DePaul University
University Libraries

DePaul Journal of Art, Technology & Intellectual Property Law

Volume 8
Issue 1 *Fall 1997*

Article 6

# NFL Contract Negotiations in the Aftermath of White v. National Football League

Joseph D. Wright

# NFL CONTRACT NEGOTIATIONS IN THE AFTERMATH OF *WHITE v. NATIONAL FOOTBALL LEAGUE*[1]

## INTRODUCTION

The 1990's has been a decade of labor strife between ownership and players in professional football, basketball and baseball. Television revenues, advertising dollars and licensing agreements now have enormous ramifications as the popularity of professional sports has reached an all-time high worldwide. This rise in popularity in the United States and abroad has brought with it a substantial increase in the amount of money earned by professional sports franchises, and subsequently, the money paid to the professional athletes who play for them. Numerous strikes, lockouts and court battles have been waged as the parties jockey for control of those dollars. Every dispute has an effect on the advertisers, owners, players and agents. They impact everyone involved with professional sports at any level, from the sports fan to the hot dog vender.

Most recently, professional football players brought a class action antitrust suit against the National Football League ("NFL"). A Special Master was assigned to settle two specific disputes arising out of two separate contract negotiations. The first dispute arose out of a contract renegotiation between Billy Joe Hobert and the Buffalo Bills. The second dispute arose from a contract negotiated between Elvis Grbac and the Kansas City Chiefs Football Club. The Special Master determined that the Hobert contract renegotiation, which changed the compensation terms of the original contract without extending the time period covered, violated the Stipulation and Settlement Agreement ("SSA") between the National Football League Players Association ("NFLPA") and the NFL. Similarly, the Special Master ruled the Grbac contract, which contained a likely to be earned ("LTBE")

1. 972 F. Supp. 1230 (D. Minn. 1997) (hereinafter *White IV*).

voidable season, violated the SSA between the NFLPA and the NFL. The NFLPA and Class counsel appealed to the U. S. District Court, District of Minnesota, Fourth Division. The district court held that the Hobert contract was authorized. The contract between Grbac and the Kansas City Chiefs was also found to be valid because there was nothing in the language of the SSA nor the NFL Collective Bargaining Agreement ("CBA") that would prohibit a LTBE voidable clause in a contract. In so holding, the District Court reversed the ruling of the Special Master.

## BACKGROUND

The United States District Court for the District of Minnesota's history with National Football League labor issues began when football players brought a class action[2] antitrust suit on September 21, 1992, seeking complete free agency.[3] Class counsel and NFL representatives reached a tentative agreement to settle that action on January 6, 1993.[4] Once the negotiations were completed, the final document that expressed the substance of that agreement was the Stipulation and Settlement Agreement ("SSA").[5] Twenty-eight NFL players[6], one Contract Advisor,[7] sixteen college players[8] and

2. The class included 4,957 NFL players that were either current or former NFL players at the time the action was brought.

3. White v. National Football League, 822 F. Supp. 1389, 1394 (D. Minn. 1993) (hereinafter *White I*).

4. *Id.*

5. *Id.* at 1394 n. 5.

6. *Id.* at 1398 n. 11. At the deadline for filing objections, April 2, 1993, the following active or former NFL players had filed objections: Wilber Marshall, Paul Gruber, Brian Washington, Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Sammy Martin, Mike Farr, Pepper Johnson, Don Beebe, Gregory Scales, Gregory J. Baty, Barry Sanders, Luis Sharpe, Steve Atwater, Horatio Benny Blades, James Hasty, Byron Evans, Michael C. Johnson, Reggie Langhorne, Maurice Hurst, John Fourcade, Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson, Terry Orr, Shane Collins, Ron Middleton, Mark Schlereth, Kelly Goodburn, David Gulledge, Ed Simmons, Matt Elliott, Joe Jacoby, Sidney Johnson, Kurt Gouveia, Ravin Caldwell, Mark Rypien, James

one NFL club[9] objected to the acceptance of the SSA. The District Court overruled those objections and enjoined all other pending cases brought by individuals on the same issues on April 30, 1993.[10]

After the January 6, 1993 tentative agreement was reached, the NFLPA took steps to reestablish its role as the collective bargaining representative for all NFL players.[11] A majority of players who had finished the 1992 season on NFL rosters, voted to

---

Jenkins, Johnny Thomas, Eric Williams, Don Warren, John Elliott, Duane Bickett and Steve Young.

After April 2, 1993, additional objections were filed on behalf of Brian Blades, Roland James, Pat Carter, Kenneth F. Ruettgers, Jerry Ball, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders and Paul Siever.

At the hearing, the court granted all motions to extend time, ruling that all objections filed as of the hearing date, April 16, 1993, would be considered by the court, whether such objections were timely filed or not. The court further ruled that April 16, 1993, was the deadline for objections, and that it would not consider any objections filed after that date.

The Tice action, another case involving preseason claims, was originally filed in the District of Columbia, and transferred to the Minnesota district court by order of Judge Royce C. Lamberth dated February 10, 1993. Tice v. Pro Football Inc., 812 F.Supp. 255 (D.D.C. 1993). Tice, Civ. No. 4-93-166 (D.Minn. transferred Feb. 10, 1993). At the preliminary approval hearing, some of the *Tice* plaintiffs objected to the settlement of the preseason pay claims within the context of White. Those objections, however, were withdrawn for purposes of final approval of the settlement.

7. *White I*, 822 F. Supp. at 1398 n. 13. Robert J. Sheridan, who represents the sixteen college player-objectors, filed the objection purportedly on behalf of himself, attorney-agents and all other present and future agents similarly situated.

8. *Id.* at 1398 n 12. One college player, Brian Pressler, filed a timely objection, purportedly on behalf of himself and all other present and future "college and other football players" similarly situated. Untimely objections were filed on behalf of college players Jesse Becton, Scott Brown, Rudy Thompson, Ernie Lewis, Eugene Brown, Percy Coleman, James Chinn, Ron Alexander, Brad LaCombe, Dan Purcell, Steve Ross, Ron Moran, Steve Robinson, Garrett Washington and Bennie Hargro.

9. *Id.* at 1397 n. 10. The Philadelphia Eagles objected to the NFL's recognition of the NFLPA as a labor union and to any potential settlement of a related dispute over licensing agreements. NFLPA v. NFL Properties, No. 90-CV-4244 (S.D.N.Y.) (filed June 25, 1990).

10. *Id.* at 1399

11. *Id.* at 1435

authorize the NFLPA as the players representative for the purpose of collective bargaining.[12]

On March 31, 1993, the NFLPA and representatives of the NFL Management Council ("NFLMC"), the multi-employer bargaining unit of the NFL owners, began negotiating in an effort to reach a new collective bargaining agreement.[13] Those negotiations remained ongoing as of April 30, 1993, on which date the court granted final approval of the original Stipulation and Settlement Agreement.[14] The court order of April 30, 1993, made several findings concerning the NFLPA.[15] The court determined: 1) the NFLPA had been lawfully formed; 2) neither the NFL nor the players had taken action that would hinder the NFLPA's role as the exclusive collective bargaining representative of the players; 3) the NFL clubs had recognized the NFLPA as the exclusive representative for the players; and 4) as a result the NFLPA is authorized to enter into a collective bargaining agreement with the NFL.[16]

The original settlement agreement anticipated that the parties might reach a new collective bargaining agreement which would include the player movement rules laid out in the settlement

---

12. *White I*, 822 F. Supp. at 1435 (citing letter from Richard A. Berthelsen, General Counsel of the NFLPA, to Paul Tagliabue, Commissioner of the NFL (March 23, 1993)).

13. *Id.* at 1397.

14. *Id.* at 1397 n. 9.

15. The specific language of the April 30, 1993 order concerning the NFLPA is laid out in the following four points:

> (1) The NFLPA has been lawfully formed and selected by the players to serve as the exclusive collective bargaining representative of all present and future NFL players.
> (2) Neither the NFL nor any of its members have taken any action which in any way hindered or supported the formation of the NFLPA as the exclusive collective bargaining representative of all present and future NFL players.
> (3) The NFL and its member clubs have lawfully recognized the NFLPA as the players' exclusive collective bargaining representative.
> (4) Accordingly, the NFLPA is fully authorized and empowered to enter into a new collective bargaining agreement with the NFL and its member clubs.

*Id.* at 1435-36.

16. *Id.*

agreement.[17] Therefore, the court did not enter final judgment on its April 30, 1993 order in the hope the ongoing meetings between the NFL and NFLPA would result in such an agreement.[18]

The NFLPA and the NFL reached an agreement on the terms of a new collective bargaining agreement ("CBA") on May 6, 1993.[19] The various lawsuits regarding the NFLPA's group licensing program also reached final settlement on that date.[20] An agreement was made to amend various provisions of the SSA and the plaintiffs moved the court to approve those amendments resulting from the negotiations.[21] Additionally, the parties made a joint motion requesting that the court reconfirm its prior findings and make further factual findings concerning the NFLPA's status, scope and applicability of the nonstatutory labor exemption.[22]

The nonstatutory labor exemption exempts certain anticompetitive union-employer activities from antitrust sanctions.[23] The Supreme Court has recognized that in order to properly accommodate the congressional policy favoring free competition in business markets with the congressional policy favoring collective bargaining under the National Labor Relations Act,[24] certain union-employer agreements must be accorded a limited, nonstatutory exemption from antitrust sanctions.[25] Generally, whether the nonstatutory exemption will protect a particular agreement turns upon whether the relevant federal labor policy is deserving of preeminence over federal antitrust policy under the circumstances of the particular case.[26]

---

17. *White I*, 836 F. Supp. at 1465.
18. *Id.*
19. *Id.* at 1466.
20. *Id.*
21. *Id.*
22. *White I*, 822 F. Supp. at 1466.
23. White v. National Football League, 836 F. Supp. 1458, 1465 (D. Minn. 1993) (hereinafter *White II*).
24. 29 U.S.C. § 151.
25. *White II*, 836 F. Supp. at 1465.
26. Powell v. National Football League, 678 F. Supp. 777, 782 (D. Minn.1988) (citations omitted), *rev'd on other grounds*, 888 F.2d 559, 568 (8th Cir.), *superseded by*, 930 F.2d 1293, 1303 (8th Cir. 1989), *cert. denied*, 498 U.S. 1040, (1991). *See generally* Daniel J. Gifford, *Redefining the Antitrust Labor Exemption*, 72 MINN. L. REV. 1379, 1404-08 (1988) (detailing history of the

The players and the NFLPA originally sought to terminate the collective bargaining relationship so that the players would be free to pursue their antitrust claims.[27] The court entered an order on May 23, 1991, determining that various actions taken by the players and the NFLPA resulted in the termination of the NFLPA's "status as a labor organization" sometime in November or December of 1989.[28] On June 12, 1991, the Eighth Circuit denied the NFL's motion for interlocutory appeal of the district court's determination in *McNeil v. National Football League* that the NFLPA had ceased to function as a labor union.[29] As a result, eight individual players were able to pursue their antitrust claims in *McNeil*.[30]

While the court's holding in *McNeil* opened the door for the players antitrust claims, once the parties reached a tentative global settlement in January of 1993, the Board of the NFLPA immediately passed a resolution seeking to again become the collective bargaining representative of the players.[31] In mid-January 1993, the NFLPA began to collect authorization cards from NFL players designating it as their exclusive collective bargaining representative.[32]

The district court granted a motion for final approval of the settlement agreement,[33] application for order and judgment approving the SSA.[34] Twenty-six football players appealed,

---

nonstatutory labor exemption); Note, *Releasing Superstars from Peonage: Union Consent and the Nonstatutory Labor Exemption*, 104 HARVARD L. REV. 874, 875-78 (1991) (discussing genesis of the nonstatutory labor exemption).

27. *White II*, 836 F. Supp. at 1466.

28. Powell v. National Football League, 764 F. Supp. 1351, 1356 (D. Minn. 1991). *See* Pittsburgh Steelers, Inc., No. 6-CA-23143, 1991 WL 144468, at *4 (June 26, 1991). The Associate General Counsel of the NLRB found that "the NFLPA has effectively disclaimed its representational rights and has converted itself from a Section 2(5) labor organization to a trade association". *Id.*

29. *McNeil v. National Football League*, No. 91-8088 (8th Cir. June 12, 1991).

30. McNeil v. National Football League, 790 F. Supp. 871, 881-84 (D. Minn. 1992).

31. *White I*, 822 F. Supp. at 1425.

32. *Id.* (the authorization cards indicated that the players were authorizing the NFLPA as their collective bargaining entity).

33. *White II*, 836 F. Supp. at 1458.

34. *Id.* at 1508.

challenging the district court's certification of a mandatory class, the approval of the settlement agreement and the enjoinment of related actions.[35] On appeal, the Eighth Circuit affirmed the district court decision on all issues.[36] Subsequently, the NFL and NFLPA adopted the CBA on May 6, 1993.[37]

Two years later, in May of 1995, an expedited determination was sought from a Special Master on the impact of the SSA for renegotiated or extended contracts. [38] The Special Master held that renegotiated and extended contracts were subject to certain salary rules under the SSA.[39] Class counsel and the NFLPA appealed the Special Master's holding to the district court[40]

On appeal, the court addressed the issue of whether the parties intended that an NFL Player Contract entered into during an Uncapped League Year, and then later renegotiated or extended during a Capped League Year, constituted only a modification of the original NFL Player Contract or a new and distinct NFL Player Contract for the purposes of applying the thirty percent (30%) Rules under the SSA.[41] The district court held that renegotiated or

35. White v. National Football League, 41 F.3d 402 (8th Cir. 1994).

36. *Id.* at 406

37. *White II*, 836 F. Supp. at 1465.

38. White v. National Football League, 899 F. Supp. 410 (D. Minn. 1995) (hereinafter *White III*).

39. *Id.*

40. *Id.* Class Counsel and the NFLPA brought the matter before Special Master Feerick because the NFLMC had informed the Clubs that the 30% Down Rule in the SSA and the CBA continued to apply to contract renegotiations or extensions reached during the Capped 1995 League Year for player contracts originally executed during the Uncapped 1993 League Year. Class Counsel and NFLPA sought a ruling by the Special Master that renegotiated or extended contracts constituted new contracts under the SSA and CBA for the purposes of applying the 30% Rules. The NFLMC filed an opposing brief, and a hearing was held before Special Master Feerick on May 16, 1995. On May 22, 1995, Special Master Feerick issued his decision denying the relief requested by Class Counsel and the NFLPA. He concluded that a 1995 modification or extension of a 1993 Player Contract remains subject to the 30% Down Rule. *Id.*

41. The 30% Rules state:

> 1. No NFL Player Contract entered into in an Uncapped Year prior to the 1999 League Year may provide for an annual decrease in Salary, excluding any amount attributable to a signing bonus as defined in Paragraph G.2(d) above, of more than 30% of the Salary of the first League Year of the Contract

extended player contracts were subject to the SSA and CBA provisions governing allowable salary decreases in player contracts entered into in uncapped years.[42] This rule prohibited decreases of more than thirty percent (30%) of the salary of the first league year contract.[43]

This line of cases provides the history of the court's experience to address the circumvention questions brought before the district court in the most recent action between NFL players and the NFL member clubs.

## FACTS

The NFLPA appealed from two related contract disputes involving the "circumvention" provisions of Article XV(2) of the SSA and Article XXV, § 2 of the National Football League ("NFL" or "League") Collective Bargaining Agreement ("CBA").[44]

---

> per year. For example, a four-year Player Contract commencing in the 1993 League Year may not provide for an annual decrease of more than 30% of the Salary, excluding amounts treated as a signing bonus, in the 1993 League Year for each of the four years covered by the Contract. *Id.*
>
> 2. No NFL Player Contract entered into in a Capped Year and extending increase in Salary, excluding any amount attributable to a signing bonus as defined in Paragraph G.2(d) above, of more than 30% of the Salary provided for in the 1998 League Year, per year, either in the 1999 League Year or in any subsequent League year covered by the Player Contract. For example, a four-year Player Contract signed in the 1998 League Year (assuming it is a Capped Year) may not provide for an annual increase of more than 30% of the 1998 League Year Salary, excluding amounts treated as a signing bonus, in each of the three additional League Years covered by the Contract.

SSA, art. X, ¶ H. *See* CBA, art. XXIV, § 8.

42. *White III*, 899 F. Supp. at 410.

43. *Id.*

44. White v. National Football League, 972 F. Supp. 1230, *1 (D. Minn. 1997) (hereinafter *White IV*). Those provisions provide in their relevant part: "Neither the parties hereto, nor any Club or players shall enter into any agreement, Player Contract, Offer Sheet or other transaction which includes any terms that are designed to serve the purpose of defeating or circumventing the intention of the parties as reflected by (a) the provisions of this Agreement with

*I. Hobert Dispute*

The first dispute concerned the renegotiation of Billy Joe Hobert's Player Contract. Hobert signed a four year contract with the Oakland Raiders in 1996 that included a $700,000 Signing Bonus.[45] Before the 1997 season began, however, Hobert was traded to the Buffalo Bills. The trade transferred Hobert's obligation to complete the remaining three years of the contract that he entered into with the Raiders in 1996.[46]

The Bills and Hobert agreed to renegotiate the remaining three years, 1997-1999 League Years, of his Player Contract.[47] Under the original terms of Hobert's contract with the Raiders he was scheduled to be paid a Paragraph 5,[48] or base salary, of $760,000 in 1997, $1,250,000 in 1998, and $1,500,000 for the 1999 League Years.[49] The 1997 League Year compensation did not include a signing bonus. The proposed renegotiated contract between the Bills and Hobert included a $235,000 Paragraph 5 salary and a $525,000 Signing Bonus for the 1997 season. Hobert's base salary for the 1998 and 1999 league years would be $1,250,000 and $1,490,000 respectively.[50]

Because a Paragraph 5 salary is not guaranteed, it is possible that Hobert's 1997 earnings could be substantially less than $760,000.[51] In fact, the salary could go unearned altogether.[52] Typically, the

---

respect to the Defined Gross Revenues, Salary Cap, Entering Player Pool, and Minimum Team Salary, and (b) any other term and provision of this Agreement. However, any conduct permitted by this Agreement shall not be considered to be a violation of this provision." *Id.*

45. *Id.* at 1231.

46. *Id.* at 1232.

47. *Id.*

48. Paragraph 5 compensation, or base salary, is the compensation set forth in paragraph 5 of an NFL Player Contract. Paragraph 5 compensation is not guaranteed, and is paid in weekly installments over the playing season. CBA Art. I, § 3(a).

49. *White IV*, 972 F. Supp. at 1232.

50. *Id.*

51. *Id.*

52. Hobert was, in fact, released by the Bills on October 15 of the 1997 League Year and, therefore, did not earn all of the negotiated 1997 Paragraph 5 salary. *Id.*

only guaranteed compensation in an NFL contract comes in the form of a signing bonus. Under the proposed renegotiation, Hobert would be paid a $525,000 Signing Bonus in 1997.[53] The remaining $235,000 of the $760,000 would be paid as Paragraph 5 compensation and disbursed to Hobert throughout the 1997 season.[54] The proposed restructured contract would also include a $10,000 pay cut in the Paragraph 5 salary during the 1999 League Year.[55]

When calculating a player's salary cap value for any given season, a Signing Bonus and Paragraph 5 compensation are treated differently. Signing Bonuses are prorated over the full term of a Player Contract.[56] Conversely, Paragraph 5 compensation is included, for salary cap purposes, by NFL Clubs "in the year earned."[57] The effect on the Bills' salary calculation for Hobert's proposed renegotiated contract can be contrasted with the original contract Hobert was under when he was traded. Hobert's original contract would have cost the Bills $760,000 against their salary cap in 1997, $1,250,000 in 1998 and $1,500,000 in the 1999 League Year. Hobert's renegotiated contract would cost an additional $410,000 against the Bills' 1997 cap,[58] $1,425,00 against the 1998 cap and $1,650,000 against the cap for the 1999 League Year.[59]

The proposed renegotiated contract would provide at least two benefits to Hobert.[60] First, Hobert would be guaranteed $525,000 for the 1997 League Year.[61] Second, the proposed Signing Bonus would provide an incentive for the Bills to keep Hobert on their roster for the entire term of the renegotiated contract.[62] If Hobert

53. *White IV*, 972 F. Supp. at 1237.
54. *Id.*
55. *Id.*
56. SSA art. X(G)(2)(a); CBA art. XXIV, § 7(b)(I).
57. SSA art. X(G)(1)(a); CBA art. XXIV, § 7(a)(I).
58. In accordance with the SSA/CBA proration rules, only $410,000 ($235,000 of Paragraph 5 compensation plus $175,000 of Signing Bonus) would be counted against the Bills' 1997 Salary Cap. The remaining $350,000 of the proposed $525,000 Signing Bonus would be prorated over the 1998 and 1999 League Years. *Id.*
59. *White IV*, 972 F. Supp. at 1237.
60. *Id.*
61. *Id.*
62. *Id.*

were released before the conclusion of the proposed contract, the Bills' Salary Cap recognition of the $525,000 Signing Bonus would be accelerated to the then-current League Year.[63] The renegotiation would also provide the Bills with an additional $350,000 of room under the salary cap in 1997.[64] However, the Bills would have $175,000 less to spend on other players during the 1998 and 1999 League Years under the terms of the renegotiated contract because $350,000 of Hobert's Signing Bonus would be prorated over those League Years.[65]

The Hobert dispute arose when the National Football League Management Council ("NFLMC") informed the Bills' that they would not accept the proposed renegotiation of Hobert's contract unless Hobert agreed to extend his Player Contract for an additional year. The NFLMC asserted that without such an extension, the contract violated the "circumvention" provisions of the SSA and CBA.[66]

### *II. Grbac Dispute*

The second dispute involves Elvis Grbac, a quarterback for the Kansas City Chiefs who signed a five year contract.[67] Grbac's contract provides for a $3,500,000 signing bonus which then would be prorated over the full term of the Player Contract.[68] The fifth year of the contract is voidable at Grbac's option upon the occurrence of any combination of several contingencies.[69]

---

63. SSA art. X(G)(2)(b); CBA art. XXIV, § 7(b)(ii). As previously noted, Hobert was released during the 1997 League Year. Consequently, the hypothetical proposed by the court was realized and the entire $525,000 signing bonus will be recognized against the 1997 League Year salary cap for the Buffalo Bills.

64. *White IV*, 972 F. Supp. at 1237.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. The contract contains the following language:

> "1. If the Player is on the Active/Inactive 53-man roster, the PUP, NFI, IR or any other employment or league list (except

The NFLMC informed the Chiefs and Grbac that the Signing Bonus could not be prorated over the "voidable" year of the contract unless Grbac agreed to specific changes.[70] The NFLMC asserted that because the incentives that would allow Grbac to void the fifth year of the contract were likely to be earned ("LTBE"),[71] the Chiefs could only prorate Grbac's Signing Bonus over the first four years of the contract at a level of $875,000. The NFLMC offered the Chiefs the option to change the incentives for the voidable year in Grbac's contract to make them not likely to be earned ("NLTBE")[72] in order to prorate the Signing Bonus over the full five League Years of the contract. If the NFLMC changes were accepted by Grbac and the Chiefs it would have a dual effect. First, the Chiefs would have $175,000 less per season to sign other players in the 1997-1999 League Years. Second, Grbac would lose his unilateral right to void the final year of the contract if he met the LTBE incentives.[73] Grbac was unwilling to accept the NFLMC

---

> Reserve/DNR, Reserve/left squad) for the last game of the 2000 NFL season.
> AND
> 2. Any of the following contingencies are met during 1997, 1998, 1999 or 2000 NFL regular seasons.
> A. Player participates in at least 20% of the team's offensive plays, exclusive of special team plays in any single season.
> B. Player passes for at least 800 yards in any single season.
> C. Player completes as least 9 or more touchdown passes in any single season.
> D. Player's QB rating is at least 73 in any single season.
> E. Club qualifies for post-season play in any single season.
> THEN
> Player has the express right to terminate (void) his contract for the year 2001 within 30 days subsequent to the last game of the 2000 regular season. Player must notify the club of his right to terminate the 2001 contract by fax, personal delivery, or certified mail to club's president or general manager."

*White IV*, 972 F. Supp. at 1233.

70. *Id.*

71. Any incentive that is within the player's sole control subject to various guidelines. CBA art. XXIV § 7c(iii) p. 100-123.

72. *White IV*, 972 F. Supp. at 1233. Any incentive that is not within the player's sole control and does not meet the criteria set out in the CBA guidelines as amended.

73. *Id.*

proposal and the conflict was turned over to the Special Master for a ruling.[74]

The NFLPA and Class Counsel argued that the Hobert renegotiation and the Grbac contract did not violate the "circumvention" provisions in the SSA and CBA.[75] The issues were fully briefed and argued before Special Master Friedenthal.[76] The Special Master issued his decision on May 30, 1997, concluding that the Hobert renegotiation and Grbac contract circumvented the intent of the parties to the SSA.[77] The NFLPA and Class Counsel filed a timely appeal in the United States Federal Court District of Minnesota, Fourth Division.

## LEGAL ANALYSIS

The district court addressed two preliminary issues raised by the NFL Management Council. The NFLMC argued that the district court did not have proper jurisdiction and that the standard of review should be a clearly erroneous standard. The court then proceeded to discuss in detail the Circumvention Rule in the context of the Hobert and Grbac contracts.

### *I. Jurisdiction*

The court noted its jurisdiction is based on the "well-established principle that a trial court retains jurisdiction to enforce consent decrees and settlement agreements."[78] The Stipulation and Settlement Agreement, the document under which the NFLMC and NFLPA brought this dispute, provides that "the Court shall retain jurisdiction over this Action to effectuate and enforce the terms of this Agreement and the Final Consent Judgment."[79] The court held

74. *Id.*
75. *Id.*
76. *Id.*
77. *White IV*, 972 F. Supp. at 1233.
78. Beckett v. Air Line Pilots Ass'n, 995 F.2d 280, 286 (D.C. Cir. 1993).
79. SSA art. XX.

that "unless and until the Final Consent Judgment is modified, the court has the power to enforce the terms of the SSA."[80]

*II. Standard of Review*

The NFLMC also argued that the terms of the SSA, in particular the Circumvention provision, are ambiguous.[81] Consequently, the NFLMC contended the proper standard of review is the clearly erroneous standard. This directly contrasted Class Counsel and the NFLPA argument that the court should review the Special Master's decision de novo.[82] The district court looked to the language of the SSA and the CBA to determine what standard should be invoked.[83] The SSA and CBA provisions regarding review provide that the court shall review the Special Master's recommendations under the clearly erroneous standard.[84] The district court determined that, from the plain reading of the SSA and CBA, the Special Master's

---

80. *White*, 972 F. Supp. at 1234.

81. *Id.*

82. *Id.*

83. *Id.*

84. The powers of the Court and the Special Master and the rights of the parties in any enforcement proceedings shall be as set forth in Rules 53(a), (c), (d) and (e) of the Federal Rules of Civil Procedure provided, however, that:

> * * *
>
> (b) The Court shall accept the Special Master's findings of fact unless clearly erroneous and the Special Master's recommendations of relief unless based upon clearly erroneous findings of fact, incorrect application of law, or abuse of discretion; except that, as to any finding concerning Article XXVII (Anti-Collusion), any imposition of a fine of $1 million or more, or any finding that would permit termination of this Agreement, review shall be de novo;
>
> (c) Subject to subsections (a) and (b) above, the Court shall determine all points of law and finally make the award of all relief including, without limitation, contract damages, contempt and specific performance.

SSA art. XXII(2); CBA art. XXVI, § 2.

factual findings were to be reviewed under the clearly erroneous standard.[85] Any conclusions of law would be reviewed de novo.[86]

The court noted the SSA specifically provides that "[t]he parties shall not, in any proceeding ... use or refer to any parole evidence with regard to the interpretation or meaning of... this Agreement."[87] Therefore, the Special Master's decision was restricted to interpreting the language used in the SSA as a matter of law.[88] As a result, the court reviewed the Special Master's decision de novo.[89]

### *III. The Circumvention Rule*

The district court addressed three issues in its decision. The first dealt with over-reaching and whether conduct that is permitted by the SSA can violate the Circumvention Rule.[90] Then the court evaluated the meaning of "circumvention" as it relates to the specific conflicts involved in the Hobert and Grbac contracts.[91] The conflict surrounding the Hobert renegotiation presented the issue of whether a Player Contract that is restructured to decrease Paragraph 5 base compensation and to increase a Signing Bonus without being extended constitutes "circumvention."[92] The Grbac conflict was slightly more complex. It presented the issue of whether it constitutes "circumvention" for a Signing Bonus to be prorated over a year of a Player Contact that is voidable at the player's option if incentives that are based upon events which are not within the player's "sole control" even though LTBE, are achieved.[93] Simply put, the Hobert and Grbac disputes focused on

85. *White*, 972 F. Supp. at 1234.
86. *Id.*
87. *Id.* at 1235.
88. *Id.*
89. *Id.*
90. *White IV*, 972 F. Supp. at 1235.
91. *Id.*
92. *Id.*
93. *Id.*

the narrow issue concerning the payment and proration of signing bonuses.[94]

The district court looked to the language of the Circumvention Rule to address the first issue. The Circumvention provision of the SSA and CBA provides that a player contract may not be entered into that is designed to circumvent or defeat the terms of those agreements.[95]

The SSA and CBA are governed by New York law,[96] which requires "the terms of a contract must be construed so as to give effect to the intent of the parties as indicated by the language of the contract."[97] When interpreting a written contract, the principle objective is to determine "the intention of the parties as derived from the language employed."[98] It is the court's responsibility to give the words of a contract their ordinary meaning unless the context requires otherwise.[99] It is not in the court's discretion to rewrite, add or subtract language that was not in the contract as written.[100] The court used these principles as the framework to interpret the relevant portions of the SSA.[101]

*A. Hobert Dispute*

---

94. *Id.*

95. Neither the parties hereto, nor any Club or player shall enter into any agreement, Player Contract, Offer Sheet or other transaction which includes any terms that are designed to serve the purpose of defeating or circumventing the intention of the parties as reflected by (a) the provisions of this Agreement with respect to the Salary Cap, Entering Player Pool, and Minimum Team Salary, and (b) any other term and provision of this Agreement. However, any conduct permitted by this Agreement shall not be considered a violation of this provision. SSA art. XV(2); CBA art. XXV, § 2.

96. *White IV*, 972 F. Supp. at 1235.

97. Slatt v. Slatt, 64 N.Y.2d 966, 967 (1985).

98. Hartford Accident & Indemnity Co. v. Wesolowski, 33 N.Y.2d 169, 171-72 (1973) (quoting S. Williston, *A Treatise on the Law of Contracts* § 600, at 280 (3d ed.1961)).

99. *See* Laba v. Carey, 29 N.Y.2d 302, 308, *mot. for rearg. den.*, 30 N.Y.2d 694 (1971).

100. *Slatt*, 64 N.Y.2d at 967; *White III*, 899 F.Supp. at 414-415 (D. Minn. 1995).

101. *White IV*, 972 F. Supp. at 1236.

The CBA and SSA set forth rules intended to govern Player Contract renegotiations and extensions. The court looked specifically to these rules to determine if the Hobert renegotiation was within the parameters allowed by the CBA and SSA rules.[102]

The CBA defines "renegotiate" as any change in the Salary or the terms under which such Salary is earned or paid.[103] "Salary" is defined as any compensation of money, property, investments, loans, or anything else of value that a Club pays to, or is obligated to pay to, a player ... during a League Year, as calculated in accordance with the rules set forth in Article XXIV (Guaranteed League-wide Salary, Salary Cap & Minimum Team Salary)."[104] According to the definitions in the CBA and SSA, Paragraph 5 Salary is "included in Team Salary in the year earned."[105] This is contrasted with the CBA and SSA definition for a Signing Bonus where, the total amount of any Signing Bonus shall be prorated over the term of the Player Contract in determining Team and

---

102. SSA art. X(I) provides:

> I. Renegotiations and Extensions
> Provided that all Salary Cap requirements are met, Player Contracts for current and future years may be renegotiated and/or extended as follows:
>
> 1. The contract of a Veteran Player may not be renegotiated to increase the Salary to be paid to the player during the original terms of the contract for a period of twelve months after the player's most recent contract negotiation. The first renegotiation of a Veteran Player Contract, however, may take place at any time.
>
> 2. No Salary and player may agree to renegotiate any term of a previously signed Player Contract for a prior League Year.
>
> 3. No contract renegotiations may be done for a current season after the last regular season game of that season.
>
> 4. A Player Contract signed by a Rookie may not be renegotiated except as provided in Article V (Entering Player Pool), paragraph 2.
>
> 5. As provided in Article IX (Final Eight Plan), paragraphs 3 and 4.

SSA art. X(I); CBA art. XXIV, § 9.

103. SSA art. I(al); CBA art. I, § 2(ab).

104. SSA art. I(v); CBA art. I, § 1(k).

105. SSA art. X(G)(1); CBA art. XXIV, § 7(a)(I).

Player Salary.[106] The relevant definitions for purposes of determining Team Salary and salary cap calculation are specifically outlined in the SSA and CBA.[107]

The court looked to these definitions in making its determination as to whether the Hobert renegotiation violated the Circumvention Rule. It was determined that, "the plain and unambiguous language of the relevant portions of the SSA permit a Player Contract to be restructured to decrease Paragraph 5 compensation and to increase a Signing Bonus for the then-current League Year without being extended."[108] The court noted the express language set forth in the SSA and CBA which states that "Player Contracts for current and future years may be renegotiated and/or extended."[109] The disjunctive "or" makes it clear a player may either renegotiate and extend his contract or renegotiate his contract without extending it.[110] The court aptly noted the CBA and SSA provide that a Signing Bonus, which is included as part of a player's Paragraph 5 salary, may be paid for a contract modification.[111] The court concluded that renegotiating, without extending, a Player Contract to include a Signing Bonus for the then-current League Year is permitted under the SSA.[112] Therefore, the Hobert renegotiation does not constitute circumvention.[113]

Consequently, the court noted that the Special Master incorrectly concluded the renegotiated Hobert contract violated the Circumvention Rule and erroneously interpreted the circumvention

---

106. SSA art. X(G)(2)(a); CBA art. XXIV, § 7(b)(I).

107. (I) any amount specifically described in a Player Contract as a signing bonus;

* * *

(iii) any consideration, when paid, or guaranteed, for option years, contact extensions, contract modifications, or individually negotiated rights of first refusal[.]

SSA art. X(G)(2)(d); CBA art. XXIV, § 7(b)(iv).

108. *White IV*, 972 F. Supp. at 1236.

109. SSA art. X(I); CBA art. XXIV, § 9.

110. *White IV*, 972 F. Supp. at 1237.

111. *See* SSA art. I(v); CBA art. I, § 1(k); See SSA Art. X(G)(2)(d); CBA Art. XXIV, § 7(b)(iv).

112. *White IV*, 972 F. Supp. at 1237.

113. *Id.*

provision to be a Salary Cap requirement.[114] The court reasoned that, despite NFLMC arguments to the contrary, the plain language of the SSA and CBA define Signing Bonus as "[a]ny amount specifically described in a Player Contract as a Signing Bonus" or "[a]ny consideration, when paid,..., for ..., contract modifications."[115] The Signing Bonus set forth in the terms of the Hobert renegotiation met the definition of a Signing Bonus under the SSA and CBA.[116] The court determined the $525,000 can, therefore, be fully prorated over the remainder of the contract.[117] Despite NFLMC claims that the Hobert contract is a "sham renegotiation" to free up "bogus Salary Cap room," the court reasoned the parties to the SSA and CBA may "justifiably rely on its terms to maximize their respective economic and competitive interests."[118] The court further held that the Hobert contract was explicitly authorized under the terms of the SSA and, therefore, did not violate the Circumvention Rule.[119]

*B. Grbac Dispute*

The narrow issue for review by the court in the Grbac dispute was "whether a Signing Bonus may be prorated over a contract year which the player has the right to void based upon events not within his sole control."[120] As previously noted, the SSA and CBA provide that a Signing Bonus is generally prorated over the term of the Player Contract for determining salary cap value for a given League Year.[121] The single exception to this rule under the SSA and CBA is provided where the right to terminate is within the sole control of the player.[122]

---

114. *Id.*
115. *Id.*
116. *Id.*
117. *White IV*, 972 F. Supp. at 1237.
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. SSA art. X(G)(2) provides:
(ii) Any contract year in which the player has the right to terminate based upon events within his sole control shall not

The court reasoned from this provision that a "Signing Bonus may be prorated over any contract year which the player does not have the right to terminate based upon events within his 'sole control.'"[123] The Special Master found that, based on the undisputed facts, Grbac did not have "sole control" over any of the player or team performance incentives that were required to be met before Grbac could exercise his option to void the final year of the contract.[124]

The court held that this determination alone should have ended the Special Master's inquiry.[125] Because the incentives required to invoke Grbac's right to void the final year of his Player Contract were not within his "sole control," the contract did not violate the Circumvention rule.[126] The court determined the Special Master ignored the plain language of the SSA and CBA, which permits a Signing Bonus to be prorated over a voidable contract year subject only to the "sole control" test.[127] The Special Master confused the issue of LTBE incentives as being a corollary of the "sole control" test.[128] The district court properly pointed to the plain language of the SSA and CBA, which do not include LTBE as a criteria for determining the validity of voidable years for the purposes of proration in a Player Contract.[129] The court noted that the SSA and CBA state "[a] ny and all incentive amounts, included but not limited to performance bonuses, shall be included in Team Salary if they are 'likely to be earned' during such League Year," and any incentive "within the sole control of the player" is deemed "likely to be earned."[130] However, the phrase "likely to be earned" is

---

> be counted as a contract year for purposes of proration. In the event the NFL and the NFLPA cannot agree upon whether an option is within the player's sole control, such issue shall be resolved by the Impartial Arbitrator.

SSA art. X(G)(2)(a)(ii); CBA art. XXIV, § 7(b)(I).

123. *White IV*, 972 F. Supp. at 1238.
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.*
128. *White IV*, 972 F. Supp. at 1238.
129. *Id. See* SSA art. X(G)(2)(a)(ii); CBA art. XXIV, § 7(b)(I).
130. SSA art. X(G)(3)(a); CBA art. XXIV, § 7(c)(I).

conspicuously absent from the relevant section of the SSA pertaining to the proration of Signing Bonuses.

The court reasoned that employing different language in different sections of the SSA, clearly indicates that the NFLPA and NFLMC recognized and understood the difference between "sole control" and "likely to be earned."[131] Had the parties intended "likely to be earned" to be the test for the proration of Signing Bonuses over voidable contract years, they could have so agreed.[132] Consequently, the district court reversed the Special Master's ruling and held the Grbac contract provision was valid under the terms of the SSA and CBA.

## IMPACT

The court relied on its considerable history of decisions and experience regarding the current NFL labor agreement and determined that the Hobert contract was authorized under the terms of the SSA and CBA between the NFLPA and NFL. The contract between Grbac and the Kansas City Chiefs was also found to be valid because there was nothing in the language of the SSA nor the NFL Collective Bargaining Agreement that would prohibit a likely to be earned voidable clause in a contract. In so holding, the district court reversed the ruling of the Special Master.

This ruling has profound importance and will have a significant impact on upcoming contract negotiations. This is particularly important in light of the possible effect on the "safety valve"[133] built into the CBA extension, the ongoing television negotiations and the inevitable league expansion in 1999. Some have argued there is a possibility that the safety valve will be exercised by one

131. *White IV*, 972 F. Supp. at 1239.

132. *Id.*

133. The Safety Valve in the current extension allows for two scenarios by which either side, the NFL or NFLPA, can shorten the extension: 1) by one year by giving notice in December of 1997, or 2) by two years by giving notice in December of 1998. If notice is given then the cap will be reduced back to 62% in the remaining years. Attachment to Letter from Gene Upshaw, President of the National Football League Players Association, "Open Letter to NFL Players" (December 20, 1996).

or both sides. Small market NFL franchises say they cannot keep up with the large market clubs.[134] They note that low-revenue teams pay players about seventy percent (70%) of their total revenue while high revenue clubs may only pay players thirty percent (30%) of the franchises revenue.[135] This is dispite the fact that NFL teams share more revenue than any other major professional sport.[136] Although those figures may well be accurate, the competitive balance in the NFL during the 1996-97 season swung in favor of the small market franchise when the Green Bay Packers and the New England Patriots met in Super Bowl XXXI.

While there are those who would argue the current CBA is not good for football clubs there are also those who maintain it is not good for the players. They contend the current agreement has created a class system within teams.[137] The argument essentially asserts that teams are not willing to keep high priced or "middle-class" veterans as back-ups on teams because of salary cap constraints.[138] This, in turn, creates a lower-class of younger players filling in as back-ups making the base minimum.[139] This argument fails to recognize that players may have anywhere from as few as three to as many as six years to earn a starting or contributing position on an NFL roster.[140] If they have not

134. Stefan Fatsis, *Is a Battle Looming Over Salary Caps*, WALL ST. J., July 25, 1997, at B9.

135. *Id.*

136. *Id.*

137. *See, e.g.*, Jerry Vanisi, *NFL Labor Agreement is a Slave to Television*, PRO FOOTBALL WEEKLY, November 2, 1997, at 47. Vanisi is a former General Manager with the Chicago Bears. Currently he practices sports law in Chicago as a player agent.

138. *Id.*

139. *Id.* The Paragraph 5 base minimums for the 1997-98 league year is $131,000 for a rookie, $164,000 for a second year player, and $196,000 for a third year player. This would not include prorated signing bonuses, LTBE's and NLTB's. There are very few players in their first three years who make active NFL rosters and are being paid at solely the base minimum.

140. *Id.* Players are granted two seasons of practice squad eligibility where they can be paid significantly below the rookie base minimum while they develop their skills. After a player earns three accrued seasons he is eligible for restricted free agency. There are strong deterrents to signing a restricted free agent such as draft compensation to be given to the players original team by the signing team and the fact the player's original team holds the right to match any

managed to contribute in a significant manner by that point in their career, then teams move on to the next draft class giving younger players a chance to develop and earn an opportunity to play in the NFL.

The facts show that the current system continues to cause seventy percent (70%) of NFL revenue to be paid to the players in the form of compensation and benefits.[141] Contrary to media perceptions, there are more older players on current NFL rosters than in any year preceding the current bargaining agreement's approval. [142] Among the seven hundred forty nine (749) players with five or more accrued seasons[143] in the league today, only seventy (70) make the $275,000 minimum.[144] This should be compared with the situation before the CBA came into effect. Among players with five or more seasons of experience, six hundred fifty one (651) players made less than $500,00 in 1992 compared with only one hundred eighty (180) such players in 1997.[145]

The current labor agreement extension could go through 2002. As noted, despite criticism, the current agreement has been very productive for both the players and the teams. The CBA extension is also important for teams in the negotiation process when attempting to lure high priced free agents. The final year of the CBA will be an uncapped season but will require a player to have six accrued seasons to be eligible for free agency.[146] The extension, along with this current ruling, will undoubtedly lead to numerous renegotiations because many contracts had originally factored in 1999 as an uncapped year under the CBA prior to the

---

other team's offer. This combination could lead to a player spending as many as six years with a particular team before he can ever exercise his right to unrestricted free agency.

141. *Staff Crosses Country to Visit Teams*, THE AUDIBLE, October 1997, at 1. (The Audible is the official newsletter of the NFLPA).

142. *Id.*

143. For the purposes of the CBA, an accrued season is generally given to a player for each season he was on, or should have been on, full pay status for a total of six or more regular season games subject to several conditions. CBA art. XVIII, § 1.

144. *Id.*

145. *Id.*

146. CBA art. LVI, § 2.

extension. The ability to renegotiate a veteran contract without adding additional years creates the benefit of salary cap room for the team and allows the player to test the free agency sooner creating a win-win situation.

Continued labor peace is critical with the NFL's new television contracts being negotiated. The NFL's television contract is, by far, the richest in sports.[147] The current television deal expires after the 1997-98 season, bringing in $4.4 billion over the past four years from telecasters ABC, Fox, NBC, ESPN, and TNT.[148] Oakland Raider owner Al Davis has predicted the new television package will double in value.[149] Industry analysts predict a forty to fifty percent (40%-50%) increase is more likely.[150] Barry Frank, senior vice-president at International Management Group, commented, "In my 40 years in the business, it's the best negotiating stance I can ever remember from a seller."[151] Whatever the final dollars are, it will drive up the salary cap significantly and give players, agents and teams significantly more dollars that can be manipulated under the cap with the new rules set down by this ruling.

It is also very likely the NFL will again expand in 1999, adding at least one[152] and possibly two more teams.[153] A promise has been made by the NFL to place a team in Cleveland in 1999. This,

147. Gary Levin, *Eye on a Loose Ball at NFL Contract Time*, VARIETY, September 1, 1996 at 29.

148. Jeff Jensen, *Tagliabue Sees Big Score Ahead for NFL TV Rights*, ADVERTISING AGE, January 1, 1997 at 3.

149. *Id.*

150. *The Real Super Bowl*, BUS. WEEK, February 3, 1997 at 118 (projecting a 40% increase in the new television contract); Rudy Martzke, *NBC Can Expect Competition, Steep Increase for NBA Deal*, USA TODAY, October 1, 1997, at C2 (quoting leaders of consulting firms as expecting the new television package increase to be in excess of 50%).

151. *See supra* note 150.

152. Peter King, *Inside The NFL: State of the Game*, SPORTS ILLUSTRATED, November 3, 1997, at 77 (quoting NFL Commissioner Paul Tagliabue that it is likely and expansion team will be put in place in Cleveland in 1999 but the Los Angeles market may be left open until a later date with other candidates such as Houston, Mexico City, Vancouver, Toronto and perhaps even a city in Germany).

153. Timothy W. Smith, *Tagliabue Anticipates a Faster NFL Expansion*, N.Y. TIMES, January 25, 1997, at 33.

coupled with the NFL's reluctance to leave Los Angeles, the nation's second largest television market, without a team is driving the NFL to consider expansion. NFL Commissioner Paul Tagliabue said that the rapid success of the Carolina and Jacksonville franchises, along with the promise to Cleveland and the importance of the Los Angeles, will in all likelihood lead to expanding the NFL to thirty two (32) teams in 1999.[154] The Carolina and Jacksonville franchises each paid a franchise fee of $140 million for the opportunity to field a team.[155] The price tag in 1999 will undoubtedly be higher.

This holding could have enormous impact on salary cap projections and the importance of including voidable years on long-term contracts to protect marquis players from pricing themselves out of the market. The importance of renegotiation to create salary cap room will take on new significance as the current agreement continues to be extended and the new television deal comes into effect. Of course, much of the impact of this holding will be fleshed out in upcoming contract negotiations.

*Joseph D. Wright*

154. *Id.*
155. *Id.*