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Boycotting the Super Bowl: NFLPA's Opportunity to Right Contractual Wrongs and Obtain Bargaining Power

BY [MATTHEW LOBELLO](#) / ON NOVEMBER 1, 2016

Football is by far America's most popular sport.[1] The National Football League's ("NFL") revenue is projected to be \$13.3 billion in the 2016 season,[2] and has grown by nearly 50% since 2010.[3] This is more than any of their competing sports leagues. As of July 1, 2016, Major League Baseball ("MLB") grosses the second highest revenue total at \$9.5 billion, followed by the National Basketball Association ("NBA") at \$4.8 billion, and the National Hockey League ("NHL") at \$3.7 billion.[4]

What's more impactful about the NFL's revenue figure is that the NFL has substantially fewer opportunities to monetize their success due to a shorter season than their competing leagues. At sixteen regular season games per team, NFL organizations play substantially fewer regular season games than the MLB's 162 and both the NHL and NBA's 82.

Yet, despite being the nation's highest grossing and most popular sport, NFL players make, on average, less money per season than the NBA, MLB, and NHL.[5] NBA players receive the highest average salaries at \$5.15 million per year, followed by MLB players at \$3.2 million, NHL players at \$2.4 million, and NFL players at \$1.9 million.[6]

Due to football's physical gameplay, there are substantially greater health risks to its players as compared to the other major sports leagues.[7] In particular, Chronic Traumatic Encephalopathy ("CTE") poses a severe risk to football players.[8] In September 2015, it was revealed that 96% of deceased professional football players tested positive for CTE.[9] CTE is a progressive degenerative brain disease that results in individuals that have a history of repeated brain trauma.[10] According to the National Institute for Occupational Safety and Health, professional football players are also more likely to die from Alzheimer's disease and Amyotrophic Lateral Sclerosis ("ALS").[11]

While the risks of playing football are substantial, the fiscal rewards pale in comparison to those of other sports. Due to the severe physical impact football has on the human body, NFL players typically have a career of just 3.2 years.[12] Due to short career times, players have a very limited window to reap fiscal rewards during their NFL playing career, which makes labor strikes incredibly difficult. According to a 2011 study of all 2010 NFL rosters,[13] just 600 out of the leagues 1,888 players accrued five or more years in the NFL, with just 134 players accumulating 10 years or more in the league.[14]

Placed in a precarious position to fight for players' right to guaranteed contracts, increased minimum contracts, and added player safety precautions, the National Football League Players Association ("NFLPA") must look to the 1994-1995 MLB strike as an example of how to obtain bargaining power and ensure the physical and fiscal protections of their players.

During 1994 and 1995, MLB players instituted an in-season strike, which resulted in the cancellation of the last month of the regular season, the entire postseason, and the World Series.[15] This was the first time the World Series was cancelled in 90 years and resulted in nearly a \$1 billion loss for management.[16] While damaging to teams and players who were chasing championships and individual records,[17] the strike was instrumental in instituting revenue sharing among the teams.[18] Now, there are over 120 MLB players making \$10 million per season or more, all in guaranteed contracts.[19]

Section 4(a) of the Norris-LaGuardia Act ("NLGA") entitled "Enumeration of specific acts not subject to restraining orders or injunctions" provides that no federal court shall have jurisdiction to issue a restraining order, temporary injunction, or permanent injunction for any cases evolving from a labor dispute for ceasing or refusing to perform any type of work in relation to employment.[20] Consequently, the Eighth Circuit held that the Act can be a tool for both employees and employers in labor disputes.[21]

With legislative and historical support, I believe the players should boycott the Super Bowl to obtain bargaining power in their fight for positive change and player protections. The Super Bowl is unlike any event in American television. The 2015 Super Bowl was watched by more than 114 million people[22] and the cost for a 30 second television ad was \$4.5 million.[23] Under such circumstances, advertisers and the media conglomerates that pay the NFL billions of dollars a year are the institutions with the greatest power in this labor relationship. However, such an impactful, poignant, and public display of labor unrest will undoubtedly project these transgressions to the forefront of public discussion and bring to light the troublesome relations that exist in the NFL today. While contempt and criticism will be immense, the 1994-1995 MLB strike demonstrates that an opportunity for greater players' rights is available to the NFLPA and should be utilized.

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