

NBA

The Rise and Fall of the NBPA

The National Basketball Association (NBA) has become a global phenomenon; players from around the world now ply their trade under its auspices. Its initials are instantly recognizable in almost every country on Earth. Unlike the other three big American professional sports, which have attempted, and generally failed, to capture the imaginations of people around the globe, basketball is truly an international sport. Michael Jordan, the NBA's most famous player ever, is a multinational legend, instantly recognized by hundreds of millions of people in places as diverse as Australia, the United Kingdom, and China.¹

In China, thanks largely to the exploits of Jordan, and more recently former Houston Rockets player Yao Ming and other Chinese players who made it to the NBA, basketball is fast becoming the number one sport, played by an estimated three hundred million people. The Chinese people, like most fans of the game, love the sheer athleticism of the NBA.

NBA players, both past—Julius “Dr. J” Erving, Earvin “Magic” Johnson, Larry Bird, Michael Jordan—and present—Kobe Bryant, Kevin Durant, LeBron James—are graceful and majestic, with individual skills that the general public can only regard with awe. Indeed, the NBA in recent years has moved away from presenting a team-oriented game to showcasing one wherein the individual skills of the players are increasingly on display. Whether the focus on individualism makes the game better depends, of course, on one's preference.

Despite this individualism, NBA players, like players in other sports (and employees around the globe), all want fair wages and decent working conditions. Unlike players in MLB, the NFL, and the NHL, NBA players have never engaged in a league-wide strike to put economic

pressure on the owners to achieve these ends. Their collective voice, the National Basketball Players' Association, has been in existence since 1954, and until recently it was assumed that the absence of any walkout or other serious public confrontation between labor and management during those sixty years indicated a harmonious relationship. In fact, the relationship between the NBA and its players has often been tumultuous, and although there was never a work stoppage before 1995—and this one was caused mostly by a civil war within the players' union—there have been a number of lawsuits over the years filed by the players against the league, and since the 1990s a noticeable increase in hostile rhetoric expressed by both sides.

Hostilities culminated in the 2011 lockout, which led to huge economic losses for the players and the season almost being abandoned. As much as one might admire the individualism of the players on the court, this same individualism in recent years has cost them at the bargaining table. Like their brethren in the NFL and NHL, NBA players have often lacked solidarity during conflicts with management, which has led to concessions resulting in less than fair compensation for their labor. Players' individualism and athletic skills may have enabled them to play in the global phenomenon that is the NBA, but their lack of teamwork has cost them in the arena of labor struggle.

The Birth of the NBA and the NBPA

The NBA was formed in August 3, 1949, by the merger of the National Basketball League (NBL) and the Basketball Association of America (BAA). The NBA considers the BAA, which came into existence in 1946, as the precursor to the modern league. The NBA's official Web site lists the three seasons of the BAA before the merger as part of NBA history. In the BAA's first season, the average player salary was between \$4,000 and \$5,000, with a salary cap in place of \$55,000. A few top stars earned substantially more. Detroit Falcon Tom King earned \$16,500; however, he also was the team's publicity director and business manager. Likewise, Philadelphia Warriors player Joe Fulks earned a decent wage: his salary was \$8,000. The merger had the effect of stopping the bidding wars between the two rival leagues for college players. *The New York Times*, in one of its few articles on the NBA in 1949, noted that the merger would prevent contracts being handed out to "big-time" college players that were excessive and threatened the livelihood of many teams.

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In contrast to the relative restraint of the BAA owners in their first season, the period between 1947 and 1949 saw some players rewarded handsomely. For example, the best player of the decade, George Mikan of the Chicago American Gears, signed a five-year contract worth more than \$60,000, Rochester Royals player Bob Davis signed a four-year \$50,000 contract, and in 1947 future Hall of Famer Jim Pollard signed a one-year deal with the Minneapolis Lakers worth \$12,000.²

Nineteen forty-nine, the first season of the NBA, saw seventeen teams compete for the title, with the Minneapolis Lakers defeating the Syracuse Nationals four games to two to be crowned the first NBA champion. However, in the following year the NBA was down to eleven teams, then ten teams in 1951, nine in 1953, and by 1954 the league consisted of only eight teams. Quite simply, the early years of the league were not a success. Considering the struggles of the NBA as a whole, then, it was not a surprise that the players were also having a rough time. Before the formation of the National Basketball Players' Association (NBPA), they did not have a minimum salary, a pension plan, health benefits, a per diem, and when the number of NBA teams had been cut by more than half there were a lot fewer job opportunities for players.³ In other words, while the star players were looked after, most players were playing for the love of the game rather than economic rewards.

The NBA's number one player, Bob Cousy, was not content with the situation. In 1954, when the players were forced to compete in twenty-one consecutive exhibition games, he wrote to the star player on each of the other teams—Philadelphia's Paul Arizin, New York's Carl Braun, Rochester's Bob Davies, Baltimore's Paul Hoffman, Fort Wayne's Andy Phillip, Syracuse's Dolph Schayes, Milwaukee's Don Sunderlage, as well as Pollard—seeking support for the formation of a union. There was near-unanimous support for the idea, with only Phillip against the idea, probably because the Pistons' owner was staunchly antiunion. With this overwhelming mandate, in 1954 the NBPA formed, with Cousy as president.⁴

At the 1955 NBA All-Star Game, Cousy met with NBA president Maurice Podoloff and presented him with a series of demands. They included the elimination of the \$15 so-called "whispering fine" that referees could inflict on a player during a game for talking or protesting a decision, as well as a request that players from the defunct Baltimore Bullets receive the salaries that they were still owed. Podoloff agreed to provide two weeks' salary for the Bullets' players and arranged to meet with the association within a fortnight to discuss the other issues.

However, despite his promise to meet with the players, Podoloff, and the owners, ignored the NBPA for the following two years. In this regard they were no different than owners in other major sports: when faced with a players' union/association for the first time, they ignored it in hopes that it would go away.

Eventually, after two years of inaction on the part of the NBA, Cousy and the NBPA had enough. The players were annoyed by the no-strike clause in their contracts and in January 1957 met with representatives of the American Guild of Variety Artists regarding the possibility of the NBPA's becoming affiliated with them. In fact, Cousy did not want the players either to strike or to become affiliated with a union. He later noted that "[e]veryone knows that's [striking] so illegal . . . it's laughable. But we want to be heard and if joining a union, which we hate to do unless we have to, is the only way of being heard . . . then that's it!" Nonetheless, the threat was a sufficient cause for concern for Podoloff and the owners that they recognized the NBPA in April 1957.

The NBA committed to the formation of an arbitration procedure for player grievances; players received meal money of seven dollars a day, an increase of between one and two dollars; for a trial period, referees could no longer fine players during a game; and the league agreed to meet annually with the NBPA. The spokesperson for the union's player representatives, St. Louis Hawk and future Hall of Famer Ed Macauley, stated, "We believe this is extremely fair—we believe the players will be happy with this." Likewise, Cousy later claimed, "My biggest win was getting the meal money bumped from \$5 to \$7. Getting that concession made me a hero."⁵

While he was laughing when he made that statement, it is doubtful that the players considered Cousy anything resembling a hero. The NBPA's demands were not excessive in the least; it is hardly surprising that the league agreed to them. There was no request for a minimum salary, a pension, and/or health insurance. Cousy was quite conciliatory with the owners. He was generally happy with the little they would provide; after all, the players were, in his words, playing a "child's game." Cousy said in 1959 that the "owners have been extremely fair with us money-wise. Frankly, I don't know of one player who is dissatisfied with his salary." Such a statement is quite remarkable. Moreover, Cousy was wrong about how satisfied the players were; in fact, they were generally displeased by the performance of both Cousy and the NBPA, as was demonstrated by the refusal by many players to pay the ten dollars in

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dues they owed the NBPA in 1957. Cousy claimed that only forty-one players actually did pay, which frustrated him to such an extent that in 1958 he resigned as NBPA president. He was replaced by his Boston Celtics teammate Tom Heinsohn.⁶

Heinsohn was not as conciliatory toward the NBA and the owners Cousy had been. To begin, he pushed for the formation of a pension plan for the players, which came to fruition with the NBA's acceptance, in January 1961, of a scheme by which the owners would match the players' yearly \$500 contributions. The pension plan would be available to any player with five years' service time in the NBA. However, the NBA reneged on the deal and engaged in a series of stalling tactics, which was successful for a number of years.

During this period, Heinsohn hired Lawrence Fleisher as the NBPA's general counsel. This appointment was to prove to be a master stroke. Fleisher, like Marvin Miller, viewed the situation as a struggle that pitted the players against the owners and the NBA, a case of "us versus them." He continually harangued the owners over the pension and pushed the union in a more militant direction. Before the start of the All-Star Game in January 1964, the players demanded that the owners put the pension approval in writing, even though the plan had already been signed off on by new NBA president Walter Kennedy. The start of the game was delayed by almost thirty minutes while the players held a meeting to decide whether to play after Kennedy had insisted it would be impossible for the owners to sign the pension approval at that time, although he agreed to call them on the phone. An unnamed player stated, "We were ready to refuse to play . . . because we feel the owners have been putting off a pension plan and have not been fair about it." Eventually, the players decided to participate, and the East beat the West by a score of 111-107.

The players made it known that if the pension plan was not approved at the owners' meeting in May 1964, further steps could be taken, including some star players refusing to sign contracts for the following season. This annoyed the owners, and Heinsohn's boss, Boston Celtics owner Walter Brown, labeled him the "No. 1 heel in sports." While he may have been a heel to the owners, Heinsohn was a "good guy" to the players.

In May, the owners approved the pension deal. Under the terms of the plan, the pension was in the form of a thirty-year endowment insurance policy for each player worth \$2,000. The owners would contribute half and the players the other half.⁷ The pension approval was

to be Heinsohn's great success. He stepped down as NBPA President in 1966 and was replaced by Cincinnati Royals player Oscar Robertson.

Robertson continued to pursue the more militant strategy first started by Heinsohn; he was ably helped in this regard by Fleisher, and in 1967 the NBPA negotiated the first collective bargaining agreement in NBA history. Following the All-Star break in January, Robertson sent NBA president Walter Kennedy a letter outlining the NBPA's demands; chief among these were an increase in owner contributions to the pension plan, a reduction in the number of games, health benefits, and a minimum wage. In regard to the pension plan, the owners offered to increase the policy to \$4,000 per player, and to pay 75 percent of the cost. However, only players who signed a contract in September 1967 would be eligible for a pension, and previous service time would not count. A ten-year veteran would receive a minimum of \$500 a month. Robertson noted that as a seven-year veteran, if he retired under the terms the owners were proposing his pension would only be \$75 per month. In contrast, the NBPA wanted all current and former ten-year veteran players to receive \$600 a month. With no action taking place on the owners' part, in early March, at a news conference, Fleisher stated, "First, we are immediately filing with the National Labor Relations Board to be the first player union certified with the NLRB. . . . Second, we will not participate in any playoff games this year." Helping the NBPA's bargaining effort was that the players were solidly behind it: 117 out of 120 players supported striking if their demands were not met. Both the NBA and the media continually emphasized that any strike would be illegal, as all players were under contract. In response, Robertson said, "So what if we're bound by our contracts. . . . Workers at General Motors can take a vote to go on strike—I don't see why we can't." Following thirty-six hours of negotiations between Fleisher and Kennedy, and two hours before the league's self-imposed deadline, an agreement was reached.

The key terms of the collective bargaining agreement included: the owners acceptance of the NBPA's demand that the pension be increased to \$600 a month, with ten-year veterans receiving it once they had been retired for thirty years; a health and medical plan for the players; a \$20,000 life insurance policy for each player; and days off before and after the All-Star Game. The NBPA was very happy with the outcome. Fleisher stated, "Never since the turn of the century has a group of athletes joined together and remained united under such trying circumstances. . . . That loyalty has now been amply rewarded." Likewise,

Robertson affirmed that "I'm very well pleased. I had been hoping for this all along." Through strong leadership, a militant approach, and, most crucially, united players, the NBPA had achieved a successful collective bargaining agreement.⁸

For the NBPA, success continued to follow when, before the start of the 1968-69 season, the union negotiated a minimum salary agreement with the NBA. For the 1968-69 season, the minimum wage for rookies was set at \$10,000; this would rise to \$12,500 in 1969-70 and \$13,500 in 1970-71. Current NBA players received \$12,500 for 1968-69, with an increase to \$13,500 in 1969-70. Thus, the long-term trend of ever-increasing salaries continued. Whereas in 1956-57 the average salary had been only \$6,000, by a decade later, in 1966-67, it had more than doubled, to \$13,000, and the year after that it jumped dramatically to \$20,000.⁹

In October 1970, after months of meetings without any of the acrimony of the previous round of negotiations, the NBPA and the NBA came to terms on a new collective bargaining agreement. The two sides released a statement noting, "Both Commissioner Kennedy and Mr. Fleisher were in agreement that the new terms were arrived at during harmonious sessions and both also expressed the belief that the negotiations between both parties this year had reached a new level of mutual understanding." Under the terms of the agreement, the minimum salary increased to \$15,500 for the 1970-71 season, with a further increase to \$17,500 for the following season. The latter figure was at the time the highest minimum wage in American professional sports. The daily meal per diem also increased \$3, to \$19. In addition, the playoff pool, which is divided between teams who have made the playoffs, rose from \$400,000 in 1968-69 to \$700,000 in 1970-71, with a further \$25,000 increase over the following two years.¹⁰ What was significant about this collective bargaining agreement is that the two sides came to terms even though they were battling in court on a different matter.

Nineteen sixty-seven witnessed the formation of a rival to the NBA; namely, the American Basketball Association (ABA). The ABA was the brainchild of sports entrepreneur Gary Davidson, who also went on to form the World Hockey Association. Rather than attempt to directly challenge the NBA, the ABA situated teams in as many cities as possible that did not have existing NBA teams. While initially the majority of the ABA teams employed second-rate players, eventually several NBA players jumped to the rival league. Also, the NBA would only draft players who had completed college; the ABA observed no

such restriction, which led to its signing, among others, future stars Moses Malone and Julius "Dr. J." Erving. However, a true bidding war for players never eventuated.

In 1969, the ABA and the NBA began merger talks, and in 1970 the eleven ABA teams agreed to pay a combined \$11 million to join the NBA. However, the NBPA was against the merger, reasoning that it would lead to less competition, with fewer hiring opportunities and, potentially, lower salaries for players. The union filed an antitrust lawsuit opposing it and succeeded in persuading the federal court to issue a preliminary injunction against the merger. In response, the NBA and the ABA tried to get Congress to issue an antitrust exemption for basketball. However, their efforts failed.

Legal wrangling delayed the merger for a number of years, but finally, in June 1976, the last obstacles were removed and the NBA and ABA united. The ABA had been a money pit for its team owners, who lost approximately \$50 million over the course of the league's existence, and by 1976 only six of its teams remained in operation. Four of them—the Denver Nuggets, Indiana Pacers, New York Nets, and San Antonio Spurs—joined the NBA, after paying \$3.2 million apiece. This brought size of the NBA to twenty-two teams at the beginning of the 1976–77 season.¹¹

The Reserve Clause in the NBA

In 1955, in *Washington Professional Basketball Corporation v. National Basketball Association*, a group led by Morris Fox sued the league on antitrust grounds. In May of that year, Fox's group thought they had persuaded the Milwaukee Hawks to relocate to Washington, D.C. Instead, the team moved to St. Louis. Fox's group then tried to buy the Baltimore Bullets and were unsuccessful. In response, they filed a \$1 million antitrust lawsuit against the NBA, claiming that the league had colluded and prevented them from buying the Baltimore franchise. The suit was unsuccessful, as the United States District Court ruled that there had been no contract between the two parties that could have been violated. However, the court also ruled that because the NBA conducted business across state borders and sold broadcast television rights, it was subject to the Sherman Act.¹²

Even though the court had ruled that the NBA was bound by the Sherman Act, the league still had a reserve clause, whose legality was affirmed by the courts in three separate cases in the 1960s. The first case

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involved Dick Barnett, who tried to switch from the NBA's Syracuse Nationals to an American Basketball Association team for the 1961-62 season. Even though Barnett did not have a contract with Syracuse, the club contended that they had an oral agreement. The Court of Common Pleas of Ohio found in favor of the Nationals, ruling that there need to be reasonable regulations in place to protect all concerned.

The second court case involved Lou Hudson attempting to back out of a contract to join the ABA team in Minnesota following his departure from the St. Louis Hawks in the NBA. As it happened, Hudson had his option year with the Hawks remaining. The court ruled that Minnesota did not have "unclean hands" in its negotiations with Hudson and that, as such, he was not obligated to join the ABA.

The third case involved Rick Barry. Barry was under contract to play for the NBA's San Francisco Warriors for the 1966 season, and as with all NBA contracts, Barry's had an option year that bound him to the team for the following year. However, Barry signed a three-year contract to play for the ABA's Oakland Oaks beginning in the 1967-68 season. The Warriors took Barry to court and the California Court of Appeals ruled that Barry had to play for San Francisco or he had to sit out his option year and not play with any other team. As part of his ruling, Superior Court Judge Robert J. Drewes stated, "It has been held that substantially identical league practices and contract provisions prevalent in professional football are not illegal as promoting monopolies, either as to cities or as to players. Further upon this record, the restraint on the defendant's [Barry's] freedom to contract imposed by the reserve clause appears to this court to be reasonably necessary to provide the stability and continuity required for the efficient management of such an enterprise." However, at no point in the decision did the court rule that the reserve clause tied a player to a team for the duration of his playing career. Instead, the reserve clause only tied a player to a team for a reasonable amount of time.¹³ Of course, the definition of a "reasonable" time was uncertain and might vary from court to court, but in the Barry case the judge's opinion pointed to the conclusion that it comprised just the option year. Within a decade, the reserve clause in any form in basketball would be consigned to history.

As noted above, in 1969 the NBPA, headed by its president, Oscar Robertson, filed a class action lawsuit in an attempt to block the merger between the NBA and ABA. In addition, the lawsuit alleged that the reserve clause, the player draft, as well as uniform player contracts were all in violation of antitrust laws. Uniform player contracts permitted

teams to set the terms of the contracts they offered players. A player had to play for the team until he was traded or sold, and if the player refused to play, the club could terminate his contract and prevent him from playing for another team. Under the reserve clause, the contract could be renewed unilaterally by the team for an option year, with a 30 percent reduction in pay. However, in 1971, the NBA proposed that the unilateral renewal be at the same salary as the previous year, with the reserve clause only applicable for an option year, after which, if the player changed teams, his former club was entitled to compensation. Initially, the player's former team could demand the compensation they wanted. If the two teams could not come to an agreement, the NBA commissioner would determine what the compensation should be. In this, it was similar in scope to the NFL's Rozelle Rule.

The NBA was obviously trying to get Congress to approve an antitrust exemption and at the same time to force the NBPA to drop its antitrust lawsuit, so that the merger with the ABA could proceed. When the NBPA rejected the league's proposal, the NBA unilaterally imposed the compensation rule and option year.¹⁴ Despite this, the NBA was unable to convince Congress to grant basketball an antitrust exemption.

Despite the hostility engendered by the antitrust lawsuit, in 1973 the NBPA and the NBA successfully negotiated a new three-year collective bargaining agreement. Under the terms of the agreement, the minimum salary was increased to \$20,000; at that time it was the highest in all American professional sports. Players could now receive their pension at age fifty, with benefits increasing to \$720 a year for each year of service. Thus, a ten-year veteran would receive \$7,200 a year at age fifty, while a fifteen-year veteran received \$10,800. Players could have their grievances heard by an independent arbitrator rather than the NBA commissioner. Fleisher claimed that the NBPA "got most of the major issues in collective bargaining to the point where we're [NBPA and NBA] on what I'd call equal footing. Sure we'd like some things better, but that's normal." One area where Fleisher was not willing to compromise was the reserve clause. He declared that "any kind of a reserve or option system is illegal. It violates basic rights. We haven't negotiated this. We've always taken the position that it's illegal. . . . But there's nothing to negotiate."¹⁵

However, despite the reserve clause, most NBA players were not struggling financially. As previously noted, for the 1967-68 season, the average salary had grown to \$20,000, representing approximately 30 percent of team gross revenue, and shortly, due to both the increased

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power of the NBPA and the rivalry with the ABA, it increased even more dramatically, reaching \$90,000 for 1972-73. This was 66 percent of team gross revenue. In 1977, player salaries as a proportion of team gross revenue would peak at 70 percent.¹⁶ While it is easy to blame greedy players wanting more, no one was forcing the NBA owners to grant them such a healthy percentage of gross revenue. As for the reserve clause, while some limitation on player movement might have been necessary, the system employed by the NBA was illegal, a fact that was to be affirmed in court.

In October 1975, the United States District Court ruled that the reserve clause, the player draft, and the uniform contract were all in violation of the Sherman Act. The court stated that: "Some degree of economic cooperation which is inherently anti-competitive may well be essential for the survival of ostensibly competitive professional sports leagues." However, it further noted that the "college draft, a perpetual reserve clause, boycotts, and a proposed merger, absent Congressional approval, or a non-competition agreement are illegal." Not surprisingly, the NBPA was ecstatic. Fleisher wrote a memo to the players stating that the judge's decision is "sensational, brilliant, and devastating to the NBA . . . and while the NBA will probably continue to fight us, it is a major victory that can only strengthen our position enormously." Following the ruling, the players could have filed a class action lawsuit against the NBA for damages, which, if the suit were successful, would have incurred what the NBA's counsel admitted would have been payments "almost too astronomical to contemplate," especially in view of the fact that because of the antitrust context of the violations, any damages awarded by a jury would be tripled.¹⁷ However, before the matter could go that far, the NBPA and NBA negotiated a settlement.

Under the settlement, which was reached in 1976, the NBA paid \$4.5 million in damages to approximately five hundred players, plus \$1 million in legal fees. The two sides also signed a new collective bargaining agreement. Starting immediately, the option clause would only be applicable to rookie contracts. The compensation agreement imposed by the NBA in 1971 would remain in effect until the end of the 1980-81 season, but beginning in 1980 a new system would be put into place wherein if a player received an offer from another team, the player's current club had the right to match the offer, the so-called right of first refusal.

Another crucial aspect of the new agreement was that the draft remained in place, but with one major change. If a player was drafted

but did not want to sign with the team that drafted him, he could sit out a year until another team selected him in the following year's draft. In addition to the change in the free agency rules, the minimum salary was increased from \$20,000 to \$30,000; players received \$75 per month toward their pension as well as (for the first time) cost of living adjustments; meal money increased from \$19 to \$24 with a further increase to \$26 by the end of the contract; better medical and dental coverage were offered; and life insurance increased from \$35,000 to \$50,000. Finally, there was an increase in the playoff pool and All-Star game payments.

Overall, the 1976 agreement was good for the players monetarily, and they also gained the right to free agency. By the 1979-80 season the average player salary had further increased, to \$173,000. The media proclaimed it a near-total victory for the players and an unconditional surrender by the owners. Fleisher stated that "[w]e are happy and delighted with the agreement." Likewise, new NBPA president Paul Silas declared, "The main thing is that now we can concentrate totally on basketball and not worry about the possibility of a strike. . . . This will make for happier times for all of us." Quite ominously, however, and foreshadowing things to come, new NBA commissioner Larry O'Brien noted that "[m]y feeling is that this is an equitable resolution, which is shared by the cast majority of owners, but not all of them."¹⁸ While the players had been overwhelmingly successful in the Robertson lawsuit and subsequent settlement, there were warning signs that the owners would eventually want to regain some of their lost power.

Labor Relations in the 1980s

The collective bargaining agreement having expired at the end of June, the 1979 season began without a contract in place. In the face of increasing payrolls, team owners were attempting to impose a limit on individual salaries beginning in the 1980-81 season. For their part, the players were asking for a share of the NBA's cable television revenue, something the owners staunchly opposed. Due to the deadlock over these issues, there was talk of players going out on strike during the playoffs, but it was lightly regarded by all. NBA commissioner O'Brien noted, "There have been no threats or rancor on either side. . . . A player walkout would be difficult for the league, but I don't believe it will happen." He was correct. Two days after the proposed strike threat surfaced, the NBA and the NBPA negotiated a new three-year collective bargaining

agreement. The minimum salary was increased by \$5,000 to \$35,000, there was an increase in the daily meal money, and in the final year of the agreement NBA rosters increased from eleven to twelve players. In return, the NBPA agreed to drop a lawsuit against the NBA demanding a share of the league's cable television revenue, and to eliminate no-trade clauses from players' contracts.

It was a good couple of days for O'Brien, as in addition to negotiating a new contract with the union, he got the owners to agree to a team in Dallas joining the NBA. Likewise, the contract was beneficial for the players. While they had to make some concessions, there were now more job opportunities for players, and salaries continued to increase at an incredible rate. For the 1980-81 season the average salary was \$189,000. This grew to \$218,000 in 1981-82, and \$246,000 for the 1982-83 season. Free agency had certainly paid off for the players. On the other hand, by 1983 player salaries accounted for more than two-thirds of team revenue; teams were losing an average of \$700,000, and the league as a whole approximately \$15 million a year.¹⁹ This situation was clearly unacceptable for the owners, and they approached the July 1982 negotiations for the new collective bargaining agreement determined to play hardball.

Representing the league's side were O'Brien and the chief spokesperson for the owners (and future NBA commissioner), David Stern. Representing the players were Fleisher and new NBPA president Bob Lanier, of the Detroit Pistons. The owners sought to reduce rosters from twelve players to ten; they demanded that players fund their own pensions, health and life insurance, and severance income and fly economy rather than first class; they asked for 75 percent of the income from players' sneaker endorsements; and they insisted on the elimination of guaranteed contracts. Fleisher claimed that the "big hangup is that the owners are taking a position of taking back all the benefits we've gained since 1967. . . . I assure you, we're not going to give them up."

In response to the owners' demands, the NBPA wanted increased benefits, all contracts to be guaranteed, and a share of television revenue. In October 1982, O'Brien stated that if the two sides could not come to an agreement the NBA would unilaterally implement some of its demands such as the reduction of rosters, players flying coach, and players paying for their pensions, health benefits, and insurance. The NBA owners justified their position by claiming extreme financial hardship, although among them there were still high rollers such as Philadelphia's Harold Katz, who was willing to sign Moses Malone to a six-year, \$13 million contract with all the money paid up front.²⁰

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The negotiations continued into the new year with the sides no closer to an agreement. Now the owners offered to cap player salaries at 40 percent of the NBA's gross revenue up to \$250,000 and 30 percent above that. Such a low ceiling was rejected outright by the NBPA, but they indicated a willingness to accept player salaries at 55 percent of gross revenue with the proviso that the teams must spend the maximum amount on salaries and benefits. Tired of the growing impasse, the NBPA imposed a deadline of April 1 for a contract to be reached or the players would go out on strike. This would eliminate the last few weeks of the regular season as well as the payoffs. As CBS was planning to televise the majority of the playoff games, a strike at that time would cost the NBA a large part of its \$22 million contract with the network. In contrast, by waiting until April 2 to strike, the players would have already received 90 percent of their income. Milwaukee Bucks player representative Junior Bridgeman astutely argued, "In baseball nothing got settled until they set a deadline, and the same thing happened in football. So maybe now that we set one, something will happen for us."

As was the case with labor-management conflict in other sports, the general public generally sided with the owners. One aspect of the NBA players' strike threat that did not affect public response to job actions in the other professional sports was the color of the players' skin. Fleisher noted, "Seventy percent of the players in this league are black. So you're getting people saying, 'Not only are they highly paid, but they're *black* too.' We realize it isn't going to be an easy job."

Nor was it an easy job negotiating with the owners. The NBPA initially was willing to accept a salary cap and a percentage of gross revenue beginning in 1987, following the end of the Robertson settlement. After the talks in March, it agreed to a salary cap, beginning the following season, of approximately \$3.5 to \$4 million. In contrast, the owners had wanted a cap of somewhere between \$1.8 and 2.5 million, but with the strike deadline fast approaching they were now willing to cap player salaries at 50 percent of NBA gross revenue, up from the 40/30 percent levels they had proposed at the beginning of the year.²¹ Last-minute negotiations proved beneficial, and after twenty-six meetings over the course of nine months, a new collective bargaining agreement was finalized on March 31, 1983.

Under the terms of the agreement, player salaries would be 53 percent of NBA gross revenue. Crucially for the players, this would include network and cable television revenue. The salary cap was set at a minimum of \$3.6 million in 1984-85, \$3.8 million in 1985-86, and \$4

million for the 1986-87 season. The five teams with the current highest player salaries had their payrolls frozen until existing player contracts expired, as they were already above the salary cap. The minimum salary was increased to \$65,000 with further increases of \$5,000 a year for the following two years. The number of players in the league was set at 253, a decrease of only three players from the previous season. Overall, the agreement was acceptable to all concerned, with the owners voting twenty-two to one in favor of it and O'Brien calling it "a landmark labor agreement in professional sports." The owners had wanted large concessions and for the most part the NBPA had protected its members. Fleisher noted that "[i]t's hard to have sympathy with someone who makes that much money. But they [the public] would have to realize that we weren't trying to get more. They [the league] put us up to the wall." The owners had played hardball, and the reason the players had been largely able to resist making concessions while still being able to maintain free agency, their pensions, health benefits, insurance (and not give the owners 75 percent of their shoe endorsement money) was that the players were united. They did not want to give up what previous generation of players had fought to achieve. As NBPA president Bob Lanier stated, "I am getting along in years, and I may not reap the benefits of this agreement, but we have worked on behalf of the younger brothers and those who are still to come. Guys like Oscar Robertson and Paul Silas sacrificed for me. We won because the guys stuck together."²²

In November 1983, Larry O'Brien stepped down as the NBA's commissioner (the NBA's head became known as commissioner from 1968). He was replaced by David Stern, an appointment that was to have far-reaching implications for the players in the 1990s.

The 1983 collective bargaining agreement expired in June 1987, by which time the average salary had increased from \$246,000 to \$440,000. While there was a salary cap in place, NBA revenues increased due to higher television contracts and a 31.3 percent increase in attendance, which benefited the players in the form higher salaries. With the agreement set to expire in June, negotiations began in February. The NBPA and the players wanted an increase in revenue share, as well as the removal of the salary cap, the draft, and the teams' right of first refusal. In an attempt to hasten negotiations, in June the NBPA and the NBA agreed that no player contracts would be signed between June 17 and October 1 unless a new agreement had been negotiated. Stern claimed that "[b]y Oct. 1, either we'll have a good agreement or we won't have

any excuse for not having one." However, by October 1 an agreement had not been reached, and the sides were still far apart on the issues.

While there was talk of a possible strike, the NBPA decided on another course of action; namely, it filed a class action lawsuit against the NBA on antitrust grounds. It argued that the salary cap, college draft, and the right of first refusal policy were in violation of the Sherman Act. Considering that the union had relatively recently agreed to these terms it was difficult to imagine that they would be successful in overturning them. However, Chicago Bulls player representative John Paxson argued that when the players had agreed to the salary cap in 1983 the NBA had been floundering, with the real possibility of a number of teams folding. "Now that the league is prospering," Paxson said, "we'd like a little back in return." In response, the NBA's general counsel Gary Bettman, who later became the head of the National Hockey League and imposed a series of lockouts, stated, "It's unfortunate the players have decided to litigate, instead of negotiate. However, we are very comfortable with our legal position and believe that ultimately we're going to make a deal."

While both the NBPA and the NBA were hoping for a quick resolution to the court case, this was not to be. The U.S. District Court judge turned down the players' request for a summary judgment while also refusing the league's request to dismiss the lawsuit. Thus, both sides were looking at a long trial. Following the judge's decision, the players refused the NBA's request to resume negotiations,²³ having decided on a different tactic.

In February 1988, in order to enhance their chances of successfully prosecuting the antitrust lawsuit, the NBPA player representatives voted unanimously to decertify the union, thereby forfeiting their collectively achieved pension and per diem benefits, which would now have to be negotiated individually. While the player representatives were in favor of the tactic, its adoption required approval by 60 percent of the union's rank and file members, whose support was hardly assured. For instance, Boston Celtics stars Larry Bird and Kevin McHale were quoted as saying that they would probably cross the picket line in the event of a strike. Such public statements undermined solidarity and the NBPA's position, betraying a lack of unity that was a precursor to what would come to pass in the following decade. By late February, however, while the NBPA was still polling its members about the decertification, the negotiations resumed, and by April a contract was successfully negotiated.²⁴

Under the terms of the 1988 agreement, the salary cap was set at 53 percent of the NBA's designated league-wide revenue. The 1988 draft

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was reduced from seven rounds to three, with subsequent drafts to consist of only two rounds. The right of first refusal only applied to a player's first contract or at the end of a negotiated extension and in the first year of the agreement would not apply to seven-year veterans, in the second year to players with five years' experience, and in 1993-94 to four-year NBA veterans. In addition, players received increases in their pension, per diem, and insurance, with players who had retired before 1965 now being eligible for the pension plan. The minimum salary was doubled, from \$75,000 to \$150,000. The NBPA was happy with the agreement; as Fleisher noted, it "continues to leave NBA players as the highest-paid athletes in team sports." This was to be Fleisher's last major struggle for the NBPA as he resigned soon afterward.

For the most part, the NBA was also happy with the settlement, although one unnamed Eastern Conference coach stated his belief that under the agreement players would be uncoachable. He announced, "You're going to have to give guys four- or five-year deals to get them to stay with your team, and unless he is a superstar you know that he's gonna take a year or two off somewhere down the line." One wonders whether the coach would have made the same claim if the majority of the players in the NBA had been white. According to the prevailing stereotype, white players were gritty and hardworking compared to African Americans, who were lazy and relied on their natural talents. It's the sort of pernicious fallacy that when repeated often enough comes to be accepted as fact, and to his credit David Stern responded immediately, saying, that it was an "almost racist approach. . . . What's uncoachable? Is Bruce Springsteen uncoachable? Does he tank because he pulls down \$1 million for a show? Is Michael Jackson uncoachable? If that happens, it only says something about the way teams select players, how they indoctrinate them and motivate them."²⁵

Notwithstanding that it exposed the racist opinions of one unnamed coach, the collective bargaining agreement was beneficial to all concerned. The NBA was in the middle of a boom period, and player salaries continued to escalate. For the 1993-94 season the average player salary was almost \$1.56 million, with the NBA's gross revenue increasing to \$945 million from \$135.2 million a decade earlier.²⁶ Moreover, unlike all the other major sports in America, there had still not been a work stoppage in the NBA. While at times there were court cases, strike threats, and a potential decertification, both the players and the NBA had realized that it was in their best interests to have no interruptions during a season. Even though the players might have earned more with

a well-timed strike and the owners could have undermined some of the players' gains with a lockout, both sides had recognized that the first work stoppage could lead to a slippery slope of conflict. However, this era of peace was about to come to an end, and an era of lockouts was set to begin.

1990s: A Decade of Lockouts

In June 1994, the 1988 collective bargaining agreement expired. In response, the NBA filed a lawsuit seeking its continuation until a new agreement was reached, and specifying that the salary cap, draft, and right of first refusal were not in violation of antitrust law. In July, Judge Kevin Duffy found in favor of the league, as the provisions had been negotiated in good faith in a collective bargaining agreement. His ruling was reaffirmed by the court of appeals in January 1995. During the collective bargaining negotiations, the owners sought a hard salary cap of \$22 million rather than the flexible one that was currently employed. The difference between the two was that under the NBA's system if the players' share of designated league-wide revenues exceeded the 53 percent at which the cap was set, they would receive the higher amount. Under the hard cap sought by the league, players would receive the cap amount and no more. In addition, the owners wanted to impose a limit on rookie salaries.

On their part, the NBPA wanted an end both to the salary cap and the college draft, as well as unrestricted free agency. The players, however, were willing to accept a soft salary cap of \$27 million. Although there was talk of a lockout and the two sides were still far apart, in October 1994 the NBPA and NBA announced that the season would not be disrupted by a lockout or strike.²⁷

In April 1995, with talks still in progress, the NBPA's executive director, Charles Grantham, resigned. While it was labeled an amicable departure in the press, he acknowledged that there were "irreconcilable differences" with the NBPA's executive committee, seemingly caused by the continuing deadlock over the new collective bargaining agreement and Grantham's hardline approach to the negotiations, albeit he modified his stance to the extent that he would accept a soft salary cap, a reduction of the draft to one round, and an extension of up to three years on contract limits for rookies. Nonetheless, Grantham was replaced by the NBPA's counsel Simon Gourdine.²⁸

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In May, talks between the NBA and the NBPA resumed, with the league threatening a lockout following the playoffs if an agreement was not reached. In June, the two sides were close to an agreement, but a group of dissident players and attorneys/agents began steps to decertify the union. Ironically, Marc Fleisher, the son of Larry Fleisher, was one of the dissenting attorneys. They were unhappy that the NBPA was not keeping the players informed during the negotiations and fearful that any proposed deal would not be beneficial to the players.

The dissidents were also upset by the fact that the player representatives would be the only ones who would get to vote on the deal, not the rank-and-file players, although this had always been specified in the NBPA's bylaws.²⁹ With a strong advocate such as Larry Fleisher representing them, it had been a less than burning issue, but Simon Gourdine had yet to earn the players' unquestioning trust. Seeking to bypass the negotiations, the dissident players, led by Michael Jordan and Patrick Ewing, as well as player agent David Falk, hoped to bring a successful lawsuit against the NBA on antitrust grounds. However, within twenty-four hours the NBPA and the NBA announced a new collective bargaining agreement.

Under the agreement, the soft salary cap would remain in place but at an increase first from \$15.9 million to \$23 million and eventually to at least \$28 million by the end of the contract. The players' share of NBA designated league-wide revenue was set at 57.5 percent, with a luxury tax to be introduced if player salaries exceeded 63 percent during the first two years of the agreement or 60 percent in the final four years. A team that exceeded the salary cap would be taxed on any amount above a 10 percent increase to veterans' contracts. There would be no tax in 1995-96, 50 percent in 1996-97, and a 100 percent tax from that point forward. The luxury tax was largely introduced to prevent teams from re-signing their veteran free agents outside the salary cap; the so-called Larry Bird Rule. In addition, there would be a rookie wage scale applied to a player's contract during his first three years, following which he could become a free agent. Players would receive \$200 million in guaranteed licensing revenue over eight years, compared to \$3.8 million they had received over the previous nine years. The owners voted unanimously to approve the agreement, but following the decertification attempt the NBPA player representatives postponed their vote. In response, the NBA locked out the players.³⁰

Charlotte Hornets player representative Kenny Gattison blamed Falk for the lockout: "I think this whole thing has been manufactured

by David Falk. . . . He gets kinda bent out of shape because he expected our union to keep him abreast of what's going on. We didn't feel it was our responsibility to have every agent in the country know what was going on." Likewise, both Stern and Gourdine blamed the agents and were unhappy that their influence had reached this stage. Gourdine stated, "We believe this work stoppage could have been avoided . . . had certain agents restrained themselves from trying to dictate union policy for our players."

In addition to their attempt to decertify the union, Jordan, Ewing, and five other players launched a class action lawsuit against the NBA on antitrust grounds. Jordan argued, "We're not being greedy here. We're not trying to make sure the league starves or doesn't become successful. If the league is not successful, we can't be successful and we endanger our own position. But we know the league is very successful. We just want an equal opportunity to make our value." In large part as a response to the decertification attempt, in August the NBA and the NBPA modified the initial terms of the collective bargaining agreement. The major change for the players was the elimination of the luxury tax, although the Larry Bird Rule remained in effect for players who had been on a team for three years. However—and it proved to be crucial a few years later—the agreement included a provision that allowed the owners to renegotiate the agreement if salaries exceeded 51.8 percent of basketball-related income.

Previously, the players had received a percentage of defined gross revenue; this was left in place in the 1995 agreement. However, there had often been disagreement on what it entailed. Indeed, in 1992 the NBPA had won a \$60 million settlement from the league as compensation for underpayment based on what constituted defined gross revenue. Under the revised agreement, players received a percentage of *basketball-related* income, which was broader in scope than defined gross revenue. The players had accepted a lower percentage than under defined gross revenue, 48.04 percent compared to the 57.5 percent initially negotiated, but the percentage was now based upon basketball-related income.

Despite the new agreement, in September 1995 the decertification vote was still scheduled. If it was successful it likely would prolong the work stoppage, which Commissioner Stern vowed would continue, even if meant jeopardizing the start of the new season, if a new contract was not reached. Both the NBPA and the dissident players tried to sway the rank and file. Both camps went to great lengths trying to get the players to vote for their side. General managers sent faxes to players

telling them not to decertify the union and to accept the agreement. The NBPA and the NBA agreed to pay for transportation for players to the polling stations.

The dissidents sent all players an eight-page letter outlining the reasons they should decertify the union. Moreover, they sent a videotape to the players. As *Sports Illustrated* noted, Atlanta Hawks player Grant Long received a copy. On it, "The dissidents argued that union executive director Simon Gourdine and union president Buck Williams had negotiated two bad deals. The first one, which was abandoned in the face of intense opposition, included a team luxury tax that, it was argued, would have put a drag on salaries. In the dissidents' view the current proposal was only slightly better. Long watched and listened as Jordan, Ewing and Reggie Miller told him that the best way to get a fair deal was to eliminate the union. Under antitrust rules, that would allow the players to seek an injunction against the owners' two-month-old lockout. The teams would then be forced to open their doors to the players, and without the leverage of a lockout the league presumably would negotiate a deal more favorable to the players." Before he watched the tape, Long had been going to vote against decertification; after watching it he was undecided what to do.

Tactics such as these divided the players and had the effect of undermining confidence in the union leadership no matter the outcome, which was evident in the decertification vote. By a margin of 226 to 134 the players voted against decertification, thereby approving the collective bargaining agreement negotiated by the NBPA. The CBA was approved by the player representatives by a vote of 25 to 2, and by the owners by a margin of 24 to 5. However, this was not a "victory" to be celebrated; there was a rift in the union, and player solidarity was divided. As New York Knick and executive vice president of the NBPA Charles Smith claimed, "We have divided players. . . . Some have taken it personally. There used to be a sense, even when you saw retired players, that we all had a bond. Now the bond boils down to, 'Were you for the union or against the union?' We have to resolve that. We have to get all the key players involved in the union. The guys who were against the union had some valid points, but the way they went about it was not the correct way to do things. At some point, we have to settle our differences."³¹

In January 1996, still trying to heal the wounds of the internal conflict, the player representatives voted to replace Simon Gourdine as NBPA executive director, despite the fact that the executive board had offered him a two-year contract the previous December. He was

replaced by G. William "Billy" Hunter, with Patrick Ewing, a client of David Falk, becoming president of the NBPA. The decertification attempt had caused a rift in the union and undermined player solidarity, and the lockout made Stern and the owners realize that the same tactic could work in future conflicts. Indeed, the next lockout was less than one year away.

Despite the collective bargaining agreement's having been ratified by both owners and players, by June 1996 the NBPA still had not signed off on the contract. There was conflict over the language in the agreement, and whether the NBPA would be able to control group licensing, and in addition the union wanted another \$31 million for the players. When negotiations reached a deadlock, Stern and the owners locked out the players. However, the lockout was to last less than two hours before a compromise was reached. The NBPA was able to obtain the majority of the \$31 million it sought; it also received \$90 million from the television contract with the TNT network, to be included in basketball-related income, and the union was granted permission to run exhibition games as well as receive money from licensing fees to go toward a strike fund.³²

While this lockout was minor and is largely forgotten today, the next lockout was anything but that. As previously noted, the NBA was authorized to reopen the 1995 collective bargaining agreement if players' salaries exceeded 51.8 percent of basketball-related income. The NBA would not have been able to do this under the first agreement signed with the union in 1995; it was only included in the revised contract that was negotiated following the decertification attempt. In March 1998, with players' salaries accounting for 57 percent of basketball-related income, the NBA owners, by a vote of 27 to 2, terminated the 1995 collective bargaining agreement effective June 30. Stern stated, "What we're seeing now is a system where salaries continue to rise, teams are becoming unprofitable and ticket prices are continuing to rise. . . . The players said to us (in the current agreement), 'If it does not work come back to us and we'll negotiate a new one.' Here we are. We need a better system." In response Billy Hunter noted, "It is unfortunate the owners have chosen to forfeit three years of guaranteed labor peace at a time when the industry is so obviously healthy." The league demanded that the players' salaries account for no more than 48 percent of basketball-related income and sought to impose a hard salary cap as well, which would effectively eliminate guaranteed contracts. However, while claiming financial hardship and alleging that half of the teams were los-

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ing money, the NBA signed a new television deal worth \$2.64 billion. This resulted in each team's annual share more than doubling, to \$23 million. Moreover, *Forbes* contended that only ten of the twenty-nine NBA teams were losing money. Considering the NBA's demands, it was not surprising that the NBPA rejected them.

One of the main problems that the NBPA faced was that superstars received the bulk of the money. For example, in 1997 the top nine players received 15 percent of all player salaries, while approximately 30 percent of the players received the minimum salary. The union accepted that something had to be done about this.³³ Nonetheless, following halfhearted negotiating efforts that led nowhere, on July 1 the owners locked out the players. Not all owners were in favor of the lockout. Both Portland Trail Blazers owner Paul Allen and Boston Celtics owner Paul Gaston voted against locking out the players, and several large-market teams such as the Knicks and the Lakers wanted the players to return to the court as soon as possible.

During the lockout, the league continued to receive income from its television contracts; if the games were not played the league would have to return the money, but they had three years to do so, without interest. The players, on the other hand, received no income during the work stoppage, as the regular season had not begun. This situation obviously favored the owners. The NBPA did manage to secure lines of credit from banks, and financial support from unions in baseball, football, and hockey in addition to the money it received from group licensing. During the lockout, Hunter claimed, "The players are strongly united in their opposition to the elimination of a soft cap. . . . That's not negotiable. We're prepared to work out some kind of compromise as long as it doesn't involve a hard cap. That's the main issue. There are other solutions to their problems. There are no teams in the red, the issue is guaranteed profits."

The NBPA proposed a luxury tax, which was ironic considering Ewing and Falk had been adamantly against this in 1995 and it had played a part in dividing the union. The union also proposed that annual salary increases be tied to the NBA's growth. Despite these concessions by the players, the lockout continued, and the NBA cancelled the start of the season for the first time in its existence. While Hunter claimed the players were united, the earlier rift in the NBPA weakened the players' position. In November, Stern tried to play up the rift by arguing that player agents Falk and Arn Tellem were trying to prevent any deal from occurring because they cared more about the superstars than majority of

the players. At the time, Falk represented almost one-half of the NBPA's nineteen-man negotiating committee, including Ewing, Juwan Howard, Alonzo Mourning, and Dikembe Mutombo. The negotiating committee had the power to decide whether a proposal was acceptable and, if so, present it to the other four hundred players to vote upon. Falk himself wanted to be on the committee and to take more of a role during the lockout. This was rejected by Hunter and the NBPA. Stern questioned why the negotiating committee had all the authority to decide on an agreement, but in the summer more than 250 players had voted to give the negotiating committee this power, so its authority was established.

Nonetheless, some players were concerned that Falk's clients had too much power. New Jersey Net Jayson Williams claimed, "Any time you have a monopoly—in that the stars people listen to are Falk guys—it's not good for everyone." He further stated that he wanted to be on the negotiating committee, "but they didn't want me. They wanted all of Falk's guys as the leaders." Whether this was "sour grapes" or not, such public displays of disunity did not help the players' cause. Moreover, other agents questioned the role of Falk. Harold MacDonald, who represented Derrick Coleman and Terry Mills, stated, "Every time I see Patrick [Ewing] say something, it's almost like watching the Energizer bunny. . . . I'm just waiting for Falk to put in another battery, and off Patrick goes again. Hardly any influence? Give me a break." Whether Falk really had as much influence as publicly claimed—and his influence was disputed by the NBPA—such accusations undermined the resolve of the players.

Trying to increase the divide between the players even further, Stern let it be known that the NBA wanted to raise the minimum salary to \$350,000 for rookies and up to \$1 million for ten-year veterans. In return, players with high salaries could receive only an annual 5 percent increase, with top free agent's salaries being limited to 25 percent of the salary cap for players with six or fewer years' experience, 30 percent for six to nine-year veterans, 35 percent for veterans with ten or more years, and with annual 10 percent increases across the board. Nearing the cutoff point for the season to go ahead, Stern sent the players a nine-page proposal outlining the owners' position. The owners backed away from a hard salary cap; the Larry Bird Rule would remain (though with some limits for the top earners) but annual increases would rise to 12.5 percent with other players receiving 7.5 percent annual increases; and the minimum salary would increase for veteran players but would decrease for rookies and players with limited time in the league. In addi-

tion, Stern set January 7 as the deadline for an agreement to be reached or he would cancel the season.

The NBPA rejected Stern's proposal, but the players began to break ranks. Kevin Willis of the Toronto Raptors called for the players to be able to vote on Stern's latest offer. He stated, "The majority would vote for the owners' latest proposal, just to start playing ball again." Willis's agent Steve Woods, who had an antagonistic relationship with the NBPA and was later decertified for speaking out against the union, claimed, "A secret ballot is something the union is adamantly against because they would feel it would tear a hole in their blanket of unity. . . . The players' union unity is based more on peer pressure and collective egos rather than on reasonable minds coming to a reasonable conclusion." Despite the claims of Willis and his agent, it was likely the owners' proposal would be rejected, even though this would have led to the cancellation of the season.

Player solidarity was further jeopardized when more than twenty players, including stars of the magnitude of the Detroit Pistons' Grant Hill and the Los Angeles Lakers' Shaquille O'Neal urged retired NBA great and former NBPA president Isiah Thomas to become involved once again with the union. Thomas criticized Falk, as he believed he was trying to take over the union, and claimed, "I think there's a system and a process in place that should allow the players to vote on their deal. However, if that process doesn't take place, I'll step up and support them, as they've asked me to." By this point, the infighting among the players and the looming loss of the season were enough to persuade the NBPA and Stern to agree to engage in further talks and work for an agreement. When it was reached, the players voted overwhelmingly in favor of the agreement; they were happy just to get back onto the court.³⁴

Under the terms of the contract, there was an individual cap on players' salaries. The maximum a player could receive was \$14 million per year if he had over ten years' experience. Likewise, players with less than 10 years' experience could only receive between \$9 million and \$11 million. Free agents who re-signed under the Larry Bird Rule would receive a maximum annual salary increase of 12 percent. Moreover, the players agreed to an escrow tax of 10 percent of their salaries in years four to six of the agreement if income devoted to salary was above 55 percent of basketball-related income.

The agreement also contained provision for a luxury tax, which the NBA termed a "team tax," beginning in 2003. If the escrow amount was not sufficient to control team spending the luxury tax would implemented

when the players' share of basketball-related income exceeded 61.11 percent: "The luxury tax threshold is one over the number of teams (1/29 for 2003) times 61.11 percent of league BRI as determined at the end of the season." A team above the threshold pays a 100 percent tax for any amount above the threshold.

The owners were not as successful in obtaining a hard salary cap. The soft cap remained in place, with exceptions; as Staudohar notes, "Any team can sign two additional players each season, one at the league average salary and the other at the league median salary, even if the team is over the salary cap. And there is no limit on total salary spending by the 29 teams in the first 3 years of the agreement." Rookie contracts were to be in effect for three years, with a team option in year four, and with teams having the right of first refusal in year five. In a victory for the players, there would be no limit on salaries for the first three years of the contract; from that point forward players would receive 55 percent of basketball-related income, a 5 percent increase over what the owners had previously offered. Moreover, minimum salary increased on a sliding scale from \$287,500 for rookies up to \$1 million for players with more than ten years' experience. Since both the union and the owners had wanted the minimum salary to be increased, this was not the great victory it first appears to be.³⁵

Overall, the lockout was a clear victory for the owners. Salaries were curtailed, with an individual salary cap being implemented for the first time in professional sports in America. However, during the 1999–2000 season, players received 62 percent of basketball-related income, with it reaching 65 percent in 2000–01, a new record. For the 2001–02 season the salary control mechanisms came into effect. Under the terms of the agreement, 10 percent of players' salaries were withheld in escrow to be redistributed to the owners. Nevertheless, players received approximately 57 percent of basketball-related income and for the next three years, the rate was about 60 percent. Then, beginning in 2003, as player share of basketball-related income was above 61.11 percent, the luxury tax kicked in. For 2003, sixteen teams were above the threshold and were taxed a combined \$173.32 million, while in 2004 twelve teams were above the limit and the tax amounted to \$157.21 million. It is worth recalling that at the start of the lockout the owners had wanted the players to receive a maximum of only 48 percent of basketball-related income and had eventually settled for 55 percent. Thus, while individual salaries were curtailed, there was now a more equitable distribution among all players,³⁶ so that the end result was not as bad as it might at first have

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appeared. Nevertheless, the owners had once again been shown that the players would lack unity in the face of a lockout, that the NBPA was still divided between the haves and the have-nots, and that as a consequence the union could be forced to accept concessions it would have resisted in the past.

The 2005 Agreement and the Power of Stern

The 1998 collective bargaining agreement was set to expire on July 1, 2005. There was talk that the owners once again wanted a hard salary cap, although during negotiations they proposed only that players receive 57 percent of basketball-related income, that players be at least twenty years of age before they join the league, and that salaries and the maximum length of contracts be reduced. The owners were prohibited from commenting on the negotiations lest they incur heavy fines from the league. *Forbes* estimated that eleven of the thirty teams were losing money, but the least valuable team, the New Orleans Hornets, was worth \$225 million and the average worth of all teams had increased by 9 percent since 2003–04. The National Hockey League's season had just been lost to a lockout, and both Stern and Hunter vowed that this would not happen in the NBA. Stern stated, "I may be combining a sort of reality with hope, but I think there will be a deal . . . by the end of the season. We're going to spend three days a week [negotiating in March] until we either can't stand each other or we can make a deal." Likewise, Hunter claimed, "Our players are making a substantial sum of money. The league appears to be thriving, and we would be foolish to not make every effort to make a deal. I'm trying to accomplish an agreement before the close of the season—the sooner the better." However, the negotiators failed to reach an agreement in March and the possibility of a lockout increased, although Stern and the owners were taking a less hardline approach compared to 1998.

Once again, the league blamed players' agents for preventing a deal and in May broke off talks with the NBPA, although they were resumed shortly thereafter. During the hiatus, the NBA tried to mount a public relations campaign blaming the top players and their agents for blocking a deal. Stern claimed that he was convinced that if an agreement was not reached a lockout could occur. Considering that it was up to the owners to impose a lockout and that Stern could have easily persuaded them not to, it was apparent that he was trying to convince the players

that a lockout would occur if they did not accept the owners' proposal. It did not come to this. In the middle of June, the two sides began talking again, and a settlement was reached on June 21.³⁷

Under the terms of the six-year agreement, the salary cap was set at 49.5 percent of basketball-related income for the 2005–06 season, increasing to 51 percent for the remainder of the contract. In regard to exceptions to the cap, "For the 2005–06 season, the Mid-level exception will be \$5 million. In subsequent years, the Mid-level exception will equal 108% of the average player salary for the prior season." As stated in the agreement, "The escrow level will be 57% [the same as the 2004–05 season]. This percentage will be guaranteed to the players, so that if total player costs before deducting escrow monies from the players are less than 57% of BRI, the difference will be paid by the league to the players." In regard to the escrow amount, "The maximum percentage of player salaries and benefits that can be withheld from the players for purposes of meeting the 57%" was 10 percent of players' salaries to be redistributed to the owners in the first year of the contract, 9 percent in years two to five, and 8 percent in year six. Thus, with all the exceptions included, the most the players could receive was 57 percent of basketball-related income.

Minimum salary occupied a sliding scale, ranging from \$398,762 for rookies to \$1,138,500 for ten-year veterans; by the 2010–11 season, this would be increased to \$473,604 for rookies and \$1,352,181 for ten-year-plus veterans. Larry Bird Rule players could receive a maximum six-year contract with annual increases in salary of 10.5 percent; all other players were eligible to receive five-year contracts with an 8 percent annual salary increase. To be eligible for the draft, a player had to be nineteen years old and one year removed from high school.

In addition, teams had to spend at least 75 percent of the salary cap, and there was a luxury tax of \$1 for every dollar a team was above the threshold. In regard to the luxury tax, the amount collected was distributed evenly to all teams. However, if a team went over the threshold, even by \$1, they were not eligible to receive any money collected from the tax; instead, the amount the luxury tax violators would have received went to league purposes. Commenting on the agreement, Stern said, "I will say we agreed almost all the way along that this business would suffer greatly from a lockout and that the deal reflects . . . a 50-50 deal. . . . Half of it went our way. Half of it went their way, and the central economics really remain the same." In a similar vein, Hunter stated, "It's a compromise deal. . . . When you look at profes-

accept the owners' proposal. It was, the two sides began talking June 21.³⁷ In agreement, the salary cap was set for the 2005-06 season, some of the contract. In regard to the season, the Mid-level exceptions, the Mid-level exception salary for the prior season." As will be 57% [the same as the guaranteed to the players, so money from the players will be paid by the league to them, "The maximum percentage withheld from the players is 57 percent of players' salaries to year of the contract, 9 percent year six. Thus, with all the could receive was 57 percent of salary, ranging from \$398,762 for rookies and \$1,352,181 for veterans could receive a maximum salary of 10.5 percent; all other contracts with an 8 percent cap. In the draft, a player had to be from high school. At least 75 percent of the salary for every dollar a team was taxed, the amount collected, if a team went over the cap, to receive any money collected. Luxury tax violators would be penalized on the agreement, in a way along that this business deal reflects . . . what the deal reflects . . . what half of it went their way, the same." In a similar vein, "When you look at profes-

sional sports, I don't think there's any better system in place than the one that exists with us. So we were inclined to not move too far off of that."³⁸ Both Stern and Hunter were correct in their assessments. The agreement was a compromise deal that largely benefited both sides. Undoubtedly, the lost NHL season was at the forefront of both the NBA and the NBPA's minds and neither side truly wanted a work stoppage; the agreement reflected that. The NBPA had not been able to recover its lost strength, having failed again to win back the concessions it had agreed to in the 1998 agreement, although it did well in resisting further concessions in 2005. What the NBPA was not able to resist, however, was the increasing power of Commissioner Stern.

Unlike the collective bargaining agreements in MLB, the NFL, and the NHL, the NBA agreement grants the commissioner a wide range of powers, as does the NBA's constitution. Beginning in 2004, Stern began to use the commissioner's power to a much greater extent than previous commissioners had. He began by cracking down on what he perceived as the NBA's chief image problem, highlighted by a fight involving players and fans during a game between the Indiana Pacers and the Detroit Pistons, namely, public perception that professional basketball was primarily an African American game.

As part of Stern's image makeover, beginning in 2005-06 the NBA implemented a dress code for the players, under which "[p]layers are required to wear Business Casual attire whenever they are engaged in team or league business." Players attending a game but not playing must wear a sports coat, dress shoes or boots, and socks. The following items are banned when players are on team or NBA business: sleeveless shirts, shorts, T-shirts, jerseys, or sports apparel; any headwear except under certain circumstances; "chains, pendants, or medallions worn over the player's clothes"; sunglasses while the players are indoors; and headphones except when the player is on the "team bus or plane, or in the team locker room." It is an extensive list, and invites the question whether a player's attire off the court is relevant to the league's business, that is, falls within the commissioner's purview or whether this dress code constituted a form of social engineering. Quite simply, Stern was attempting to appeal to conservative white fans by implementing a dress code that buried any traces of so-called hip hop (read: African American) culture beneath what he defined as a more "professional" public wardrobe.

Stern imposed the code unilaterally. Although he did discuss it with the NBPA, he did not seek the union's approval before implementation, nor did he receive it. Arguably, the NBPA has grounds to overturn

the dress code, because it should have been agreed to in a collective bargaining agreement. However, it has not chosen to do so.³⁹

In addition to the dress code, in 2006 the NBA unilaterally introduced a new basketball, again without consulting the NBPA or the players. The ball was substandard in many aspects and it led to numerous complaints. The NBPA filed a grievance with the NLRB, believing that Stern had overstepped his powers. However, before the board could rule on the matter, in an embarrassing retreat, Stern and the NBA withdrew the new basketball. These and other episodes, such as investigating whether it was possible to ban players from certain nightclubs, mandating what players can wear on the court, blocking certain trades in deference to the so-called (and self-defined) good of the game, as well as wielding a disposition to dish out heavy fines to players, coaches, and management, all served to demonstrate that Stern was determined to ensure his legacy before he retired.⁴⁰ This was clearly demonstrated by his handling of the 2011 lockout.

The 2011 Lockout

Even though the 2005 collective bargaining agreement was not due to expire until June 30, 2011, the NBA submitted a proposal for its renewal to the NBPA in January 2010. Once again, the NBA owners were claiming financial hardship. Stern argued that the league was going to lose approximately \$350 million in the 2010–11 season and had lost money every year since 2005. Because of their losses, the NBA owners were proposing a hard salary cap, a 38 percent reduction in player salaries, which would amount to between \$750 million and \$800 million, a reduction in the length of player contracts, and the elimination of all salary cap exceptions such as the Larry Bird Rule. The reduction the owners sought would result in players receiving 40 percent of basketball-related income.

The NBPA disputed the extent of the financial woes of the league, but was willing to accept a reduction in the players' share of revenue, although not to the extent the owners wanted. While the NBA claimed that twenty-two of its teams were losing money, a *Forbes* investigation revealed that only seventeen teams were, and that the net worth of the teams had increased to an average of \$369 million, a 1 percent increase from the previous year, but 2.9 percent lower than the two years before that. However, as *Forbes* notes, "Our estimations are based on the team's current economics (unless ground has been broken for a new building)

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and do not include the value of real estate." This was demonstrated when both the Golden State Warriors and the Washington Wizards were sold for more than their *Forbes*-estimated worth. Indeed, the new owner of the Warriors, Joe Lacob, was not in the slightest concerned that the franchise, which was hardly successful, would be a money loser for him. He stated soon after buying the team in 2010 that "[t]his is an incredible business opportunity. . . . Look, sports franchises appreciate 10% a year on average over three decades, the last three decades. There's no reason to think this won't appreciate in value. So that is the least of my worries."⁴¹ Thus, while teams were losing money, the situation was not as bad as the NBA claimed, and the majority of owners could recoup any losses through selling the team at a vastly higher price than they had bought it for. Moreover, owners were not forced to offer players contracts that led to the teams losing money; they did so voluntarily.

The owners displayed a united front, and to sustain this, Stern let it be known that he did not want them talking to the media. In 2010, he fined Washington Wizards' owner Ted Leonsis \$100,000 for publicly advocating a hard salary cap. Stern stated, "We're negotiating and that was one of our negotiating points . . . but collective bargaining is a negotiating process, and that was not something that Ted was authorized to say and he will be dealt with for that lapse in judgment."⁴² In other words, Leonsis was not permitted to publicly advocate a hard salary cap even though Stern acknowledged that it was being negotiated on. Such disciplinary measures were also handed out during the lockout that was to follow.

There were disagreements among the owners when it came to revenue sharing. Under the 2005 agreement, some of the money in the luxury tax pool was being redistributed to the have-not teams. Not surprisingly, the economic powerhouses in the NBA were not open to any idea of comprehensive revenue sharing such as existed in MLB and the NFL. The NBA argued that revenue sharing was between the owners and outside the parameters of a collective bargaining agreement, while the NBPA argued that the idea of revenue sharing was tied to the players having a salary cap.⁴³

Despite on-and-off negotiations, by May 2011 the two sides were still far apart. The owners still wanted a hard salary cap of \$45 million per team, although they were willing to phase it in rather impose it immediately. Stern was claiming in the media that if an agreement was not reached there would be a lockout, not explicitly threatening the players with one so much as accepting it as a *fait accompli*. This was a similar situation to the 1998-99 lockout.

The owners did not have to lock out the players if an agreement was not reached by June 30; they threatened to do so as a bargaining tactic. With the June 30 deadline nearing, the owners modified their demands. Instead of a hard cap they now proposed a "flex cap" and a ten-year agreement. Under the flex cap, the salary cap would be set at \$62 million, a figure that represented the assumed median for all teams. If the actual median exceeded \$62 million, the players would have to accept salary reductions. For example, for the 2010-11 season the Los Angeles Lakers' player payroll was a league-high \$91 million while the Sacramento Kings only spent \$44 million.

The owners' goal was for players to receive approximately 50 percent of a newly defined basketball-related income for the 2011-12 season, thereby reducing their salary and benefits to approximately \$2 billion, compared to \$2.17 billion for the prior season. The NBPA claimed that under the owners' proposal, by the middle of the ten-year contract, the players' share of basketball-related income would fall to around 45 percent and then farther, to 35 percent for the final three years of the contract. The union countered by offering the owners a five-year contract containing \$500 million in savings. The players' share of basketball-related income would fall, but only from 57 percent to 54.3 percent.

Following the NBA's proposal, a journalist asked Hunter to estimate, if the two sides had been one hundred miles apart before the owners' new proposal, how widely they were separated now. Hunter replied, "ninety-nine." In a show of solidarity, more than forty players attended last-minute negotiations between the NBPA and the NBA wearing T-shirts with STAND printed on them, as in, "United we stand, divided we fall."⁴⁴ On June 28, the owners authorized a lockout to take place if a new agreement could not be reached. It could not, and the lockout began on July 1.

During the lockout, both sides tried to portray that they were united. However, cracks appeared on both sides. Before the lockout began, the NBA sent a memo to the owners stating that they could be fined up to \$1 million if they discussed the lockout or any player during the work stoppage. Michael Jordan, who now owned the Charlotte Bobcats, was fined \$100,000 for arguing in the Australian press that revenue sharing was a good idea for all concerned, as well as discussing Australian NBA player Andrew Bogut. In addition, Stern fined Miami Heat owner Micky Arison \$500,000 for discussing the lockout on Twitter and implying that it should be abandoned. It is interesting to note that Arison

was fined five times as much as Jordan; Arison wanted the lockout to end, Jordan wanted what the NBA wanted, revenue sharing. And while Arison sought an end to the lockout, all the small and medium-sized teams were unhappy with the fifty-fifty offer. There was disunity between them and the large market teams. The small and medium-sized teams' owners wanted a majority share of revenue.

If the players had remained united they might have profited from owner disunity, and the lockout might have ended sooner with them receiving a better deal than otherwise would have been the case. However, it is alleged that there was disunity between Hunter and NBPA president Derek Fisher. During the lockout, Hunter vowed that the union would not accept less than 52.5 percent of basketball-related income, while in the press it was claimed that Fisher was willing to agree to Stern's proposal for a fifty-fifty split. Fisher denied the accusation, and wrote to the players stating as much, but he did not deny that he agreed to a fifty-fifty split until the end of the letter, and he never mentioned Hunter either directly or indirectly. Trying to maintain unity Hunter, at least publicly, supported Fisher. Nevertheless, as one unnamed player told the press, "Right now, everyone has to choose sides: Billy or Derek. . . . How the [expletive] did it come to this?" There was further disunity when a number of players began publicly lobbying on Twitter for the NBPA to make a deal. Boston Celtic Glen Davis wrote, "Take the 51% man and let's play" and Cleveland Cavalier Samardo Samuels stated he would be happy with a fifty-fifty split, while Houston Rocket Terrence Williams wrote, "Hey @TheNBPA Let's play BALL enough with the stare off."⁴⁵

This disunity was not helping the NBPA and, capitalizing on this, Stern insisted that if an agreement was not reached by November 9 the owners would no longer offer the players a fifty-fifty split but rather only 47 percent of basketball-related income. In response, the NBPA indicated that it was willing to accept the equal split if the owners were willing to concede some ground on free agency. This resulted in Stern backing away from his threat and negotiations continued.

On November 14, with the lockout in its fifth month, the NBPA utilized a familiar tactic: it decertified. However, unlike in the past, the NBPA declared a "disclaimer of interest," which the players had previously authorized. Under a disclaimer of interest, which is a top-down approach, there does not have to be a decertification vote, and in this instance it meant that the union decertified itself almost immediately. Following the decertification, two lawsuits were filed against the NBA

on antitrust grounds; one in California and one in Minnesota. Eventually, the suits were merged and the case was docketed to be heard in Minnesota. While it might be months or years before the court cases were decided, the NBPA was attempting to get the owners to concede some ground, and in that regard negotiations continued.⁴⁶

Once again there was a lack of solidarity evidenced among the players. Glen Davis argued that there was a lack of communication between the NBPA and the rank and file. He also complained, "It seemed like we just had a couple of issues, and now we have to go to court. . . . You don't want to waste that amount of money going to court." Sacramento King DeMarcus Paul stated, "Some of the young players I talked to, it's not about the money. . . . We just want to go out there and play ball." Likewise, Samardo Samuels claimed even though he did not like the NBA's latest proposal he would have voted for it. He noted, "A lot of people in the league are panicking. . . . You're talking about missing paychecks. Those paychecks you're missing are going to add up and guys have families and responsibilities and bills to pay."⁴⁷ Comments like these didn't help the NBPA's negotiating position, and just twelve days after the union decertified an agreement was reached that was not favorable to the players.

Under the terms of the ten-year agreement, players received 51.5 percent of basketball-related income in 2011–12 and would get between 49 and 51 percent for the years that followed. Thus, Hunter's vow that the NBPA would not accept less than 52.5 percent proved hollow. Ten percent of player salaries were designated to be held in escrow every year. Teams had to spend 85 percent of the salary cap for the 2011–12 and 2012–13 seasons, and 90 percent of the salary cap for the remaining seasons covered under the agreement. The luxury tax was increased, especially for repeat offenders. However, unlike in previous agreements, where offending teams did not receive any share of the collected tax, in the 2011 agreement nonoffending teams may receive up to 50 percent of the total amount. While the agreement does not specify what the NBA will do with the remaining 50 percent, it appears that it may go to league purposes and/or be distributed evenly among all of teams.

A revamped revenue sharing plan was agreed to that was a lot more comprehensive than in the past, with its full details unveiled in January 2012. Under the new system, "Each team then receives an allocation equal to the league's average team payroll for that season from the revenue pool. If a team's contribution to the pool is less than the league's average team payroll, then that team is a revenue recipient.

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Teams that contribute an amount that exceeds the average team salary fund the revenue given to receiving teams." Another term of the agreement granted Larry Bird Rule players only a maximum five-year contract with annual increases in salary of 7.5 percent; all other players could receive four-year contracts with a 4.5 percent annual salary increase. Minimum salary remains the same for the first two seasons as it had been in 2010-11, with incremental increases for the remaining years. Crucially, while it is a ten-year agreement, either the owners or the players can choose to opt out as early as 2017. Considering recent history, one would think that it is almost a given that that will occur. Fisher proclaimed, "For myself, it's great to be a part of this particular moment, in terms of giving our fans what it is that they so badly wanted and want to see." He did not smile when he said this. Indeed, no one representing the players at the news conference when the settlement was announced praised the agreement, nor should they have.⁴⁸

Quite simply, the deal was not one to be celebrated by the NBPA; the players were happy to go back to work but they were doing so with a greatly reduced share of revenue. Moreover, players on minimum salary were hit hard with a wage freeze for two seasons. In the end, while the players could play ball again, the owners won in every other area. Following the settlement, the NBPA recertified and the players as well as the owners approved the agreement.

The owners were pleased with the results, and this was further reflected in the NBA's financial position. *Forbes* estimates that the average NBA team in 2012 was worth \$509 million. This was a massive 30 percent increase from the previous season. The average operating income of an NBA team increased to \$11.9 million, the highest level since at least 1998, when *Forbes* began investigating NBA team worth and revenue. The "least" valuable NBA team, the Milwaukee Bucks, was worth \$312 million, with the New York Knicks leading the league with a net worth of \$1.1 billion. The Knicks and the Lakers are the first two NBA teams worth more than \$1 billion. Regarding operating income, only eight teams lost money in 2012, compared to fifteen teams in 2011. This was due in part to the new revenue sharing plan and, of course, the reduction in player costs.

There were even better results for owners in 2013. Operating income doubled to 23.7 million, with only four teams losing money. Reduced labor costs and revenue sharing, which saw \$120 million transferred from high-revenue teams, has greatly benefited low-revenue teams. The average NBA team is now worth \$634 million, a 25 percent increase

from 2012. The Knicks are now worth an estimated \$1.4 billion. Moreover, in October 2014 the NBA signed a new nine-year, \$24 billion television contract with ABC/ESPN and TNT. The deal tripled the previous television contract. The owners' cries of financial hardship no longer will ring true, if they ever did.⁴⁹

The fallout from the lockout saw Billy Hunter unanimously sacked as NBPA executive director by the player representatives. He was accused of conflict of interest and mishandling union finances, and is currently under investigation by the United States government. Following the vote, Fisher stated, "Going forward, we'll no longer be divided, misled, misinformed."⁵⁰ However, even if the NNBPA is united this does not mean the players are. Economist David Berri points out that there is a short career span for an NBA player, the majority of games are won by a select few players, and by the time an NBA player peaks, in his mid-twenties, he knows whether he will be a star or not. These factors combined mean it is likely that nonstars will not remain united, or care about star players. He states, "[T]he players cannot stay united, and that means the NBA owners tend to win. In other words, we should not be surprised that across the past three decades the players have agreed to a cap on league payroll, team payroll, rookie pay, and individual pay."⁵¹ It is hard to disagree with his claims. However, the players' lack of unity in the most recent negotiations and lockout also led to a freeze on minimum pay for two years and only gradual increases after that.

If the players are fragmented, not only will star players be forced to accept concessions, but all players. As the players generally have a short career span, it is essential for them to maximize their earnings while they can. If they are divided, this will not happen. This is the biggest challenge the union faces going forward. If the players' solidarity remains weak and divided by different factions, the NBPA will continue to engage in concession bargaining and the players will earn less than they otherwise would. But while on the basis of their recent performance it is easy to assume that the players will remain divided, it is important to remember that NFL players, who have on average shorter career spans, remained united during their 2011 lockout after years of showing weak solidarity. NBA players were united in the past; they can become united once again, even though it will be difficult. For the players to regain the solidarity they lost, the first step is to remember what the slogan STAND meant on the T-shirts some of them wore just before the 2011 lockout began: United we stand, divided we fall.