

From Mackey to Brady: The Evolution and Challenges of NFL Free Agency

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SPMT 560 – Sport Law

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October 12, 2025

Introduction

Every March, the National Football League's (NFL) free agency period draws attention from owners, players, and fans, as players with expired contracts can negotiate with other teams. Free agency allows players to seek fair compensation for their performance. However, complete player mobility could hinder the competitive nature of the NFL. Every 10 to 11 years, a new Collective Bargaining Agreement (CBA) sets players' salaries, benefits, revenue sharing, and other conditions for the upcoming NFL seasons. Often, the new CBA negotiations raise debates around free agency. Free agency is a highly emotional topic amongst a lot of NFL players because, without free agency, players lose the ability to negotiate and receive fair pay for their performance. Issues such as CBAs, antitrust laws, and salary caps all come into question when free agency moves from negotiations between the NFL and the NFLPA into the court system.

Problem/Issue

Free agency is a highly negotiated issue in the NFL for a variety of reasons. Free agency affects players' rights and mobility within their workplace and affects team competitiveness. There have been several rules implemented by the NFL that have opened the doors to free agency for players while also maintaining a monopolist workplace.

Since the league's creation, owners have placed restrictions on player movement through mechanisms like the reserve clause, the Rozelle Rule, first refusal/compensation lists, the Franchise Tag, and salary caps. Lockouts, holdouts, and CBA negotiations have become the primary way for players and the NFLPA to fight for free agency. Several NFL players also chose to take the NFL to court in antitrust suits to prove that the restrictions on player movement are unfair. Lawsuits such as *Mackey V. NFL*, *McNeil v. NFL*, and *White v. NFL* show that there has been a long legal struggle between the owners and players in the NFL surrounding the idea of free

agency and labor practices. Free agency is a two-edged sword because NFL players want to obtain the ability to move around freely in their place of work and receive proper compensation for their talent. However, on the other end, the NFL owners and managers want to ensure the competitive nature of the sport and the workplace does not diminish. The NFL is a unique business market and one of the few of its kind that exists in the world. Therefore, free agency is an important concept to study, given that it could have serious effects on the company.

Scholars frequently research and debate about whether CBAs and antitrust rules are fair or whether they suppress open market competition in the NFL. However, in this field of study, most of the research focuses on the 1990s free agency reforms, and lack of research in the area of the current Franchise Tag and other player movement restrictions in the modern NFL era.

Literature Review

Historical Evolution of Free Agency

Several scholars have researched the evolution of free agency from the league's creation to the present day. In his article, Dickerson (1996) discusses the evolution of free agency in the NFL and the unilateral and collective bargaining agreements' restrictiveness upon it. When the league was created, players were bound to one team in the league for the lifetime of their career by the reserve clause (Dickerson, 1996). Four decades after the league's creation, the Rozelle Rule was created to help players move after a certain amount of time played for a team; however, in order for a player to move teams, their old team had to be compensated for the loss player (Dickerson, 1996). After the Rozelle Rule was established, there were several antitrust court cases, strikes, and new CBAs that slowly moved free agency forward. Due to the uproar of court cases in 1989, the NFL implemented Plan B free agency (Dickerson, 1996). Plan B free agency allowed owners to put their best 37 players on a protected list and made any unprotected players

unrestricted free agents (Dickerson, 1996). However, due to another court case, the Plan B free agency act did not withstand antitrust laws, specifically the Sherman Act; therefore, it was dismantled and brought free agency to the 1993 CBA. Shortly after, the franchise and transitions designations were created and implemented, which put more restrictions on players who were labeled as unrestricted free agents (Dickerson, 1996). Dickerson notes that salary caps and existing requirements for becoming a free agent still put the NFL in control over a player's ability to truly market themselves and their talent. It is important to fully understand how free agency has legally evolved because the court ruling set precedents for future rulings pertaining to the free agency issue at hand.

One case that set a ground ruling that has been used in several other free agency cases is the *Mackey v. NFL* case (1976). In this court case, NFL players took the NFL commissioner and the league to court with concerns about the Rozelle Rule violating the Sherman Act (1976). The court declared that the Rozelle Rule was not per se illegal under the Sherman Act; however, it was illegal under the Rule of Reason under the Sherman Act (1976). It is important to note that the NFL does have some labor exemptions from antitrust laws given the nature of their business; however, in this case, specifically, the Rozelle Rule did not fall under their non-statutory labor exemptions. From this court case, the court created a player restraint test that allowed players to agree to unreasonable player restraints, as long as the agreements were made through bona fide arm-length bargaining (Dickerson, 1996). This test became very influential in future free agency cases and CBAs.

Antitrust Conflict and Collective Bargaining

Another important case that contributed to the present standing of NFL free agency is the *Powell V. NFL* Case (1989). In this case, NFL football players brought action against the NFL

after their CBA had expired (1989). The plaintiffs alleged that the NFL maintained the status quo of all the mandatory elements of bargaining that were included in the expired CBA. The Circuit Court of Appeals ruled that, even though the CBA had expired, there was still a working relationship between the NFL player union and the NFL owners; therefore, players had difficulty challenging the league (Dickerson, 1996). Overall, this court case showcased that CBAs shield the NFL from antitrust attacks and that players have limits when trying to sue the NFL for antitrust laws during ongoing bargaining.

Following the *Powell v. NFL* case, NFL players faced great difficulty in challenging the league under antitrust laws while the collective bargaining process was ongoing. In an article published in 1991, the author focused on how NFL free agency restrictions are under attack by antitrust laws (Bartok, 1991). In the *Powell v. NFL* case, the court decided not to reach the antitrust merits of the NFL players' claim because the court considered that, because the union and the owners came to an agreement about player movement and restrictions that the labor exemption immunizes those restrictions from antitrust laws (Bartok, 1991). However, despite this court case ruling, the author believes that there are alternative ways for NFL players and the players' union to scrutinize free agency players' restrictions under antitrust laws (Bartok, 1991). These alternative ways are to decertify the NFLPA and have players sue the NFL individually, or the unilaterally imposed Plan B free agency is not immune from antitrust scrutiny (Bartok, 1991). This article is important to read and understand because the bypass theories included in it came to life in the *McNeil v. NFL* case.

The *McNeil v. NFL* (1993) case was the case that ultimately brought the practices of modern free agency into the 1993 CBA. In this case, eight individual football players whose contracts had expired sued the NFL, raising allegations against the proposed wage scale

presented to the NFL players (1993). The court in the case utilized the player restraint test, which was created in the Mackey v. NFL case, and came to the conclusion that the non-statutory labor exemption did not exist in this case (Dickerson, 1996). In this court case, the NFLPA decertified itself as the players' CBA representative; therefore, there was no longer an ongoing labor relationship between the NFL owners and players (Dickerson, 1996). Lastly, the court decided that the NFL was not a single entity and the NFL owners did not justify antitrust immunity (Dickerson, 1996). Overall, the facts and outcome of the case are what brought free agency into the 1993 CBA agreement.

The *White v. NFL Case* (1993), NFL football players brought an antitrust class action suit against the NFL and member teams, challenging various NFL Player rules (1993). In this case, a stipulation and settlement agreement was tendered, and the court approved the agreement (1993). Ultimately, this lawsuit challenged the antitrust validity of restrictions that are placed on NFL Players, similar to the cases that had come before it (Dickerson, 1996). In this case, after much negotiating and obtaining a settlement agreement, it became the new CBA (Dickerson, 1996). In the 1993 CBA agreement, the NFLPA union obtained free agency for its players; however, there were still some player restrictions (Dickerson, 1996). For example, to allow players free agency, the NFL owners introduced a salary cap into the league (Dickerson, 1996). This salary cap has become one of the current restrictions on free agency for NFL players and is a modern topic surrounding the issue.

As showcased above, the evolution of antitrust issues and court cases has contributed to the creation and negotiations of the CBAs that followed them. In his article, Kahn (2009), highlights how antitrust law interacts with CBAs in professional sports such as the NFL. Antitrust laws are a crucial mechanism for maintaining competitive balance and protecting

player mobility in the NFL (Kahn, 2009). However, CBAs protect the league from antitrust lawsuits and contribute to the restrictions that players face (Kahn, 2009). Although both antitrust laws and CBA have proved to be both helpful and not to the leagues, it is important to note that the leagues rely on CBAs as a defense against antitrust attacks (Kahn, 2009). This article establishes that there is tension between labor law and antitrust enforcement, which is important to note when analyzing free agency from a legal perspective.

Building off the theory established by Kahn, Salow (2019) establishes the tension that CBA can bring to the NFL and the measures that NFL players and owners take to accomplish their goals. In this article, the author mentions that a CBA is the NFL's governing document; therefore, anything included in the document is negotiated by the NFL, NFLPA, and any other essential parties within the league (Salow, 2019). However, it is important to note that when CBAs are created, not all parties are happy with the outcome; therefore, holdouts and lockouts may occur (Salow, 2019). This article highlights how NFL owners utilize lockouts to often pressure players into accepting unfavorable terms (Salow, 2019). While players utilize holdouts to try and leverage their talent to achieve the outcomes that better suit them (Salow, 2019). These lockouts and holdouts can be effective for each party to get what they want out of the CBA; however, they do create economic tension and legal scrutiny amongst the parties in modern free agency negotiations (Salow, 2019). The author does note that arbitration and litigation are often used to resolve these disputes when negotiating CBAs: however, they offer mediation as a potential solution to these disputes.

Modern Legal and Economic Issues

Turning our attention to modern free agency, a recent case that has been reconciled by the courts is *Brady v. NFL* (2011). When the owners of the NFL initiated a lockout in 2011, several

high-profile players in the NFL decertified the NFLPA as their representatives and filed an antitrust lawsuit against the NFL, alleging that the lockout was an illegal group boycott under the Sherman Act (2011). The court initially ruled in favor of the players, stating that the lockout did violate antitrust laws; however, the decision was later reversed because the Norris-LaGuardia Act restricted federal courts from issuing injunctions in cases involving labor disputes (2011). This case is significant to modern free agency because it showcases that labor and antitrust laws are still complex in the NFL, and that players are still having trouble fighting for what they think is right.

As mentioned earlier, salary caps are another modern era issue that revolves around free agency. In the 1993 CBA, NFL owners implemented the salary cap system. In his article, Levine (1995) talks about how salary caps have affected NFL players and how utilizing a different salary cap system in the NFL could be beneficial. The NFL utilizes what is considered to be a “hard cap,” which means that the NFL has set a specific amount limit for which a team within the league can pay its players (Levine, 1995). Since the teams only have a set limit per year that they can spend on their players, when a seasoned player becomes a free agent, they are faced with the difficulty of finding a team that can afford them (Levine, 1995). Due to the salary cap in place, a lot of teams have turned their attention to rookie players because they tend to have cheaper salaries (Levine, 1995). Utilizing a “soft cap” system in the NFL could be beneficial because it sets a maximum amount a team can spend on players; however, it allows teams to exceed their caps in specific situations (Levine, 1995).

In his article, Nissim (2004) critiques the current structure of the NFL’s salary cap impacts the competitive balance of the NFL and player autonomy. The author of this article points out that the “hard cap” that the NFL uses promotes financial equity amongst teams

(Nissim, 2004). However, even though the salary cap helps with the finances within the league, as mentioned in other articles, the salary cap hinders players' freedom to move amongst other teams within the league, ultimately inhibiting the players' full autonomy. The author proposes that the NFL allow for more trading flexibility within salary caps (Nissim, 2004).

Another recent dilemma that has arisen concerning free agency in the modern era is the use of the Franchise Tag. In his article, Spadoni (2022) establishes how the franchise tag was created and critiques how it diminishes players' free agency. When a player turns into an unrestricted free agent, their team can place a franchise tag on them, which prohibits the player from seeking out a contract with a different team (Spadoni, 2022). Instead, the player is presented with a one-year contract with their old team to sign, or they can choose not to sign and sit out a season (Spadoni, 2022). The franchise tag takes away the unrestricted free agent's ability to move, therefore taking away their rights of being a free agent. The author suggests that this franchise tag could be rebutted by utilizing the unconscionability doctrine (Spadoni, 2022).

Lastly, an article published in 2008 highlights how congressional actions have contributed to the league's business operations. As the article analyzes the legislation behind the NFL's non-statutory labor exemptions, the author establishes that Congress has long sought to balance the league's needs for cooperative business arrangements but still attempts to preserve fair competition and player rights (Rosing, 2008). However, the author does note that there have been some inconsistencies with the congressional oversight (Rosing, 2008). However, it is important to note that both economic and political forces have helped shape the way that the NFL operates and have had a great influence on antitrust and free agency litigation.

Discussion

The NFL's current free agency system, though it has improved from earlier years, continues to benefit team owners over players due to the restrictive nature of antitrust laws and labor exemptions. Court cases such as *Mackey v. NFL* and *McNeil V. NFL* have proved that even though legal intervention has improved player mobility, owners still implement restrictive mechanisms such as the franchise tag and hard salary cap.

As Kahn explains, the non-statutory labor exemption shields CBA from antitrust scrutiny, allowing the NFL to impose restrictions on true market competition and player mobility. This indicates that the NFL can limit player movement and compensation without violating the Sherman Act as long as the restrictions are negotiated into a CBA. Salow furthers this point when mentioning that owners often can coerce players into unideal contracts by locking the players out in order to persuade them to sign the contract. In addition, the courts' constant deference to CBA, seen in *Brady V. NFL*, reflects the reluctance to disrupt negotiated systems.

The current salary cap and franchise tag mechanisms illustrate how CBAs can hinder structural inequality. The "hard cap" system, which was negotiated into the 1933 CBA, was created to maintain a competitive balance in the NFL while also allowing players to become free agents; however, player mobility and earnings are still restricted and hindered. The franchise tag also restricts and hinders players' autonomy because even though some players become free agents, that free agency is swept underneath the rug with a simple title, and doesn't allow players to maximize their market value. Both mechanisms are legally negotiated into the recent CBA; however, they still impact player autonomy.

While the NFL's free agency framework represents progress, it continues to operate within a legal environment that favors the NFL owners over the NFL's players. Free agency's

legal history proves that NFL owners hide behind the CBA agreements in an attempt to limit antitrust class lawsuits against them. As Salow mentions in his article, there are other methods that can be implemented into the NFL bargaining agreements that could not only benefit the owners but also the league players. Rather than arbitration or litigation, Salow recommends that mediation be used as a tactic instead. Similarly, Spadoni recommends that the unconscionability doctrine should be used as a defense against the franchise tag because the doctrine has proven useful in preventing parties with unequal bargaining power. If the NFL and courts keep utilizing antitrust laws and labor exemptions to build free agency, then the promise of true free agency will remain unkept. NFL players have the right to their autonomy and compensation, while also ensuring that they are working in a fair and truly competitive marketplace.

Conclusion

The NFL's free agency system stands as a testament to the complex intersection of law, economics, and sport. There has been considerable improvement over the restrictive practices of earlier decades, as shown by the court cases such as *Mackey V. NFL* and *White V. NFL*; however, it still falls short of achieving genuine free agency for players. The labor exemption of antitrust law, designed to protect the CBA process, simultaneously protected restrictive mechanisms such as the hard cap and franchise tag from meaningful legal challenge. Future progress in this area of sport law will fall on the courts, owners, and players to turn towards other methods of achieving successful negotiation, perhaps methods such as mediation. Given that free agency could be considered a two-edged sword, the issue is not on track to be resolved soon; therefore, further research and progress are left in the hands of scholars and policymakers to reevaluate the scope of the antitrust laws and labor exemption.

References:

- Bartok, R. E. (1991). NFL free agency restrictions under Antitrust Attack. *Duke Law Journal*, 1991(2), 503
- Brady v. NFL, 779 F. Supp. 2d 1043, 2011 U.S. Dist. LEXIS 45511, 190 L.R.R.M. 2952, 2011-1 Trade Cas. (CCH) P77,428 (United States District Court for the District of Minnesota April 27, 2011, Filed).
- Dickerson, C. (1996). The evolution of free agency in the National Football League: Unilateral and collective bargaining restrictiveness. *Sports Law Journal*, 3, 165
- Kahn, L. M. (2009). Sports, antitrust enforcement and collective bargaining. *The Antitrust Bulletin*, 54(4), 857–881.
- Levine, A. M. (1995). Hard cap or soft cap: The optimal player mobility restrictions for the professional sports leagues. *Fordham Intellectual Property, Media & Entertainment Law Journal*, 6(1), 243–304.
- Mackey v. NFL, 543 F.2d 606, 1976 U.S. App. LEXIS 6643, 1976-2 Trade Cas. (CCH) P61,119 (United States Court of Appeals for the Eighth Circuit October 18, 1976, Decided.)
- McNeil v. National Football League, 790 F. Supp. 871, 1992 U.S. Dist. LEXIS 5570, 1992-1 Trade Cas. (CCH) P69,841 (United States District Court for the District of Minnesota, Fourth Division April 15, 1992, Decided)

Nissim, A. (2004). The trading game: NFL free agency, the salary cap, and a proposal for greater trading flexibility. *Sports Law Journal*, 11, 257

Powell v. National Football League, 930 F.2d 1293, 1989 U.S. App. LEXIS 20824 (United States Court of Appeals for the Eighth Circuit November 1, 1989).

Rosing, R. (2008). Congressional antitrust for the National Football League. *Entertainment & Sports Law Journal*, 26

Salow, J. (2019). Holdouts, lockouts, and payouts: The National Football League's bargaining power phenomenon. *Law and Psychology Review*, 43, 239

Spadoni, J. (2022). The unconscionability of the NFL's franchise tag. *University of Denver Sports & Entertainment Law Journal*, 25

White v. NFL, 822 F. Supp. 1389, 1993 U.S. Dist. LEXIS 7421, 1993-2 Trade Cas. (CCH) P70,299 (United States District Court for the District of Minnesota, Fourth Division April 30, 1993, Decided).