

2011 NBA Labor Dispute

In 2011, the National Basketball Association (“NBA”) initiated a lockout of its players following the expiration of the 2005 collective bargaining agreement (“CBA.”) The lockout lasted 161 days, beginning on July 1, 2011 and ending on December 8, 2011. It was the fourth lockout in the history of the NBA, and the second labor stoppage resulting in a cancellation of games, shortening each team’s 2011-12 season from 82 games to 66.

The NBA and National Basketball Players Association (“NBPA”) had opened discussion of a new CBA during the February 2009 All-Star weekend in Phoenix, Arizona. The NBA made its first proposal in January 2010, which called for major changes to the 2005 CBA, including a substantial decrease in the players’ share of basketball related income (“BRI”), implementation of a hard salary cap, and shorter player contracts. The NBPA rejected the NBA’s initial proposal, and disagreement over these three issues – BRI, salary cap structure, and length of player contracts – would continue to divide the parties throughout the negotiations.

The 2005 CBA guaranteed 57% of BRI to the players. The NBA sought to drastically reduce the players’ share of BRI in the new CBA. With respect to the salary cap structure, the players sought to retain a soft salary cap and luxury tax similar to that included in the 2005 CBA. From the owner’s point of view, however, the existing system disadvantaged small market teams by enabling big-market teams to spend above the salary cap through various exceptions and by paying a luxury tax. As for player contracts, the owners wanted contracts for free agents limited to three years for players signing with new teams or four years for players re-signing with their current team. The NBPA wanted the duration of such contracts to be four and five years in length, respectively.

As the 2005 CBA expiration date approached, unlike the NFLPA, the NBPA chose not to decertify as a union. Instead, it pursued its rights under the National Labor Relations Act. On May 24, 2011, the NBPA filed unfair labor practice charges with the Labor Board, seeking relief against the NBA’s allegedly unlawful bargaining tactics and lockout threat.

Meanwhile, bargaining continued without success. The parties made a series of proposals and counterproposals, but an agreement was not reached before the 2005 CBA expired at midnight of June 30, 2011. The lockout began at 12:01 a.m. the following day.

Shortly after the lockout began, in a memo to the players the NBPA expressed support for some players’ desires to play basketball overseas and the FIBA, the International Basketball Federation, granted NBA players the option to play overseas. Accordingly, during the lockout, some players pursued opportunities to play basketball abroad in China, Italy, and Turkey.

Negotiations between the NBA and NBPA did not resume until August 1. Two days later, on August 3, 2011, the NBA filed its own charge with the NLRB, claiming that the NBPA was failing to bargain in good faith by unlawfully threatening to decertify. The NBA also filed suit in federal court in New York, seeking a declaration that its lockout did not violate federal antitrust laws.

In September, the NBA postponed the opening of training camps and canceled some pre-season games, while talks continued. In October, the NBA cancelled the rest of the pre-season, as well as the first two weeks of the regular season. In mid-October the parties met with federal mediator George Cohen, the Director of the Federal Mediation and Conciliation Service. By early November, however, the parties had still not reached an agreement despite numerous. The split of BRI was the primary issue in dispute. On November 5, the NBA made a new offer to players, with a deadline of November 9 for the players to accept.

Perceiving this offer as an ultimatum, the players decided to pursue a new strategy to bring the NBA back to the bargaining table. On November 14, 2011, the NBPA ended its role as the players' collective-bargaining agent by filing a disclaimer of interest and becoming a "trade association." This enabled the players to take action against the NBA in court. On November 15, 2011 the players filed class-action lawsuits against the NBA in Northern California and Minneapolis on the basis that the NBA violated antitrust laws by refusing to allow players to work.

With the federal antitrust lawsuit looming in the background, talks aimed at ending the lockout resumed. The parties finally reached agreement at the end of November and officially ratified a new CBA early in December. Opening day was on Christmas, December 25, 2011.

The 2011 CBA is a ten-year agreement, with a mutual opt-out in 2017. The owners achieved virtually a 50-50 split in BRI. Other features of the new agreement include maximum player contracts of five years, a higher luxury tax with progressive tax rates, and the retention of a soft salary cap system.