NBA v. Williams, 45 F.3D 684 (2D Cir. 1995)

Jeffrey Kosc

Follow this and additional works at: https://via.library.depaul.edu/jatip

Recommended Citation
Available at: https://via.library.depaul.edu/jatip/vol6/iss1/10

This Sports Law Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Art, Technology & Intellectual Property Law by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.
NBA v. Williams,

45 F.3d 684 (2d Cir. 1995).

INTRODUCTION

The National Basketball Association ("NBA"), a professional basketball organization, and the twenty-seven teams that are members of the NBA ("NBA Teams") brought an action for declaratory judgement against a class of NBA players, prospective NBA players, and the National Basketball Players Association (collectively "players"). The NBA and the NBA Teams sought a declaration that the continued application of several labor restraints did not violate federal antitrust laws. The United States District Court for the Southern District of New York ruled in favor of the NBA, declaring the continued implementation of the restraints did not violate antitrust laws. On appeal, the United States Court of Appeals for the Second Circuit affirmed, finding that the antitrust laws have no application to the collective bargaining negotiations between the players and the NBA Teams.

FACTS

Plaintiff-appellee, NBA, organizes, markets and conducts a professional basketball league comprised of the co-plaintiffs, the twenty-seven member NBA Teams. The defendants are a class of present and prospective professional basketball players and the National Basketball Players Association, the exclusive bargaining representative of all present NBA players.

Since 1967, the NBA Teams, as a multiemployer bargaining unit, have bargained with the Players Association. The parties have entered ten successive collective bargaining agreements ("CBAs") during that time. The most recent CBA began in 1988 and expired on June 23, 1994 (the "1988 CBA"), the day following the last game of the 1993-94 NBA season. The NBA and the players have extended the 1988 CBA to cover the 1994-1995 season while a new agreement is negotiated. In negotiations over a new agreement, the players have demanded that the NBA eliminate the three disputed provisions of the 1988 CBA, the "College Draft," the "Right of First Refusal," and the "Revenue Sharing/Salary Cap System."

The College Draft apportions 54 eligible college players amongst the NBA Teams. The order of selection is usually determined by the teams' previous-season records with the worst teams selecting earlier. A player selected by a team in the draft may negotiate with that team only. An undrafted player may negotiate with any NBA team.

The Right of First Refusal creates a class of "Restricted Free Agents," those players who have completed fewer than two contracts or have less than four years of NBA experience. The Right of First Refusal lets an NBA team match any salary offer made to one of its restricted free agents by another team and
thereby retain that player.

The Revenue Sharing/Salary Cap System is a complex system which allocates the gross revenue of a team between the players and the team owners on a fixed percentage basis. The system also sets a minimum and maximum amount which a team may spend on player salaries in a given year.

In order to expedite negotiation on a new CBA, the NBA Teams filed an action in the Southern District of New York on June 17, 1994, seeking a declaratory judgment on the aforementioned restraints. The NBA sought two main declarations. First, the NBA sought judgment that the contested restraints were not violative of antitrust laws because their imposition was governed by labor laws and the nonstatutory labor exemption to antitrust laws applied. Secondly, the NBA sought a declaration that even if antitrust laws applied, the contested restraints survived under "rule of reason" analysis.

After the NBA initiated the proceedings for a declaratory judgment, the players applied for and received a temporary restraining order ("TRO") prohibiting the NBA Teams from entering into any contracts with any current or prospective NBA players prior to the preliminary injunction hearing which was set upon the granting of the TRO. The case was assigned to District Judge Duffy, who consolidated the preliminary injunction hearing with the trial on the merits pursuant to Fed. R. Civ. P. 65(a)(2). The trial was then conducted in one day on July 12, 1994. Judge Duffy found that the nonstatutory labor exemption to antitrust law applied as long as a collective bargaining relationship existed. In addition, Judge Duffy found that the restraints in question survived antitrust liability under the rule of reason even if they were not exempt.

The players appealed the district court's declaration that the restraints were not subject to federal antitrust laws. The players' appeal relied on the argument that the NBA Teams have agreed jointly to impose the contested restrictions, creating naked restraints that prevent competition, fix prices, and suppress salaries.

**LEGAL ANALYSIS**

The U.S. Court of Appeals for the Second Circuit first looked to the players' claim to determine the true issue at hand. It found that the players' claim was grounded in classic antitrust principles, urging that multiemployer groups should be barred from insisting upon, or using economic force to obtain the desired terms of employment, as such conduct would constitute price-fixing. Since the players conceded that the NBA Teams may act jointly regarding terms of employment where the players agree to those terms, the court of appeals found that the players were basically contesting any joint conduct by the NBA Teams that was beyond proposals made to the players union, and thereby decided by and imposed or insisted upon unilaterally by the NBA Teams. The NBA offered the same two-pronged defense it offered in district court, claiming that the restraints were protected by the nonstatutory labor exemption to antitrust law, or, alternatively, if antitrust law did not apply, that the restraints survived antitrust liability under the rule of reason, whereby the competitive balance fostered by the chal-
The court of appeals first addressed the players' claim by looking at the nature and purposes of multiemployer bargaining. The unanimous panel of judges turned to Charles D. Bonanno Linen Serv., Inc. v. NLRB\(^1\) to determine that the purposes of multiemployer bargaining include strengthening the employers' position by taking away the union's ability to shut down individual employers one by one, giving employers the ability to confront the union with a simultaneous shutdown, eliminating competitive disadvantages resulting from each employer reaching a different CBA with the union, eliminating multiple negotiations, and allowing employers to make group benefit programs available. The judges then went on to determine that multiemployer bargaining is even more important in the sports industry because some of the terms and conditions of employment must be standardized (e.g., scheduling, playoff structure, etc ...), requiring common rules and uniformity. The court, therefore, found that not allowing employers to agree on common terms and conditions of employment to be negotiated in a new CBA, bargain hard over such terms, and ultimately insist upon them would be in direct contravention with the core purpose of multiemployer bargaining, which is allowing multiple employers to act as if they were a single employer.

The Second Circuit then turned to how antitrust law affects multiemployer bargaining, finding that the lack of case law challenging multiemployer bargaining and the lack of congressional restriction on multiemployer bargaining combine to show that Congress never intended multiemployer bargaining to be subject to the antitrust laws. Looking to the judiciary, the court found that in the 104 years since passage of the Sherman Antitrust Act (1890), the routine practices of multiemployer bargaining have never been challenged in a case under the antitrust laws. The court of appeals inferred a general acceptance of the practice of multiemployer bargaining from this lack of on-point cases. The court found statutory protection of multiemployer bargaining under antitrust law by combining section four of the Norris-LaGuardia Act\(^2\) with section twenty of the Clayton Act\(^3\). Section four of the Norris-LaGuardia Act bars federal courts from issuing injunctions against employers for employer organization activity. Section twenty of the Clayton Act disallows federal intervention employer-employee disputes even in the event of an employer lockout. The court read these two provisions together to determine that multiemployer bargaining is exempted from antitrust law, as both employer organization and employer action are allowed in disputes. In addition to the statutory approval of multiemployer bargaining, the court found that Congress' reluctance to pass any restrictive measures against multiemployer bargaining suggests a general acceptance of such bargaining.

The court finally turned to the relationship between labor law and multiemployer bargaining. Judge Winter began by stating that the players' con-

---

1. 454 U.S. 404, 409-10 (1982) (citing NLRB v. Truck Drivers Local Union No. 449, 353 U.S. 87, 96 (1957)).

Published by Via Sapientiae, 2016
intentions were in direct conflict with the basic tenet that antitrust laws cannot be used to subvert fundamental federal labor policy. The judges continued by noting that multiemployer bargaining has been a feature of collective bargaining since the dawn of unions, and that changing its essence now would require a "massive" reshaping of collective bargaining law and policy.

Furthermore, the appellate court found that the players were contesting the continued imposition of the challenged restraints after the expiration of the 1988 CBA. However, the National Labor Relations Act ("NLRA") requires that employers maintain the status quo until an impasse is reached. Therefore, the players were viewing conduct required by the NLRA as illegal. The judges construed this position as meaning that the players considered multiemployer bargaining to be illegal. The court emphatically rejected any such claim, citing \textit{NLRB v. Truck Drivers Local Union No. 449} in which the Supreme Court held that multiemployer bargaining was valid because Congress debated its validity during hearings on the Taft-Hartley amendments to the NLRA, during which proposals were made to limit or outlaw multi-employer bargaining. Those proposals were resoundingly rejected. The court found that this inaction did not mean Congress was waiting until a later date to address multiemployer bargaining, but that Congress intended to leave regulation of multiemployer bargaining to the National Labor Relations Board ("NLRB") because of its specialization in balancing competing labor policy interests.

Finally, the Second Circuit addressed the players' claim that multiemployer bargaining is a voluntary establishment and employers and unions should be free to withdraw from the relationship at any time. The NLRB has previously held that sports leagues are an exception to the voluntariness standard and that they are required to bargain as joint employers. This NLRB holding was affirmed by the Fifth Circuit in \textit{North American Soccer League v. NLRB}. Therefore, any argument that the NBA Teams are illegally compelled to bargain as a multiemployer unit fails.

\textbf{CONCLUSION}

In affirming the district court, the court of appeals addressed, individually, the application of both antitrust and labor law to multiemployer bargaining. The court found that multiemployer bargaining was limited only by labor law, as federal labor policy preempts antitrust concerns. Since Congress has never viewed multiemployer bargaining as an antitrust problem, the court inferred a lasting, uncodified assumption that multiemployer bargaining is not subject to antitrust laws. The court found that the NLRB has held multiemployer bargaining to be valid, and enhances the objectives of collective bargaining. Therefore, any limits on multiemployer bargaining exist in labor laws alone, and antitrust laws shall not apply.

\begin{flushright}
Jeffrey Kosc
\end{flushright}

\begin{footnotesize}
4. 353 U.S. at 95-96.
5. 613 F.2d 1379 (5th Cir.), \textit{cert. denied}, 449 U.S. 899 (1980).
\end{footnotesize}