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ISSUES PLAYERS FACE WITH THE COLLECTIVE BARGAINING PROCESS

*Matthew Parlow*¹

Many professional athletes live paycheck-to-paycheck. Most of the data seems to suggest that. Even someone as ridiculously wealthy as Kenyon Martin, having made more than \$100 million in his career, had to go play in China during the NBA lockout because he had to make money. So, then, imagine those athletes who are not making the kind of money Kenony Martin. There was pressure to want to play because they needed the money.

The prospect of losing paychecks was of great concern for the players. Every week of the regular season that was missed during the NBA lockout amounted to \$82.4 million dollars worth of salary for NBA players. There was a lot of pressure, not early on, but when David Stern began canceling portions of the season, players began missing out on real money that mattered to them.

This is significant, in part, because the average career of an NBA player is four and a half years. Therefore, when there was talk about maybe having no season for the 2011/2012 season, players faced losing twenty percent of their career earnings. That is a very different position to be in than billionaire owners who had more to be able to gamble with in that regard. Elite players, however, had more reason to want to hold out than players who might only have a four-and-a-half year career span. Why? Because what was at stake was the length of guaranteed contracts and the maximum amount they make. This is where there existed a tale of two players: One was the rank-and-file player who has a four-and-a-half year career span that needs that big level kind of salary. Then you have star players, like LeBron James, Kobe Bryant and Derrick Rose, who are going to make big money. These are the players who had some 'skin' in the game to actually try

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to push off a settlement to make sure their interests—those long-term and financial lucrative contracts—were preserved.

So what did players have to do? Delonte West actually applied for a job at Home Depot then ended up working in a furniture store. Luke Walton became an assistant coach at Memphis to bide time. Some of them sought alternative employment by playing overseas. But there were dangers to playing overseas. There was the threat of injury. If a player got injured while playing overseas, unless he had an insured NBA contract, he was not going to get paid under his NBA contract and, in fact, his team could void the contract.

The lockout and the potential for cancelled games (and perhaps even a cancelled season) put pressure on the groups of players with the most to lose: those players nearing the end of their careers—who needed money to help sustain them for the remainder of their lives—and well-paid underperformers whose contracts were about to expire. This latter group needed the 2011-12 season to improve their performance and justify another substantial contract. The elite players, of course, fared slightly different. They had plenty of money. For example, Kobe Bryant offered to lend other people money. Players like Kobe, Kevin Durant, and Derrick Rose, would participate in basketball exhibition games and receive \$400,000 for simply showing up and playing the game. The rank-and-file NBA player did not get such lucrative opportunities.

The lockout also affected veteran players in terms of getting ready for the season because they were banned from teams' practice facilities. They were also banned from dealing with team personnel, trainers, and coaches. In fact, there were even silly issues of whether players and coaches could sit at the same table at the wedding of NBA player Chris Bosh.

Rookie players were different than veteran players, as they were in a sort of limbo. They were drafted, but had not been signed to contracts. They did not have any of the resources (either the teams or the league) to help prepare them to enter the NBA. The NBA has an orientation program that teaches rookies how to best manage their money, how to avoid being taken advantage of, and how to avoid the mistakes other NBA players have made in the past—like squandering their money. The rookies did not have this program because of the lockout. They did not have access to veteran players they could talk with unless there was informal, organized practices. Many rookies continued to live at home, with their parents, and some of them were taking loans to pay for their living expenses.

So there was a lot of pressure on players. As I mentioned, some players chose to play overseas; the salaries, however, were not very good. Overseas salaries ranged from about \$50,000 to \$75,000 per month—far less than the amount that would be offered in the NBA. Even players who made big money in the NBA played overseas, but for a fraction of their previous salaries. Kenyon Martin made \$16.5 million the season before the lockout, but ended up playing overseas for \$2.6 million. JR Smith, who made \$6 million the previous season, played overseas for \$3 million.

Those were some of the pressures facing the players as they entered the lockout and the subsequent negotiations began. Those were some of the forces underlying the disadvantaged position players had when they were negotiating with management. There were also other issues going on that affected them, and they failed to adjust particularly well. One of those issues was public perception. It was fascinating how NBA Commissioner David Stern helped spin public perception to where the public turned on 20-year-old millionaires rather than much older billionaires. The public found it difficult to empathize with 20-something year-old millionaires who were holding out for more money. Instead, the public sympathized with the owners. Additionally, it did not help that anyone could access and utilize ESPN's online trade machine to figure out players' salaries; people knew the salaries of high performing players and underperforming players. In contrast, the owners were faceless people whose incomes, and profits off of their teams, were not public knowledge. David Stern was masterful at the public perception game. He cherry-picked facts. He framed owners as very reasonable people, then, when the players would reject bargaining offers, he would evince great shock. Commissioner Stern's message really affected the public's perception of the players' position and that hurt the players because the more that the owners started to realize the public was not supportive of the players, the more the owners could get at the bargaining table.

The union, to their credit, tried to take a civil tone. They tried to appear as the reasonable ones by not lashing out or being particularly critical. There was, however, a strain. They issued a weak response to Stern's offensive game plan in terms of framing the public perception. Stern got the public thinking that these were underperforming players, with long-term bloated contracts, and the perception ran against them. This, however, was not always the case, but the players did not effectively respond. Consider, for example, Derrick Rose, who had a \$5.6 million for a salary—because he was under his rookie contract—during his MVP season. No doubt he was underpaid at \$5.6 million.

But messages like this were not getting out. Consider LeBron or Kobe, for as much as they both make individually, almost any economist would admit they are underpaid for the value that they bring to their teams and in their marketability. Moreover, players did not sign themselves; rather, the general managers and owners signed them. But, again, that was not a message that came through in a meaningful way. Because of this, the players looked pretty bad in the court of public perception. There were also several retired players criticizing the current players. These retired players basically stated, "We didn't have it as good as they do. We made a lot less money." It obviously did not help when former players in the fraternity of professional athletes were criticizing the current players.

Another aspect where the players failed was in public relations. They kept saying, 'fair deal.' But when players' salaries are in the millions of dollars, the general public really does not have much sympathy as to what is fair and not fair. Additionally, the players' Twitter campaign of 'Let Us Play' bordered on ridiculous. They could play, if they signed the offer placed before them. No one believed that it was the owners not letting them play. It was that the players were not, in the minds of the public, taking any of the deals they were offered. For the players, this was not the way to steer public perception to their side. Even worse, Etan Thomas, the executive vice president of the Players Union, started to use *Occupy Wall Street* language. He talked about a one percent (the owners) and 99 percent (including the players). This strategy failed; public perception was unlikely to be swayed by using this kind of inapposite rhetoric.

Another issue that was really important to the story of the NBA lockout, but was largely untold, was the players' perception that there was a power imbalance and the racial undertones surrounding the entire lockout. The vast majority of owners were white while the majority of basketball players, some 84 percent, were African American. This imbalance, of course, is reminiscent of the power imbalance of slavery. Bryant Gumble raised this issue on a television show and was criticized for calling David Stern a plantation overseer. Charles Barkley criticized him pretty heavily and defended Stern by saying millionaire players are not akin to slaves and, no doubt, that is absolutely true. People, however, underestimate how much players might have felt this way, as though there was a power dynamic that was not fair, as though there were racial undertones and implications to the negotiations that disadvantaged them. There was the Dwayne Wade/David Stern interaction where both were arguing back and forth in a meeting. At one point Stern pointed his finger at Wade, and Wade

snapped back and said, “Don’t point your finger at me. I’m not your child.” Wade was criticized for that in the press, but his response really galvanized the players and really struck a chord with the players because many of them likely felt there was a white/black or rich/disadvantaged dynamic going on in the negotiations. One of the untold stories here concerned issues of race. Undoubtedly, there is systemic racism in sports. One can debate how much there is, but it exists. African-American athletes in the NBA provide the vast majority of the league’s talent, but they have little control over their professional lives. And indeed, they have white team owners, who have a majority of the power and the influence.

Take as an example “The Decision”— LeBron James’ signing as a free agent with the Miami Heat in the summer of 2010. He was vilified in the press. But Cleveland Cavaliers owner Dan Gilbert’s comments, as many people pointed out, implied in some sense that he owned LeBron James. That is, LeBron James should have stayed with the organization because they owned him. Players, however, loved what LeBron James did because he was taking advantage of all the hard battles that were fought by former players like Bill Russell and Oscar Robertson to allow the players to have more input over what they were going to do with their careers. So players celebrated LeBron James’ decision. He took ownership of his career and did it how he wanted to, by not allowing the team’s white owner to dictate where he went, how he went, or what he was going to do.

The reforms proposed by the owners for the new collective bargaining agreement could be viewed as an attempt to constrain the ability for players to move and to control their own destiny. Larry Bird suggested getting rid of the ability to sign and trade at the end of the contract, which Carmelo Anthony did. Bird’s response could be viewed as an economic fix. Or it could be viewed as an attempt to control free agency, players’ movement, and their ability to control their careers. The racial undertones at play during the negotiations should not be underestimated.

The Players Union also lacked solidarity. Players’ agents festered discontent and tried to get certain players to take a more strident view of decertification. Derek Fisher, as head of the Players Union, spent more time trying to keep the Players Union together than actually negotiating. When Commissioner Stern discovered this, he manipulated it because he knew he had rank-and-file players who wanted to vote and who wanted to accept the offer on the table. Union leadership, however, was paternalistic and thought they were savvier than their rank-and-file members. Thus, there was a division within the

Players Union, between those rank-and-file members who wanted to vote and union leadership who wanted to hold out for a better deal. Under a labor employment theory of collective bargaining law, a split union causes problems because management can manipulate it, which is what happened during the NBA lockout.

In conclusion, the Players Union reacted poorly to Commissioner Stern's various tactics. This is partly because it was portrayed negatively in the press. Some players reacted emotionally, which actually hurt their bargaining positions. Additionally, the Players Union did not have a particular strategy they were trying to execute. The 'fair deal' notion did not resonate with the public, and the Union did not have a unifying message which could bring them to a position with the ownership that the parties could agree on. Finally, the Players Union did not realize their lack of leverage. It received a good deal; economics had changed. There were systemic structural flaws in the way the NBA was structured and, because of that, the Players Union overestimated its position, which is part of the reason it suffered in the court of public perception.