

AntitrustConnect Blog

Injunction Against NFL Lockout Improperly Granted in Players' Antitrust Suit

Jeffrey May (Wolters Kluwer) · Friday, July 8th, 2011

Earlier today, the U.S. Court of Appeals in St. Louis vacated an injunction lifting the National Football League's "lockout" of its players. The divided appellate court, just five days after hearing oral argument on the matter, concluded that, because the parties were involved in a labor dispute, the Norris-LaGuardia Act prohibited the federal district court from issuing the injunction.

The victory for the league comes as negotiations continue between the league and the National Football League Players' Association (NFLPA) to reach a collective bargaining agreement as the 2011 season fast approaches. In a joint statement, the NFL and NFLPA said: "While we respect the court's decision, today's ruling does not change our mutual recognition that this matter must be resolved through negotiation. We are committed to our current discussions and reaching a fair agreement that will benefit all parties for years to come, and allow for a full 2011 season."

Just before the most recent collective bargaining agreement was set to expire in March, the players voted to end the collective bargaining status of their union, fearing that the "union would serve to allow the NFL to impose anticompetitive restrictions with impunity." Anticipating a lock-out by the league, nine professional football players and one prospective football player brought suit against the NFL and its 32 separately-owned clubs, alleging that the lockout would constitute a group boycott in violation of Section 1 of the Sherman Antitrust Act.

The players also sought damages and declaratory and injunctive relief based on the league's salary caps and other alleged anticompetitive conduct. However, these claims were outside the scope of the appeal.

On April 25, the district court in St. Paul, Minnesota, granted the players' motion to enjoin the lockout ([CCH 2011-1 Trade Cases ¶77,427](#)). The district court rejected the NFL's assertions that the district court lacked jurisdiction to enter the injunction. The same three-judge panel that heard the appeal—Circuit Judges Steven M. Colloton, Duane Benton, and Kermit E. Bye—stayed the district court's order lifting the lockout pending an expedited appeal ([CCH 2011-1 Trade Cases ¶77,456](#)). Thus, the lockout has remained in place.

The appellate court began its decision, authored by Judge Colloton, with a lengthy discussion of the "relationship between the League and its players [which] has been punctuated by both collective bargaining agreements and antitrust lawsuits." Then, the appellate court considered the NFL's contention that the Norris-LaGuardia Act deprived the district court of jurisdiction to enter

the injunction.

Labor Dispute

The Norris-LaGuardia Act, 29 U.S.C. § 101 et seq., restricts the power of federal courts to issue injunctions in cases “involving or growing out of a labor dispute.” The district court concluded that the Norris-LaGuardia Act was inapplicable because the conflict between the league and the players was no longer a “labor dispute” after the union was terminated. It reasoned that the term “labor dispute” connotes a dispute between an employer and a union, and the Act therefore does not apply “absent the present existence of a union.”

“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,” the appellate court held. Section 13(c) of the Norris-LaGuardia Act defined the term broadly. “[T]he labor dispute did not suddenly disappear just because the Players elected to pursue the dispute through antitrust litigation rather than collective bargaining,” in the appellate court’s view.

Conformity with Norris-LaGuardia Act

The appellate court rejected the players’ alternative argument that, even if the case grew out of a labor dispute, the injunction conformed to the provisions of the Norris-LaGuardia Act and therefore should be affirmed. The appellate court agreed with the NFL that Section 4(a) of the Norris-LaGuardia Act forbids an injunction to prohibit a lockout.

Section 4(a) prohibited a court from issuing an injunction to prohibit “any person or persons participating or interested” in a labor dispute from “Ceasing or refusing to perform any work or to remain in any relation of employment.” The players unsuccessfully argued that the Norris-LaGuardia Act was not intended to protect employers and that the Act prohibited only injunctions against employees. The appellate court decided that employers were among the persons participating in a labor dispute covered by Section 4(a).

Lockout as to Free Agents and Rookies

While Section 4(a) of the Act applied to the league’s lockout of players under contract, it did not apply to the lockout of the free agents and prospective players or “rookies.” The league’s refusal to deal with free agents and rookies was not a refusal “to remain in any relation of employment,” for there was no existing employment relationship in which “to remain.” Thus, the appellate court left open the possibility that the free agents and rookies could seek an injunction against the lockout.

In any event, the existing injunction as a whole had to be vacated, because it was not issued in strict conformity with Section 7 of the Norris-LaGuardia Act, the appellate court held. As the appellate court explained, “Section 7 provides that a court has no authority to issue an injunction ‘except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto.’” The league was not granted an opportunity to cross-examine the players. The district court incorrectly concluded that such procedures were unnecessary because the Norris-LaGuardia Act was wholly inapplicable.

Dissent

A dissent written by Circuit Judge Bye contended that the district court correctly determined the case did not involve or grow out of a labor dispute. The dissent disagreed with the majority's reading of the term "labor dispute" and with the majority's conclusion that the case did not represent the outer boundary of the phrase "involving or growing out of a labor dispute." In addition, the dissent went on to say that Section 4(a) of the Norris-LaGuardia Act should be interpreted to protect employees, rather than employers.

The July 8, 2011, decision in *Tom Brady v. National Football League*, No. 11-1898, will appear at CCH 2011-1 Trade Cases ¶77,518.

This entry was posted on Friday, July 8th, 2011 at 11:31 pm and is filed under [Antitrust Exemptions & Immunity, Boycotts](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.