The NFL Labor Dispute – Trying to Cause a Fumble

The National Football League (NFL) grosses more revenue, produces more profit, and captures more of the American fan’s attention than any other American sport. The 2011 Super Bowl was the highest rated television program in history with 111 million people tuning in and advertisers willing to pony up $3 million for a 30 second commercial.\textsuperscript{i} It is estimated by Plunkett Research that the NFL took in $7.8 billion in revenue for the 2010 season and netted profits over $1.03 billion amongst its 32 teams\textsuperscript{ii}. Other estimates have total revenue at $9.3B for the 2010 season. Yet even with such a commanding position in the American sports landscape, the NFL and the NFL Players Association (NFLPA), the union representing its gridiron warriors, are teetering on the brink of a work stoppage due to an inability to reach a settlement on a new Collective Bargaining Agreement (CBA).

The current CBA, which expires on March 4\textsuperscript{th}, 2011, grants the players roughly 59.6\% of total revenues through automatic increases to the salary cap and allocates the remaining revenues to the league for ongoing operations, team expenses, and profits for owners. The owners have threatened to lock out the players upon expiration, thus jeopardizing the 2011 season. The CBA has been a highly profitable arrangement for both the players and the owners as the growing popularity of the league has benefited both sides handsomely. Current salaries have never been higher and franchise values have exceeded even the wildest of expectations; however, the current labor dispute centers on how best to grow the league’s revenues going forward and how those revenues will be split. The owners and the NFLPA have both used various methods of game theory to outfox the other side, including tactics that fundamentally shift the other side’s payoffs and potential moves. This paper describes and analyzes these moves and illustrates how game theory has played a role in each side’s actions.

Growing the Pie – and Determining the Size of Each Slice

The previous CBA is commendable in that it aligned the interests of both the players and the owners. By splitting revenues and automatically adjusting salary caps, both sides have clear motivations to increase revenues and keep money coming in. This explains why the NFL has had relative labor peace
since the original CBA was put into effect in 1993. While both the National Hockey League and Major League Baseball have lost seasons (in 2005 and 1994, respectively) and drawn the ire of fans, the NFL has successfully avoided player strikes and owner lockouts. While continuing to grow revenues remains in both parties’ best interest, the sides disagree as to how to split future dollars. The risks of a work stoppage are clearly bad for both sides. The owners have stadiums to fill and franchise values to maintain. Players have limited career lifespans and missing a year of work represents a large loss of earning potential. While it seems clear that both sides should be willing to reach across the table to avoid the loss of a season, instead they appear to be playing a high-risk game of chicken, trying to extract concessions from the other side. The current expectation is that if a deal is reached, it will be late into the night of March 4th – if at all. This represents a Hawk-Dove game where both sides have a severe penalty if no agreement is reached, yet both sides resist concessions as they attempt to maximize their respective gains. This causes brinksmanship and the culture of mistrust can lead to mutually disastrous outcomes.

The owners have proposed changing the mix of pre-season and regular season games – from 4 and 16 to 2 and 18. Regular season games command much higher television ratings and draw more fans to the gate (by which the owners benefit both from ticket sales and incremental revenue from $25 parking and $9 beers). Some estimate that such a change would yield as much as 5.7% more revenue while keeping the total games played the same. The NFLPA argues that such a change to the season would resort in more injuries as established players tend to play only a portion of pre-season games, if
at all. Further, the NFLPA claims that the best way to look at the effects of an increased regular season schedule would be on a per regular season game basis. An 18 game season amounts to a 12.5% increase in games played, but only a 5.7% increase in player salaries. This effectively means that players are taking a per-game pay cut. The NFLPA also argues that a longer season creates a non-linear increase in injury risk. They reason that as the season goes on, players develop lingering injuries that do not fully heal and thus put themselves at greater risk of serious injury that could be career-disruptive, or even career-ending. Both of these outcomes seriously threaten a player’s expected payoffs as a player, and have even broader payoff repercussions as players may be faced with paying for their own healthcare after their NFL careers. The NFLPA seems willing to expand the season and revenues, but only if the players are compensated with a larger percentage of revenues. The owners seem unwilling to offer this.

A possible area for compromise is through creating fully guaranteed contracts. Currently, an NFL contract contains two different pools of money – a guaranteed portion and a non-guaranteed portion. The latter portion can be cancelled by a team prior to the start of the season. Thus, if a player experiences a career-ending injury or if his performance no longer justifies the contract, it is typically cancelled by the team. While this feature of NFL contracts has been a source of volatility and anxiety for players, it is unclear that it is truly beneficial to owners. If the owners are forced to pay a fixed percentage of revenues to overall player salaries, there is no benefit in allocating these funds to the players who are the top performers or even physically able to perform. The current practice of cancelling player contracts simply acts as a method to shift salary from one player to another – it does not save the owners overall labor costs. While the argument can be made that the non-guaranteed contract protects individual teams from sinking money into an injured player and thus becoming less competitive, on a league level, this micro-level risk vanishes. In fact, the NFL easily change the salary cap rules to make a league-wide pool of funds to pay for injured players. This would cover the contracts of injured players while allowing teams to maintain competitiveness in case of injury by being able to sign new free agents. This injury pool would be taken from the players’ share of league-wide revenue before the salary cap is established. This would give players guaranteed contracts, yet not cost the owners any additional funds. If the NFL proposed to make all contracts guaranteed, it could co-opt the NFLPA’s argument against extending the regular season.
Trusting the Left Tackle

Ever since Lawrence Taylor savagely sacked star Quarterback Joe Theismann from his blind side on Monday Night Football in 1985 and ended Theismann’s career, the Left Tackle has been core to a QB’s trust and ability to perform. With trust in his Left Tackle’s proper protection, the QB can survey the field and make the proper throw. This trust on the field of play between lineman and QB has not been replicated in the NFL and NFLPA relationship. Clearly, both sides will lose from a work stoppage. Therefore, the rational move for each side is to cooperate. Yet there is palpable mistrust on each side which has led to an escalation that may be bad for both parties.

It would clearly benefit both parties to reach an agreement, but both are flirting with disaster because they feel as if the other side has more room or willingness to concede. This has fostered a sense of mistrust between the parties that has soured negotiations. A key area where the owners have refused to cooperate is the opening of the league’s books. This refusal to allow the NFLPA to audit teams’ accounting (the exception being the Green Bay Packers, who have a public ownership structure) is a misguided attempt by the owners to maintain an information advantage. If one applies “look forward and reason back,” the response by the players to this move will be to expect revenues greater than they previously expected. Thus, withholding this information from the players only increases their demands because of the perception that owners are hiding money. By not opening the teams’ financials, the owners are stoking increased player demands while also decreasing the odds of a settlement by shrinking the zone of possible agreement. While the league might think that having an informational advantage over the players is beneficial, it has not fully thought through the implications of this “advantage.” As seen in the McCain-Schumer exercise, disclosure can be beneficial and, in the airline case, an asset may actually have negative game theoretical value. The league should immediately open their books and disarm this area of mistrust in order to maximize its payoff.

One area where the owners have shrewdly moved to affect the NFLPA’s strategy is the hiring of the “lock-out lawyer.” Owners retained Bob Batterman, a labor negotiator and lawyer, as a way to prepare for an eventual lock-out. Mr. Batterman is most famous for representing the NHL owners the labor negotiations in which they locked out players and cancelled the 2005 NHL season. Although this caused many NHL teams financial distress in the short term, the long-term effects of the NHL lockout shifted power from the players to the NHL. This public display of willingness to follow the same course of action represents a credible threat that the owners will lock out the players. The NFLPA has said that the hiring of Mr. Batterman is a signal that the owners are not interested in reaching a settlement and
that they are not negotiating in good-faith. This sentiment is likely an attempt to get the public on the side of the players, but it makes the issue of trust between both sides a key lever in the negotiation.

Public sentiment was a key element that forced the NHL players to capitulate after the lost 2005 season. Ipsos-Reid, a Canadian public opinion pollster, reported that 52% of fans blamed the players (and their high salary expectations) for the lost season, and only 21% blamed the owners. It should be no surprise that many of the battles among the NFL and NFLPA are for the “hearts and minds” of the football public. Here the players are embracing a risky strategy. Many players are appealing to fans through social media as a way to make the public plea of “Let us Play” (see http://www.youtube.com/watch?v=Jl9BpUgYljQ for YouTube video). Players have also been active on Twitter accounts and in radio interviews as a way to influence the negotiation through public opinion. As the side forcing the lock-out, the owners are in the undesirable position of creating the action that will trigger the work stoppage. The NFLPA is attempting to make any such move by the owners as painful as possible by making it clear to fans that the owners are actively causing the labor issue and not giving negotiation a chance: “The players didn't walk out and the players can't lock out. Players want a fair, new and long-term deal. We have offered proposals and solutions on every issue the owners have raised. This claim has absolutely no merit.” This strategy of making the public believe that the players are willing and eager to play puts public pressure on the owners and makes it difficult to justify a movement away from the current CBA. This makes the owners argument of a necessary lockout seem wrongheaded to fans. If done properly, the NFLPA can get the public on their side and avoid the mistake made by the NHL players.

The risks of such a public relation strategy for the NFLPA is that with over 1,500 players (most of whom get hit in the head repeatedly) and technology’s ease of making broad public statements, there exists high risk of a rogue or ineloquent statement creating a backlash. Football players are not always the most articulate or most modest members of society. It would hinder the NFLPA’s public relations strategy if an outspoken player such as Chad Ochocinco (formally Chad Johnson – a player who changed his last name to be the Spanish translation of his uniform number) made statements that either showcased possible fissures in the players union or lacked the public relations grace that professionals within the NFLPA have been retained to provide. Any such misstep by a player could damage the NFLPA’s position with the owners or create a situation where fans begin to blame players for the labor stalemate.
Home Field Advantage

The venue in which a football game is played can be a major advantage: a hometown crowd can make communicating plays more difficult for the opponent and potentially influence referees to make calls in favor of the home team. The legal venue for the NFL labor dispute also represents a significant advantage and both sides have jockeyed for position. There is limited legal recourse the NFLPA can take against a potential lockout by the owners. As a collective bargaining unit, the NFLPA cannot wage an anti-trust lawsuit against the NFL because the players have formed a collusive body representing their mutual interests. However, as individual players, without representation from a union, such an anti-trust lawsuit can be brought against the NFL. This is exactly how the union muscled its way into the first CBA. Back in 1993, Reggie White, as an individual player, sued the NFL over his inability to negotiate with other teams (the so-called Rozelle Rule named after former Commissioner Pete Rozelle) after his contract was up with the Philadelphia Eagles. The threat of this becoming a class action against the NFL was strong enough to force the NFL to agree to the first CBA which allowed unrestricted free agency. That suit and the tactics used by the NFLPA 18 years ago are influencing both sides’ strategies today.

The expectation is that the NFLPA will officially decertify itself on March 3rd (one day before the CBA expires). This will legally dissolve the union and allow players to bring the NFL to court on anti-trust grounds. The jurisdiction of this suit will reside within the US District Court of Judge David Doty, as he was the judge handling the original suit by White in 1993. Doty is widely expected to be sympathetic to the players. The owners expect such a decertification move by the players as an attempt to bring the issue to Judge Doty’s courtroom. The owners have therefore filed a preemptive unfair labor practice charge with the National Labor Relations Board (NLRB). The likely outcome of the NLRB complaint will be a ruling as to whether the decertification of the union is valid. The NFL has claimed that the NFLPA is negotiating in bad faith in order to “run out the clock” on the CBA so that a recertification effort can land the dispute in Judge Doty’s courtroom. This decertification strategy and counter-strategy is a wonderful example of the owners creating a mental model of their opponent, and then anticipating their opponent’s moves in order to influence where this battle is fought. In this case, the owners reasoned that it is in the players’ best interest to decertify, therefore the owners attempted to block this future move by formalizing a complaint to the NLRB.
Scabs on TV

For years the NFL has anticipated the potential for a labor stoppage in 2011 and as a result, they shrewdly negotiated television contracts with express language that protects the league’s revenues even if NFL stars don’t take the field for the 2011 season. The league added wording to its latest television contracts with DirectTV, NBC, CBS, and ABC that has been labeled “lockout insurance.” The language entitles the NFL to $4 billion in annual television rights regardless of which players take to the field in 2011 and beyond. This wily move effectively shifts the risk of a lockout disproportionally to the players by changing their own best alternative to a negotiated agreement (BATNA). With these television revenues guaranteed, the NFL owners can call up replacement players for a season or two and wait for the current players to turn on each other. As mentioned earlier, the players have on average a very short playing career, and their employment opportunities beyond the NFL are limited. Therefore, it can be concluded that a season or two without their paychecks would entice some players to defect from the union. Complicating this would be a potential decertification of the union which would limit the organizing resources of the players.

Figure 2: Shifted Game Trees by the inclusion of “Lockout Protection” TV Revenues

The NFLPA was a bit late in realizing their deteriorating negotiating position, but eventually understood their disadvantage. The NFLPA then did what most groups who have been outsmarted do – it sued to stop the NFL from receiving any TV revenues from such agreements. On February 1, Special Master Stephen Burbank ruled that the NFL would be allowed to keep the $4 billion, but ordered the NFL to pay a paltry $6.9 million to the NFLPA for damages. The NFLPA has appealed this ruling to its
favorite judge, David Doty. Judge Doty has refused to issue a ruling for fear that his ruling will affect ongoing negations. This piece of the power struggle between the sides seems to be on the owners’ side, but any future litigation or judgment by Justice Doty will likely escrow these TV revenues and thus shift some of the power back to the players. This legal risk should prevent the NFL owners from overplaying their hand in regards to guaranteed TV revenues. Legal information regarding the likelihood of a court injunction is beyond this author’s expertise – yet the probability of such an event is surely non-zero.

End Game

The end-game for this labor dispute is still up in the air. Since this paper was written, events have leveled the playing field. After a few short-term extensions, the CBA did expire on 3/11/11 and the NFLPA did decertify and sue the NFL just before the NFL officially locked out the players. Judge Doty ruled that the NFL TV contract revenue must be held in escrow and shared with the players, thus eliminating the owners’ lockout insurance. Currently, the NFL draft will happen in April, but drafted players will not be able to actually meet with the teams that select them. Free agents can not sign with teams. There is still an NFL, but it is in a strange sense of suspended animation.

There needs to be an external force that causes both sides to compromise. Absent of a court order forcing a labor contract on both sides, this gravity pulling both sides to an agreement will emanate from lost revenue. Both sides are able to hold out in March, April, and even June, as there are minimal revenue implications, however when the calendar reaches July, the specter of true losses will force the sides together. Season tickets are owed to fans, advertisers start considering other options, and broadcasters will need to plan for alternatives. Cancelling a pre-season game will cause typical teams to lose $5M in ticket sales alone (68,000 tickets at $75 each). When one adds on concessions, parking and TV rights real value becomes lost as this struggle continues.

Both sides have reason to maximize revenues and keep the NFL as the preeminent sports league in the US. There is little to lose until late July as media coverage, an awkward draft, and the loss of off-season workout (OTAs) have no real revenue implications for revenues. The first real loss to revenues will occur in July when corporate sponsorships and season tickets will have to be refunded or interest paid on pre-payments. Pre-season games would be cancelled starting in August and regular season games cancelled in September. If labor unrest continues until November, the entire season would most
likely be lost. We expect both sides to talk tough until any real money is lost. It’s easy to talk tough when little is at stake, but both sides have too much to lose if a lockout causes the cancelation of games. This will force both sides back to the table in July, before any losses are realized.

Figure 3: Implications of Lockout on NFL revenue by month (2011)