2011 NFL-NFLPA Labor Dispute[1]

The beginnings of the 2011 NFL labor dispute reach as far back as May 20, 2008, when the NFL owners unanimously voted to opt out of their 2006 CBA with the NFL players, eliminating the final two years of the deal. The 2006 CBA expired in 2011, rather than 2013. As a result of the opt-out, the 2010 season was played without a salary cap and players needed six seasons to become an unrestricted free agent, rather than the four seasons required during any other year of the 2006 CBA.

The main issue dividing the NFL and the NFLPAS was how to split the total revenue ("TR"). Under the 2006 CBA, the players received 50 percent of all NFL revenues with a club salary cap set at 57.5 percent of the TR. (Note: before the players' share was determined, the NFL deducted 5 percent for expenses and 1.8 percent for its G-3 Stadium Program). Without real evidence that the NFL clubs were in financial distress, the NFLPA was not open to fundamental change in the TR split. Throughout the bargaining process, the players sought extensive financial information from the NFL and expressed continual dissatisfaction with the information provided.

On February 14, 2011, the NFL filed an unfair labor practice charge with the NLRB against the NFLPA, claiming that negotiations were stalled as a result of the NFLPA's failure to bargain in good faith and the NFLPA's threat to decertify the union and file an antitrust lawsuit against the League. Shortly, thereafter, on February 18, 2011, the parties used the services of the Chair of the Federal Mediation and Conciliation Services, experienced neutral George H. Cohen. Despite numerous sessions and extensive negotiation, the parties could not reach agreement.

The 2006 CBA was set to expire on Thursday, March 3, 2011. To allow for additional time to negotiate and mediate, the parties agreed to a 24-hour extension, followed by a 7-day extension. However, with no new agreement reached, the 2006 CBA between the NFLPA and the NFL expired at 11:59 pm on March 11, 2011. Hours before the expiration of the 2006 CBA, at approximately 4:00pm, the NFLPA announced that it was no longer the bargaining representative of the NFL players. The NFLPA amended its bylaws to prohibit the NFLPA or its members from bargaining with the NFL, individual teams, or agents, terminated its status as a labor organization with the Department of Labor, filed the necessary paperwork with the IRS to reclassify as a professional organization, and informed the NFL that the NFLPA had decertified. At midnight, in an attempt to put economic pressure on the players, the NFL owners imposed a lockout of NFL players, preventing the players from being paid or using league facilities.

The following day, March 12, 2011, New England Patriots' quarterback Tom Brady, nine other NFL players and one prospective NFL player (the "Brady Plaintiffs") filed a class-action lawsuit in Minnesota's Eighth Circuit District Court against the NFL and its 32 member clubs. The complaint alleged that the NFL's lockout violated the Sherman Antitrust Act, constituting an unlawful group boycott; furthermore, the complaint alleged that the NFL's salary cap and free

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[1] See, Chris Deubert et al., *All Four Quarters: A Retrospective and Analysis of the 2011 Collective Bargaining Process and Agreement in the National Football League*, 19 UCLA ENT. L. REV. 1 (2012).

agency restrictions were anticompetitive. The Brady Plaintiffs sought a declaratory judgment, injunctive relief, and damages.

Brady, et al. v. NFL, et al.
779 F.Supp.2d 992
D.Minn. (April 25, 2011)

SUSAN RICHARD NELSON, District Judge.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Brady Plaintiffs are nine professional football players and one prospective professional football player who have been or seek to be employed by Defendants, the National Football League ("NFL") and the 32 separately-owned NFL teams (collectively, "the NFL" or "the League"). The Brady Plaintiffs filed this lawsuit on behalf of themselves and similarly situated players, alleging antitrust violations and breach of contract based on Defendants' actions, inter alia, in imposing a "lockout" or "group boycott" of the Players. Plaintiffs seek a declaratory judgment, injunctive relief, and damages.

The dispute between the NFL and the Players has a long and complex history. Powell v. NFL, 930 F.2d 1293, 1303 (8th Cir.1989).

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The most recent . . . CBA provided players with approximately 50% of all NFL revenues with a salary cap set at 57.5% of "Total Revenues," as defined in the CBA, after the deduction of approximately $1 billion in expenses. In May 2008, however, the NFL opted out of the last two years of the operative . . . CBA for various reasons, including a desire to seek a greater share of revenues, and to impose new restraints, such as a rookie wage scale. Since that time, the NFLPA and the NFL have attempted to negotiate a new CBA, but their efforts have proven to be unsuccessful. During this process, the NFL warned the Players that they might use a "lockout" as a means to achieve an agreement more favorable to their interests. A lockout occurs when an employer lays off or 'locks out' its unionized employees during a labor dispute to bring economic pressure in support of the employer's bargaining position.

The most recent . . . CBA was due to expire at 11:59 p.m. on March 11, 2011. As of that date, the Players had determined that "it would not be in their interest to remain unionized if the existence of such a union would serve to allow the NFL to impose anticompetitive restrictions with impunity." A substantial majority of the Players voted to end the collective bargaining status of their Union, and the player representatives of the Union then voted to restructure the organization as a professional association rather than as a union.

Accordingly, at approximately 4:00 p.m. on that day, the NFLPA informed the NFL that it disclaimed any interest in representing the Players in further negotiations. In addition, as of that time, the NFLPA amended its bylaws to prohibit it or its members from engaging in collective bargaining with the NFL, the individual teams, or their agents. The NFLPA also filed notice with the Department of Labor to terminate its status as a labor organization. Similarly, it filed an application with the IRS to be reclassified for tax purposes as a professional association

rather than a labor organization. And on March 11, it also informed the NFL that it no longer would represent players in grievances under the soon-to-expire CBA, so that the players would have to pursue or defend on an individual basis any grievance with the NFL or the individual teams.

The Brady Plaintiffs filed the present Complaint that same day. It alleges several antitrust claims under Section 1 of the Sherman Act as well as breach of contract and related tort claims. They allege that the NFL and its thirty-two separately-owned and independently-operated teams have jointly agreed and conspired—"through a patently unlawful group boycott and price-fixing arrangement" or "a unilaterally-imposed set of anticompetitive restrictions on player movement, free agency, and competitive market freedom"—to coerce the Players "to agree to a new anticompetitive system of player restraints" that will economically harm the Plaintiffs. One of the alleged anticompetitive agreements is the "so-called 'lockout' aimed at shutting down the entire free agent marketplace," "as well as a boycott of" rookies and players currently under contract." Thus, they moved for a preliminary injunction the same day, seeking to enjoin the NFL from perpetuating the "lockout" or group boycott. . . .After the CBA expired at the end of that day, the League instituted its "lockout" effective March 12, 2011.

The Brady Plaintiffs present affidavit evidence to this Court regarding their irreparable harm. Richard Berthelsen, the NFLPA's General Counsel, contends that, due to the relatively short careers of most NFL players, damages could not fully compensate the Players. He argues further that the players' unique abilities and circumstances compound the difficulty in determining the salary and benefits that each player might have earned in a competitive market. Numerous affidavits underscore that the careers of NFL players are of short duration, typically less than four years.

These affidavits note that the short careers of NFL players are due to both the ever-present risk of career-ending injury and the constant physical wear and tear on players' bodies—risks faced by every NFL player. The Brady Plaintiffs also maintain that they must constantly demonstrate their skill and value on the practice and playing fields. Because of this constant pressure to prove their physical and economic worth, the Brady Plaintiffs submit that the loss of an entire year in a short professional athletic career cannot be recaptured and, therefore, cannot be adequately compensated by damages. As a result of sitting out a season, they argue, this diminishment in skills could shorten or end the careers of some players.

As a result, the Players—having made the decision to dissolve the NFLPA as their collective bargaining agent—allege that they immediately began to suffer the consequences of the NFL's lockout. Significantly, in previous battles in this long-running dispute between the Players and the League, this Court has recognized that the threat of harm shown by Plaintiffs here, including lost playing time, constitutes irreparable harm.

II. DISCUSSION

Plaintiffs seek a preliminary injunction under Rule 65 against the "lockout" that Plaintiffs contend is an illegal "group boycott and price-fixing agreement" by the NFL and its owners. In response, the NFL claims this Court may not enjoin their "exercise of their labor law right to

lock out their player-employees" as the lockout "is unquestionably lawful and permitted by federal labor law."

Before this Court may address whether a preliminary injunction is warranted, however, it must first address the NFL's argument that the Norris–LaGuardia Act precludes any injunctive relief here, as well as its argument that this Court should defer this matter, or at least a portion of it, to the National Labor Relations Board under the doctrine of primary jurisdiction—issues that the NFL contends are jurisdictional.

A. The Threshold "Jurisdictional" Issues

Both of the NFL's jurisdictional arguments appear to rest on the premise that this dispute is governed by labor law—chiefly the National Labor Relations Act of 1935. This premise, in turn, assumes that the Players are still represented by their former Union.

It is necessary then to determine, as an initial matter, whether this Court has jurisdiction to rule whether the Players' disclaimer was effective or not, or whether this Court must refer that issue to the National Labor Relations Board ("NLRB"). The Court thus turns to the critical question of what general body of law governs this dispute in its present factual context. This antecedent issue is best approached by first addressing the League's contention that this dispute, or at least a portion of it, must be referred to the NLRB under the doctrine of "primary jurisdiction" for resolution of the question of whether the Union's disclaimer was valid and effective. [Exercising its discretion, the Court declines to refer the matter to the NLRB.]

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The League objects, arguing that the Players cannot just flip the "light-switch" and disclaim the Union. But again, employees have the right not to be a union as much as they have the right to be or organize as a union. Moreover, if negotiating as a union has proven unsuccessful, such organized employees also have the right to terminate the union. There is nothing inherently unfair or inequitable about a disclaimer effecting an immediate termination of the framework of labor law. Such an election cannot be viewed as mere gamesmanship, because it only comes with serious consequences to the Players making the election. The Players no longer derive the negotiating benefit of collective bargaining or any of the other rights they had enjoyed while they were unionized. The disclaimer is hardly one-sided, of course, as it also relieves the League from the obligations imposed on it in collective bargaining.

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2. The Norris–LaGuardia Act Does Not Deprive This Court of Jurisdiction To Issue Injunctive Relief

The League also contends that this Court lacks jurisdiction to issue any injunctive relief against it because the Norris–LaGuardia Act deprives the federal courts from issuing any injunction in a case "involving or growing out of a labor dispute," including one sought "by employees challenging a lockout under the antitrust laws." Insofar as this argument presents a matter of subject matter jurisdiction, this Court is obligated to satisfy itself that its jurisdiction is validly established.

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(a) History and Purpose of the Norris–LaGuardia Act

Some historical perspective on the Norris–LaGuardia Act is necessary and useful to understand the Act's operation. Before the Act was passed in 1932, employers routinely used the Sherman Act's prohibition against the restraint of trade against many union tactics involving organization and economic pressure. E.g. Loewe v. Lawlor (Danbury Hatters case), 208 U.S. 274, 28 S.Ct. 301, 52 L.Ed. 488 (1908) (holding union liable for treble damages for instigating a boycott). “The popularity of injunctive relief among employers stemmed from its unique effectiveness in stifling labor disputes” and “enabled employers to defeat unions instantly by preventing them from using self-help and destroying the momentum of strikes before substantive legal rights were litigated.” Burlington Northern Santa Fe R. Co. v. Int'l Brotherhood of Teamsters Local 174, 203 F.3d 703, 707 (9th Cir.2000) (en banc).

In response, Congress enacted the Clayton Act in 1914, including Section 20, which provides certain substantive and procedural limitations on injunctions sought in any case “involving, or growing out of, a dispute concerning terms or conditions of employment.” 38 Stat. 738 (codified at 29 U.S.C. § 52). The Supreme Court, however, gave a narrow reading to the provisions protecting labor. Duplex Printing Press Co. v. Deering, 254 U.S. 443, 469–73, 41 S.Ct. 172, 65 L.Ed. 349 (1921). It confined Section 20 so as to not prohibit injunctions against “secondary boycotts” as opposed to “primary boycotts.” Id. at 474–79, 41 S.Ct. 172.

Accordingly, Congress enacted the Norris–LaGuardia Act, which did not just impose substantive limits on, or procedural conditions for, such injunctions. Rather, Congress took the “extraordinary step” of withdrawing the jurisdiction of federal courts from issuing injunctions in non-violent labor disputes because it “was necessary to remedy an extraordinary problem” of federal courts refusing “to abide by the clear command of § 20 of the Clayton Act.” The legislative history discloses that it was necessary to remedy the “ ‘disobedience of the law,’ ” not on the part of “ ‘organized labor,’ ” but “ ‘on the part of a few Federal judges' ” who refused to administer “even justice to both employers and employees.”

(b) Prohibitions and Limitations of the Norris–LaGuardia Act

The Act imposes several different limitations on the authority of federal courts to issue injunctive relief in labor disputes. Section 1 states the general prohibition against federal courts issuing injunctive relief “in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter,” and also permits injunctions only where not “contrary to the public policy declared in this chapter.” 29 U.S.C. § 101. Section 2 then expressly declares the Act's policy—to facilitate employees' ability to organize into unions and bargain collectively with employers:

Whereas ... the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, ... it is necessary that he have full freedom of association,*1024 self-organization, and designation of representatives ... to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers ... in ... concerted activities for the purpose of collective bargaining ... [certain limitations on federal injunctions] are enacted.

‘The Norris–LaGuardia Act ... expresses a basic policy against the injunction of activities of labor unions.’ ” Burlington Northern R.R. v. Brotherhood of Maintenance of Way Employees, 481 U.S. 429, 437 (1987) (quoting Machinists v. Street, 367 U.S. 740, 772, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961)). [The lower courts too have understood Congress's intent and purpose. “The anti-injunction provisions of the Norris–LaGuardia Act were intended to protect workers in the exercise of organized economic power.” In re Crowe & Assocs., Inc., 713 F.2d 211, 216 (6th Cir.1983). Those provisions are not designed “to bolster management's strength against labor.” Int'l Paper Co. v. The Inhabitants of the Town of Jay, 672 F.Supp. 29, 33 (D.Maine 1987)] But this Court need not and does not solely rely on this express pro-labor policy of the Act in order to conclude that it does not preclude an injunction against the League here.

Section 104 of the Act enumerates specific acts that are not subject to restraining orders or injunctions under any circumstances. 29 U.S.C. § 104. Section 104 expressly deprives, from federal courts, jurisdiction to issue any injunctive relief “in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of” nine enumerated acts. Id. Of those nine, the League relies on the first: “[c]easing or refusing to perform any work or to remain in any relation of employment.” Id. § 104(a).

As the NFL observes, Section 4(a) of the Norris–LaGuardia Act “ ‘forbids courts to enjoin work stoppages ‘in any case involving or growing out of any labor dispute.’ ” There is no dispute that the plain language of this provision covers employees' right to strike.

It is not as clear that Section 4(a) could also cover, as the NFL argues, an employer's right to lock out its employees. As the Players note, they “are requesting an injunction so that they can work.” As the NFL correctly contends, the “Act was meant to ‘end the granting of injunctions ... based upon complaints charging conspiracies to violate the Sherman Antitrust Act.’ ” (quoting Milk Wagon Drivers' Union, Local No. 753 v. Lake Valley Farm Prods., 311 U.S. 91, 101, 61 S.Ct. 122, 85 L.Ed. 63 (1940)).) But in Milk Wagon Drivers' Union, the Supreme Court ruled that the Act precluded an injunction against a local union and its officials. In fact, the Supreme Court recounted the history of some federal courts ignoring Section 20 of the Clayton Act, such that its restrictions “have become more or less valueless to labor.” Id. at 102, 61 S.Ct. 122. [Likewise, the other authorities cited by the NFL in support of its reading of the intent of the Norris–LaGuardia Act all concerned actions against unions.]

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Here, as discussed in greater detail above, the Norris–LaGuardia Act was enacted to protect labor from the injunctions that some federal courts were granting to employers despite Section 20 of the Clayton Act. This Court is not convinced that the Act should be extended or interpreted to protect the NFL under its reading of Section 104(a). But this Court need not rely on its reading of the plain language of Section 104(a) to issue the injunction requested by the Players here, because this Court concludes that the Norris–LaGuardia Act does not apply here at all, now that the Union has effectively renounced its status as the Players negotiating agent.

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The League has identified no legal support for its attempt to . . . to extend the Act's application not only to parties other than the employer and the union and its member employees at the time a union exists, but also to the realm of non-labor employment disputes after a union

ceases to exist as the employees' collective bargaining agent. To propose, as the NFL does, that a labor dispute extends indefinitely beyond the disclaimer of union representation is fraught with peril. For example, in light of the fact that employees come and go over time, it would be patently unfair to impose labor law restrictions or conditions upon employees who began working for the employer only after a union had disclaimed representation of other employees. Similarly, if an employer was in a dispute with its unionized employees over wages or conditions of employment, and the union then disclaimed representation, the dispute would still be governed, under the League's analysis, by labor law for weeks or months, if not years, after the disclaimer.

[H]ere, the Players are not third parties tangential to an ongoing labor dispute so as to be governed by the Act. Rather, the Players—now individual employees (or prospective employees) after having disclaimed their Union—have proceeded outside of the framework of labor law. Thus the Players presently are in the same legal position as employees who are not, and never were, represented by a union. This Court is not convinced that the Norris–LaGuardia Act applies, absent the present existence of a union, so as to prohibit or condition injunctions.

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In sum, the League provides this Court with no controlling or even persuasive authority for its assertion that the Norris–LaGuardia Act continues to apply in the post-collective bargaining, post-union world of employment law. Any such argument would seem to run headlong into the right of employees, seemingly without exception or limitation, to choose not to organize into a union, or having been once represented by a union, to decertify that organization or otherwise disclaim its function as their negotiating agent. . . .

Accordingly, this Court holds that the Norris–LaGuardia Act does not apply to the present dispute between the League and the Players, now that the Players have effectively and unequivocally elected to disband the Union and proceed individually, rather than under the labor law umbrella of collective bargaining. Thus, this Court possesses subject-matter jurisdiction over the dispute, and the Norris–LaGuardia Act does not remove this Court's jurisdiction to award the Players the injunctive relief they presently seek.

[Court then concludes that an injunction is necessary to prevent irreparable harm to the players and the players have established a fair chance of success on the merits.]

III. ORDER

The nation's labor laws have always applied only where an action involves or grows out of a labor dispute. Such a labor relationship exists only where a union exists to bargain on behalf of its members. Where those employees effectively renounce the union as their collective bargaining agent—and accept the consequences of doing so—and elect to proceed in negotiating contracts individually, any disputes between the employees and their employers are no longer governed by federal labor law. Likewise, the Norris–LaGuardia Act, which applies only to preclude some injunctions in the context of “labor disputes,” also no longer applies here to preclude injunctive relief. The NFL urges this Court to expand the law beyond these traditional dictates and argues that the protections of labor law should apply for some indefinite period beyond the collapse and termination of the collective bargaining relationship. In the absence of

either persuasive policy or authority, this Court takes a more conservative approach, and declines to do so.

This Court, having found that the Union's unequivocal disclaimer is valid and effective, concludes there is no need to defer any issue to the NLRB. Because that disclaimer is valid and effective, the Norris–LaGuardia Act's prohibition against injunctive relief does not preclude granting the Player's motion for a preliminary injunction against what the League characterizes as a "lockout."

[The Court granted the injunction and the NFL sought a stay of the injunction from the Eighth Circuit Court of Appeals.]

Brady, et al. v. NFL, et al.
644 F.3d 661
8th Cir. (June 8. 2011)

COLLOTON, Circuit Judge.

II.

We consider first the League's contention that the Norris–LaGuardia Act deprived the district court of jurisdiction to enter the injunction. The NLGA, enacted in 1932, curtails the authority of a district court to issue injunctions in a labor dispute. "Congress was intent upon taking the federal courts out of the labor injunction business except in the very limited circumstances left open for federal jurisdiction under the Norris–LaGuardia Act."

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The language of the Act . . . extends well beyond the specific issues decided in [earlier Supreme Court cases]. The impetus for the NLGA was dissatisfaction with injunctions entered against workers in labor disputes, but the statute also requires that an injunction against an employer participating in a labor dispute must conform to the Act. . . . This case requires us to decide whether, and if so how, the Act applies to the district court's injunction against the League.

To determine whether the NLGA forbids or places conditions on the issuance of an injunction here, we begin with the text of the statute. Section 1 provides that "[n]o court of the United States ... shall have jurisdiction to issue any ... temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter." As noted, the district court concluded that the Act is inapplicable to this action, because the case is not one "involving or growing out of a labor dispute."

Section 13(c) of the Act states that "[t]he term 'labor dispute' includes *any controversy concerning terms or conditions of employment,* or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." This lawsuit is a controversy concerning terms or conditions of employment. The Players seek broad relief that would affect the terms or conditions of employment for the entire industry of professional football. In particular, they urge the court to

declare unlawful and to enjoin several features of the relationship between the League and the players, including the limit on compensation that can be paid to rookies, the salary cap, the "franchise player" designation, and the "transition player" designation, all of which the Players assert are anticompetitive restrictions that violate § 1 of the Sherman Act. The district court did not appear to question this point. . . .

We are not convinced by the Players' contention that because § 13(c) uses the term "includes," rather than "means," to introduce the substance of a "labor dispute," Congress did not fully define the term. They urge that § 13(c) merely expanded one respect (to disputes outside the employer-employee relationship) a preexisting definition of "labor dispute"—a definition that was not codified and that, according to the Players, extended only to disputes involving organized labor. Whatever might be the significance of the verb "include" when used in other contexts, Congress stated in § 13 of the NLGA that "labor dispute" is "defined in this section," and the Supreme Court consistently has described § 13(c) as a "definition" of "labor dispute." … Not only has the Supreme Court repeatedly characterized § 13(c) as a definition, but contrary to the suggestion that an established meaning should be used to narrow the text, the Court has observed that "the statutory definition itself is extremely broad," and explained that "Congress made the definition broad because it wanted it to be broad."

The Act also states expressly that "[a] case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation." This case, of course, involves persons engaged in the "same industry," namely, professional football. The statute continues that such a case "shall be held to involve or grow out of a labor dispute" when "such dispute is ... between one or more employers or associations of employers and one or more employees or associations of employees." This dispute is between one or more employers or associations of employers (the League and the NFL teams) and one or more employees (the Players under contract). By the plain terms of the Act, this case "shall be held to involve or grow out of a labor dispute."

The district court reached a contrary conclusion by departing from the text of § 13(a). The court thought the phrase "one or more employees or associations of employees" did not encompass the Players in this dispute, because "one or more employees" means individual *unionized* employee or employees." We see no warrant for adding a requirement of unionization to the text.

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Further confirmation that the present existence of a union is not required for a "labor dispute" comes from *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962). There, a group of seven employees who were "wholly unorganized" and had "no bargaining representative" or "representative of any kind to present their grievances to their employer" staged a walkout to protest cold working conditions in a machine shop. Although the employees were not part of a union, the Supreme Court held that the walkout "did grow out of a 'labor dispute' within the plain meaning of the definition of that term in § 2(9) of the [National Labor Relations] Act." The definition of "labor dispute" in the National Labor Relations Act is "virtually identical" to the definition of "labor dispute" in the NLGA, and the two provisions "have been construed consistently with one another" by the Supreme Court.

Even § 2 of the NLGA, cited by the Players as an interpretive guide for the Act based on its declaration of "[p]ublic policy in labor matters," conflicts with the district court's conclusion. Section 2 declares, among other things, that the "individual unorganized worker" shall be free from the interference of employers in "the designation of ... representatives or in self-organization or in other concerted activities for the purpose of collective bargaining *or other mutual aid or protection.*" Employees may engage in activities for the purpose of "mutual aid or protection" *without* the present existence of a union.

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The definitions in the NLGA provide that a case shall be held to involve or grow out of a labor dispute if a controversy over terms and conditions of employment is between an employer and " *one or* more employees." The Act's reference to "concerted activities" appears only in the public policy section. If the NLGA nonetheless were construed to require concerted activity by employees to establish a labor dispute, a lawsuit filed in good faith by a group of employees to achieve more favorable terms or conditions of employment *is* "concerted activity" under § 7 of the National Labor Relations Act.

The text of the Norris–LaGuardia Act and the cases interpreting the term "labor dispute" do not require the present existence of a union to establish a labor dispute. Whatever the precise limits of the phrase "involving or growing out of a labor dispute," this case does not press the outer boundary. The League and the players' union were parties to a collective bargaining agreement for almost eighteen years prior to March 2011. They were engaged in collective bargaining over terms and conditions of employment for approximately two years through March 11, 2011. At that point, the parties were involved in a classic "labor dispute" by the Players' own definition. Then, on a single day, just hours before the CBA's expiration, the union discontinued collective bargaining and disclaimed its status, and the Players filed this action seeking relief concerning industry-wide terms and conditions of employment. Whatever the effect of the union's disclaimer on the League's immunity from antitrust liability, the labor dispute did not suddenly disappear just because the Players elected to pursue the dispute through antitrust litigation rather than collective bargaining.

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III

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Aside from the text and structure of § 4, the Players argue that the policy of the NLGA and the legislative history support their position that § 4(a) offers no protection to employers. To be sure, the policy stated in § 2 is that the individual unorganized worker should be free from the interference, restraint, or coercion of employers in the designation of representatives, self-organization, or other concerted activities. But it does not follow that a prohibition on injunctions against employer lockouts is contrary to the policy of the Act. The Supreme Court has observed that while the Act was designed to protect workingmen, the broader purpose was "to prevent the injunctions of the federal courts from *upsetting the natural interplay of the competing economic forces of labor and capital.*" An employer's lockout is part of this interplay; it is not the equivalent of a judicial injunction that interferes with the ability of workers to exercise organized economic power.

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The Players also contend that the legislative history of the NLGA shows that § 4(a) prohibits only injunctions against employees. They cite a House Committee Report, which states

that § 4 was "intended by more specific language" to overcome the effects of judicial decisions that upheld injunctions against workers. They point as well to then-Professor Frankfurter's treatise, which characterized § 4(a) as "declaratory of the modern common law right to strike." … These materials indicate that Members of Congress, and Professors Frankfurter and Greene as drafters of proposed legislation, were determined to forbid federal courts from entering injunctions against workers participating in labor disputes. But they do not address the specific question whether § 4(a) also prohibits injunctions against employers.

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For these reasons, we conclude that § 4(a) of the Norris–LaGuardia Act deprives a federal court of power to issue an injunction prohibiting a party to a labor dispute from implementing a lockout of its employees. This conclusion accords with the few decisions that have addressed the specific question. Because the Norris–LaGuardia Act prohibits the district court from issuing an injunction against the League's lockout of employees, the court's order cannot stand.

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The district court's order of April 25, 2011, granting a preliminary injunction is vacated, and the case is remanded for further proceedings.

BYE, Circuit Judge, dissenting.

. . . Despite the repeated efforts of the legislative branch to come to the rescue of organized labor, today's opinion puts the power of the Act in the service of employers, to be used against non-unionized employees who can no longer avail themselves of protections of labor laws. Because I cannot countenance such interpretation of the Act, I must and hereby dissent. . . .

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Throughout the months of June and July 2011 the NFL and NFL players continued talks. On July 26, 2011, the parties notified Judge Nelson that they settled the pending litigation, ended the lockout and reached agreement on the 2011 CBA.