

A Historical Analysis of the Non-statutory Labor Exemption in the NFL

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Antitrust law in the US has a long history, serving to promote competition in the marketplace and deter monopoly power of companies, thus protecting consumers. Antitrust law has heavily influenced the organization and operation of professional sports leagues in the US, especially in the areas of player rights and movement. Professional sport leagues have a variety of inherently anti-competitive measures and restraints not seen in other spheres of business. Player drafts compensation systems, free agency, and league rules restricting franchise relocation are argued by leagues as necessary restraints for continued league economic viability and competition. Congress passed the Sherman Antitrust Act in 1890 in order to combat business trusts and monopolies. The antitrust provisions of most interest to the business of professional sports leagues are Sections 1 and 2 of the Sherman Act. Section 1 prevents contracts or agreements in restraint of trade by two or more entities, while Section 2 prevents unilateral monopolization (Sherman Antitrust Act, 15 U.S.C. §§1-2, 2006). Most antitrust challenges involving professional sport leagues have involved Section 1 scrutiny, as opposed to Section 2. With the advance of trade and commerce in the US, labor unions became a source of contention with employers, who argued that their collective action on behalf of workers served to restrain trade and as thus in violation of §1 of the Sherman Act. Recognizing the importance of such unions, Congress passed the Clayton Act, which provided a statutory labor exemption for actions taken by labor unions, thus insulating them from antitrust violations (Wong, 2010).

While the Congressionally-created statutory labor exemption protected actions by labor unions, there was no similar protection for the joint actions of employers acting in concert with unions. Three Supreme Court decisions (*Allen Bradley Co. v. Local Union No. 3, International Brotherhood of Electrical Workers*, 1945; *Amalgamated Meat Cutters & Butcher Workmen of North America v. Jewel Tea Co.*, 1965; *United Mine Workers v. Pennington*, 1965) involving antitrust challenges in this arena changed this and resulted in the nonstatutory labor exemption, commonly referred to as “the labor exemption” (Wong, 2010). The nonstatutory labor exemption specifies that a collective bargained agreement between a union and employers does not represent a conspiracy, combination, or concerted activity and is thus not in violation of Section 1 of the Sherman Act. Use of the nonstatutory labor exemption in the professional sports context began in 1972, involving the National Hockey League’s reserve system (*Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.* 1972). Perhaps the most significant use of the nonstatutory labor exemption in the professional sports context, however, occurred in *Mackey v. NFL* (1976). At issue was the “Rozelle Rule,” instituted by League Commissioner, Pete Rozelle, which required a team that signed a veteran free agent to provide compensation to that player’s former team in the form of cash, draft picks, or other players. A group of present and former NFL players challenged the rule on the grounds that it represented a restraint on trade, as the compensation requirement served to deter teams from signing veteran free agents from other teams,

lowering player salaries. The NFL asserted that the nonstatutory labor exemption applied, since the system was a condition of the collective bargaining agreement (CBA) agreed upon by the NFL Player's Association and the league. The court established a three-prong test to determine when a professional sports league could use the labor exemption in antitrust cases:

1. The restraint on trade must primarily affect only the parties to the CBA.
2. The issue must concern a mandatory subject of bargaining.
3. The issue must have been achieved through arm's-length bargaining.

In ruling against the NFL in *Mackey*, the court stated that even though the compensation system at issue had been collectively bargained and was included in the 1970 CBA, it had not been achieved through arm's-length bargaining, because the Player's Association had little bargaining power at the time as compared to the league. Thus, the court ruled that the league could not raise the labor exemption defense against the alleged antitrust violation (*Mackey*, 1976). Furthermore, the court concluded that the Rozelle Rule was more restrictive than necessary, serving as a "perpetual restriction on a player's ability to sell his services in an open market" (p. 622). The "Mackey test" subsequently served as the barometer for applying the nonstatutory labor exemption in antitrust cases involving professional sport leagues. Much of the structure and organization of the NFL has been shaped, in large part, by the 70+ antitrust cases it has faced throughout its history (Wong, 2010).

In March of 2011, the (NFLPA) de-certified and became a trade association. Seven hours later, the NFL locked out the players following the expiration of the CBA. A group of players subsequently filed an antitrust lawsuit against the NFL and each team individually (*Brady v. NFL*, 2011). An important legal question now is whether the nonstatutory labor exemption still applies despite the fact that the CBA has expired and the NFLPA has decertified. This presentation will focus on the nonstatutory labor exemption in the NFL and discuss the history of case law, including *Mackey v. NFL* (1976), *Powell v. NFL* (1988), *McNeil v. NFL* (1992), *White v. NFL* (1993), and *Clarett v. NFL* (2004). It will also discuss the current NFL labor dispute and offer insight as to what may happen in the future.

References

- Allen Bradley Co. v. Local Union No. 3, International Brotherhood of Electrical Workers, 325 U.S. 797 (1945).
- Amalgamated Meat Cutters & Butcher Workmen of North America v. Jewel Tea Co., 381 U.S. 676 (1965).
- Clarett v. NFL, 306 F. Supp.2d 379 (S.D. N.Y. 2004).
- Mackey v. NFL, 543 F.2d 606 (8th Cir. 1976).
- McNeil v. NFL, 790 F. Supp.871 (D. Minn. 1992).
- Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F.Supp. 462 (E.D. Pa. 1972).
- Powell v. NFL, 678 F. Supp. 777 (Minn. 1988).
- Sherman Antitrust Act, 15 U.S.C. §1 (2006).
- United Mine Workers v. Pennington, 381 U.S. 657 (1965).
- White v. NFL, 836 F. Supp. 1458 (D. Minn. 1993).
- Wong, G. M. (2010). *Essentials of sport law* (4th ed.). Santa Barbara, CA: Praeger.