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Does Decertification Work? Outcome Analysis of the
National Football League's Negotiated Order (1986-2008)

A thesis
presented to
the faculty of the Department of Sociology
East Tennessee State University
In partial fulfillment
of the requirements for the degree
Master of Arts in Sociology

by
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Dr. Martha Copp, Chair
Dr. Paul Kamolnick, Committee
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ABSTRACT

Does Decertification Work? Outcome Analysis of the National Football League's Negotiated Order (1986-2008)

by

Matthew Bowers

For decades, union membership and activity has been declining in North America; employers have demanded greater flexibility and have successfully weakened workplace and worker protections. Modern workers increasingly use alternative strategies to negotiate conditions of employment with managers who have limited their discretionary power. Negotiated order theory provides a useful tool for analyzing the mesostructural arrangements of bargaining parties during labor disputes. This thesis applies negotiated order theory to explore how and why the National Football League (NFL) players have twice decertified their union and sought court intervention to challenge the legitimacy of the League's highly restrictive reserve system. An outcome-focused content analysis was designed as a preliminary investigation to ascertain why an alternative strategy was sought and if the strategy proved more effective in securing the players' preferred ends than conventional collective bargaining. The NFL case offers a fixed market from which to formulate a negotiation context of the interorganizational structures and bargaining interactions of its members.

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CHAPTER 1
INTRODUCTION

On March 11, 2011, the National Football League Players Association (NFLPA) decertified as a union for the second time in its 50-year history. The action came when the 2006 collective bargaining agreement (CBA) between the National Football League (NFL) and the NFLPA expired. The two parties failed to reach a new agreement and the owners chose to employ a lockout against the players as a negotiation strategy.¹ Both parties justified the impasse by accusing the other of failing to bargain in good faith.

The owners argued that the NFLPA never intended to negotiate and always planned to decertify. The NFLPA contended that the owners preferred a lockout in order to undo the labor market arrangements established by the expired CBA. The owners used a clause bargained into the 2006 CBA extension that allowed them to opt-out of the contract in 2008. In a prepared statement, league representatives said that they were “taking the difficult but necessary step of exercising their right under federal labor law to impose a lockout of the union.”²

The players’ reaction to the owners’ lockout was to decertify the NFLPA, which disbands the union and its role as sole bargaining representative of the players in negotiations with the NFL. This strategy allowed the players to seek advantage through litigation rather than collective bargaining. Ten players filed suit against the NFL, headed

¹ A lockout blocks the players from all NFL operations including salaries, benefits, contract negotiations, player transactions, off-season training, and access to team facilities and medical care. It is a bargaining tactic used by employers to prevent employees from working until they accept the employer’s terms.

² Evans, Simon. 2011. “NFL Announces Lockout of Players.” *New York Times*, March 12, pp. 18. Retrieved April 28, 2011 (<http://www.reuters.com/article/2011/03/12/us-nfl-lockout>).

by MVP quarterbacks Tom Brady, Drew Brees, and Peyton Manning. The antitrust lawsuit attacks the League's draft policies, salary cap, standard players' contract, and free agent restrictions.³

The owners declared the decertification a "sham" and "built on the indisputably false premise that the NFLPA has stopped being a union and will merely delay the process of reaching an agreement."⁴ DeMaurice Smith, executive director of the NFLPA, countered that the owners provoked this action. Smith stated, "I would dare any one of you to pull out any economic indicator that would suggest that the NFL is falling on hard times. For the last 14 days the NFL has said, 'trust us.' But when it came time for verification, they told us it was none of our business."⁵ Smith referred to the owners' refusal to share financial information with the NFLPA to justify its claims of lost revenue due to rising player and stadium operation costs – the owners' grounds for opting out of the agreement. Normally, each side would file a petition to the National Labor Relations Board (NLRB) claiming the opposition's failure to bargain in good faith, followed by a bargaining tactic like an owners' lockout and/or players' strike. The courts often defer to the NLRB in such disputes and prefer a collectively bargained solution over judicial interference. The courts presume that the active parties in negotiation understand the relative issues and context better than judges in a court room.

An obvious question is why did the NFLPA act so definitively when choosing decertification as its strategy for negotiation? The owners consistently insisted that they

³ *Brady v. NFL*, 11-CV-639.

⁴ Boren, Cindy. 2011. "Owners React as NFLPA Decertifies." *The Washington Post*, March 11. Retrieved May 2, 2011 (http://voices.washingtonpost.com/early-lead/2011/03/owner_react_as_union_dec.html).

⁵ NFL.com Wire Reports. 2011. "League Locks Out Players as Union Decertifies." *NFL.COM*, March 11. Retrieved April 30, 2011 (<http://www.nfl.com/news/story/article/league-locks-out-players-as-union-decertifies>).

would not hire replacement players and intended to lockout the players once the contract expired. In 1987, the league's national television contracts were not guaranteed if games were canceled due to a work stoppage. Owners needed to provide a televised product in order to earn revenue from the television networks. They hired replacements, or "scabs," in lieu of the players to maintain operational income and fulfill their contractual obligations. The willingness to use replacement players increased the owners' leverage in negotiations with the striking NFL players. As a consequence, the players' solidarity dissolved in two weeks as several marquee players crossed the picket lines. The players ended the strike without a new agreement and received minimal concessions from the owners. The 1987 labor dispute illustrates the historical ineffectiveness of the players' bargaining positions in the NFL labor market.

In the 2011 NFL season, the owners will receive media contract revenue even if no games are played. The owners will not need the NFL players or replacements to ensure their short-term profitability. Presumably, the owners' resistance to NFLPA demands will continue as long as they can maintain operational income. The owners appear to have superior leverage in the 2011 CBA negotiations because of their market situation and available resources. It affords them the ability to withstand a significant work stoppage and increases their discretionary leverage in the labor dispute. Most NFL players are not millionaires and need salaries, benefits, training, and access to team facilities to maintain their status and economic livelihoods. Players do not share the owners' economic position and have a limited career life span. Players, more than owners, seek a more timely resolution to this conflict.

The current labor conflict stimulates a number of questions. Does decertified litigation give the players more leverage in the NFL labor market? Does it produce more preferred outcomes for players? Does this explain why the NFLPA advised the players to seek litigation so early in the new CBA bargaining period? Because the court system prefers to delegate rulings to the NLRB and current labor laws encourage collective bargaining, litigation does not seem expedient. What advantages does decertification, as an alternative negotiation strategy, offer the players that traditional bargaining does not? Mere “tactical posturing” by the players seems an unlikely explanation. The action must serve some other meaningful purpose than to simply stall the bargaining process.

I used these questions as the basis for my thesis research. I wished to understand the negotiation context that affects employers’ (owners’) relationships with workers (players). I am specifically interested in the alternative mode of action employed by the workers in the NFL market to improve their situations. In other industries, traditional labor market arrangements – even those negotiated by unions – for workers seem counterproductive to their discretionary needs. If this is true, workers are compelled to pursue alternative modes of action to bargain successfully with employers. Investigating the effectiveness of decertification in the NFL labor market helps to understand a structural framework for the action as a possible alternative for future labor negotiations.

After I review relevant literature and theory in the next chapter, I describe the methods I used to compare the outcomes of decertification and CBAs in Chapter 3. A historical narrative in Chapter 4 explains the dynamics and points of contention affecting the reserve system in the negotiated order produced by the NFL and NFLPA. I also describe the applicable laws associated with the labor market negotiations and antitrust lawsuits

that routinize the strategies of the NFL and NFLPA within a larger social order. In Chapter 5, I analyze the outcomes sought by players through collective bargaining and decertified antitrust lawsuits. My thesis concludes with a discussion of the importance of understanding structural conditions that shape the negotiation context in the NFL. I also explain how my findings relate to other contemporary labor issues.

CHAPTER 2

LITERATURE REVIEW

As contemporary society differentiates at an exponential rate, social actors constantly take into account existing social structures and traditional roles to interpret the meaning of their interactions (Durkheim 1893; Mead 1913; Simmel 1971; Strauss 1978). The tension between structure and change is explored by many theorists, who differ in how much influence they assign to social structures versus individuals' actions. Structural-Functionalists view society as a system of interrelated parts that are relatively stable and each part serves a function to preserve the social order. Conflict theorists perceive society as a system of inequalities, where the normative structures benefit some people at the expense of others. These social inequalities cause conflict that leads to social change. Symbolic Interactionists treat reality as a social product that people can alter in their situated interactions with others.

Sociologists interested in social interaction look beyond biological and cultural determinants to focus on how meaning is created and maintained by social actors as they perform in everyday life. This approach is commonly referred to as the "symbolic interaction" perspective (Blumer 1969). Symbolic interaction rests on three primary premises: (1) humans act towards things based on the symbolic meaning those things have for them, (2) meaning arises out of the interaction of individual actors with others, and (3) actors handle and modify meanings through an interpretive process as they deal with situations in their environment. The study of these social processes and the freedom of

action in relation to constraints are fundamental emphases of social interaction theorists (Fisher and Strauss, 1977).

Anselm Strauss' developed a theoretical framework for understanding and studying negotiated orders with a symbolic interaction perspective in *Negotiations: Varieties, Contexts, Processes, and Social Order* (1978). He explains how modern societies act as evolved normative systems that are constantly renegotiated and evaluated against traditional arrangements. People negotiate traditional values using pre-established tacit agreements that control what can be discussed, negotiated, and agreed upon.

The NFL is a social order that is negotiated between opposing actors to satisfy their subjective interests. A social order refers to a set of linked social structures, institutions, and actions that conserve, maintain, and enforce ways of relating and behaving (Strauss 1978). All social orders are negotiated orders and are human products. They occur within a social arena and are derived from the self-serving interactions of social actors, where an actor can be an individual, group, organization, nation-state, etc. The primary actors involved in the NFL's social order are team owners and league players who negotiate the work conditions that affect the NFL's organizational structures. The owners' main interests concern the economic viability of their league and to maintain the status quo that protects their privileged market positions. Players seek to negotiate the conditions of the status quo concerning salaries, benefits, job mobility, and security in line with their collective interests. The sum of all concessions offered by owners to the players as compromise for maintaining the status quo represents the evolved conditions of the negotiated order (Strauss 1978).

There are several components to all negotiated orders. They are patterned social products with temporal limits. The NFL crafted its organizational structure from Major League Baseball (MLB) and used the reserve system as the basis for its social order. The reserve system was an effective mechanism for owners to subordinate players, protect their interests, and manage the system's status quo arrangement (Flynn and Gilbert 2001; Garvey 1979; Leeds and Allmen 2005). As a result, the owners secured monopsony power over the labor market and controlled players' demands by limiting what could be discussed, negotiated, and agreed upon.

As the league's reserve system evolved, owners marginalized the players by offering only minor concessions to appease their demands. Despite the small improvements, players, as subordinate actors, persisted in seeking greater improvements. This reciprocal give-and-take relationship of actors within a negotiated order is a constant process, which produces its inherent temporal limits. The status quo is reviewed, reevaluated, and renegotiated to remain consistent with the changing values of actors. Some negotiations are terminated as new ones arise to produce better and more efficient status quo arrangements. The negotiated order at any given moment is the totality of its organizational structures, rules, policies, and all other agreements, including contracts, pacts, and accepted arrangements (Strauss 1978). The negotiated order of the NFL, then, is represented by its constitution and by-laws, which organizes the league's interactions and facilitates the conditional standards of the reserve system.

Examining the NFL with a symbolic interactionist and negotiated order perspective helps us understand how players' work conditions unfold over time. The sociological literature on work conditions and their consequences is extensive; for the purposes of this

thesis, organizational size, how work is organized, wages, and mobility are especially relevant issues to explore (see also Hodson and Sullivan 2008). Workers tend to prefer small corporate organizations to larger ones because of the perception that it increases workers' discretion concerning the structural conditions of the work environments. Larger organizations can produce feelings of alienation, powerlessness, and isolation because workers lose a meaningful purpose to their association and action (Freeman and Rogers 1999). The corporate culture of these large organizations can limit, and even change, the choices and behaviors perceived to be available by workers who operate within its structures (Kunda 1992; Pierce 1993).

Salaries and job mobility also affect workers' perceptions of their work. Workers' economic livelihoods are directly related to the pay that is earned from their labor. Workers use their wages to provide shelter, food, clothing, and other basic essentials to sustain their lives. Workers' wages are consistently regarded as a necessary characteristic of a good job (Freeman and Rogers 1999). Similarly, workers need to feel that hard work will pay off and be rewarded. The lack of job mobility can disenchant workers from the labor process and decrease motivation. For a job to be considered fulfilling, workers often state a need for purposeful tasks and an outlined career path (Hodson and Sullivan 2008). This is especially true when workers associate their personal self-worth with their level of career advancement (Ospina 1996). Also, the bureaucratic divisions of labor in modern labor markets produce a hierarchal pyramid where high-paying jobs are limited and low-paying jobs are relatively abundant (Gordon 1996). Access to better paying jobs can become a fierce competition between workers, decreasing the solidarity between them and their associations.

Other variables often discussed as being important to workers in the social organization of work are job security and fair treatment. Job security is important to ensure the workers ability to maintain their personal and family's economic livelihoods. In capitalists societies like the United States where workers' healthcare, retirement, and economic livelihoods are tied directly to employment, the insecurity of losing these benefits is a source of stress and dissatisfaction (Sennett 1998). Workers feel they receive fair treatment from employers when they are treated with respect and dignity and have some discretion in their overall work conditions. Employers who respect workers in their organizations increase loyalty and relative productivity (Hodson 2001). Workers who are allowed more autonomy in their labor production are generally more satisfied with their work than are workers who have their work dictated to them (Adams 2001). Employers who bully workers to control work conditions can negatively affect the organization's work experience, workers' sense of security and self-worth, and inflict emotional damage (Ehrenreich 1999).

Job mobility is historically the NFL players' prominent concern in labor market negotiations (Garvey 1979; Leeds and Allmen 2005). Job mobility in the NFL is correlated to the players' ability to freely move between teams to establish a competitive bidding market for their services, or "free agency". Players believe that if they are allowed to sell their services in an unrestricted free agent market they will increase the standards of their work and personal lives. Free agency is also used as a promotional apparatus by players who develop their skills into a desired commodity to obtain a starting position with another team, choose their work location, or increase their bargaining leverage with current teams. Research defends the players' position and shows that restricted players

receive lower salaries, benefits, and relative work conditions than they could have achieved in a competitive market (Garvey 1979; Krautman, Allmen, and Berri 2009; Simmons and Berri 2009). The players frequently demand the ability to “test the market” with free agency to receive fair compensation for their services.

Consequently, owners consistently resist free agency and players’ mobility to protect their interests of maintaining the league’s competitive balance and economic viability. The commodity produced in professional team sports is “on the field” competition to sell as entertainment to consumers, or “fans.” A sports league, like the NFL, needs its teams to remain profitable, stable, and economically viable to provide a consumable product year after year. Fans associate with a particular team more than the entire league itself, so maintaining a consistent team base to maximize its relative fan base is important (Bishop, Finch, and Fromby 1990; Pivovarnik and Zuber 2004). Fans also desire the league to have unpredictable and competitive games. Winning teams draw more fan interest, but even teams that win on a routine basis find that fan interest declines proportionate to the predictability of the outcome (Pivovrnik and Zuber 2004).

Maintaining competitive balance and team viability is difficult for a league without mechanisms to counteract the inequality apparent between its large market and small market teams. Larger markets allow more opportunities to increase revenue and operational income, which provides an intrinsic advantage to acquire better talent due to a larger budget to allocate on player salaries (Flynn and Gilbert 2001; Vrooman 1995). Presumably, large market teams could consume all the best available players and jeopardize the league’s competitive balance and game unpredictability. Sports leagues use intra-team revenue share programs and restrictions on player mobility to offset the

inherent unequal market conditions of its teams so small market teams can remain competitive.

By far, the largest expense for any team is player costs (Brook and Fenn 2008; Leeds and Allmen 2005; Vrooman 1995). Players represent roughly 45 to 70 percent of all operational costs for a particular team. Player costs also represent the biggest risk for owners. Evaluating player performance is not an exact science and teams routinely draft high priced talent that fall short of expectations. Team owners also invest in developing promising players into “on the field” contributors. Because owners expect to recoup a return on their investment, they seek to restrict player mobility so that players do not receive training and leave to play for another team (Brunkhorst and Fenn 2010).

Team owners contend that controlling free agent mobility is a necessary and vital condition to ensure the overall success of the league. The Coase Theorem (Coase 1960) suggests that whether free agency exists or not has no impact on the distribution of player talent within a league.⁶ The only difference lies in who reaps the rewards associated with a player’s services. If a player owns his rights, he keeps the gains. The opposite is true if a team owns his rights. The law of diminishing returns suggests that a single owner would not sign all the best players because it would reduce the value of the investment. The additional productive output of new players decreases because there is a fixed number of players who can participate in a game at any given time and a fixed number of specialized positions. Thus, owners have an incentive to allow talent to be spread across the league. It

⁶ The Coase Theorem is an economic theory states that the initial allocation of property rights (whether a player has the right to sell his services to any team or whether the owner holds the rights to a player’s services) doesn’t matter. As long as the property rights are clearly established and bargaining costs are low, the services will be put to use by the person or firm that benefits and values them the most.

doesn't make economic or strategic sense for a single team to contract all the best players at any one position.

Negotiated Order Theory: A Closer View

As I noted above, negotiated order theory was developed by Anslem Strauss in the 1970s to conceptualize a general theory of negotiation. If negotiated orders are a functional element of society, then a theoretical framework needed to be constructed to understand its dynamic implications. The social order is better understood as a negotiated order because social actors pursuing competing agendas bargain, compromise, redefine, and produce an emerging sense of order as a stable, functional, and meaningful reality (Strauss 1978).

Negotiation is a means of getting things accomplished, making things work, or amending things so they continue to be functional. Actors enter into negotiations with one another to reach a settlement over some matter. Negotiation in this relationship has two primary effects (Strauss 1978: 4). First, it focuses on a specific set of constraints, outcomes, and referents. Every actor enters into negotiations with demands that it seeks from the interaction but is often limited by the arrangements of the particular social order within which it acts. Second, bargaining requires the dominant coalition to assess alternative constraints, goals, and referents bearing on the given actor's subjective interests. The dominant actor is considered one who holds power and coercive influence over the social order, with a vested interest in its traditional arrangements, and is opposed to change. Strauss (1978) emphasizes the necessity to comprehend these structural contexts within which interactions between opposing actors take place in order to grasp the conditions

that influence the chosen modes of action. Context here refers to the structural arrangements of an encompassing order larger than the other unit under focus, which is interaction. Symbolic interactionists often fail to grasp these larger structural conditions and have the potential to overstate the framed interactions of social actors.

In order to properly study negotiations, Strauss organized several directives that he felt were imperative. First, negotiation theorists need to look at a much fuller range of negotiations (Strauss 1978:11). Previous theorists' attempts to explain negotiated orders as a process of social action are inadequate due to the topical focus of their investigations and specificity. Negotiation is frequently treated as a sub-process of the larger systems but is rarely viewed as warranting a substantive theory of its own.

Second, negotiated order theorists need to relate the negotiations to the modes of action available to social actors. If there are alternative courses of action besides negotiation, then how does that possibility impact the negotiation process? Negotiation processes are entwined with other social processes that must be studied together to gain a thorough understanding of the negotiation context. For example, actors in a dominant position in a social order may choose not to negotiate relevant issues with subordinates due to the power their positions provide. Corporate managers with monopoly power over the market do not need to negotiate fairly with employees because it controls the modes of production, available resources, and distribution networks (Clawson 2003). The United States' coal industry is a relevant example.

Third, negotiation theorists need to look at particular negotiations in correlation to the larger structural conditions within which they operate. Strauss (1978: 99)

distinguishes “between the larger, structural context and a negotiation context, where the latter refers specifically to the structural conditions that directly affect the course of the negotiation itself”. In many social orders, the structural conditions are arranged so that certain kinds of negotiations are impossible or improbable, while still others are more frequent and permitted. Workers often experience economic consequences from their specific industries because the competition and industrial process is exclusive to that industry (Sullivan 1990). For instance, growth industries can offer better wages, benefits, incentives, and job security for workers as opposed to industries in decline (Galloway 2005). Workers negotiating better work conditions in a declining industry have less bargaining leverage than their growth industry counterparts. The structural constraints of a particular industry can affect how actors view social orders and its arrangements. Actors’ preconceived judgments can limit behaviors and reinforce limitations on the actions that are open or closed to them within those structures. Thus, for any proper study of negotiation, both the micro-negotiation context and macro-structural context need to be analyzed, to comprehend the normative conditions of that environment.

In understanding the structural framework of a particular negotiation researchers need to examine the structural context as if it were the background and operationalize the negotiation context in the foreground. “The structural context is larger, more encompassing, than the negotiation context, but the lines of impact can run either way” (Strauss 1978: 101). Focusing on both the macro-structural and micro-negotiation contexts will increase the likelihood that the specific courses of negotiation to be studied within the larger social structures are identified. Observing the outcomes produced by the negotiations is vital and can contribute to recognizable patterns of change in the

negotiation contexts that may apply to future negotiations and impact the social order (Strauss 1978). It is the “course” of the parties’ bargaining relationships and developmental natures that are the most relevant aspects for understanding the negotiation context and any effective resolutions.

There are many specific kinds of negotiation contexts that pertain to the interactions between negotiating parties, but there exist several properties that can be applied to all (Strauss 1978). A researcher needs to understand the number of negotiators, their experience levels, and whom they represent. It is important to determine if the negotiations are one-shot, repeated, sequential, serial, multiple, or linked. Also, a comprehension of the relative balance of power between the negotiating parties is required to understand their interactions. Knowing the circumstantial power positions of the negotiators helps to conceptualize the nature of each party’s respective stakes in the negotiations. Understanding if the interactions are covert or overt is necessary because the relative visibility of specific actions can greatly influence the behaviors and actions of the interested parties. A researcher needs to appreciate the number and complexity of related issues being negotiated to ascertain the effectiveness of the negotiation in producing preferred ends. Finally, understanding the available options to either party in the negotiations that could affect their ability and preference to negotiate is a primary concern.

CHAPTER 3

METHODOLOGY

My research investigates the negotiation strategies employed by players in the NFL labor market case study using Strauss's negotiated order theory. The tension between the team owners' need for a stable environment to achieve competitive balance and the players' insistence on change to acquire free agency informs my research. My main goals are to understand (1) why players decertify from the NFLPA and (2) whether this action results in more advantages for players than conventional collective bargaining. Content analyses of the players' lawsuits during the decertification period of 1989-1993 and subsequent CBA extensions of the 1993 agreement provide counterfactual data to make inferences to these questions.

Understanding the Variables

Examining the differences between class action lawsuits and collective bargaining in labor markets is difficult because these unique strategies are performed under distinct normative arrangements. Class action lawsuits deal primarily with antitrust laws and court litigation. Collective bargaining operates under federal labor laws and uses gamesmanship tactics to gain leverage in contract negotiations. To overcome this limitation, I followed Anselm Strauss's advice. Strauss suggests that the normative conditions affect the actions of the negotiating parties in 4 ways: (1) aims they pursue, (2) alternative modes of action, (3) tactics during negotiations, and (4) outcomes (Strauss, 1979).

I classify my objects of interest, decertified class action lawsuits and collective bargaining, as alternative modes of action, or strategies, employed by players to obtain positive outcomes in the labor market. I treat each strategy as a separate entity and evaluate the outcomes that each generates within in its own procedural constraints. In this manner I avoid the bias of holding lawsuits to the same standards as collective bargaining or vice versa. By focusing on the aims that negotiating parties pursue through each mode and the outcomes offered by each, I can understand their effects on the current arrangements of the labor market.

I chose not to examine the tactics used during the negotiations for several reasons. First, the actual influence of the tactics is hard to determine. Second, because the tactics for the two modes are distinct, they cannot be adequately compared. Third, the actual tactics are not essential to my plan to examine the outcomes of the two strategies. Although specific tactics associated with each mode of action affect the negotiation process and alter the short-term conditions of the labor arrangements, analyzing them would be more appropriate for a within-mode rather than a between-mode study. Testing my hypotheses does not require inspecting these details, only the outcomes of the chosen strategies. Fourth, tactics employed in each mode are discussed in the historical narrative and provide contextual understanding of their significance in the NFL labor market. For these reasons, tactics, as variables to be examined, are excluded from the research in this thesis.

Status Quo

Several time periods could represent the baseline arrangements to compare the collective bargaining and decertification strategies. I could establish the status quo as the

market conditions existing when the NFL officially organized in 1923, using the complete monopsony structure of an unfettered reserve system. Similarly, I could choose 1970, the first year of the NFL and AFL merger and the owners' acceptance of the NFLPA as the sole bargaining representative of the NFL players. Several significant court cases occurred during the 1970s that led the NFL and NFLPA to forge commitments to each other with the original CBAs. However, the litigation in the 1970s did not follow decertification. The rulings are historically significant and establish precedence, but do not align with the intent of my research. I view the 1970s-era CBAs in the same fashion. Though relevant to my discussion, the 1970s CBAs were negotiated under different market conditions and arrangements than those in the late 1980s, when decertification first occurred. To analyze how decertification and CBAs affect the labor market, I need to examine the variables under similar conditions.

For this thesis, I use 1986 as the baseline status quo for the players' situation in the NFL labor market. I do this for several reasons:

1. The failure of the 1987 CBA negotiations and players' strike ended with no official CBA. Consequently, the league defaulted to the standards of the 1982 CBA. The 1986 NFL labor market conditions are the last year before decertification that the league operated under a negotiated CBA. Thus, it seems a logical starting point to measure the outcomes of my variables.
2. The NFLPA decertified in 1989 to seek better bargaining position through litigation as a direct result of the 1987 CBA negotiations' failure. The NFLPA was recertified in 1993. From 1989 to 1993 the union didn't represent the players because of decertification. Therefore, 1989 to 1993 represents a measurable time period

when decertified class action lawsuits were the only mode of action officially used by players in negotiations.

3. The 1993 CBA has been extended four times: 1996, 1998, 2002, and 2006. Each extension offers an opportunity to study collective bargaining in the NFL labor market because the conditions and arrangements operate under the same basic guidelines offered in the 1993 CBA. Amendments made to each extension of the 1993 CBA are measurable as changes in the status quo and as negotiated outcomes.
4. In 2008, the owners opted out of the 2006 version of the 1993 CBA. This action led to the 2011 NFLPA decertification after new contract negotiations stalled and the 1993 CBA officially expired. The 1993 CBA and subsequent extensions act as the only standard arrangements of the NFL labor market after the NFLPA's first decertification and prior to its second.

Measuring the Variables

I conducted two separate tests to evaluate the strategies. The first analysis studies the effects of antitrust lawsuits on the NFL labor market during the decertified time period between 1989 and 1993. The second analysis examines the effects of collective bargaining beginning with the 1993 CBA and ending in 2008 when the owners opted out of the CBA. The 1993 CBA is critical because the agreement is a product of the courtroom litigation that preceded it from 1989 to 1993. Because the lawsuits impact the negotiations of the 1993 CBA, roughly equivalent market conditions exist for both analyses.

I will measure the outcomes of each strategy as gains or losses in the labor market situations of players against the status quo. Gains are evaluated as positive increases in

players' work conditions using four categories of analysis: (1) player mobility, (2) league revenue share to be allocated for players' salaries and benefits, (3) job security, and (4) impartial dispute resolution. Mobility concerns a player's ability to act as a free agent while entering and playing in the league; free agency would permit players to negotiate contracts with other teams in a competitive market to seek the highest salary, work conditions, employment location, and chosen employer. Players' portion of the league's revenue share is regarded as the percentage of the NFL's gross revenue for a particular season. The percentage is based on an estimate of the league's projected earnings for that season and comprises all monies allocated to players for salaries, prorated bonuses, and benefits. Benefits in the NFL are viewed as post-career financial plans that address four main categories: severance pay, annuities, second career plans, and retirement savings plans. Players and their families are covered by a league-wide insurance plan while in the NFL so the benefits program is not applied to actual current players. For my research, job security is interpreted to mean a player's ability to sign a guaranteed contract, refuse an unwanted trade, and the minimum requirements to become a vested NFL player in order to receive full benefits and veteran protections. Impartial dispute resolution deals with a player's ability to seek arbitration from a third party that is external to the NFL Commissioner's Office in matters concerning labor disputes, discipline, and contract agreements.

Losses are evaluated as negative decreases in the same four categories. When no changes occur in the labor market conditions as a result of either negotiation strategy, then the status quo will be considered maintained without a positive or negative effect.

Class Action Lawsuits

During 1989 to 1993 there were three significant lawsuits filed on behalf of players against the NFL. Other minor lawsuits were filed, but each case either failed to reach a ruling or was deferred to one of the three lawsuits examined in this thesis. The three cases were *Powell v. NFL* (1989), *McNeil v. NFL* (1992), and *White v. NFL* (1993).

I obtained court transcripts for the cases using two sources, the Lexis-Nexis archival database and LegalFind.com, to examine the individual lawsuits. I examined the transcripts in three ways. First, I identified the claims of the initial lawsuits for a contextual understanding of their intents, applicable laws, and which status quo arrangement they brought into question. Second, I interpreted the court rulings and concluding opinions on the players' work conditions using my four categories of study. I marked any changes to those conditions as a result of the court rulings. In many of the cases, the district court's rulings were appealed to a higher court. I investigated these appellate court transcripts in the same manner as the lower court transcripts to maintain consistency in my research. Finally, I used the 1993 CBA as a standard to compare the outcomes of the decertification strategy, examining the changes between the initial status quo of 1986 and the 1993 agreement.

Collective Bargaining

For my investigation into collective bargaining, I began with the 1993 CBA and included each negotiated extension (1996, 1998, 2002, and 2006). I used the NFLPA website to obtain copies of the 1993 CBA and each extension agreement (www.NFLPlayers.com). By examining each CBA, I was able to evaluate outcome changes

by assessing the standard arrangements existing prior to each bargaining period compared to the accepted conditions of each extension. Again, I coded the results using the four categories of players' work conditions to ascertain any changes to the status quo. In order to gain a precise understanding of players' demands entering each bargaining period, I used relevant news articles, press releases, and scholarly journal publications found online with Google, Lexis-Nexis archival database, and the NFLPA website. Understanding what the players sought during each bargaining period allowed me to examine the effectiveness of the negotiations for players. The sources were not used to interpret opposing viewpoints of the NFL or NFLPA during negotiations, only the actual demands being sought by the players at the time of each bargaining period.

Other Sources

Finally, obtaining financial information on the NFL or individual teams is extremely difficult. All NFL teams except the Green Bay Packers are privately held and are not obligated to disclose financial records. To verify the accuracy of my collected data, especially concerning the collective bargaining analysis, I used "The Economics of NFL Team Ownership" (Murphy and Topel 2009) and *Forbes* annual reports on the financial conditions of the NFL from 1996-2008. "The Economics of NFL Team Ownership" was a report prepared for the NFLPA that was distributed to players during the 2009 Super Bowl. It examines the NFL owners' claims that they could not continue to operate under the 2006 amended version of the 1993 CBA. It was prepared for the NFLPA by Dr. Kevin M. Murphy and Dr. Robert H. Topel, professors of economics at the Booth School of Business at The University of Chicago. The *Forbes* data are published in an annual report containing

information on individual franchise values, revenue, operating income, debt, player expenses, and gate receipts. The *Forbes* reports are cited in numerous scholarly journals and recognized as a reliable source for this information. Prior to 1996, the now defunct *Financial World* published the same NFL report before *Forbes* succeeded it. The *Financial World* data, though cited in several journal articles, was not obtainable and was not considered for the purpose my research. This should not prove to be a major issue because the *Forbes* data cover all but the first three years of the collective bargaining period and began publication the same year of the first CBA extension.

CHAPTER 4

THE NEGOTIATED ORDER OF THE NFL

Applicable Laws

Sherman Antitrust Act

The Sherman Antitrust Act of 1890 is the most commonly cited grievance in NFL lawsuits. It was ratified to eliminate unfair competitive advantages obtained by cartels or monopolies (also known as “trusts”) in the market.⁷ It focuses upon ensuring fair market competition and requires the federal government to intervene when violations exist. The act seeks to eliminate artificial pricing schemes that increase or decrease market values by restricting trade or supply. The U.S. Supreme Court gave more clarity to the Act’s purpose in *Spectrum Sports, Inc v. McQuillan*:⁸

The purpose of the Sherman Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself.

There are two main sections to the Sherman Act that are most applicable to antitrust lawsuits. Section 1 prohibits specific means of anticompetitive conduct. It states, “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among several States, or with foreign nations, is declared to be illegal.”⁹ Section 1 violations are considered “per se” violations, which are obvious constraints on competition and recognized as consistent actions that would always contribute to the restraint of trade. The court definition is any action that is found to have a “pernicious

⁷ Sherman Antitrust Act of 1890, Pub. L. No. 647, 26 Stat. 209 (codified as amended 15 U.S.C. §§ 1-7).

⁸ *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (U.S.C. 1993).

⁹ 15 U.S.C. § 1.

effect on competition” and “lacks any redeeming virtue.”¹⁰ Thus, any actions that deliberately create monopoly conditions and serve no purpose other than to cause these conditions are in violations of Section 1 of the Sherman Act.

Section 2 focuses on the end results of market activities that are anticompetitive in nature. It states, “Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony...”¹¹ Section 2 violations fall under the “rule of reason” and are applied in two ways. First, it must be proved that a possession of monopoly power in the relevant market exists and survives a “burden of proof” place upon the defendant. Second, the willful acquisition or maintenance of that monopoly power is deemed not to be developed as a consequence of a “natural monopoly” created by a superior product, business acumen, or historic accident. The court analyzes if “facts peculiar to the business, the history of the questionable action, and the reasons why it is implemented,” to assess the restraints on competition in the relevant product market.¹² In essence, if an action appears to have an anticompetitive effect on the market using logical economic reason, beyond the burden of proof, then it is considered a trade violation.

The Clayton Act of 1914 extended the provisions of the Sherman Act to specific actions of misconduct like price discrimination between different purchasers, exclusive dealing arrangements, and merger acquisitions that substantially reduce market

¹⁰ *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 58 (1977) (quoting *Northern Pac. Ry. v. United States*, 356 U.S. 1, 5 (1958)).

¹¹ 15 U.S.C. § 2.

¹² *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 58 (1977) (citing *United States v. Columbia Steel Co.*, 334 U.S. 495, 519 (1948)).

competition as illegal activities.¹³ The Clayton Act also provided a labor exemption clause that allowed unions exemption from antitrust liability.¹⁴ It allows unions and owners to enter into agreements that may create monopolistic practices regarding the working conditions of the workers it represents. Another amendment offered by the Clayton Act required the trebling of all damages awarded to plaintiffs in antitrust lawsuits.

Nonstatutory Labor Exemption

The non-statutory labor exemption immunizes certain union and employer agreements from antitrust scrutiny. Under such agreements, actions that would be found to violate antitrust laws can be permitted if negotiated and accepted in CBAs. The courts often defer to applicable labor laws that favor collective bargaining to judicial intervention in labor market disputes. In practice, nearly all management and union agreements bargained in good faith receive protection from antitrust laws. Antitrust laws become applicable only when either party has performed an unfair labor practice or when negotiations reach an impasse. All other matters fall under the jurisdiction of the National Labor Relations Board (NLRB).

The National Labor Relations Act

The National Labor Relations Act (NLRA) of 1935 established the guidelines by which collective bargaining relations are determined.¹⁵ The main tenet of NLRA is the duty

¹³ Clayton Antitrust Act of 1914, Pub. L. 63-212, 38 Stat. 730 (codified U.S.C. §§ 52-53).

¹⁴ Prior to the Theodore Roosevelt administration, the Sherman Act was more commonly used against union activities in bargaining than corporate trusts. Strikes and boycotts were considered unfair labor practice violations.

¹⁵ NLRA (also known as the Wagner Act) of 1935, Pub. L. No. 74-198, 49 Stat. 449 (codified as amended at 29 U.S.C. §§ 151-69).

to bargain in good faith in an attempt to foster industrial peace between management and labor. The NLRA demands that all parties should “meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.”¹⁶ These criteria are considered mandatory subjects of bargaining because they directly impact workplace conditions.¹⁷ The collective bargaining process is based on several tactics, including aspects employed by either party to exert economic pressures upon the other during negotiations. These tools of economic pressure are used to gain bargaining leverage and are considered perfectly legal measures, including lockouts and strikes.¹⁸

The NLRA focused upon employers and their common refusal to bargain with workers in labor market negotiations, constituting an unfair labor practice.¹⁹ The act states that there is only a duty to bargain in good faith and does not define the parameters of what constitutes a lack of good faith bargaining. Defining a lack of good faith was left to the NLRB and federal courts. The Supreme Court said the purpose of the act was to provide a vehicle for the “free opportunity for negotiation with accredited representatives of employees...and to promote industrial peace”.²⁰

The Taft-Hartley Act of 1947 provided clearer definition to the concept of “good faith”, stating that employers and employee organizations must meet and confer with an open mind and with true intent of reaching an agreement. There is no requirement that the parties reach an agreement, only that each party attempts to negotiate one. If one party

¹⁶ 29 U.S.C. §158 (d).

¹⁷ The topics of workplace conditions are more expansive than this and can include retirement benefits, arbitration mandates, legal liability clauses, internal union matters, etc.

¹⁸ In *Am. Ship Bldg. v. NLRB*, 380 U.S. 300, 310 it was written that “there is nothing in the statute which would imply that the right to strike ‘carries with it’ the right exclusively to determine the timing and duration of all work stoppages. Thus, lockouts are legal actions to be used by owners/managers.

¹⁹ NLRA, Section 158(a)(5).

²⁰ *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45-47 (1937).

can prove that the other has not negotiated with the intent to find a solution, the bargaining can be declared to have reached an impasse.

History of the Reserve System

As research of the NFL labor market history suggests, the owners have held superior bargaining leverage and maintained monopsony power over the players by implementing the reserve system. The reserve system was developed by team owners in closed-door meetings, without critique of the players, the courts, or Congress (Leeds and Allmen 2005). It consists of five main elements: (1) the selection of players or “draft”, (2) the retention of players, (3) discipline and control of players, (4) dispute resolution, and (5) ability to sell and trade players (Garvey 1979). Each structure is considered by the owners to be a necessary aspect to maintain a league’s economic viability and guarantee a competitive product. Though there are five elements to the reserve system only three have major significance to the labor market: the draft, the retention of players, and control over discipline and dispute resolution. The ability to sell and trade players coincides with the mechanisms used for player retention, such as the standard players’ contract, ownership rights to players’ services, and restrictions on players’ mobility.²¹ Disciplinary control and dispute resolution are both organized under the jurisdiction of the NFL Commissioner’s Office and operate in similar fashions, so they are combined in this study.

²¹ The practice of trading players is accepted in all leagues and allows teams to trade a player to another team at a moment’s notice without his discretion. The player has no choice but to report to his new team, regardless of the location or working conditions, or end his participation in the league. The NFL has resisted the exchanging of players for cash payments that other sports leagues accept. MLB allows player for cash trades because it acts as a form of revenue share, where small market teams are subsidized by large market teams by consuming higher salaried player contracts. The NFL views this practice as counterproductive to ensuring competitive balance.

The reverse order draft is the foundational component to the reserve system because it allows owners to control the entrance, distribution, and salaries of players into the league (Garvey 1979). It grants a particular team owner the exclusive rights to negotiate a contract with a drafted player and the ability to control competitive balance and minimize salaries from the beginning of a player's career (Fort and Quirk 1995; Garvey 1979; Leeds and Allmen 2005; Levine and Maravent 2010). The reverse order draft allows the worst teams the previous season the ability to strengthen their rosters with the best collegiate talent to become more competitive in the league at a reduced cost.²² According to the NFL Constitution, in order to gain entrance into the league each player must participate in the draft process no earlier than three years after graduating from high school. A player's initial salary is set at a fixed rate based on the previous year's signings of players selected in a similar draft position. For example, quarterback Cam Newton was viewed as the number one collegiate prospect entering the 2011 Draft. Without a draft, Newton could negotiate a contract with any team in an open market. He could choose his team/location and expect a higher salary as each team bids against the other for his services. Newton *was* selected with the first overall pick by the Carolina Panthers in the draft. His initial contract will be based on the parameters established by the first overall pick of the 2010 draft, and though substantial, will be presumably less than what he could have received in a competitive market.

The draft was ruled an illegal violation of the Sherman Act in 1976 because it acted as a group boycott when NFL owners refused to deal with players before the draft or after

²² Evaluating player talent and potential is not a science. A high draft choice is not a guarantee that the player will be effective in the NFL.

they were drafted by another team.²³ Under the rule of reason, the draft exhibited an unreasonable restraint of trade that exceeded the legitimate goals of the NFL. The plaintiff, James “Yazoo” Smith, was awarded \$276,000 in trebled damages.²⁴ Despite the court’s ruling, the draft remained active in the league’s status quo arrangement because it was bargained into the subsequent CBA. It remains an issue for collective bargaining and must be accepted into each new CBA or extension by the bargaining parties. The draft has become a secondary area of negotiations and rarely surfaces as an issue, except in antitrust lawsuits brought by players against the NFL and the reserve system.

The second structure of the reserve system addresses the retention of players to specific teams, or “the restriction of free agency”. In the NFL labor market this remains one of the two main issues negotiated between the owners and players. The restriction of free agency has evolved from the original reserve clause, then the Rozelle Rule, Plan B free agency, and eventual salary-capped free agency. The reserve clause was structured into the standard player’s contract that every player signed as a stipulation to enter into the league. Once signed, the contract could be terminated by the team at any moment, but a player was locked into the contract. At the end of the initial contract, typically five seasons, the players’ team reserved the option to sign the player for an extension. An extension was for a fixed salary amount, normally 10% less than the original contract in the NFL (Garvey 1979). The team retained the rights to the player’s services, so players realistically did not

²³ *Yazoo Smith v. Professional Sports*, 593 F.2d 1173 (8th Cir. 1976).

²⁴ Smith was an All-American player for the Oregon Ducks and was drafted by the Washington Redskins in 1968. He played one season in the NFL before being severely injured in the final game of the 1969 season. Smith received an initial salary of \$22,000, plus bonuses worth approximately \$20,000. To award damages, District Judge Bryant calculated Smith’s annual “free market salary” from the annual salary received by a free agent at the same position signed by the Redskins the same year (\$54,000). All relevant bonus structures and payments already received were considered and concluded that Smith was eligible for \$92,000 in damages, which is trebled in accordance to antitrust laws to contrive the full damage amount of \$276,000.

have the option to sign with another club and had no choice but to accept the offer made by the only team that could employ him (Garvey, 1979). Under the constraints of the reserve clause and perpetual one year options offered by owners, players often played for the same team their entire careers. They had little discretion to bargain for higher salaries, employment conditions, or even their chosen employer.

The NFLPA began negotiating for players in 1956 when players of the Green Bay Packers and Cleveland Browns formed a union to demand a minimum league wide-salary, per diem pay for road games, uniforms, and equipment.²⁵ Players also sought injury pay when they sustained football related injuries and could not play the following season. The court ruled in *Radovich*, that the NFL was not exempt from antitrust scrutiny which made a majority of the reserve system's anti-competitive behaviors illegal. Fearful of other lawsuits, the owners granted most of players' demands including: minimum salaries and benefits, rank and file pay structure for veterans, and player insurance. Owners refused to recognize the NFLPA as the players' bargaining representative.

In 1962, Pete Rozelle became the NFL Commissioner and introduced the compensation clause as an amendment to the NFL Constitution.²⁶ At the completion of a player's initial contract, he could become a free agent and had the option to sign with his existing team or to negotiate with another team. Any team that signed a free agent player had to compensate the original team with cash payouts, other players, or draft choices. If the two teams could not agree upon fair compensation, the commissioner would decree what was fair. The commissioner's job was to reduce the free movement of players

²⁵ The status quo in 1956 was for players to provide their own uniforms and equipment, including the maintenance of it, and receive no per diems or salary floor.

²⁶ The compensation clause is generally referred to as the "Rozelle Rule".

between teams so the compensation was set unrealistically high to discourage teams from signing free agents (Garvey, 1979). As a result of the new system, only 34 players changed teams via free agency over the 15 years that the Rozelle Rule was implemented (Leeds and Allmen, 2005).

John Mackay of the Baltimore Colts filed a class action suit against the Rozelle Rule in 1975.²⁷ The courts ruled in the players' favor and declared the Rozelle Rule to a group boycott in violation of the Sherman Act. The 8th Circuit Court rejected the owners' appeal that the Rozelle Rule was exempt due to the nonstatutory labor exemption but declined to follow the district court's ruling. Instead, the court suggested that the two parties were better suited to ensure their mutual interests than the courts and should negotiate to resolve the dispute.

After a brief 15-day strike in 1968, the NFLPA effectively negotiated its first CBA, but concessions were small.²⁸ The CBA was short lived and ended when the NFL merged with the AFL in 1970. The NFLPA's CBA was usurped by the agreement between the AFL players and team owners, which offered fewer concessions.²⁹ As a condition to the reduced agreement, the NFLPA was recognized as the players' sole bargaining representative and successfully petitioned the NLRB for union certification (Levine and Maravent 2010).

The NFLPA contended that many of the bargaining issues should have been conceded by owners after *Radovich*, like the elimination of the draft, the option clause, Rozelle Rule, impartial arbitration, and the waiver system, but to no avail (Garvey 1979). The NFLPA had accepted the reserve conditions in the 1968 CBA and again in the 1970

²⁷ *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976).

²⁸ The players received a \$1.5 million pension fund, but no increases in the minimum rookie salary of \$9,000, veteran salary floor of \$10,000, or independent arbitration, which had been sought.

²⁹ The players' pension fund was reduced to \$85,000 and no minimum rookie salary.

NFL/AFL merged CBA and failed to successfully implement the court rulings into a bargained agreement. As a consequence, the NFLPA struggled to bargain for players' demands in the 1972 negotiations and the season began without a contractual agreement and a players' strike. The owners reacted by performing a lockout of veteran players and only invited rookies and non-NFL free agents to training camp. After a month, more than 25 percent of all veteran players crossed the picket lines, leaving the union badly split and underfunded. The only concession the players received was an increase to the players' pension fund to \$19.1 million.

The NFLPA failed to capitalize on the 1970s court rulings as well. The 1977 CBA had little effect on the reserve system and resulted in a watered down version of the Rozelle Rule, called Plan B free agency. Under Plan B free agency, teams reserved the rights to 37 players out of a 45-man roster.³⁰ Reserved players were not allowed to be true free agents and were deemed protected under Rozelle Rule provisions. If a reserved free agent was offered a contract by another team, the original team was granted the right to first refusal or to match the offer of the other club. If the original team chose not to match the offer, the signing club had to provide draft choices as compensation (Leeds and Allmen, 2005; Levine and Maravent, 2010). Unprotected players were permitted to negotiate with a team of their choice, which allowed marginal players to secure larger contracts and move freely between teams while better players remained restricted. Marquee players fared the same under this system as under the Rozelle Rule, which made it all but impossible for them to move between teams in a competitive market. The players still lacked the unfettered free agency they valued and coveted most. On average 125 players per year sought free agency

³⁰ Teams protected the most talented players, but released the least skilled players on their rosters.

from 1977-1988, but only 3 players changed teams; fewer than 50 out of 600 players received offers from other teams after becoming free agents (Fort and Quirk, 1995).

As the 1982 CBA negotiations approached, players showed increasing signs of solidarity in an attempt to overcome the stranglehold owners had on the labor market. The NFLPA changed its focus from free agency to a larger share of the revenue pool generated by the NFL. The NFLPA sought 55 percent of the league's total revenue to be allocated to player salaries and benefits and a compensation plan structured on years of service, playing time, and individual/team performance (Levine and Maravent 2010). The owners preferred a performance-based bonus salary structure without seniority considerations and contended the players already received 48 percent of the revenue share. The NFL's long-term financial viability became a focus of the negotiations, though the owners refused to disclose their financial records. The NFLPA challenged the owners' refusal to provide information as an unfair labor practice and inability to bargain in good faith to the NLRB without success.³¹ The NLRB stated the NFLPA had "no definitive basis" to warrant a demand of 55 percent of the revenue share. This decision led to the predictable outcome of a players' strike and an owners' lockout. Owners offered veteran players with at least three games played into their fourth season "money now" bonuses if a new CBA was signed. By November, the CBA was signed. The players received their bonuses worth a total of \$60 million and realized increases in the salary floor, pension, and preseason pay.

The players elected Gene Upshaw, a former all-pro NFL player, in 1983 to be the new Executive Director of the NFLPA. As his first action as head of the union, Upshaw

³¹ As a legal statute, a firm only has to open its financial records to a union if it states an inability to pay workers, not a refusal to pay. Since the NFL never contended that it could not pay the players' demands, it was under no obligation by law to share its financial information with the union.

conducted a league-wide players' poll to assess the needs and wants of the current players. Player mobility remained the highest priority (Levine and Maravent 2010). Hearing the players' demands, Upshaw made free agency his number one agenda heading into the 1987 negotiations.

Owners immediately rejected the players' demands stating that free agency would disrupt the league's competitive balance and ability to remain economically viable. Owners prepared for a possible work stoppage by tentatively hiring replacement players at \$1,000 per game and secured a \$1.5 billion line of credit from banks using their television contracts as collateral. The NFLPA understood that a strike would be ineffective if owners were willing to play games using replacement players, but the players ignored the suggestion and voted to strike. The owners' strategy significantly limited the NFLPA's bargaining leverage because the owners actually increased their teams' profitability by preparing to pay replacement players lower wages while reaping the rewards of their lucrative television contracts.

The strike became contentious, not between players and owners, but between the players themselves. Two weeks into the strike veteran players began to cross the picket lines including star players like Steve Largent, Ed "Too Tall" Jones, and Jim Kelly. Players solidarity broke down and three weeks later the strike ended without a CBA or any new concessions granted to players.

The NFLPA decided that collective bargaining was a futile effort at that juncture and reverted to litigation as a way to seek bargaining leverage against the owners. The NFLPA's class action lawsuit challenged the league's Plan B system as a violation of Section 1 of the

Sherman Act.³² The NFL, on behalf of the owners, filed a motion stating that free agency was a topic for collective bargaining and was exempt from antitrust scrutiny by the nonstatutory labor exemption suggested in *Mackey*. The court ruling favored the owners declaring that the nonstatutory labor exemption did exempt Plan B free agency because it had been negotiated into a CBA, even if the agreement had expired. The court deferred to the NLRB on whether an impasse had been reached. The NFL filed a claim proposing the NFLPA refusal to bargain in good faith by choosing to litigate. The NLRB declared that an impasse had been reached and the lawsuit was allowed to continue. On appeal, the courts agreed to the impasse but refused to issue an injunction believing that such a measure would undermine the collective bargaining process. As a final decree, the 8th Circuit Court of Appeals's majority decision held that the nonstatutory labor exemption did protect the league and Plan B from antitrust scrutiny. In dissent, Justice Gerald Heaney wrote:

...the majority purports to reject the owners' argument that the labor exemption in this case continues indefinitely. The practical effects of the majority's opinion, however, is just that – because the labor exemption will continue until the bargaining relationship is terminated either by the NLRB decertification proceeding or by abandonment of the bargaining rights of the union.³³

Justice Heaney suggested that the players should disband the NFLPA as a union so that the nonstatutory labor exemption no longer applied. The players chose to follow Justice Heaney's advice and voted to decertify the NFLPA as a union and its bargaining representative on November 3, 1989. This action opened the door for player-initiated class action lawsuits against the NFL and the reserve system status quo.

The final element of the reserve system that affects the balance of power is the operative maintenance and administrative authority granted to the commissioner in the

³² *Powell v. NFL*, 930 F.2d 1293 (8th Cir. 1989).

³³ *Id.*

NFL Constitution. The owners feared a Congressional oversight committee would intervene in league affairs without a demonstrable mechanism to ensure that the players' and fans' interests were being served by the NFL. The owners appointed a league commissioner to fulfill this superficial function and ensure that the owners' interests were protected, nurtured, and effectively implemented. Instead of an external regulator, the owners had an internal agent to oversee the day to day operations of the NFL.

The commissioner has three major duties: (1) protect and promote league interests, (2) manage labor relations, and (3) act as judiciary control over all league matters (Garvey 1979). For the owners, the most important duty of the commissioner is to ensure the league's profitability and sustainable growth. Rozelle worked diligently to create a "league think" mentality with the owners. Under his plan, large market teams would sacrifice short term profit goals for the sake of long-term revenue sharing schemes that would ensure league-wide growth and financial prosperity.³⁴ Rozelle's successor, Paul Tagliabue, furthered the group think mentality in the 1980s and 90s with his stadium renovation and construction program that continued to increase league profits.

The NFL has the most aggressive form of intra-team revenue share in professional sports. It is the only league that equally shares television contract revenue from the major networks and cable affiliations. A study in 2005 showed that share of television revenue fully pays the operational costs of many small market NFL teams, which allows them to remain viable and produce a competitive product (Conlin and Emerson 2005). The NFL also has the most egalitarian visitor's gate receipt policy. Gate receipts include all monies

³⁴ Rozelle's most influential strategy was for owners to share the revenue generated by national television contracts to guarantee every team's viability and produce long term profit maximization. He also established NFL Properties to broker all licensing agreements between the NFL and external corporate sponsors.

derived from game day tickets but does not include stadium concessions, fan club programs, luxury suites, or parking fees (Leeds and Allmen 2005). The NFL's shared gate revenue is split 60/40 for every game, with the home team receiving 60 percent and the visiting team 40 percent. Comparatively, MLB has two gate receipt policies. The National League (NL) exchanges at a 90/10 rate and the American League (AL) shares at a rate of 80/20. The NBA and NHL have no gate revenue share policies and the home team receives the entire take.

CHAPTER 5

FINDINGS

1986 Status Quo

For my research, I established the status quo of the players' labor market situation as the standards that existed in 1986. Using my four criteria of analysis, I determined the initial status quo as the following: (1) player mobility was controlled under Plan B free agency and realistically offered players little free agency. The players lacked the ability to change teams to seek the best work conditions, salaries, or employer. All players entered the league through the draft and weren't eligible until three years after their high school graduating class. (2) The players received 49 percent of the league revenue compensated in the forms of salaries, bonuses, and personal benefits (Vrooman 2011). In 1986, 87 percent of the players' share was allocated to salaries and bonuses, while 13 percent was used to cover retirement benefits. The median average player salary was \$198,000, including prorated bonuses. (3) Job security was relatively weak. Only 3 percent of players in the entire league had guaranteed salaries for the 1986 season (Hachlin 2008). A majority of those players were on the teams' practice squads and only 11 active roster players had a guaranteed salary. Players had no discretion or recourse if a team traded them. The owner retained complete control over the rights to a player under contract and could trade him without warning or justification. Players became vested in the NFL after six full seasons on an NFL roster, or 96 games at 16 games per season. If injured during the course of a season, players were said to have played a full credited season if they were on the active roster for eight games over the course of the season. (4) Due to statutes in the standard player's contract, a player forgoes any right to an external arbitrator and allows

the NFL Commissioner to act as judge and jury over all league matters. If a player had a grievance with a team or condition of employment or sought to appeal a disciplinary action taken by a team or the league against him, he could not express his complaints to an outside arbitrator. All conflicts were presented before the commissioner for resolution. Also, the commissioner retained veto power over all player contracts to ensure that they complied with league standards.

Decertification Period (1989-1993)

All three of the lawsuits studied in my research directly addressed the NFL's restraints on players' mobility as they enter and play in the league. The *Powell* lawsuit was filed before decertification was recognized and was judged on the precedent of earlier court rulings where the courts ruled that "the labor exemption would continue to shield the existing system of player restraints until the parties reach an impasse in negotiations."³⁵ The courts wrote that, "defendants (owners) were protected from plaintiffs' (players') antitrust allegations up until the point of impasse and since impasse was not found until June 17, 1988, plaintiffs' claims for antitrust damages regarding the right of first refusal/compensation system before that date are without merit."³⁶

In *McNeil v. NFL*, eight players directly attacked the Plan B system of free agency as an unreasonable restraint on trade that affected their ability to earn top salaries compared with players in other professional sports. The jurors sided with the players on three of four issues: (1) Plan B had a "harmful effect" on competition, (2) Plan B was more restrictive than it needed to be, (3) and players suffered economic injury due to Plan B free agency.

³⁵*Powell vs. NFL*, 678 F. Supp. 777, 788-89 (D. Minn. 1988).

³⁶*Powell vs. NFL*, 711 F. Supp. 956-66 (D. Minn. 1989).

Plan B free agency was ruled to be a violation of antitrust laws and, thus, an illegal restraint of trade in a competitive market. The owners succeeded on how much Plan B contributed to competitive balance in the NFL and the inherent need to maintain competitive balance in a sports industry.

In *McNeil*, the courts recognized the decertification of the NFLPA and ended the owners' antitrust protection from antitrust lawsuits provided by the nonstatutory labor exemption. The court referred to rulings in *Powell* and *Chevron Oil Co. v. Huson*, which declared that the termination of the collective bargaining relationship did not establish a "new principle of law" because decertification is a common practice with legal precedents.³⁷ The court continued that the dissenting opinions in *Powell* foreshadowed the current arrangements of the *McNeil* case. Although the majority in *Powell* declined to pick the exact point at which the labor exemption would end, they acknowledged that the bargaining relationship could be terminated and thus the owners' protections.

The defendants contended that the 8th Circuit's opinion in *Powell* did not address the issue of what actions would be legally sufficient to terminate the labor exemption. In response, the court observed that "generally the collective bargaining relationship between an employer and a particular union exists for as long as that union continues to be the recognized bargaining representative of a majority of the employees."³⁸ The court wrote that labor law protects the voluntary nature of union representation and stated, "the NLRA

³⁷ *Chevron Oil Co. v. Huson*, 404 U.S. 97, 30 L. Ed. 2d 296, 92 S. Ct. 349 (1971). In *Chevron*, the Supreme Court set forth 3 factors to be examined when determining whether a judicial decision should be applied retroactively: (1) whether the decision established a new principle of law; (2) whether retroactive application will advance or subvert the purpose of the decision; (3) whether inequities will result from retroactive application.

³⁸ *Powell v. NFL*, 678 F. Supp. At 787-88 n. 18.

guarantees the employees the right to bargain collectively with representatives of their own choosing.”³⁹

The defendants countered that the final factor in *Chevron*, concerning the balance of equities, favored the plaintiffs because they relied solely on the decision in *Powell* and failed to seek a prompt determination of the labor exemption issue. The defendants argued the plaintiffs had an unfair advantage in the *McNeil* case because of “the 8th Circuit’s holding that the right of first refusal/compensation system portion of Plan B was immune from antitrust scrutiny until this Court specified the point in time when the exemption expired.”⁴⁰ The court rejected this claim on the basis that the defendants were clearly put on notice that they were not entitled to a permanent immunity from antitrust scrutiny. The court continued, “the players took a drastic step ending their union representation to allow individual claims to go forward and have already paid a significant price for the loss of that representation.”⁴¹

After the legal wrangling concluded, the courts denied the defendants’ motion for partial summary judgment of the plaintiffs’ claims, with three significant issues that required attention. First, there is a relevant market for the services of professional football players in the United States. Second, there is a relevant market for professional football in the United States. Third, the NFL defendants possess monopoly power in each of those relevant markets. The final point reaffirms the court findings in *USFL v. NFL* that the owners had willfully monopolized the market.⁴² The owners defended that *AFL v. NFL* was

³⁹ citing *NLRB v. Local 103, International Ass’n of Bridge, Structural and Ornamental Iron Workers*, 434 U.S. 335, 344, 54 L. Ed. 2d 586, 98 S. Ct. 651 (1978)(citing 29 U.S.C § 157).

⁴⁰ citing *Powell v. NFL*, 930 F. 2d at 1303.

⁴¹ *McNeil v. NFL*, 764 F. Supp. At 1359.

⁴² *USFL v. NFL*, 644 F. Supp. 1040, 1042 (S.D.N.Y. 1986).

inconsistent with *USFL* and survived appeal on the basis that NFL defendants did not possess monopoly power in the relevant market.⁴³ The *McNeil* court ruled the *AFL* case was distinguishable from the current arrangements of the labor market and 30 years outdated. On appeal, the defendants contended that the acquisition of the AFL was a strategic business action that naturally led to the monopolized market. The plaintiffs countered, using 2nd Circuit notes in *USFL*, “in 1966, the NFL and AFL agreed to merge, largely because the competition for players had sharply increased salaries. Congress exempted this merger from antitrust laws by legislation and not judicial ruling...”⁴⁴ The 2nd Circuit Court ruled in *McNeil* that the issue of monopoly power is relevant to the inquiry of whether the challenged restraints are anticompetitive under the rule of reason. The 2nd Circuit continued:

Defendants argue that monopolization of an output product market, that is the market of professional football, is irrelevant to a determination of the legality of restraints in an input labor market, that is the market for professional football player services. They nevertheless premise their entire rule of reason defense on the alleged necessity of implementing player restraints in the relevant input market in order to strengthen their ability to compete in the output market.

The *USFL* jury verdict thus became a tested precedent for the *McNeil* case. Unlike the situation in 1992, the court noted that a rival league existed at the time of the *USFL* case. The jury had found that the NFL had monopoly powers in *USFL*, a situation less compelling than the current market arrangements. The jury in *McNeil* ruled that Plan B restraints violated Section 1 of the Sherman Act and inflicted economic injury on the plaintiffs. The *McNeil* verdict precluded the owners from re-litigating the existence of their monopoly power in the relevant market of professional football.

⁴³ *AFL v. NFL*, 205 F. Supp. 60, 323 F. 2d 124 (4 Cir. 1963).

⁴⁴ *USFL v. NFL*, 842 F.2d at 1344.

The *McNeil* case is monumental because it eliminated the NFL's nonstatutory protection from antitrust scrutiny and owners' monopsony control over free agency. It validated the *Radovich* and 1970s court rulings against the reserve system and opened the door for future lawsuits by NFL players. *McNeil* paved the way for players to obtain an improved free agent system.

After the *McNeil* case, several lawsuits were filed by players seeking antitrust injunctions and damages stemming from various reserve system practices like Plan B free agency, the standard players' contract, and the draft. In *Jackson v. NFL* players said the same injuries ruled in *McNeil* affected and restrained them from becoming free agents.⁴⁵ The court granted a temporary restraining order against the NFL and Plan B free agency, stating "the players would suffer irreparable injury each week they remained restricted under the NFL-imposed system of player restraints."⁴⁶

Shortly after *Jackson*, Reggie White and four other players demanded total or modified free agency for all current or future players, not merely individual players named in the lawsuit.⁴⁷ It stated that the lawsuit was brought on behalf of:

- (i) all players who have been, are now, or will be under contract to play professional football for an NFL club at any time from August 31, 1987, to the date of final judgment and ...
- (ii) all college and other football players who, as of August 31, 1987, to the date of final judgment have been, are now, or will be eligible to play football as a rookie for an NFL team.

This action of solidarity marked the first time the players explicitly expressed interest to be recognized as a collective in any particular lawsuit. In response, the court certified a settlement class for damages and injunctions.

⁴⁵ *Jackson v. NFL*, 802 F. Supp 226, 228 (D. Minn. 1992).

⁴⁶ *Id.* at 230-31.

⁴⁷ *White v. NFL*, 822 F. Supp. 1389 (D. Minn. 1993).

The owners did not like the pattern of the court decisions and feared the *White* case would follow form and would decrease the owners' ability to restrain players within the league. Rather than chance another defeat in court, the owners offered to settle with the players and conceded a new free agent system. The plaintiffs in *White* agreed to settle the case and all other ongoing litigation related to the labor dispute. The Minnesota District Court mediated the settlement process and granted a preliminary approval of the agreement. Any interested party in the settlement was allowed to present grievances before the court for several weeks. The court overruled the few objections and enjoined every individual lawsuit by NFL players with similar claims into a class group. The agreement, known as the "White Settlement Agreement," had several significant elements.⁴⁸ First, it granted all NFL players unrestricted free agency after completing the terms of their initial contract, which for most players came after their fourth season in the league. As a condition to the agreement, only players who were actively litigating a similar claim at the time of *White* were allowed free agency in 1993. All other players had to wait until the 1994 season to become free agents. Second, as a compromise to free agency, the players agreed to a salary cap that was derived from a percentage of the League's defined gross revenue (DGR).⁴⁹ The exact percentage of the initial salary cap was considered an issue for collective bargaining. Therefore, the 1993 season was played without a salary cap in order to bargain a proper level for the 1994 season. As a part of the settlement negotiations, owners approved a salary floor to coincide with the salary cap. Each team

⁴⁸ *White v. NFL*, 836 F. Supp. 1508 (D. Minn. 1993).

⁴⁹ Defined gross revenue is derived from the total shared revenue between NFL teams, mostly generated from national contracts, licensing agreements, and visitor portion of gate receipts.

was required to pay a minimum amount each year for player salaries. The salary floor was established as 85 percent of a particular season's salary cap amount.

The players agreed to recertify the NFLPA as a third condition of the *White* agreement. This caused tension with many players, including NFLPA Executive Director Gene Upshaw who stated, "we didn't plan to recertify the union, it was the owners who requested it."⁵⁰ The last major part of the settlement dictated that any amendment to the agreement must be approved by the Minnesota District Court's Judge William Doty. The NFL and NFLPA agreed to give Judge Doty control over dispute resolution and final consent judgment over the league's labor agreements.

After receiving free agency in the settlement, veteran players grew less concerned with labor issues that affected future players. As a consequence, the draft and standard players' contract remained active elements of the NFL labor arrangement to be bargained over in upcoming negotiations. One week after the *White* settlement the recertified NFLPA and NFL offered a new CBA to the district court for approval. The CBA mirrored the settlement agreement and was successfully approved by the district court on April 30th, 1993.

Collective Bargaining Period (1993 – 2008)

The 1993 CBA brought a new era to the NFL and redefined the status quo arrangements of the labor market. The players had successfully won free agency through litigation and began to test the open market. Owners sought to salvage the reserve system

⁵⁰ Katzowitz, Josh. 2011. "Will the NFLPA Choose not to Recertify?" *CBSSPORTS.COM*, May 24, 2001. Retrieved May 28, 2011 (<http://www.cbssports.com/mcc/blogs/entry/2247988/29613017>).

and looked for new strategies to control player mobility, maintain the league's competitive balance, and maximize profits.

Player Mobility

The 1993 CBA did not change the NFL's draft process as a means to control the entrance of new talent into the league. The draft expires at the end of each extension and remains a relevant topic for collective bargaining. In order for the draft to remain active, it must be accepted by the NFLPA during each bargaining period. From 1993-2008, the traditional arrangements of the draft did not change.

Veteran players did not receive improved conditions during the life of the 1993 CBA either. The agreement allowed veteran players to become free agents after four seasons in the league and did not change during the bargaining period. The only exception came in 2008 when the owners opted out of the 2006 extension. According to the 2006 CBA, if the owners chose to opt out of the agreement, then, starting in 2010, a player would become an unrestricted free agent after six seasons.⁵¹ The 2010 season was played under this new arrangement, and it remains the status quo until a new CBA can be negotiated.

Revenue Share

The owners' revenue share offered to players as stipulated in the 1993 CBA is derived from a percentage of the League's DGR. The percentage represents an estimation of the League's projected revenue for the upcoming season. The salary cap is established by quantifying a dollar amount from the percentage of DGR, subtracting player benefit

⁵¹ Article XXIV, Section 4(d).

costs, and dividing by the number of teams in the league. In 1994, the percentage of DGR allocated to player costs was 59.3 percent.⁵² This translated into a players' revenue share of \$1.079 billion and created the first NFL salary cap at \$33,718,750. As a result of the salary cap, the mean players' salary decreased from \$660,000 in 1993 to \$628,000.

The 1993 season had no salary cap and marked the first season of free agency for certain players. The revenue share received by players in 1993 was a drastic increase from previous seasons. From 1990 to 1992 the average revenue share received by players was 55.3 percent (Vrooman, 2011). In 1993, the players' share was 68.5 percent. This share was responsible for a 38 percent increase in player salaries. In 1994, the salary cap was established and the revenue share decreased to 59.3 percent.⁵³ It decreased again in 1995 to 56.9 percent heading into the 1996 bargaining period.

The first three seasons of the 1996 CBA show a recognizable pattern to the owner/player revenue sharing system. At the beginning of each extension, the revenue share is at its peak before depreciating over the length of the agreement. This pattern is caused by the strategic positioning of the league's television contracts. The owners brokered the television contracts to expire the same year as each extension. A significant portion of the salary cap was associated with the television contracts' ratio to the DGR, so changes in the television contracts had a causal effect on the revenue share. Following the previous example, the 1996 extension to the CBA saw the revenue share increase to 61.4

⁵² 1993 CBA Article XXI, Section 2(b)(iii).

⁵³ The actual monies received by players did not drop significantly, because the revenues taken into consideration were from a larger pool.

percent. In the three subsequent years of the 1996 extension, the players' revenue share decreased to 58.9, 56.4, and 55.9 percent, respectively.⁵⁴

The television contract negotiations became a point of contention during the 2002 CBA negotiations because the NFLPA was not included in the bargaining sessions between the NFL and television networks (Halchin 2008). The NFLPA filed an unfair labor practice with the NLRB, but the motion was denied a hearing. The NLRB cited a lack of sufficient claim to justify the need to be present at the contract negotiations. The NFLPA remained excluded until the 2006 CBA extension. The owners offered the NFLPA a larger revenue share as a compromise to this conflict. The years 2002-2005 mark the only time period the players' revenue share increased over the course of the agreement rising from 61.5 percent in 2002 to 63.5 percent in 2005.⁵⁵ The 2005 revenue share was the highest percentage received by players since the 1993 season.

The 2006 CBA made the most significant changes to the NFL's revenue share arrangements. Before the bargaining period started, the owners were in conflict with each other over the League revenue share between teams, not players. The stadium initiative of the 1990s created a situation where teams with newer stadiums were enjoying large profit margins due to unshared revenue. Newer stadiums offered more luxury boxes, expensive club seating, and personal seat licenses (PSL) that generated exclusive revenue for a team.⁵⁶ Owners who operated in outdated stadiums received diminishing returns compared to owners in newer stadiums.

⁵⁴ 1996 CBA Article XXII, Section 8(e)(ii).

⁵⁵ 2002 CBA Article XXIV, Section 10(c).

⁵⁶ Personal seat licenses were started by the Carolina Panthers in 1993 as a means to raise capital and help finance new stadium construction. In essence, a fan that wishes to buy season tickets for an NFL team with PSL requirements must pay a fee for the rights to those seats and tickets. Depending on the team, the PSL fee can be a

The NFL offered a solution for the owners to be negotiated in the 2006 CBA. In order to balance the league revenue share between teams, the owners agreed to broaden the scope of the DGR to include total revenue (TR).⁵⁷ In the past, the DGR was established primarily from the national television contracts, licensing agreements, and visitor gate receipts. The new TR system contained all team income including luxury boxes, club seating, PSLs, and game day parking fees. As a compromise to the new arrangement, the NFLPA agreed to reduce the players' share of the TR to 57.0 percent, instead of 64.5 percent under the DGR system. The players received a smaller percentage of a larger pie and the salary cap rose from \$94.5 million (DGR) to \$102 million (TR) per club. A stipulation to the new system was an owners' deduction of various operation expenses before the players' revenue share calculation. The credit deductions helped owners offset the cost of new stadium financing, luxury box and club seating depreciation, and increased operational expenses of the larger stadiums. The owners bargained the more expensive stadiums increased the revenue share for all parties. The NFLPA accepted the terms on the condition the owners would include them in all future contract and licensing negotiations with external sponsors and agencies.

The three seasons affected by the 2006 CBA before the owners opted out of the agreement in 2008 saw a substantial growth in player salaries but not in the percentage of revenue share. The revenue share for the seasons 2006-2008 was calculated at 57.0, 57.0, and 57.5 percent, respectively.⁵⁸ The mean average players' salary rose 20 percent in

one-time payment or a yearly due. A fan is not refunded the PSL fee if they stop purchasing season tickets, but he/she can sell the PSL ownership rights to another fan.

⁵⁷ 2006 CBA Article XXIV, Section 1(a)(i).

⁵⁸ Id. Article XXIV, Section 1(a)(i)(5).

2006, 8 percent in 2007, and 13 percent in 2008 to reach \$1.94 million dollars (see Table 1).

Table 1: NFL Total Revenue and Percentage of Players' Share

| | Total Revenue ¹ | National Revenue % ² | Player % ³ | Mean Salary ⁴ | % Change ⁵ |
|------|----------------------------|---------------------------------|-----------------------|--------------------------|-----------------------|
| 1986 | 859 | NA | 49 | 198 | 3.8 |
| 1993 | 1,745 | 75.2 | 68.5 | 666 | 37.7 |
| 1994 | 1,819 | 70.3 | 59.3 | 628 | -5.7 |
| 1995 | 2,142 | 67.2 | 56.9 | 717 | 14.1 |
| 1996 | 2,235 | 65.9 | 61.4 | 788 | 9.9 |
| 1997 | 2,382 | 64.3 | 58.9 | 737 | -6.5 |
| 1998 | 3,138 | 69.4 | 56.4 | 993 | 34.7 |
| 1999 | 3,423 | 67.2 | 55.9 | 1056 | 6.4 |
| 2000 | 3,938 | 63.5 | 61.7 | 1116 | 5.7 |
| 2001 | 4,284 | 63.4 | 57.1 | 1101 | -1.4 |
| 2002 | 4,944 | 59.9 | 61.5 | 1316 | 19.6 |
| 2003 | 5,330 | 60.0 | 62.6 | 1209 | -4.3 |
| 2004 | 6,029 | 58.8 | 63.1 | 1331 | 5.7 |
| 2005 | 6,160 | 59.9 | 63.5 | 1396 | 4.9 |
| 2006 | 6,539 | 61.1 | 57 | 1687 | 20.8 |
| 2007 | 7,090 | 61.2 | 57 | 1712 | 1.5 |
| 2008 | 7,575 | 62.1 | 57.5 | 1947 | 13.7 |

¹ Total revenue (TR) in millions of U.S. dollars (*Forbes*).

² Percentage of TR that is attributed to national television contracts (*Forbes*; Murphy and Topel 2009).

³ Players share of the NFL revenue.

⁴ Mean salary of NFL players in thousands of U.S. dollars (*Forbes*)

⁵ Percentage change of NFL players' mean salary year over year

Benefits

Benefits are funded from a portion of the League's total revenue that is allocated to players. In 1987, benefits represented 10 percent of the players' revenue share, supporting both active and retired players (Halchin 2008). Under the 1993 CBA, benefits are defined as "the aggregate for a League Year of all sums paid...by the NFL and all NFL teams for, to, or on behalf of present or former NFL players, but only for (i) pension funding, (ii) group insurance, (iii) injury protection, (iv) workers' compensation, (v) pre-season per diem, (vi) travel expenses, (vii) postseason pay, (viii) player medical costs, (ix) tuition assistance, and (x) players' health reimbursement account."⁵⁹

The NFLPA has a persistent conflict between active and retired players concerning benefits that is similar to the owners' issues with team revenue share. All monies designated for the retired players' benefit programs are apportioned from each season's revenue share allocated to current players. Current players sacrifice a percentage of each season's monies to facilitate the needs of all retired players. The NFLPA only represents current NFL players during negotiations, so the monies provided to retired players is at the discretion of the represented players. For this reason, the NFLPA constantly seeks more benefit concessions from the owners in order to offset the tax on current players by retired players.

The 1993 CBA established many new benefit programs for active and retired players. Players became vested after five credited seasons and earned a benefit credit for each year played.⁶⁰ The benefit credit was established at a rate of \$80 a month for each credited season. A retired vested player was eligible to receive pension benefits at age 55,

⁵⁹ 1993 CBA Article XXXVI, Section 1(a).

⁶⁰ Id. Article XXXVI, Section 1(c)(iii).

or 20 years after retiring from the league, whichever came later. The 1993 CBA allowed players who were one credited season shy of vestment, eligibility to receive a lump sum payment at the current rate of pension compensation for years played in the league. The Retiree Medical Plan afforded retired players access to the active players' group insurance benefits.⁶¹ Previously, retired players who were vested in the league received full benefits for 48 months and a 50 percent reduction thereafter. A Second Career Savings Plan was created for teams to match individual player contributions to the fund with a maximum value of \$25,000.⁶² All players, including those in their first-year, may contribute to the plan. However, a player must have at least two credited seasons, with at least one season in 2006 or later, to receive a matching contribution from a team. So, a player who retired in 2005 or before did not receive matching funds. Those who participated in the plan and played in 2006 received retroactive payments to compensate for a team's matching contribution between 1993 and 2006.

A severance pay system was established in the 1982 CBA giving players \$5,000 for every credited season in the league, regardless of vested circumstances. The 1993 CBA required a minimum of two credited seasons, with at least one season occurring prior to 1993. A player received \$10,000 for every credited season as a lump sum payment once he formally requested severance pay and gave notice of permanently ending employment with league teams.

Total and Permanent Disability Benefit Program (T & P) was created in 1970 to help active players and vested retired players who were permanently disabled as determined by the Retirement Board. A player must have an accredited season after 1958 to be eligible.

⁶¹ Id. Article XXXVII-B, Section 1(d).

⁶² Id. Article XXXVII-C, Section 2(b)(ii).

T & P benefits were payable for a player's entire life. Before the 1993 CBA, the NFLPA or players did not have a representative on the Retirement Board, which acted as a ruling party for all relevant retirement issues and eligibility requirements. After 1993, the NFLPA and active players were allowed one representative each on the Retirement Board to oversee and rule on the cases.⁶³

A Tuition Reimbursement Program was the final amendment offered to players' benefits program with the 1993 CBA.⁶⁴ It reimbursed players who entered the draft before they completed their college degrees or who wished to obtain a graduate or professional degree reimbursement for all expenses incurred while attending the school of their choice. Related expenses were defined as tuition, fees, books, and a small stipend at a maximum yearly amount of \$10,000. Players were eligible for the program if they were on an active NFL roster while continuing their education and had at least two credited seasons in the league.

The 1998 extension established an annuity program for retired players with an initial payment by the league of \$25 million dollars.⁶⁵ The annuity program was a deferred compensation program that allocated \$65,000 for every credited season a vested player was in the league. The annuity program did not apply to vested players before the 1998 season. The extension also increased the lowest benefit credit offered to a monthly payment of \$80 to \$100. The pension eligibility requirement was lowered from five to four credited seasons in order for players to become vested.⁶⁶ The lowered qualification did not

⁶³ Id. Article XXXVIII, Section 1(e).

⁶⁴ Id. Article XXXVII-D, Section 1(b).

⁶⁵ 1998 CBA Article XLI-B, Section 2(b)(iii).

⁶⁶ 1998 CBA Article XXXVII, Section 1(d)(iv).

apply to retired players. Finally, the active players' revenue share allocated to retired player benefits rose to 15%.⁶⁷

The 2002 CBA negotiations allowed players with injured reserve seasons prior to 1970 to be counted towards pension eligibility. This change caused a 4% increase in the number of seasons claimed by players in the pension program and allowed over 300 retired players to become vested (Halchin 2008). A majority of those players had not received vested interest because the injured reserve seasons had left them short of the necessitated quota. The lowest benefit credits rose again from \$100 to \$200. The extension created a health reimbursement account (HRA).⁶⁸ The HRA was an annual contribution by the League of \$25,000 or \$50,000 depending on a player's eligibility, to reimburse a player for healthcare expenses during time periods when he is not covered in a CBA. The reimbursement to an individual player is capped at \$300,000. At least eight credited seasons was required for players whose last credited season was 2005 or before to receive \$25,000. Players in 2006 or later needed at least 3 credited seasons to receive \$50,000. The Tuition Reimbursement Program's maximum yearly amount was raised to \$15,000. As a final measure, the 2002 extension raised the severance payout to \$15,000 for each credited season in the league.⁶⁹ The \$15,000 was applied only to seasons after 2002, so a player whose career spanned from 1999 to 2005 would receive \$10,000 for the three seasons before 2002 and \$15,000 for the 4 seasons after it.

The 2006 extension raised the lowest benefit credits for a third time to \$250, but only for players vested in the league between 1920 and 1982. The current players, and any

⁶⁷ Id. Article XL, Section 2(b).

⁶⁸ 2002 CBA Article XLVII-C, Section 1(a)(i).

⁶⁹ Id. Article XXXVII, Section 6(b).

vested players after 1983, received a 10% increase in their monthly pensions.⁷⁰ The extension also tripled widows' and surviving minor children's benefits for all retired and current players. By far, the most significant amendment came in the form of the Plan 88 program created by the league. Plan 88 provides retired players with up to \$88,000 per year for medical care resulting from dementia or other head trauma.⁷¹ Funding for dementia research is also provided by the league at no expense to players. Plan 88 established a network of medical specialists who focused on neurological care, spine treatment, joint replacements, and discount prescription drugs. The plan doubled the T & P disability benefit to \$40,000 and reduced the periodic reviews to once every five years.⁷² Finally, the extension substantially increased a vested players' line of duty benefits eligibility.⁷³ Eligibility to apply for benefits became correlated with the number of credited seasons a player was in the League. Instead of only 48 months to apply for benefits, a player who accrued eight seasons in the NFL would have eight years to apply for line of duty benefits.

It is estimated that the NFL paid approximately \$919.6 million dollars for retired player benefits in 2007 (*Forbes*). The NFLPA claimed that active players provided \$181.6 million of this amount under the revenue share system.⁷⁴ The NFLPA noted that only 38 percent of vested retired players were receiving monthly benefits in 2007. The escalating players' benefit costs were one reason owners opted out in 2008, especially with NFLPA

⁷⁰ 2006 CBA Article XLVII, Section 2(a).

⁷¹ Between 2006-2008 over \$9 million dollars was paid to retired players under Plan 88 (Halchin, 2008).

⁷² Id. Article XLVIII-D, Section 2(c).

⁷³ Line of duty benefits apply to any player who incurred a substantial disablement due to participation in the NFL, but is not totally or permanently disabled. A player does not have to be vested to receive benefit payments. Benefits are paid for no longer than 7 ½ years.

⁷⁴ Staff, 2011. "FACT CHECK: DeMaurice Smith at the University of Virginia Darden School of Business." *NFL Labor News*, April 5, 2011. Retrieved May 3, 2011 (<http://nflabor.com/2011/04/05/fact-check-demaurence-smith-at-the-university-of-virginia%E2%80%99s-darden-school-of-business/>).

demands for more league contributions without it affecting the current players' revenue share.

Job Security

For most NFL players, job security is associated with guaranteed contracts. Unlike other sports leagues, the NFL does not offer many guaranteed compensation contracts for players because of the brutal nature of the sport and the unpredictability of players' injuries. During the course of the collective bargaining period between 1993 and 2008, an NFL team's roster showed that 10 percent of all players at any given time were listed on the injured reserve list (Leeds and Allmen, 2005). This means that 10 percent of all players on a team's active roster at the beginning of a season sustained injuries that left them unable to finish the season. The 1993 CBA did not change this arrangement and only 6 percent of all NFL players received guaranteed salary contracts (Vrooman, 2011). The ratio remained relatively constant during the course of the collective bargaining period, with guaranteed contracts going to players with league minimum salaries or practice squad players.

Guaranteed salary in the NFL is awarded to players through a bonus payment system that is associated with contract signings, performance, or participation in team activities like off-season workouts. It became common practice after the 1993 CBA for players to receive guaranteed bonuses for participating in team activities. The amounts of compensation were variable to the number of seasons in the league and a player's position. Performance bonuses were integrated as a common practice with the 1998 CBA extension but remained variable to each individual player's contract.⁷⁵

⁷⁵ 1998 CBA Article XXXI, Section 3(b).

The NFLPA has stated that signing bonuses are preferred over salary guarantees because the money is given in an upfront lump sum payout before a player offers his services to a team. Bonuses are a form of players protection in case they receive a career-ending injury. Over 60 percent of players during the bargaining period received signing bonuses of \$250,000 or less (Halchin 2008). Marquee players received higher signing bonuses. The percentage of players who received a signing bonus in 1987 was 23 percent. In 1993, 40 percent of players received signing bonuses in conjunction with their contracts. The NFLPA and player agents successfully negotiated more frequent and larger signing bonuses as a condition for their players in each extension up to 2002 (Halchin 2008). As a result, in 2001, 82 percent of players received a signing bonus with their contracts. A majority of minimum salaried players and practice squad players did not receive signing bonuses.

In 2002, the owners negotiated terms that discouraged the policy of signing bonuses due to the rising number of players who were suspended from the League and unable to contribute to the team. Though no implicit standard had ever been officially negotiated into a CBA concerning signing bonuses, the practice had become an unwritten rule encouraged by the NFLPA after 1993. Owners began to limit the number of signing bonuses offered in player contracts resulting in a steady decline over the following years, which culminated in only 55 percent of players receiving a signing bonus by 2008.

Impartial Dispute Resolution

The 1993 *White* Settlement Agreement and CBA granted the players a third party mediator concerning labor dispute issues. Judge Doty mediated and reserved final

approval over all amendments to the agreements. However, his jurisdiction in the NFL labor market ended with overseeing amendments to the CBA and did not cover the league's disciplining of player conduct or appeals. The Commissioner's Office maintained jurisdiction in these matters and did not change during the collective bargaining period.

There are three exceptions. First, the 1993 CBA gave the NFLPA and one player full representation on the Retirement Board.⁷⁶ The other exceptions arose in the 2006 bargaining sessions. As already discussed, the NFLPA was allowed to participate in the league's television contract negotiations as a condition of the 2006 CBA.⁷⁷ The third exception applied to NFLPA representation of the "on the field" rules change process. Each year, NFL owners hold a weeklong "State of the League" conference to discuss economics and vote on relevant league issues, like rule changes, for an upcoming season.⁷⁸ Before 2006, the NFLPA had been excluded from these meetings. The NFLPA was only allowed access to the meetings on days when rule changes were being discussed.

⁷⁶ 1993 CBA Article XXXVII-G, Section 2(c)(ii).

⁷⁷ 2006 CBA Article XIII, Section 6(e)(iv).

⁷⁸ *Id.* Article XIII, Section 6(g)(ii).

CHAPTER 6

DISCUSSION

Negotiation Context

The set of relevant U.S. labor laws appears to have the most influence on the negotiations between the NFL owners and players. All of the NFL's teams reside and operate under the jurisdiction of the United States and are accountable to how the laws define negotiations, the bargaining interactions, and legal courses of action. The Sherman Act provided the legal precedent that the players use in antitrust lawsuits against the NFL and its reserve system. Every lawsuit against the NFL contains some elements that attack the legality of the draft, standard contract, or restrictions on trade, such as free agent mobility or the salary cap. The nonstatutory labor exemption and its protections outside the law impeded the players' ability to negotiate with the owners or seek a third party's intervention. A cultural prerogative in the United States is that owners/managers and workers in American industries understand their situations better than outside arbitrators and should pursue collective bargaining to settle disputes regardless of power imbalances between the opponents. Historically, the players were at an extreme disadvantage compared to the owners because of the reserve system and the owners' ability to avoid fully negotiating the players' demands.

The NFL isn't as susceptible to the business cycle the way other industries are affected. Due to its strategic revenue share program and popularity with fans, the NFL has continued to increase its relative market share and revenue streams. The current recession has slowed growth, but owners' net operational income continues to be healthy and secure. The largest effects the economy has on the NFL are the monies that media outlets,

corporate sponsors, and fans can spend on NFL interests. The media outlets and corporate sponsors have remained constant and continue to grow for the NFL, despite the decline in other industries. In many ways, the NFL controls the media outlets because of the excessive amounts of money exchanged in the contracts. The media outlets—which depend on NFL “content”—must market the league sufficiently to reap a return on their own investments. The state of the overall U.S. economy, though influential in the decision-making of league officials, does not seem to impinge on the NFL labor market despite owners’ claims to the contrary.

Though the NFL and NFLPA are experienced and familiar with the industry’s negotiation process, they do not approach it with equal experience. Players enter and leave the league each season due to the draft, retirement, and injuries. As mentioned, players have short career lifespans. As consequence, the NFLPA represents a different group of players during each bargaining session. The owners’ membership is more static; almost all owners acting in the 2011 bargaining sessions will have participated in early NFL negotiations.⁷⁹ The team owners are middle-aged businessmen, competent in the language, tactics, and implications associated of each bargaining action. The players, by comparison, lack experience. They are mostly young, fresh out of college, not from the same social class as owners, and often focus more on developing their playing abilities than their business acumen. Players’ decisions can be influenced by the union, veteran and retired players, their agents, and the media. The NFL and NFLPA share similar bargaining experience, but the owners are seasoned veterans compared to the relative rookie status of players.

⁷⁹ Only four NFL team franchises have changed ownership since 1990. Dan Snyder purchased the Washington Redskins in 1999 and three new franchises were created: Carolina Panthers and Jacksonville *Jaguars* in 1993 and the new Cleveland Browns in 1999.

Consequently, the owners have dominated the labor relationship because they benefit from the reserve system and the strategic disadvantages of the players' limited resources, experience, and time.

Under the collective bargaining arrangement, the NFLPA struggled to undermine the anti-competitive nature of the reserve system and the NFL's monopoly power over professional football in the U.S. The players had few alternatives other than decertifying in 1989. Decertification made the NFL adhere to the larger social order of the United States's legal system, whose jurisdiction outranked the NFL and exposed the reserve system to a level of authority beyond the owners' control. The lawsuits of the 1970s and the decertified action of 1989 represent two significant periods in the NFL's negotiated order when the players were able to achieve some of their goals. Until 1993, the players could not bypass the nonstatutory labor exemption's legal protection of the owners from antitrust scrutiny. Once the barrier was removed, the owners became eager to reach an agreement and insisted upon a return to the collective bargaining arrangements. However, the 1989 decertification and the *White* ruling changed the status quo from a monopsony empowered elite group of owners to a more egalitarian relationship based on organic solidarity and reciprocity. The data demonstrate that each side benefited from the new free agent/salary cap arrangement, maximizing profits for all.

The main interests of the owners and players have not changed since the bargaining relationship began in 1970. Each negotiation period is routinized by the same issues, actions, and representatives (NFL and NFLPA), with minimal variation over time. The negotiations are connected by the nature of the collective bargaining process. Each time a CBA expires, the bargaining parties have the chance to renegotiate the conditional

arrangements. The time between NFL bargaining sessions was variable, but recurs approximately every 5 years (1968, 1972, 1977, 1982, 1987, 1993, etc.). Typically, the concessions received by players in a previous CBA remain valid in a new CBA, but unresolved conflicts become objects of interest for future negotiations and can escalate into tensions, mistrust, bitterness, and a lack of cooperation between the groups. Each CBA symbolically represents a temporal peace for the duration of the agreement.

The NFL owners need CBAs for more reasons than sheer market power. Professional football before the NFL consisted of loosely banded teams that had no inter-team affiliations. It was impossible to create a sustainable product because team owners did not know which teams would be available to schedule games with the following year. The same type of problems would surface in the present-day NFL without binding collective agreements. For example, if the Dallas Cowboys acted purely in its own self-interest, it would play a 20-game national schedule to maximize its profit potential, while the Cincinnati Bengals would perhaps play only 12 regional games because it is more cost efficient in its market. The league would have no national media contracts or licensing agreements because each team would negotiate its own contracts for presumably less money than a collective could obtain. Large market teams would dominate the industry, possibly resulting in a diminished league with only a few national-interest teams. The CBAs bring together the players *and* owners into a single group with shared interests and goals.

Findings Analysis

The findings suggest that there is only partial support for the success of decertification to improve the four key variables I measured. The overall pattern I found is that the strategy of decertification/litigation was effective in securing a major change in players' status – 'free agency' – and improving player mobility. The other three variables were more weakly affected.

Free agency remained the most consistent need for players from the beginning of the NFL's labor market negotiations. The findings show that decertified litigation enhanced the players' mobility far more than collective bargaining could have produced between 1987-1993; or improvements achieved between 1994-2008 were minor by comparison. Without the decertified action, it is realistic to infer that players would not have achieved unrestricted free agency because it was a concession the owners continue to deny in collective bargaining.

The court mediated rulings altered the players' core status in the bargaining relationship. All three lawsuits attacked the legality of the restrictions placed by owners on players' mobility. The victory in *McNeil* was a culmination of over 50 years of organized negotiations with owners over unrestricted free agency. In the NFL, all binding issues and rules must be incorporated into a CBA before they become operational. The court can declare one of the owners' anti-competitive behaviors to be in violation of the Sherman Act, but it remains abstract and external to the league's operations until it's bargained into an agreement. *White* would have failed to grant free agency to players without the settlement agreement and associated 1993 CBA. This illustrates how a cycle of decertified litigation followed by collective bargaining functions far better than each strategy alone.

Consequently, the players' use of litigation, though successful in 1993 for obtaining free agency, may not be an effective strategy for other negotiation situations. If an organization such as the NFL refuses to adopt litigated policies into its structures, then the court rulings have little effect on the actual operations and work conditions of those entities. A successful third party intervention occurs only when recommendations are incorporated into the structures and practices of the organization and become part of the structural context. Despite winning the court cases in the 1970s, it took the players more than 25 years before those conditions were accepted into the NFL's negotiated order. This is one of the biggest problems associated with alternative modes of action such as decertification because the social order does not change until the structures surrounding the traditional arrangements also change.

The two most commonly cited litigation interests for players besides free agency are the reserve system's influence on the draft and the standard players' contract. These two restrictive measures will not disappear in the manner that brought free agency. Neither the owners nor players will relinquish the draft as a condition shaping the labor market. The owners have staged the draft as a celebratory and ritualized spectacle that future players anticipate eagerly as their debut into the league. Before the 2011 Draft, the NFLPA asked collegiate players to boycott the Draft because of the current lockout, but the players refused. Every player alluded to the desire to walk across the stage, shake the commissioner's hand, put on his new jersey, and listen to the fans cheer for his draft selection. The draft has become meaningful to the players and their families as the day their childhood dreams come true.

The standard players' contract, despite its questionable nature, is a necessary evil for the NFL to ensure that all players adhere to the same binding agreements and membership rights in the league. Amendments may be made to the standard players' contract, but it seems unrealistic that dramatic changes will occur. The NFL and NFLPA will eventually agree to a new CBA and these terms will be codified in that agreement because both parties support and/or accept those practices.

A primary function of the standard players' contract is the players' acknowledgement of the commissioner's role as judge and jury over league matters. Decertification did not improve the status quo arrangement for players, nor did collective bargaining. Judge Doty and the Minnesota District Court did assume jurisdiction over the amendments to the 1993 *White* Settlement Agreement and CBA, but this oversight was not permanent nor encompassing. No formal impartial system was established under the litigation strategy. Collective bargaining granted NFLPA representation on the rules committee, but this was a minor change. The commissioner maintained the right to veto contracts and to manage behaviors, discipline players, and resolve disputes. The players still lack an impartial mechanism to appeal the commissioner's rulings or seek a third party's intervention on any matter stipulated in a CBA and/or players' contract.

Similarly, the research demonstrates that neither decertification nor collective bargaining improved players' job security. Due to the relevant nature of the game of football, NFL players have an average career life-span of 3.8 seasons. Their "playing days" can be cut short due to injury or declining skill, so maximizing compensation during players' tenures in the NFL is a major concern. Decertification allowed veteran players to seek better compensation with more mobility, but this is not security because many

players will never realize the four-year minimum requirement to become a free agent. Collective bargaining helped players' job security by initially increasing the guaranteed signing bonuses paid to players as a condition of their contracts from 40 percent of all peoples in 1993 to 82 percent in 2002. However, in the second half of the bargaining period, this trend reversed and by 2008, the percent of players receiving guaranteed bonuses was only 55 percent. It's fair to say that the drop in the percentage of players receiving bonuses was a retrenchment by owners to offset risk. Either way, players' job security remained conditional and players did not receive guaranteed contracts or compensation other than the bonus payment structure, which was highly variable during the time-frame of the study.

The main bargaining interest in the 2011 negotiations concerns the players' percentage of revenue share. It can be argued that players received a higher percentage of league revenue through decertification than collective bargaining, but the findings are far from definitive. Revenue share, like most labor market issues, is handled through collective bargaining rather than the courts. Courts can assess and award damages and impose injunctions against bargaining actions but cannot dictate the exact distribution of revenue to either party.

Revenue sharing varied considerably in the research and had many mediating factors such as the leagues' projected income, television contracts, licensing agreements, and fan attendance. Comparing the standards in 1986 with 1993, we notice a dramatic change in the players' share of league revenue during decertification. The revenue share rose from 49 to 68.5 percent, but these numbers may prove misleading because 1993 was an uncapped year. An interesting finding is that before 1989 the NFLPA continuously failed

to secure a 55 percent revenue share for players. After the 1993 CBA, the players' revenue share did not decrease below 55 percent. The closest it came to falling below this threshold was in 1999 with 55.9 percent. The rise in salaries remained fixed under the salary cap and tied to the increased revenue generated by the NFL.

Collective bargaining provided the players with increases in revenue share in 2002 and 2006. The 2002 agreement was the only time that players' revenue share remained above 60 percent for the course of the agreement. The restructuring of the 2006 CBA reduced the players' percentage but increased the monies allocated to player salaries under the salary cap. These changes were not as substantial as those made between 1986 and 1993, nor as consistent over as long a duration. The 2002 agreement lasted four seasons and the 2006 agreement lasted only three, until the owners opted out of the CBA to renegotiate the labor arrangements.

Conclusion

Decertification alone did not produce major changes to the status quo other than player mobility because modern labor markets require formal structures and policies. The NFL operates like a cartel and needs to bind all of its members into a single association of functioning parts. This is one reason the owners insisted that the NFLPA be recertified as a condition of the *White* settlement, as a way to reorganize the players' new status as potential free agents into a new CBA. Without CBAs as an organizational mechanism, the NFL would struggle to maintain its groupthink mentality and operational capacity.

My analysis shows that decertification and collective bargaining are not opposing strategies; one sets the stage for the other. The eventual outcome of litigation within the

NFL labor market will be a return to a two-party bargaining relation. Decertification functions as a sequential rather than alternative strategy that players may deploy in negotiations. As a sequential strategy, decertified litigation helps a significant status change for the players in the labor market but cannot finesse within-status reforms. The latter is reserved for collective bargaining within the context of the negotiated order and the larger, prevailing social order. Decertification helped to create free agency, but CBAs are the most likely mechanisms for changes until another fundamental status change is or may be sought.

Decertification realized free agency for NFL players in less than five years based on the antitrust statutes of the United States, but it was an evolved process. The 1970s NFL players did not capitalize on free agency with *Mackey* because of their inexperience in converting litigated victories into status quo agreements. The players in 1993 learned from their predecessors and immediately followed the *McNeil* verdict with a class action lawsuit to bind the ruling into a formal agreement, which it accomplished in *White*. The status-altering shift earned by players in the settlement greatly increased players' mobility and relative revenue share, but only when conjoined with the owners' interests and acceptance of a salary cap.

The *White* victory offered the players more than mobility; it created a partnership between owners and players who both now share in the league's success. As the research suggests, this partnership would not have been possible without the players' decertified action and the court's intervention. Such abrupt changes seem less feasible through traditional arrangements like collective bargaining because the operative functions of an organization constrain the participating members' actions. Status-altering shifts seem

more probable under a decertification/litigation model because it operates outside the status quo and demands the intervention of a third party. This action does not guarantee success, but it permits the reinterpretation of the social order's formal structures by an impartial mediator, which within-status bargaining relations rarely accomplish. Collective bargaining supports negotiations over the NFL's operative structures that influence revenue share, job security, and impartial mediation but does not produce dramatic changes of the formal structures. Only litigation realized this goal for the players as free agency forced the owners to compete for available players' talent, acknowledge the players' discretionary needs, and increase the players' bargaining positions relative to the owners. The players' status change – the 1993 CBA's concession of free agency – completely altered the status quo arrangements of the labor market and is the most significant improvement the players have realized within the NFL's negotiated order.

The NFL's negotiated order is a continuous process with temporal limits that must be reevaluated periodically over time and sometimes dramatically altered. It will be interesting to see how the organizational structures of the NFL change as a reaction to the current conflict between the owners and players. Most likely the broad standards that oversee the general operations of the NFL will not change as they did in 1993 with free agency. The players and owners now share the responsibility of maintaining the league's competitive balance and profitability. The owners will continue to seek new ways to limit effective actions of players in negotiations. The players will seek more concessions. Regardless, the present conditions of the NFL's negotiated order pose too great a risk for either party to detour too far off course.

REFERENCES

- Adams, Roy J. 2001. "Choice or Voice? Rethinking American Labor Policy in the Light of the International Human Rights Consensus." *Chicago-Kent College of Law Employee Rights and Employment Policy Journal*. (521).
- Bishop, John A., J. Howard Finch, John P. Formby. 1990. "Risk Aversion and Rent-Seeking Redistributions: Free Agency in the National Football League." *Southern Economic Journal* 57 (1): 114-124.
- Blumer, Herbert. 1969. *Symbolic Interaction: Perspective and Method*. Englewood Cliffs, NJ: Prentice-Hall.
- Brook, Stacey L., Aju J. Fenn. 2008. "Market Power in the National Football League." *International Journal of Sports Finance* 3: 239-244.
- Brunkhorst, John P., Aju J. Fenn. 2010. "Profit Maximization in the National Football League." *The Journal of Applied Business Research* 26 (1): 45-58.
- Clawson, Dan. 2003. *The Next Upsurge: Labor and the New Social Movements*: New York: Cornell University Press.
- Coase, Ronald. 1960. "The Problem of Social Cost." *Journal of Law and Economics* 3: 1-44.
- Conlin, Micheal. 2002. "Reputation in Bargaining: National Football League Contract Negotiations." *Economic Inquiry* 40 (2): 241-259.
- Conlin, Micheal, Patrick Munro Emerson. 2005. "Discrimination in Hiring v. Retention and Promotion: An Empirical Analysis of Within Firm Treatment of Workers in the NFL." *Journal of Law and Economics* 22 (1): 18-29.
- Durkheim, Emile. 1893. *The Division of Labor in Society*. Trans. Coser. NY: Free Press.

- Ehrenreich, Rosa. 1999. "Dignity and Discrimination: Toward a Pluralistic Understanding of Workplace Harassment." *Georgetown Law Review* November: 1-47.
- Fisher, B., Anselm Strauss. 1979. "The Chicago Tradition: Thomas, Park and Their Successors." *Symbolic Interaction* 5: 32-44.
- Fort, Rodney, and James Quirk. 1995. "The College Football Industry." In *Sports Economics: Current Research*, ed. by John Fizel, Elizabeth Gustafson, and Lawrence Hadley. Westport, CT: Prager Publishing.
- Flynn, Micheal A., Richard J. Gilbert. 2001. "The Analysis of Professional Sports Leagues as Joint Ventures." *The Economic Journal* 111 (469): F27-F46.
- Freeman, Richard B., Joel Rogers. 1999. *What Workers Want*. Ithaca, NY: Industrial and Labor Relations Press.
- Garvey, Edward R. 1979. "From Chattel o Employee: The Athlete's Quest for Freedom and Dignity." *Annals of the American Academy of Political and Social Science* 445: 91-101.
- Gordon, David M. 1996. *Fat and Mean: The Corporate Squeeze of Working Americans and the Myth of Managerial Downsizing*. New York: Free Press.
- Hachlin, Elaine L. 2008. "Former NFL Players: Disabilities, Benefits, and Related Issues." *Federal Publications Paper* 525. <http://digitalcommons.ilr.cornell.edu/key>
- Hodson, Randy. 2001. *Dignity at Work*. New York: Cambridge University Press.
- Hodson, Randy, Teresa A. Sullivan. 2008. *The Social Organization of Work*. Belmont, CA: Thomson Wadsworth.
- Krautmann, Anthony C., Peter von Allmen, David Berri. 2009. "The Underpayment of Restricted Players in North American Sports Leagues." *International Journal of Sport Finance* 4: 161-175.

- Kunda, Gideon. 1992. *Engineering Culture*. Philadelphia: Temple University Press.
- Leeds, Micheal, Peter von Allmen. 2005. *The Economics of Sports*. Boston, MA: Pearson Addison Wesley.
- Levine, Jeffrey, Bram A. Maravent. 2010. "Fumbling Away the Season: Will the Expiratio of the NFL-NFLPA CBA Result in the Loss of the 2011 Season?" *Fordham Intellectual Property Media and Entertainment Legal Journal* 20: 1419-1500.
- Mead, George Herbert. 1913. "The Social Self." *Journal of Philosophy, Psychology and Scientific Methods* 10: 374-380.
- Murphy, Kevin M., Robert H. Topel. 2009. *The Economics of NFL Team Ownership*. Chicago, IL:Chicago Partners.
- Ospina, Sonia. 1996. *Illusions of Opportunity*. Ithaca, NY: Cornell University Press.
- Pierce, Jennifer. 1993. "Rambo Litigators: Emotional Labor in a Male-Dominated Occupation." *Masculinities in Organizations*. Sage Publications: 1-27.
- Pivovarnik, Timothy P., Richard A. Zuber. 2004. "Competitive Balance and Fan Interest in the National Football League." *Journal of Economics and Economic Education Research* 9 (2): 75-98.
- Sennett, Richard. 1998. *The Corrosion of Character: The Personal Consequences of Work in the New Capitalism*. New York: Norton.
- Simmons, Rob, David J. Berri. 2009. "Gains from Specialization and Free Agency: The Story from the Gridiron." *Springer Science+Business Media* 34: 81-98.
- Simmel, Georg. Ed. Levine. 1971. *Georg Simmel on Individuality and Social Forms*. Chicago: University Press of Chicago.

Strauss, Anslem. 1978. *Negotiations: Varieties, Contexts, Processes, and Social Order*. San Francisco, CA: Jossey-Bass Publishers.

Sullivan, Teresa A. 1990. *Change in Social Institutions*. New York: Plenum.

Vrooman, John. 1995. "A General Theory of Professional Sports Leagues." *Southern Economics Journal* 1 (4): 971-990.

Vrooman, John. 2011. "The Football Players' Labor Market." *Southern Economics Journal* 64 (1): 191-219.

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