York Times, June 8, 1982.

owners share revenue equally, don't expect a bidding war [in a liberalized free agency market]" (NFLPA, "Why A Percentage of Gross? Because We Are the Game," 1981, p. 31).

As long as there was revenue sharing among the NFL clubs, owners have no economic incentive to pursue the best players to lure fans to the stadium or to their television sets.[17] No matter where a team finds itself in the standings, each club would still receive 1/28th of the League's revenues.[18]

The percentage of the gross demand dominated the 1982 negotiations and led to the impasse and strike. This single issue produced an extreme chilling effect, a "souring of the [bargaining] relationship," where negotiations tend to degrade into impasse (Thompson, 2009, p. 47).[19]

Because of its core nature to the agreement, the 1982 strike will be judged based on how the parties negotiated the percentage of the gross proposal. The fixed-pie, competitive negotiations hindered a successful agreement between the NFL and NFLPA. Fixed pie negotiations generally occur in negotiations where there is a single issue but CBA negotiations usually don't exhibit single issues. Howver, in 1982 percentage of the gross may as well been the only issue because every concessions or demand modification was built around this issue.

Anchoring and re-anchoring strategies started the spiral into a chilled relationship. An anchor is a starting point of the party presenting the first proposal. A chilling effect usually occurs when a party anchors on an exaggerated starting point, which is what occurred when the players asked for the percentage of the gross system. The percentage of the gross demand was

[17] Eradicating or changing inter-club revenue sharing was not a bargained issue in 1982. Technically desiring a percentage of the gross was in essence a demand to include the players in the revenue-sharing system.
[18] In 1982, there were 28 NFL franchises. Today, there are 32.
[19] The chilling effect is mostly attributed to disputes that result in final-offer arbitration, where parties tend to not negotiate and stick to their initial demands thinking that the least they could receive would be a split the difference result; nevertheless, the concept of refusing to negotiate because of an "I'll take my chances" attitude applies in competitive negotiations.

perceived by owners as outrageous because the notion that management should give its workers a substantial part of its profits — much less over half of its profits — was previously unheard of in any industry.

The owners swiftly responded to the players' anchor by offering a 48-page counterproposal that made no mention of the percentage of the gross, focusing instead "on the free agency system."[20] As Thompson notes, an "effective counteroffer moves the focus away from the other party's offer as a reference point," exactly what the owners intended by ignoring the players' percentage of the gross demand (Thompson, 2009, p. 50).

When NFLPA President Gene Upshaw said that the "principle was 'etched in stone' and that the players [would] not accept a contract that is not tied to a percentage of gross revenue," it was clear that the players would refuse to move from their target point.[21] In addition, the owners' stance to "never agree to paying a percentage of gross income" immediately created a negative bargaining zone.[22] Essentially, no agreement would be possible unless one or both sides moved from their resistance points.

The players' resistance point on percentage of the gross required it to be tied to a percentage of gross income, but the owners refused to even negotiate on this issue.[23] When the players effectively fought the owners' attempt to counter-anchor, the potential of reaching an agreement was reduced substantially.

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[20] In their initial counteroffer, the owners did not propose many changes to the free agency system. The owners offered to soften the reserve clause by lowering the "cost" of signing a free agent by increasing the amount of money a free agent receives before the new team must offer a first round draft pick. The owners also offered more money to the players on the winning team of the Super Bowl, life insurance, and for major medical insurance. This offer of course was supremely unsatisfactory to the players, who would not move off of the percentage of the gross demand. Frank Litsky, "N.F.L. Players Irked by Offer," The New York Times, July 14, 1982.

[21] Bart Barnes, "NFL '82: Season of Its Discontent," Washington Post, July 11, 1982.

[22] There was no possibility of reaching an agreement if the owners wouldn't even negotiate percentage of the gross with the players because it would be impossible for bargaining zones to overlap.

[23] It could be said that the owners' reservation point on the issue would be a contract that did not have the players receiving a percentage of gross revenue.

When a negative bargaining zone is present, "negotiators should exercise their best alternatives to agreement" or BATNA (Thompson, 2009, p. 42).[24] However, instead of resorting to their BATNAs in a timely fashion, both sides continued to use inflammatory language and failed to seek potential sources of agreement. It is not certain whether the parties understood or even cared the fractured negotiations had any chance of repair.

Months of negotiations continued to stall. Few concessions were offered as the NFL began its season. Grandstanding, brief and fruitless negotiation sessions, and murmurs of a strike and/or lockout came from the two sides.

Finally, on August 25, 1982, talks were indefinitely suspended when no additional proposals were made after the owners' initial counterproposal of July 13, 1982.[25] The consummation of the chilling effect that began with the anchor/counter-anchor movement at the start of negotiations occurred on September 20, 1982, when the players initiated a strike after the second week of games.[26]

In one of the first negotiation sessions after the strike was called, the players reduced their percentage of the gross demand to "50 percent of television revenues over the next four years" — a plan that would be worth $1.6 billion to the players.[27] This new request was in response to the owners' offer of $1.6 billion in guaranteed money over five years.

The owners rejected this request because it did not keep the current individual contract negotiation system intact, and it still gave the players' association control over dispensation to the players. Although some concession were offered by the players and both parties seemed to

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[24] The owners' BATNA would be a lockout and the players' BATNA would be to strike, form a new league, or join a competing league. If the United States Football League (USFL) was in operation in 1982 (it began in 1983), the players would have certainly had a more attractive BATNA and, consequently, more bargaining power. Forming a new league was also not an option due to high startup costs.

[25] Bart Barnes, "Football Talks Off Indefinitely," Washington Post, August 26, 1982.

[26] This enabled players to earn two game checks in order to offset the lack of cash flow during the strike.

[27] Michael Janofsky, "N.F.L. Players Start a Strike as Contract Impasse Holds," The New York Times, September 21, 1982.

move closer on the monetary value of the contract, it was not enough to warm the chill. As long as the NFLPA wanted to control the money and end individual player-team contract negotiations, no deal could be made.[28]

A percentage of TV contracts was not appetizing to the owners, perhaps because of foreseen growth in the value of television contracts. By setting a precedent of offering a portion of the telecast royalties, the owners would lose valuable leverage in future negotiations by having a potential baseline of 50 percent of television revenue given to the players. In 1987, NFL television contracts were paying each owner $17 million per year, a figure which would have been reduced if the players' obtained a percentage of TV revenue (Staudohar, 1988, p. 26).

Unfortunately for the players, striking was not an effective strategy. Internal conflict within the ranks, especially between star players and the rank-and-file, coupled with "disenchantment over [NFLPA Executive Director] Ed Garvey's leadership," slowly eroded NFLPA unity (Staudohar, 1996, p. 72).[29] In addition, two game checks were not sufficient for most players for the extended period of the strike, the planned all-star games that were supposed to gain public sympathy were a failure, and by not waiting until the third week of the season prevented players from gaining a credited year toward pension benefits.

At the root of it all, the owners were able to withstand a prolonged strike because of their comfortable financial standing that allowed them to hold the line. In order for a strike to be effective in a competitive negotiation, it must impose costs on the other side so as to convince it that the resistance point needs to move toward the striking party's demands.

[28] In a prepared statement, the NFL Management Council stated the "only difference between [them and the players] seems to be the length of the new contract and whether players will be paid through individual negotiations or by means of a wage scale."

[29] Swann and other star players stood the most to lose out of a labor stoppage. They already had lucrative contracts and were not as worried about an increase in salary as players who were not the superstars. In mid-September, player reps began polling their teammates to see if support for the union's position remained. Players also began to question the effectiveness of the strike and express interest in returning to play.

In 1982, the only reason the owners eventually made concessions was to salvage the season. Although the owners were able to withstand a strike, they felt that at least playing some games, the playoffs, and the Super Bowl were in the best interest of the League. The owners' offer was less than what they could have afforded by a substantial margin.

In early November, the owners offered $1.28 billion in guaranteed money over four years, which would meet the players' initial minimum salary and raise requests. In return, the players would give up the union-controlled wage scale. These concessions demonstrate the strength of the owners' bargaining power over the players because the owners made an "easy" concession relative to the players' loss of a major demand.

Faced with crumbling internal support, lack of public sympathy, and loss of bargaining power, the players accepted a five-year, $1.6 billion player compensation package with $1.28 billion guaranteed (Staudohar, 1996, p. 72). Benefits included increases in minimum salary, pension, pre-season pay and injury protection. Other non-monetary benefits included the right to receive a second opinion for injuries and an agent-certification system.

The 1982 CBA was a better deal for owners than it was for players. Owners were able to prevent players from achieving the full extent of the original percentage of the gross demand, to receive five years of labor stability, and to pay less than their original $1.6 billion offer.[30] It was also less than what owners could have afforded, given the substantial income from attendance and television contracts (Staudohar, 1996, p. 73).

What is surprising about the 1982 negotiation was the focus on one issue and the fact that other issues were not used create effective trade-offs for the main issue or break up the main

[30] Guaranteeing $1.28 billion over five years was in essence a version of giving a percentage of revenues. But it was not 55 percent, tied to television revenue, based on seniority, or dispensed to the players through the NFLPA, which were all major player requests during the strike negotiations. The final deal was nowhere close to what the players originally demanded. If the owners cost of player compensation did not total $1.28 billion over the term of the CBA, they would have to make up the difference (Berry, Gould, and Staudohar, 1988, 144-145).

issue into separate issues for effective concession-making *before* engaging in a work stoppage. Focusing on a single issue forced both sides to make sweeping changes to that issue in order to make concessions instead of finding other sources of agreement and continuing from that point.

As Berry, Gould, and Staudohar (1988) note, if both sides had effectively perceived each other's resolve, they would certainly have made a better effort to reach a deal before a strike. The players misjudged their solidarity which led them to "overestimate their strengths and failed to effectively gauge the owners' ability to withstand a strike" (Berry, Gould, and Staudohar, 1998, p. 44). Instead of allowing a chill to haunt negotiations, both parties ought to have resorted to their BATNAs sooner or made an agreement.

1987 Strike: Lack of Serious Negotiations and Successful Use of Replacements

When the 1982 CBA expired in 1987, unresolved issues and unsatisfactory terms from the 1982 agreement, such as free agency, pensions, severance pay, entry-level salaries, minimum salaries, guaranteed contracts, drug testing, protection of player representatives, and team roster size, returned to the bargaining table.[31] There was a joint desire to avoid the mistakes and contention of 1982, but after a valiant effort to avoid media spotlight and mudslinging, the negotiations unraveled.

Even though both sides displayed amicable feelings toward each other, there was a "lack of progress in negotiations" (Staudohar, 1988, p. 28). There were a few negotiation sessions prior to the CBA expiration and the start of the season, but the discussions exhibited a disturbing lack of urgency.

[31] At this point in NFL labor history, it has been usual for the players to come to the bargaining table first because they generally are the party dissatisfied with the current contract. Consequently, the negotiations are usually focused on the issues presented by the players. We will see this situation flip in the 2011 lockout, where in 2008 the owners opted out of the 2006 CBA and negotiations began on their terms.

Unlike the 1982 negotiations, both sides brought multiple issues to the table, allowing the possibility of effective trade-offs. Yet there was no attempt by either side to make a concession or cut a deal. The initial positions the two sides offered on April 20, 1987 remained largely unchanged during the negotiation.

No doubt owners were satisfied with the lack of progress because of its financial ability to withstand a strike. Their strategy was threefold: stonewall in negotiating, gain public support for their position, and use replacement players to break the resolve of the strikers (Staudohar, 1988, p. 28).[32] In short, they were prepared for another round of contentious, competitive bargaining. It was the owners' strategy, particularly the use of replacements, and the poor preparation the NFLPA showed in selecting free agency as the primary issue that contributed to the failure of the players to gain anything.[33]

Much like 1982, the players and owners felt that each side's opening offer provided few opportunities for subsequent concessions. Eventually, the cordial bargaining relationship deteriorated and the parties returned to jockeying with each other in the popular press. Before the players called the strike on September 22, 1987, NFLPA Executive Director — and chief negotiator — Gene Upshaw had not been at the bargaining table in two weeks, instead focusing on meeting with players, gathering support for a strike (Staudohar, 1988, p. 28).

The owners insisted free agency was the major roadblock to a deal, but the players contended that free agency was only one of several key issues they wanted to negotiate.[34] As was seen in 1982, the owners wanted to frame the negotiation around a single issue, free agency,

[32] "Surface bargaining," or "stonewalling" as Staudohar (1988, p. 28) puts it, "occurs when an employer or a union appears to be going through the motions of bargaining but is not sincerely trying to reach an agreement" (Budd, 2008, p. 284). It is classified by the NLRB to be a version of bad faith bargaining, but since both sides engaged in it, neither side could justly accuse the other.

[33] The players also missed out on having the USFL as a potential BATNA. The rival league played from 1983 to 1986, immediately between the strike years of the '80s.

[34] Gary Pomerantz, "Free Agency Debate 'Stumbling Block' In NFL Negotiations," Washington Post, August 23, 1987.

but the players made sure negotiations remained focused on a package of issues they wanted changed.

No doubt owners questioned the players' demands because they were similar to what they gained in the 1982 deal. From the owners' perspective, players should be happy with what they received in 1982, no matter how little the gains. Other than free agency, there was no major issue to negotiate and no reason to risk reopening wounds suffered in 1982. Alas, this is what happened in 1987.

Although average player salary over the course of the five-year 1982 CBA increased from $90,000 to $230,000, it was not a result of the 1982 CBA but instead came from pressure by the USFL, a rival football league that created a bidding war for the best players (Staudohar, 1988, p. 26). The NFLPA believed the rights they won in *Mackey v. NFL* and bargained away in 1977 were essential to improving player mobility and income.[35]

Concessions were minimal on the free agency issue. The players opened with unrestricted free agency for all members, which the owners immediately rejected. They returned with an offer to further liberalize the right of first refusal.[36,37] As a result, the players dropped their demand to unrestricted free agency for those with four years of service in the NFL. After these few concessions, negotiations stopped as a result of the strike.

As occurred in 1982, the players were ill-prepared to strike. The NFLPA did not create a strike fund nor did it obtain a line of credit for striking players. The owners, on the other hand,

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[35] The players allowed the owners to institute the right of first refusal in the 1977 CBA in exchange for the League increasing annual contributions to the players' pension fund. According to the *Mackey* decision, restricting player mobility through League rules was a violation of antitrust law.

[36] Unrestricted free agency is the ability of a player to contract with another team without any resistance from his former team.This system would allow for a bidding war between teams for the best players, increasing the price of labor and player mobility.

[37] The salary paid to a player before a first round pick was required to compensate his former team would increase and a team had the right to match a competitive offer for a player or allow him to leave. This would have increased player mobility.

were prepared and arranged for replacement players at $1,000 per game. This enabled the owners to honor the television contract, keep stadiums open for gate and concession receipts, and reduce player salaries.[38]

After the first week of the strike, several veteran players returned to play. Overall 15 percent of non-replacement players crossed the picket line during the 24-day strike (Staudohar, 1988, p. 30). It was hard for players to sustain the 1987 strike when the 1982 strike failed, the issues in contention were not worth a strike, they had no other steady source of income, and other players were crossing the picket line.

After 20 days of striking, Upshaw appeared on a Monday Night Football broadcast to propose an end to the strike. Upshaw’s return-to-work proposal called for reinstatement of all players and protection of player representatives, keeping the 1982 CBA remaining in effect, and that all bargaining issues would be submitted to mediation and, if necessary, arbitration. The NFLPA had no choice but to return to work in the face of crumbling support and owners who were satisfied with business-as-usual with replacement players.[39]

To be effective, a union must be able to maintain a strike for a considerable period of time or at least convince management that it can maintain a strike (Breaux, 2010, p. 87). In both the 1982 and 1987 strikes, the NFLPA did neither and the owners proved they were the side that could withstand a prolonged work stoppage.

This back-to-work agreement, though, did not end the labor discord. The owners, although agreeing to almost the entire proposal, rejected arbitration and set an end-strike deadline of October 14, 1987. The union did not end the strike until October 15 and also filed an

[38] The NFL did have to pay $60 million to the networks for one weekend of lost play and reduced ratings (Staudohar, 1988, p. 30).
[39] During the replacement games attendance dipped at first, but steadily increased, although not to non-replacement game levels. Average profits for each owner rose from $800,000 per game to $921,000 due to the salary savings (Staudohar, 1988, p. 29).

antitrust suit against the NFL, challenging the draft and free agency rules of the expired 1982 CBA.[40]

In response to the union not following the deadline, but most likely in response to the antitrust suit, the NFL did not allow strikers to play in the next week's scheduled games. Owners publicly reasoned they did not want to see player injuries or be required to pay both the returning strikers and replacement players. The NLRB determined the owners' actions to be an unfair labor practice and ordered the NFL to pay the returning strikers that week's salary.

The NFLPA failed with its strike strategy because it did not understand it would be difficult to receive the sweeping changes in free agency it sought. At this point in the bargaining relationship, it seemed as if the NFLPA would not be able to win at the bargaining table.

The bargaining relationship had too far deteriorated and was too deeply rooted in competitive, adversarial bargaining to dislodge the seemingly insurmountable bargaining-power advantage of the owners. Consequently, collective bargaining was ineffective as a means of realizing joint gain through a negotiated agreement. It is against this backdrop that we see the courts enter the arena to "help" produce a solution.

Court Battles of the 1990s

From 1987 to 1993, the NFL operated without a collective bargaining agreement as the NFLPA-initiated antitrust suit wound its way through the courts. Although a CBA was signed in 1993, labor peace still was not realized because of the legacy of the overly competitive CBA negotiations that occurred during the 1980s.

The antitrust suit that was initiated at the conclusion of the 1987 strike, *Powell v. Pro Football, et al,* did not produce a satisfactory end for the players.[41] On appeal, the court ruled a

[40] The NFLPA could file an antitrust suit because the 1982 CBA was still expired at the time and no new CBA was in effect, thus a bargaining relationship did not per se exist. The players returned to work under a return-to-work agreement, not a CBA. The *Powell* case (discussed later) will address this situation.

bargaining relationship still existed even after impasse was reached and even though a new CBA was not signed. As long as the NFLPA was the official union of the NFL players, it could not initiate antitrust suits.

Before the 1988 season, the owners unilaterally implemented "Plan B," a new free agency system that allowed a team to protect 37 players on a reserve list.[42] If a player whose contract expired was placed on this list, he could not change teams unless his current team chose not to match the offer (Breaux, 2010, p. 88).

After the loss in *Powell* and the unilateral implementation of Plan B, the players voted to decertify the NFLPA, allowing for the unabated pursuit of an antitrust suit against the NFL. A series of successful suits, particularly *McNeil v. NFL*, held that Plan B was harmful to the players and constituted an antitrust violation. The *McNeil* case did not fully eradicate Plan B because the jury found it to "reinforce competitive balance in the NFL," but it did force the parties back to the bargaining table (Breaux, 2010, p. 93).

Although nothing much came from light bargaining after the *McNeil* decision, *White v. NFL* certainly accelerated the movement toward the NFL's first CBA in six years. *White* was a class-action antitrust suit filed on behalf of all players who were affected by Plan B. Instead of allowing the case to proceed, which the NFL most likely would have lost, a settlement was reached that led to the 1993 CBA.[43]

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[41] The suit was against all the individual clubs, as well as the NFL. The Washington Redskins' corporate name is "Pro Football, Inc.," who was the first defendant listed in the case.
[42] Labor law permits the employer to unilaterally implement changes to the terms of a previous CBA during impasse without consulting or bargaining with the players.
[43] The players who were affected by Plan B received $155 million lump sum as part of the settlement.

The 1993 CBA was a watershed moment in the labor history of the NFL.[44] It ushered in 18 years of uninterrupted labor peace. It was also peacefully amended and extended a number of times until major changes were made in the 2006 CBA.[45]

However, what is noteworthy about these developments is that the players and owners did not reach achieve this new labor peace through their own negotiations. Rather, it occurred only after the courts stepped in and adjusted the balance of negotiation power toward the players.

The 2006 CBA included an opt-out clause in 2008, which the owners swiftly took advantage of as a result of numerous complaints to the agreement. The 2011 owners' lockout was the battlefield for those issues.

2011 Lockout: Mediation Facilitates Collaboration

The 2011 lockout was the result of what the owners perceived to be massive unforeseen problems from the 2006 CBA. They complained the player salary terms in the 2006 agreement, coupled with the economic recession that began in 2008, caused the owners to lose income. The owners argued that changes needed to be made to allow for a lower player share of the revenue pie and more expense credit, as well as other demands framed to be in the best interest of increasing the value of the NFL, and consequently the revenue pie.[46,47]

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[44] The 1993 CBA finally gave the players the right of unrestricted free agency and a liberalized player movement system, the salary cap was instituted (in essence guaranteeing the players a percentage of the owners' gross income), a minimum team salary was introduced, and the college draft was reduced to 7 rounds (it still is today), among other terms (Breaux 2010, p. 95-97).

[45] The 2006 CBA included an increase in the salary cap and a revenue sharing component which had the top-revenue teams contributing more to the pot than the lower-revenue teams. It was estimated to cost the owners nearly a billion dollars over the next six years. ESPN.com news services, "NFL owners approve six-year CBA extension," March 8, 2006.

[46] Per the 2006 CBA, the owners received approximately $1 billion off the top of the total revenue before the player salary percentage was calculated. The $1 billion was used for offsetting expenses, aiding in building and renovating stadiums, and investing in new ways to increase the value of the League.

[47] A Forbes analysis asserts that these claims were "unwarranted," yet "economic realities" were the major reason for the owners' decision to terminate the CBA after the 2008-2009 season rather than after the 2011-2012 season. Maury Brown, "Numbers Show NFL's 'Economic Realities' for Lockout Unwarranted," Forbes, January 1, 2011.

The initial negotiations in 2011 focused on four early proposals offered by the NFL. The owners requested an additional $1 billion expense and investment credit, an increase in games per season from 16 to 18, a rookie wage scale, and hGh testing included as part of the NFL's anti-performance enhancing drug program. Owners reasoned that each of these proposals will mean more revenue for the NFL and will increase the pie for all parties, as well as redirecting money from rookies to more established veterans.

In a positive step from previous negotiations, a mediator from the Federal Mediation and Conciliation Service (FMCS) was invited to the bargaining table to facilitate an agreement. Thompson notes that mediation "offers the possibility of discovering underlying issues and promoting integrative agreements." Although use of a mediator failed at the beginning of the negotiations, the 2011 negotiation eventually was settled in an integrative way through the use of a mediator (Thompson, 2009, p. 367).

Early on, the mediator enabled the sides to come to an agreement on two major issues: a rookie wage scale and the ability of owners to recoup money from players who face legal troubles. Both sides agreed it was beneficial to decrease the initial pay of unproven rookies because the owners would not have to pay exorbitant salaries to draft "busts" and first-year players. Instead, more money would be directed toward the owners and proven NFL players.

Both sides also understood that the negative publicity associated with players who engage in unlawful conduct, and remain rewarded by their NFL contracts, was not positive public relations. The key to this agreement was the owners backing off a strict wage scale that ignored performance incentives and the players allowing owners to not pay players who are jailed when their contract bonuses are due.[48]

At first, the understanding of both sides that saving owners money on unproven rookies, directing more money to proven veterans, protecting owners from paying convicted criminals, and protecting the reputation of NFL players seemed to bode well for future negotiations, especially with the presence of a mediator. However, when the issue of splitting the revenue pie reached the bargaining table, negotiations hit a major snag.

The players did not object to discussing a reduction in the players' percentage of revenues, but they were opposed to discussing a pay cut without being allowed to review relevant financial data. As a result, the players and owners entered into a side negotiation regarding what financial data the owners would release.[49] This served as an effective distraction and hindrance to the main issues and prompted the players to stiffen their positions.[50]

In the weeks before the lockout, the deadline was extended to accommodate the ongoing financial disclosure negotiations. This was not an effective strategy, as was seen in 1982 when both sides clearly were not moving their positions. At this point, even in the presence of a mediator, both sides would have been better off exercising their BATNAs in a timely fashion rather than negotiate over a non-major issue and foster a negative bargaining table atmosphere.

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[48] Unfortunately, this small agreement did not last the entire negotiation and was re-negotiated later in the process. This illustrates a faulty negotiation technique of not making packaged proposals, which prevents recognition of trade-offs for mutual gain. By making packaged proposals, the parties can engage in give-and-take on issues that they are willing to give in on and search for ways to create mutual benefit. Jason Cole, "Sources: Agreement Reached on Rookie Scale," Yahoo! Sports, March 9, 2011.

[49] The owners offered limited data including team profits, but did not identify which teams the profit data was attached to. The only team full financials that were available to the public were for the Green Bay Packers, which is publicly traded. The Packers' financials indicated a 71 percent reduction in profits amid an 18 percent increase in revenues. The owners' argument is bolstered by the fact that Packer salaries increased from $110.7 million to $160.8 million from 2006-2008.

[50] During this period, the players expressed their disapproval for an 18-game regular season and would settle for "no less than a 50-50 split of revenues," which were not acceptable terms for the owners. Michael Silver, "Owners ask for a lot, offer very little in return," Yahoo! Sports, March 9, 2011.

When the players decertified on March 11, 2011, the owners responded with a lockout the following day.[51] These actions effectively ended negotiations and placed the dispute in court. Other than the revenue split, 18-game season, and rookie scale, the deal left on the table by the players included many player-friendly provisions that were incorporated into the final CBA agreement.

The next time the players and owners met, it was under a court-ordered mediator. This turned out to be the best possible development in the 2011 negotiation. Although this negotiation format was court-ordered, the mediator was able to facilitate a collaborative process that enabled both parties to agree on the major issues and obtain an agreement that experts claim benefits both owners and players.

The negotiation did exhibit some integrative realization by the parties prior to the decertification/lockout with the principle agreement on the rookie wage scale and felon pay, as each side was able to understand the other's interests in this small agreement. As Thompson notes, taking the perspective of one's negotiation partner is an effective integrative strategy, and this theme emerges throughout the process (Thompson, 2009, p. 81).

When the parties began to understand the shared vision of continued league expansion, the negotiations began to take off with creative, divergent thinking. Divergent thinking is resolving a conflicted issue through "originality of thought" (Thompson, 2009, p. 209).

The chief collaborative breakthrough was obtaining an agreement on the revenue split through joint development of a new "all revenue model," one that reestablished trust by

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[51] The players filed an antitrust lawsuit, *Brady v. NFL*, to contend that the lockout was illegal, hoping to gain leverage. The players won the lawsuit, but a stay on the order to lift the lockout and a reversal by the appeal court prevented a leverage shift. Another lawsuit earlier in the negotiations did not allow the owners to collect $4 billion in television revenues during the lockout. This judgment, too, had no impact on the leverage of any side in the negotiation.

simplifying the calculation for the players' revenue share after the expense credit.[52] The all-revenue model would first remove the owners' expense credit for stadium expansion and investment. Then the next season's salary caps would be set based on a percentage from media contracts, NFL Ventures, and club revenue would be given to the players.[53]

This calculation essentially is a guarantee players would receive no less than a set portion of league revenues and aligns the interests of the owners and players. This major agreement allowed the sides to realize that an integrative solution was the optimal result of the dispute, especially since the start of the season was fast approaching.[54]

With most of the non-monetary issues settled, mainly on the terms that the NFL offered prior to the players' decertification, negotiations focused on the final three issues: rookie wage scale, transition rules into the drastically-shortened 2011 offseason, the free agency rules. While the transition rules and schedule were quickly determined, the rookie scale was identified by the parties "as the most complex issue" because of the number of movable parts within the issue.[55] How players whose contracts had expired after the 2009-2010 season were to be handled in the shortened free agency period also needed to be addressed by the parties.

Unfortunately, the collaboration that had been present since the court-ordered mediation began to deteriorate by the end of the process. But there had been enough goodwill through resolution of the major issues during court-ordered mediation that a deal wasn't derailed. Parties need not be great friends to achieve a collaborative settlement. Rather, they just need to

[52] Albert Breer, "NFL owners, players regaining trust with 'all revenue' model," NFL Network, June 23, 2011.
[53] In essence, the previous year's revenues will dictate what the next year's salary cap will be. The combined salary caps of the 32 NFL franchises would be equal to the percentage required by the CBA.
[54] Cancelling a full weekend of preseason games would have cost approximately $60 million in lost revenues, lessening the amount of revenues for the League and players to split. Associated Press, "NFL lockout now up against a hard deadline,'" July 6, 2011.
[55] Associated Press, "Sources: Sides eye July 21 ratification," July 11, 2011.

understand the greater value achievable through collaborative bargaining compared to competitive bargaining.

The rookie salary cap issue mostly was resolved, but talks reached a snag when discussing a fifth-year option for first-round draft picks. Both parties agreed that rookie contracts would consist of four years with a team-determined, fifth-year option but disagreed on how much money these rookies would receive if the option were picked up by the team.

The divide on this issue was not remarkable. The owners wanted a fixed amount, whereas the players wanted a top-10 position salary for top-16 picks, top-15 salary for picks 17-32. One owner, the Cowboys' Jerry Jones, offered the top-10 quarterback salary for quarterbacks selected in the first round, but was rebuked his colleagues. This demonstrates that both sides were offering creative ideas, even though the players charged the owners with not reciprocating on concessions.[56]

A positive regarding the 2011 negotiations was the openness the parties had for mediation and devising creative solutions. When the parties entered the final stage of negotiations, there was no need for the mediator. In fact, the mediator had been on vacation while the parties were discovering solutions to the rookie salary cap, resolving the antitrust litigation, and setting the stage for ratification of a potential agreement.

In the finalized 2011 CBA, owners were able to obtain the economic concessions desired, while the players were able to move some money to veteran players and retirees and obtain major changes in player safety, benefits and training sessions. The shortening of the preseason workout schedule and granting more in-season off days will allow players to remain healthy during the season, keeping star athletes on the field at no cost to the owners. Also, increasing

[56] Chris Mortenson and Adam Shefter, "Sources: Sides eye July 21 ratification," ESPN, July 11, 2011.

benefits for both current and retired players served as a good concession by the owners, as well as an excellent public relations and legal move.[57]

However, the most important term of the 2011 CBA is the increase in the amount of pre-calculation credit the owners will receive. The agreement allowed owners to receive a credit based on actual stadium investment up to 1.5 percent of revenues. This allows the NFL to continue to employ its G-3 program to fund new stadiums and renovate aging stadiums, especially in Los Angeles, a city to which the NFL seeks to return.[58] The G-3 program lasted from 1999-2006, where 11 stadiums were newly built or renovated with help from this assistance program.

New and renovated stadiums with more seating capacity, more expensive luxury boxes, and more concession stands, among other lucrative stadium amenities, increases the total revenues for all parties. Since players receive 40 percent of local club revenue, revenue derived from stadium receipts in the 2011 CBA, it made sense for the players to allow the owners to obtain a larger credit before calculating the players' share.

Why a Collaborative Partnership Is Beneficial to the Future of the NFL and Players

The NFL did not reach the zenith of American sports culture with the help of positive labor relations. In fact, the NFL obtained and maintained its massive popularity in spite of the labor struggles of the 1980s and early 1990s, and both parties didn't significantly expand the revenue pie past the massive TV contracts until they began realizing the joint gain possible through collaborative bargaining.

[57] The NFL has been battling legal claims against former players regarding rules neglecting their health. By making rule changes, along with providing more post-career benefits for players, the NFL could bolster its defense in court.

[58] Farmer's Field in Los Angeles is currently under construction. A program similar to G-3 most likely will be used to aid the construction of the new stadium.

It took the NFL and NFLPA a while to understand that they were partners in creating the NFL product and treat each other as such in collective bargaining negotiations. This did not occur, and could not have occurred, without the balancing of bargaining power that resulted after the players' union sought assistance from the courts.

During the 1980s, when the players and owners used competitive strategies to obtain concessions, the resulting CBAs (or lack of a resulting CBA in 1987) did nothing to make the parties true partners in creating the NFL product, thus perpetuating an adversarial, employer-employee relationship.

At this point in their labor relationship, the players and owners have established CBA parameters that truly make each party a partner in the NFL's success. According to Thompson, while focusing on the long-term relationship does not lead to collaboration, it does mean that "negotiators should have an easier time working to reach win-win" (Thompson, 2009, p. 80). Because of this naturally-developed partnership through the different CBAs during the years, the NFL and NFLPA must focus on the long-term relationship or fail to grow the NFL brand.

A long-term relationship is important because players receive a percentage of the NFL's revenues from national television, local club revenue, and NFL Ventures. The owners need high-caliber athletes to field teams which fans want to watch and players no doubt want to play a sport they love and at which make a lot of money.

Current NFL Commissioner Roger Goodell set a goal of increasing NFL revenue to $25 billion by 2027. To accomplish this, Goodell said the NFL must "'expand [its] capital, expand [its] stadiums, keep renovating and keep all of [its] capital equipment up to the highest standards, invest in technology, [invest] in the business, [reaching the revenue goal by 2025] could be done.'"[59] For players, it makes sense to continue coming up with creative solutions because more revenue means a higher salary cap which, in turn, means more money in their pockets.[60]

The most direct, yet most difficult, way owners can increase the NFL's value is to develop its stadium infrastructure. It is clear that when the G-3 funds were being used from 1999 to 2006, non-television-generated revenue became a significant portion of total revenues. Increasing the capability of the owners to invest in new stadiums or modernize old ones will increase income on Sundays.

The demand for new stadium infrastructure is present even in the recession that has affected the U.S. economy since 2008. NFL attendance figures have not been significantly affected, and those who are wealthier than the average fan are still able to afford essential revenue-producing amenities such as luxury boxes, club sections, premium parking and fan lounges.

Unfortunately, the owners and players missed out on the opportunity to begin the stadium boom early, when they focused instead on contentious issues such as free agency and splitting the revenue pie. Although the stadium boom was not driven by the use of G-3, they were a significant help during 1999-2006, the major part of the stadium boom.

Television contracts are an essential part of the NFL's value. The owners, more specifically the Office of the Commissioner, are responsible for obtaining a television package that is in the best interest of the NFL. The NFL has been successful at obtaining lucrative television contracts.

Since the NFL did not split television revenue with the players until 1993, the league's growth can be attributed mostly to the presence of television deals, in spite of the unstable labor

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[59] Daniel Kaplan, "Goodell sets revenue goal of $25B by 2027 for NFL," SportsBusiness Journal, April 5, 2010.
[60] The salary cap is tied to the upcoming season's projected revenue. This has been the case since players started receiving a portion of the League's revenues since the 1993 CBA.

situation. Non-television revenues did not constitute a large percentage of the entire NFL revenue until the stadium boom of the 1990s, indicating that value was not created by the actions of the parties but by unilateral investment by the owners.

The best indication of whether a deal creates joint value is evaluating how much additional revenue was created on top of the television money. Since the CBA does not address how the NFL is to make deals with the networks, ownership is the only party that influences this portion of the revenues.

Stephen Douglas McCreary discusses how failed competitive negotiations created "enormous" short-term costs that the NFL had to overcome (McCreary, 1989, p. 290). Although gate and concession receipts dropped only slightly during the 1980s strikes and was "largely offset by reduced payroll," the same cannot be said of television revenue (McCreary, 1989, p. 290).

During the work stoppages of the 1980s, television ratings dipped tremendously in 1987 and the NFL had to return money from lost games to the networks in both 1982 and 1987.[61] This resulted in lost money for players and owners to split. With the increasing lucrativeness of television contracts, the NFL cannot afford another prolonged work stoppage as a result of hardline negotiation tactics leading to an impasse.

Other costs that derive from the breakdown of competitive negotiations are those that come from antitrust suits brought against the league (McCreary, 1989, p. 290). Court and attorney fees are expensive, especially since the parties generally use outside counsel. In addition, the parties generally do not negotiate during legal proceedings, preventing an agreement from being obtained.

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[61] It took "fully three-and-a-half years for television ratings to rebound to pre-strike levels following the fifty-seven-day strike in 1982" (McCreary, 1989, p. 290).

One of the few instances of competitive tactics in the 2011 lockout was the players' use of decertification and antitrust litigation. Before the court-ordered mediation, the parties were not meeting at the bargaining table, instead posturing in the popular media. Instead of souring the relationship in a legal battle, the parties would be best suited to engage in mediated discussions.

In his book *Tailgating, Sacks, and Salary Caps*, Mark Yost examines how the NFL became the most lucrative sports league in the world. Yost argues that the "reverse-draft and shared-revenue model" is the NFL's ticket to success (Yost, 2006, p. xii).

Yost's argument has considerable merit. The reverse draft allows poorly-performing teams to rebuild during the draft with younger players, allowing for competitive parity which maintains fan interest. Revenue sharing allows for all teams to remain financially sound, while making the players a partner in the creation of league revenues.

Revenue sharing includes players as well as owners. In 1982 and 1987, the players and owners fought over the players' revenue share. As we saw in 2011, the players were able to understand that future investment in the league by the owners would produce league growth. In return, the owners were able to provide the players with enhanced safety and health benefits, as well as, in essence, "investing" in the health of their employees.

NFL Ventures is the consolidated entity that licenses NFL apparel, promotes the NFL brand, and works to expand the game into international markets. According to audited financial statements, NFL Ventures contributed approximately $1.6 billion in revenue to the 2009-2010 revenue pie, a large portion of which comes from apparel sales, which mostly include sales of replica player jerseys.

Without the players, NFL Ventures cannot be profitable. Thus, it is in the best interest of the owners to share this jointly-created profit with the players. Players create the demand for their jerseys with great play and personality and the NFL expands demand through marketing and product distribution.

NFL Ventures also will play an important role in the future expansion of the NFL. Because of the difficulty in building and renovating older stadiums and the fact that U.S. sponsorship and advertising markets are fully developed, it will be harder for the NFL to reach its 2027 growth goal. Newer businesses such as "Internet, cell phone, satellite [television] and international [expansion of the game to foreign markets], as well as the NFL Network" are the key to further expansion of the NFL brand.[62]

Future CBAs need to be tied to the owners' ability to expand the NFL through investment in new ventures. However, as the owners claimed during the 2011 lockout, initial financial credits were required in order for the NFL to make such investments. If the labor relationship had been in 2011 the way it was in 1980, the NFLPA would have rejected any deal that gave the owners more money because the relationship was not seen as a partnership. At that time, the players were trying to gain more "rights," while the owners were attempting to increase their control over their "employees."

In 2011 the players were "willing to provide the owners financial credits" if the owners would release financial reports that proved the money was being invested for the benefit of the NFL.[63] Although exactly what financial data the owners eventually disclosed to the players was never publically announced, it seems that either enough information was shared or another concession was given by the owners to convince the players to increase the owners' initial credit.

[62] Daniel Kaplan, "Goodell sets revenue goal of $25B by 2027 for NFL," SportsBusiness Journal, April 5, 2010.
[63] Daniel Kaplan, "Goodell sets revenue goal of $25B by 2027 for NFL," SportsBusiness Journal, April 5, 2010.

The labor relationship between the two parties has evolved as the relative bargaining power gap between the players and owners has shrunk. Before the courts became involved in the collective bargaining process, players were unable to gain any concessions at the bargaining table. The players' ability to successfully use decertification and antitrust law during the 1990s, coupled with subsequent player gains in the resulting CBAs, leveled the relative power between the players and owners.

The shrink of the bargaining power gap between NFL owners and players makes the choice to use competitive bargaining strategies more dangerous. Power, "the ability to coerce someone to do something she would not otherwise do," typically involves "imposing costs" on the other side usually via competitive tactics such as the use of threats (Thompson, 2009, p. 110). Because of the considerable interdependence between the players and the owners and the small gap of relative bargaining power, use of competitive strategies in future bargaining would most likely result in impasse and fail to increase the value of the NFL.

Conclusion

The nature of the labor relationship has changed for the players and the owners. In the past when both parties perceived an adversarial relationship and attempted to obtain as much of the NFL revenue pie as possible through competitive negotiation, they were unable to maximize the NFL's growth potential. Today, both parties must understand that in order to realize Commissioner Goodell's lofty $25 billion-dollar goal, collaboration is necessary.

From 1980-1990 NFL revenue grew by $900 million, from 1990-2000 revenue grew by $2.6 billion, and from 2000-2010 revenue grew by $4.8 billion. Yost's claim of parity and revenue sharing being the driver of the NFL's success, which mirrors the opinions of many sports business scholars, suggests that players and owners were lucky to strike gold in courtpressured negotiations of 1993 when today’s model of revenue sharing was installed, and in 2006 when the revenue sharing model was tweaked on the owners’ side.

The owners and players missed out on the opportunity to take full advantage of the stadium boom that began in the late 1980s and came to fruition in the 1990s. The unfortunate fact is that while the NFL was expanding as a business, players and owners failed to capitalize on it through their collective bargaining relationship.

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