

## Competitive Bargaining Delays 2011-2012 NBA Season

Like the National Football League (NFL), the National Basketball Association (NBA) functions through the league's owners agreeing to renewable contracts, or collective bargaining agreements (CBAs), with its players. Also like the NFL, the NBA's recent agreement with its players association, the NBA Players' Association (NBAPA), expired this past year, resulting in a bitter fight between the league's players and owners. Unlike the NFL mediation, as the parties engaged in negotiations to create a new agreement, their respective hard-lined positional bargaining tactics caused the league to suffer a delayed start to its season that led to the cancellation of games.

The NBA's most recent CBA was a six-year agreement, which began in 2005 and was to expire at the end of the 2011 season. By the fall of 2010, and with the NBA season already underway, discussions to produce a new CBA had failed. Both sides were adamantly opposed to backing down from their proposed revenue sharing schemes, and NBA Players' Association President Billy Hunter warned that a lockout was highly likely for the following season. In a lockout, league owners try to financially pressure the players in order to obtain the upper hand in labor negotiations since the players would be prevented from collecting payments under their contracts. NBA and NBAPA officials began meeting early in the 2011 calendar year in an attempt to avoid such an occurrence. As the months passed without an agreement, and with a lockout seeming imminent, the NBAPA filed suit to enjoin the league from implementing the lockout. Being unsuccessful at court, the lockout began as the CBA expired at 12:01 a.m. on July 1<sup>st</sup>.

In October, the NBA and NBAPA agreed to begin mediation with George Cohen, the federal mediator who successfully assisted the NFL in negotiating its labor dispute. Though several issues were up for discussion under the new CBA, the most important was the division of the league's revenue. Under the 2005-2011 agreement, players had received 57% of basketball related income (BRI). Facing financial hardships due to the recent economic recession, several teams, particularly those in smaller markets, asked the league to grant them loans to keep them afloat. As part of its plan to recover these costs, the league was adamant about increasing its share of the BRI to establish a stronger and more sustainable financial situation for the future.

NBA players offered a scheme whereby the BRI would be split 53/47 between players and owners. NBA Commissioner David Stern, negotiating the deal on behalf of team owners, demanded a 50/50 BRI split. The league claimed it needed the extra 3% to break even on revenue given the league's financial commitments in supporting its small market teams. Players were concerned that they would set a dangerous precedent for future CBAs if they came down from their already reduced proposed scheme of a 53/47 split. The potential money involved added up to \$1 billion over the course of a ten-year agreement.

Hunter and the NBAPA gambled that, by acquiescing to the NBA's requests on issues such as contract lengths and free agency earlier in negotiations, the players would find themselves in a better position to obtain a more favorable share of BRI in the latter stages. The gamble did not pay off for Hunter. By making these early concessions, the players had given up issues to trade with later in the mediation during discussions on revenue sharing. Having already reached agreement on smaller issues, Stern positioned the league to capitalize on its stronger bargaining position.

Without having a CBA proposal on the table by a self-imposed October 28<sup>th</sup> deadline, and by cancelling games through the month of November, Stern showed the players that the owners were resolute in their position and unwilling to back down. While their counterparts in the NFL had revealed the secret purchasing of “lockout insurance” which would pay the players in the event of a lockout, Stern’s show of force was unmatched by NBA players. Mediation reached an impasse as neither side was willing to move from its proposed revenue share.

Recognizing the importance of unity during labor negotiations, Hunter reminded the players that they had been preparing for a lockout for two years. Now that the lockout was finally here, Hunter asked the players to dig their heels in and remain committed to the lockout in the face of intimidation and ultimatums from league owners and its commissioner. On November 13<sup>th</sup>, Stern followed Hunter’s plea by sending his own letter to the NBA players directly, asking them to approve a CBA passed by owners based on their offer of a 50/50 BRI split. The following day, the players unanimously voted down the proposal in a strong showing of solidarity. Though their vote mitigated the effects of Stern’s attempt to grab power, it led to another standstill in CBA negotiations.

Just as it seemed that the entire season would be cancelled, internal and external pressures breathed new life into negotiations. Though both sides continued to pursue legal maneuvers in court, players were still not collecting payments under their contracts; league finances were being further frustrated with lost revenue from cancelled games; and the Occupy Wall Street movement contextualized fan frustrations against the wealthy owners in a public relations battle. Furthermore, the league risked losing support from its fans, who pointed to the successful NFL mediation as a model for the NBA to amicably resolve its dispute.

In an effort to save the season, owners and players resumed negotiations and quickly reached a tentative “handshake agreement” on November 26<sup>th</sup>, ending the lockout and creating a shortened season that began on Christmas Day. On December 8, 2011, players and owners signed a ten-year CBA, allowing both parties an “opt out” option after the sixth year.

As is frequently the case in negotiation, the side willing to walk away from the table can wield this power to pressure the other side into an agreement. By showing that they were willing to cancel games, and potentially the entire season, the league compelled its players into giving ground on their biggest issue, resulting in the players yielding to the NBA’s demand of a 50/50 BRI split.

(Citations omitted)

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