Marquette Sports Law Review

Volume 18
Issue 2 *Spring*

Article 5

A Sports Seminar with a Free Agent Market Exercise

Alfred Dennis Mathewson

ESSAY

A SPORTS SEMINAR WITH A FREE AGENT MARKET EXERCISE

ALFRED DENNIS MATHEWSON*

I have taught a seminar in sports law for approximately twenty years. The course has always included an exercise concerning the negotiation of a professional player contract. At one time, I used the baseball salary arbitration exercise that used to be included in previous editions of Ray Yasser's casebook. The negotiation exercise otherwise always has involved the representation of professional basketball players. I use basketball primarily because it is my favorite sport. I have been tempted to try baseball or football, but over time, familiarity with the exercise has created resistance to change.

For many years, the exercise paired students into agents and owners in a simple one-on-one negotiation approximately one hour in duration. In 1995, I decided to radically modify the negotiation exercise. I was interested in testing a hypothesis of mine that universal unrestricted free agency was not in the best interest of players, or at least of non-superstar players. Restricted free agency, whether resulting from the unilateral fiat of the owners or through collective bargaining with players' associations, has the effect of reducing the supply of players on the market in a given year and should result in higher compensation. It seemed to me a basic question of supply and demand. If there were no restrictions on free agents, then, I surmised, every year would result in a glut of free agents such that the increased supply would result in lower compensation. To test the hypothesis, I created a free agent season in which there were no restrictions on free agency. As in the simple negotiation exercise, I divided the class into agents and owners. Each agent was assigned three players, and each owner one team. Every agent was free to negotiate with all owners and vice-versa. Students had three weeks in which to reach agreements. The exercise required students to use real teams and players with actual factual information. Prior to the beginning of the free agent season, agents and owners had to research the players and teams on the Internet. The

* Professor of Law, University of New Mexico School of Law.

owners were limited only by the financial condition of their team to the extent that such information was available on the Internet. They had to submit a negotiation memo with their proposed strategies prior to the season. At the end of the season, the class debriefed the negotiations. Not all players were signed. Not every team signed a player. We compared the actual negotiations with the strategies and goals that students had set out in the memoranda.

Insofar as my hypothesis was concerned, the results were inconclusive that year and in the subsequent years of universal free agency. The top salaries often exceeded my expectations. In the first year, the agent for Penny Hardaway stated in his memo his intent to obtain a five-year $100,000,000 contract for him and did. One agent was prescient enough to have selected Michael Jordan before he returned and signed him to a one-year $15,000,000 contract, an amount that was less than I had expected. The results of that year were typical of subsequent years. Some superstars were signed for substantial amounts, and lesser players were signed to far less lucrative contracts.

More recently, I dropped universal free agency and decided to apply the National Basketball Association (NBA) salary cap rules. The exercise has been far more interesting. For one thing, owners must select their teams before they know who the players are, and agents must select players before they know which teams are available. One year, a fortunate agent chose to represent Shaquille O'Neal and Kobe Bryant when they were both with the Los Angeles Lakers during their championship runs, but no owner selected the Lakers. Both players went unsigned as no team had enough cap room. In one memorable year, Scottie Pippen was not signed as his agent concluded that it was unethical to accept a million dollar exception from the only owner willing to make an offer. Even Tim Duncan went unsigned the year after the Spurs won their third championship in 2005.

The teams in last year's exercise were the Chicago Bulls, Denver Nuggets, Indiana Pacers, Los Angeles Clippers, Los Angeles Lakers, and the Phoenix Suns. The players available were Kevin Garnett, Manu Ginóbili, LeBron James, Yao Ming, Dirk Nowitzki, Shaquille O'Neal, Tony Parker, Chris Paul, Ben Wallace, and Rasheed Wallace. Kobe Bryant, Steve Nash, and Dwyane Wade were not available because more than one student selected them, and I chose to exclude them rather than hold a draft.

The instructions that I use are below:

Negotiation Exercise

> **Negotiation Season**. The negotiation season begins at the end of class on _____ and ends on _____. The sport will be basketball, and the league will be the National Basketball Association. Students will own a current NBA team or represent current NBA

or college players whose eligibility ends in the current year. Each agent will have two or three players. Students who wish to be owners must submit the team that they wish to own. If more than one student selects the same team or player, ownership or agency representation will be decided by a draft.

Free Agency. All players are free agents and may negotiate with all teams. The general terms of the new NBA Collective Bargaining Agreement is in effect. Agents should research their players and determine each player's value and desires. Team owners should research their team, especially its general financial condition and salary structure. You should negotiate within those parameters.

Negotiation Strategy Memo. After completing your research, you should prepare a memo. For agents, the memo should contain for each player: (a) your estimate of the player's market value, (b) the basis on which you determined that market value (including player's stats, comparison to other players, marquee value, etc.), (c) the salary amount you are seeking, (d) the lowest value you are willing to accept, (e) a ranking of the teams in the order of your preference to contract with them, and (f) your negotiation strategy.

For owners, the memo should contain: (a) a description of your team's financial condition and salary structure, (b) the amount of salary cap room you have, (c) the maximum amount you will pay for any player or for particular players, (d) the player needs of the team, (e) a ranking of the players in order of your desire to sign them, and (f) your negotiation strategy.

The memos should be about three to five pages in length. They should be turned in by class time on _____. Please keep them confidential. We will compare actual results with the memos. You may obtain information about teams and players on the Internet, Lexis, or Westlaw. You may not begin negotiating until you have submitted your memo.

Contract Terms. Once you reach an agreement on the business terms, you must work with the opposing side to draft the addendums to the Uniform Player Agreement. The form of addendums may also be found on the course website attached to the Uniform Player Contract. These are due on _____ at class time.

The selection of teams and players by owners and agents must occur sufficiently in advance of the start of the free agent season so that they have time to conduct the research and prepare the memos. A student may not begin negotiating until the memo has been submitted. I prefer to have the selection process take place at least one month before the season begins so that students can begin following teams and players, especially for students who are not avid sports fans. The free agent season is usually scheduled during the last month of the semester.

Students have found the exercise very illuminating. They are surprised at the amount of information that is available online. They have been quite flexible in how they conduct the negotiations. Some occur in person before and after class, some take place in social settings like restaurants, but most probably are conducted by email. The use of the NBA salary cap has reduced the need for the information about the financial conditions of the team, except that such information may affect business strategy for an owner. The most interesting aspect of the exercise is the extent to which the students must attempt to master the cap and resort to strategies to maneuver under the cap. Many superstars remain unsigned unless their current teams are available. Most agents still decline to accept a contract under an exception that is substantially below their player's market value. While students tend to be cooperative in the exercise, some are tempted to take advantage of students who are sports challenged.

The free agent season provides a laboratory for a professor to observe the operation and effects of the cap. A professor can explore the impact of the cap on the ability of the league to foster competitive balance, the difficulty of teams like the New York Knicks that are heavily burdened by the cap in restoring a competitive edge on the court, and the role of agents. My experimentation, however, is limited by class size. Enrollment is limited to twelve students, although occasionally I have permitted a few additional students. The small number of students makes it virtually impracticable to replicate the precise conditions in the NBA or draw upon results from a statistically significant sample. As a result, I have toyed with the idea of trying to set up the exercise with other law schools. Differences among students in familiarity and knowledge of the sports world and financial astuteness pose another set of limitations. In sum, the exercise provides an engaging experience for students and professors.