

THE PENNSYLVANIA STATE UNIVERSITY  
SCHREYER HONORS COLLEGE

DEPARTMENT OF LABOR AND EMPLOYMENT RELATIONS

PLAYERS IN POWER: A HISTORICAL REVIEW OF CONTRACTUALLY BARGAINED  
AGREEMENTS IN THE NBA INTO THE MODERN AGE AND THEIR LIMITATIONS

ERIC PHYTHON  
SPRING 2020

A thesis  
submitted in partial fulfillment  
of the requirements  
for baccalaureate degrees in Political Science and Labor and Employment Relations  
with honors in Labor and Employment Relations

Reviewed and approved\* by the following:

Robert Boland  
J.D, Adjunct Faculty Labor & Employment Relations, Penn State Law  
Thesis Advisor

Jean Marie Philips  
Professor of Human Resources Management, Labor and Employment Relations  
Honors Advisor

\* Electronic approvals are on file.

## **ABSTRACT:**

This paper analyzes the current bargaining situation between the National Basketball Association (NBA), and the National Basketball Players Association (NBPA) and the changes that have occurred in their bargaining relationship over previous contractually bargained agreements, with specific attention paid to historically significant court cases that molded the league to its current form. The ultimate decision maker for the NBA is the Commissioner, Adam Silver, whose job is to represent the interests of the league and more specifically the team owners, while the ultimate decision maker for the players at the bargaining table is the National Basketball Players Association (NBPA), currently led by Michele Roberts. In the current system of negotiations, the NBA and the NBPA meet to negotiate and make changes to their collective bargaining agreement as it comes close to expiration. This paper will examine the 1976 ABA-NBA merger, and the resulting impact that the joining of these two leagues has had. This paper will utilize language from the current collective bargaining agreement, as well as language from previous iterations agreed upon by both the NBA and NBPA, as well information from other professional sports leagues agreements and accounts from relevant parties involved. This paper focuses on the history of labor in the National Basketball Association, and how the NBA and NBPA found themselves in their current situation. This paper utilizes first person interviews from individuals directly involved at the bargaining table from the 1970's through to the 1990's. This paper will also take an in depth look into *Robertson v. National Basketball Association*, as well as *Haywood v. National Basketball Association* and examine how these two monumental cases that made their way to the Supreme Court affected the players bargaining position, and

lead to further power dynamical changes between the NBA's positions of power and that respectively of the NBPA.

**TABLE OF CONTENTS**

<b>ACKNOWLEDGEMENTS</b>	v
<b>CHAPTER ONE</b>	1
<b>INTRODUCTION</b>	1
<b>The First Shot is Fired</b>	4
<b>And Then There Were Two</b>	6
<b>CHAPTER TWO</b>	9
<b>The Fight to Move</b>	9
<b>Reservations for All</b>	11
<b>CHAPTER THREE</b>	16
<b>ROBERTSON V. NBA</b>	16
<b>If the Suit Fits, Wear it</b>	18
<b>The Nitty Gritty</b>	19
<b>The End is Near</b>	21
<b>CHAPTER FOUR</b>	23
<b>HAYWOOD V. NBA</b>	23
<b>Taking His Talents to the League</b>	24
<b>Nitty Gritty Round Two</b>	25
<b>The Aftermath</b>	28
<b>Chapter 5</b>	29
<b>BIBLIOGRAPHY</b>	37
<b>ACADEMIC VITA</b>	42

## ACKNOWLEDGEMENTS

I would first like to thank the Schreyer Honors College for always pushing me and encouraging me to create something new with this thesis. It is truly an honor to be able to leave something of this magnitude behind to future students and interested parties. I would also like to give a special acknowledgement to all of my previous mentors and advisors that have helped guide me on my journey at Penn State.

I would also like to thank all of the staff within the School of Labor and Employment Relations, for without them, none of this would have been possible. I would like to extend my sincere gratitude to Robert Boland, Charles Grantham and all the people who made this paper and podcast such an immense success. Without all of their contributions, this would not have been possible and I am sincerely grateful to all of them. I would like to thank Dr. Paul Whitehead and Dr. Jean Phillips for their help and guidance on this process.

I would like to thank the individuals who were interviewed in conjunction with this paper, including three individuals who were directly involved at the bargaining table from the 1970's through 1990's.

Lastly, I would like to thank my parents for always encouraging me throughout this process and helping to make my journey at Penn State a reality, and for that I am forever grateful.

*All information and relevant materials associated with this thesis and subsequent accompanying podcast and recorded materials are exclusively owned by the creators involved.*

## **CHAPTER ONE**

### **INTRODUCTION**

The National Basketball Association as we currently know it was founded in 1946 as the BAA and became the NBA after a successful merger with a competing league, the NBL. The league has grown to encompass 30 teams spread across the country. Basketball has become one of the world's fastest growing sports internationally, and the players within the NBA have risen to elite international stardom with massive following on various platforms, allowing them to interact with fans all over the world at a moment's notice. Fans are able to quickly capture and analyze plays and replays from the entire game in real time, spending countless hours interacting and debating on social media sites about their favorite teams, players, highlights and more. Throughout the league's 74 years of existence, a number of non-court related issues have arisen that have helped shape and change the league and the sport of basketball as a whole. These problems have arisen from a number of issues including representation, mobility rights within the league, and access to "Free Agency". The organization that is subsequently in charge of representing the players of the NBA in all matters both on the court and from any issues off the court is the players union, also known as the National Basketball Players Association (NBPA). Established in 1954, some 8 years after the creation of the NBA itself, the NBPA has a self-stated mission to "Ensure that the rights of NBA players are protected and that every conceivable measure is taken to assist players in maximizing their opportunities and achieving their goals,

both on and off the court” (About NBPA, n.d.). The NBPA is a collective of all players currently employed and on a team in the NBA, currently representing four hundred and fifty members from forty-one different countries (About NBPA, n.d.). The unions purpose is to bargain on behalf of the players over a number of issues, but chief among them are the working hours, conditions of employment, and wages received by the players. The Players Association and the league come together to negotiate these issues and conditions during times of labor negotiations. This relationship and ordeal produce a collectively bargained agreement that outlines the rules and procedures that governs nearly every part of the game of basketball, and what is expected of all parties involved, including players, owners, referees, and league officials. When the agreement has reached its collectively bargained last legs, the two parties come together and sit down to renegotiate a new one, utilizing previous issues as further grounds for added negotiations. Until expiration of the collective bargaining agreement and possible decertification by players, the NBPA is the exclusive sole negotiator of the players, representing them at the bargaining table across from the league, seeking the best possible agreement for its players in all avenues of bargaining.

The NBPA is led by two different groups of people. The NBPA has a nine-member executive committee led by players that are elected to the committee by a vote of their peers from the Board of Player Representatives (Leadership NBPA, n.d.). The NBPA President and First Vice-President serve four-year terms on the board, while the Secretary- Treasurer and remaining seven members serve three-year terms on the board. The NBPA Executive Committee works alongside the Executive Director, a position appointed jointly by the Board of Player Representatives and Executive Committee. The job of the Executive Director works jointly with the Executive Committee to direct the affairs and create and direct policy decisions for players. The Executive

Director and Executive Committee serve as the face of the NBPA in times of negotiation and bargaining with the owners.

On the opposing side of the bargaining table lies the league and its army of lawyers representing the owners, led solely by the Commissioner of the National Basketball Association. This position is currently held by Adam Silver, being the ultimate decision maker for the league on all topics being negotiated. This position is voted on by the owners, without input from any players involved. The process to becoming commissioner is the result of a vote by the NBA Board of Governors in which the candidate must receive an affirmative vote of at least three-fourths of all Governors (Constitution and Bylaws NBA, 2012), and after receiving the necessary votes, Adam Silver was unanimously elected to the position February 1, 2014. Similarly, to the NBPA, Silver and the NBA attempt to achieve the best possible contractually bargained agreement for the league and team owners as possible. As the NBA and the game of basketball has evolved, the position of commissioner has evolved into being a CEO type, representing the league and the owners in all interests possible. Thus, the commissioner is in charge of protecting the leagues on-court product, as well as maintaining the image of the league off the court in the eyes of the fans and media.

Bargaining between the NBA and the NBPA has at times become a contentious relationship, something that is not conducive to productive agreements and have previously led to a number of work stoppages emanating from both sides of the bargaining table. These stoppages have resulted in at times entire parts of seasons being cancelled, and the schedule of games being played to be altered drastically. In 2011 the league and players association sat down to renegotiate their current collectively bargained agreement, and after coming to an impasse, the league and owners locked out the players. In this lockout, the two sides were at such an impasse



regarding the terms of the deal that the lockout extended for eight months and into the season, resulting in a delay to the start of the season and a cancellation of a number of games, hurting both the players and the owners. While the owners and players have a contentious relationship in regards to their diametrically opposing bargaining positions, there is always a winner at the end of negotiations. In a war of dollars and cents, in a disagreement between billionaires and millionaires, the billionaires are generally able to secure deals and concessions in times of work stoppages, as they have much larger pitfalls of revenue to hold themselves over, while NBA players and professional athletes in general are commonly known to not practice the utmost fiscal responsibility. When players financial stability begins to falter during times of work stoppages, there is often a push to return to the negotiating table, and oftentimes, the terms of a potential deal have changed, leaving the players and NBPA grasping for straws from the owners and the league.

All professional sports leagues have a union counterpart. Both the league and union must be loyal and working for their constituents. As such, the league will fight for the best deal for their constituents, the thirty team owners, while the union will fight on behalf of all four hundred and fifty members it represents.

### **The First Shot is Fired**

Collective bargaining in professional basketball began in 1954 when the players led by Boston Celtic's Hall of Fame Point Guard Bob Cousy began to talk of creating a union with other established players from each of the other seven teams in the league at the time (ABPR, n.d.). Cousy and a number of players then presented a list of demands to the league at the 1955 January All-Star game, seeking amongst other demands, the payment of back salaries to then defunct members of the Baltimore Bullets, the covering of moving expenses for traded players,

and “The abolishment of the \$15 whispering fine which referees could impose on a player during a game” (ABPR, n.d.). Cousy and the players took these demands to NBA President, Maurice Podoloff, who agreed to the payment of the salaries for the members of the Bullets, and agreed to meet soon regarding the other demands.

Podoloff, backed by the team owners were able to continue to put off the players and their demands for another two years to 1957, until at which point Cousy and other players threatened to, and held meetings with the AFL-CIO officials regarding providing additional assistance towards further union formation and recognition. It was at this point that Podoloff and the NBA owners officially agreed to bargain with the fledging union during the following off season in “Good Faith” and in April 1957, the NBPA was officially recognized by the NBA and the owners as the official representative of NBA players. This was the first in a series of wins for the players and the fledging NBPA.

Beginning in 1961 and continuing all the way through to 1964, the players then NBPA President and Boston Celtic Tom Heinsohn fought the NBA and owners over a number of issues, chief amongst them the lack of pension plan for players. During these early years, the players and the union over time become more militant and confrontational regarding their attempts to win labor concessions. It was at this point that minutes prior to the tip-off of the 1964 All-Star game, a nationally televised event that was critical to the league’s exposure nationwide, did an opportunity for players to take a major union victory present itself. The players in this game, sensing the opportunity to weaken the league’s position, declared that they would refuse to play unless they received the pension they had been fighting for and went on strike for a brief, but monumental twenty-two minutes, and just minutes before tip-off was set to occur, NBA President Walter Kennedy relented, giving union leadership his word that they would receive

their sought-after pension. That following May in 1964, Kennedy and the owners contributed to the first pension for NBA players, another immense victory for the fledging union. Heinsohn continued as president of the NBPA until he was succeeded in 1967 by superstar and labor leader, Oscar Robertson. Robertson in his role as union leader continued his predecessor's bold strategy of weaponizing the players ability to sit out of important televised games, and again threatened owners and the league with a player strike prior to the 1967 All-Star Game. This time, Robertson and the union were seeking to be paid for exhibition games, and the reduction of these games from fifteen to ten (ABPR, n.d.). Tensions between owners and players continued to skyrocket until in March of 1967, league owners threatened to cancel the playoffs unless the players gave assurances that they would honor their already signed contracts. This extreme ratcheting of tensions resulted in the union's threat to file for certification with the National Labor Relations Board, a dangerous step towards a full-fledged labor war between the factions. The two sides experienced a cooling of tensions with the announcement of an increased pension plan for players, along with new medical and health insurance starting in the summer of 1967.

### **And Then There Were Two**

The National Basketball Association was not always the predominant league that fans were able to consume professional basketball from. Sensing an opportunity to enter the market, a group of investors founded the American Basketball Association, and for the first time since the NBL-NBA merger, a very real competitor for fans attention, attendance revenue, and television deals. This new startup league offered a new, more upbeat pace of play, with its own rules that made it a more watchable product for fans that was often compared to "Playground basketball: showy and pure, with lots of running" (History n.d.).

The ABA became a sort of haven to players, offering entirely new competition, changes to rules that worked in their favor, and a new opportunity to ingratiate themselves with fans in different markets. Initially, fans viewed some of the rule changes, like the introduction of the three-point shot, and creation of the Slam Dunk Contest, as “Bush-league stunts, but later became some of the most exciting aspects of professional basketball” (Greathouse 2015). The three-point shot specifically was one of the most exciting elements to be added to the game, allowing the pace of a game of basketball to increase dramatically, while providing new avenues for gifted athletes to impress the casual fan. This shot, which was added and adopted from the then defunct American Basketball League became an instant fan favorite and was called “The home run, because the three-pointer was exactly that. It brought fans out of their seats” (Washington Post, n.d.). The three-point shot also forced players to develop their own game as they were now expected to be able to guard opposing players from an area on the court that was seemingly always left wide open.

The introduction of the slam dunk contest during the 1976 ABA All-Star game was the birth child of the league’s greatest player, Julius ‘Dr. J’ Erving. This contest allowed players to show off their skills for fans, while also creating a new and increasing way of drawing attention to the financially floundering league. According to Denver Nuggets General Manager at the time, Carl Scheer, “We were in serious trouble. We knew that it was our last year and we had to make a big impression” (qtd. in Greathouse, 2015). The 1976 ABA Dunk Contest left fans with one of the most unforgettable basketball memories and images. Julius Erving, after running the length of the court, planted his foot on the free-throw line, and soared fifteen feet through the air, dunking the ball, winning the contest and forever supplanting an image into fans minds everywhere of what the ABA offered and subsequently what the NBA was lacking. While

financially hurting, the ABA became enough of a rival and nuisance to the NBA that eventually something would have to be done to either stop the league or merge them moving forward. As we continue further in this paper, we will further discuss the merger that occurred between the ABA and the NBA, and the resulting conundrum that it caused players, owners, and the courts.

## CHAPTER TWO

### The Fight to Move

In every sport there is a continuous struggle constantly being fought between owners and players. Owners, the people who pay the salaries of their players are constantly fighting to pay their players less money. Players, just like average workers are constantly hoping for and fighting with their owners or superiors over the desire to be paid a higher salary. Player mobility and movement amongst teams, or the threat of it continues to be one of the best tools a player can use. Having a large number of teams bidding for the services of a specific player in nearly every case results in the player receiving a salary increase. By comparison, a lack of interested parties or teams requires players to have their value set at by the lowest bidder.

As we have seen, collective bargaining between management and labor generally involves contentious behavior on both sides. Over the years, a number of federal laws governing labor practices and the rights of labor and management have been enacted by Congress for the protection of both sides of the bargaining table.

Congress passed the first major bill regarding labor and management in 1890, with the Sherman Antitrust Act (15 U.S.C §1-38). This bill outlaws any act which prohibits the restraint of interstate commerce and or competition in the workplace (15 U.S.C §1-38). Using this act, federal regulators broke up led by President Theodore Roosevelt broke up a number of illegal trusts and monopolies in the private sector. This act was one of the first to protect consumers and strive to preserve a competitive market that would allow capitalism and competition to thrive. Congress next major foray into labor involved passing the Clayton Act of 1914 (15 U.S.C. §§ 12-27, as amended). This bill was passed with the intention of closing some loopholes that were being exploited by some companies under the Sherman Antitrust Act. The Clayton Act forbid

some companies from engaging in activity that continued to result in concentrations negatively impacting competition in the workplace and marketplace. The Clayton Act also included provisions that indicated that anything that a union and a company agrees to in a collectively bargained agreement at arm's length bargaining would be legal and free from antitrust violation. The Clayton Act, combined with the Norris-LaGuardia Act of 1932 created a "Statutory exemption and shield a broad range of union activities from antitrust scrutiny" (Corcoran 1994). Congress historically wrote these labor acts very broadly, and as such there is ample room for interpretation by the courts, as well as the opportunity for loopholes to be exploited by both sides of the bargaining table. As Corcoran writes:

Although Congress failed in these Acts to specify exactly how they were to mesh with the federal antitrust laws, it was clear that the conduct promoted by the labor acts would often be in conflict with the antitrust laws, since collective bargaining agreements often contain provisions, such as restrictions on hours worked, that restrain trade... It has been it has been necessary for courts to accommodate the two sets of laws and their conflicting policies. One way in which the courts have done this has been to create the "non-statutory labor exemption" (Corcoran 1994).

The non-statutory labor exemption is where most professional sports currently try to position themselves. This exemption allows for the activities that the leagues and unions to bargain and create for themselves a space outside the realm of antitrust oversight, and therefore

anything that they collectively bargain using arms-length bargaining to be within the constraint of allowed practice.

### **Reservations for All**

Owners in pro sports have used and continue to use every potential avenue to maintain as much control over players as possible. Every American professional sports league has utilized different rules embedded in player contracts to stifle player movement as much as possible. These clauses were known by the common term as the Reserve Clause. These clauses first found their legs in professional baseball in 1887 (Ashcraft and Depken 2007). As baseball gained popularity in the late 19<sup>th</sup> century, teams competed to sign the best players, thus driving up salaries and team expenses rapidly. Some owners, sensing the potential of the wealthiest teams or teams in the largest market signing the best players worried that this would potentially threaten the financial viability of the entire league, began to think of ways to stem the rise of the player salaries moving forward (Ashcraft and Depken 2007). Beginning in 1887, teams began including clauses in contracts that reserved the player to that team in perpetuity, even after retirement. These clauses prohibited players from being able to sign with another team, as they were “Reserved”. When a player's signed contract was expired, they could opt to negotiate a new contract with the team. If a deal did not come to fruition and the player wanted to continue playing, they could sign a contract at a ten percent pay cut, yet if this still did not work out, the player was officially put on the team's reserve list (Dominique 2008).

Baseball being the oldest professional American Sport set the standard moving forward that other leagues would subsequently adopt with strict limits on player movement and containing no free agency. The reserve clause would subsist in professional baseball until 1975,



when a lawsuit filed by Andy Messersmith and Dave McNally was decided, granting the two players free agency status (Ashcraft and Depken 2007). The limitations on free agency persisted, as MLB instituted a rule stating that players were only allowed free agency status, provided that they have “[s]ix years of Major League Baseball experience... [expanding] the already [existing] arbitration system” (Ashcraft and Depken 2007). This resulted in veteran player salaries exploding from an average salary in 1975 of \$44,676 to \$143,756 in 1980 (Baseball Reference, n.d.)

Football adopted their own strict version of the Reserve Clause in 1963, titled the Rozelle Rule, named after NFL commissioner Peter Rozelle:

Under the “Rozelle Rule”, whenever a team lost a free agent, the team signing that free agent had to compensate his former team. If the teams did not agree to terms, Commissioner Rozelle had the final authority to decide what the compensation would be (Dominque 2008).

NFL franchises during the period of the Rozelle rule were incredibly fearful of the potential compensation from Rozelle. For example, Team X signs Team Y’s backup Punter to a free agent contract. Under the Rozelle rule, Commissioner Rozelle was well within his right to award Team Y’s starting Quarterback to Team X as compensation. Nowhere within the rule were protections for teams to protect certain players from Rozelle. As such, NFL franchises were very reluctant to sign free agents, “From 1963-1974, only 34 players signed with new teams” (Dominque 2008), while in 2018, NFL teams signed 366 different players as free agents (CBS Sports, 2018). The Rozelle rule was eventually struck down in 1976 when the NFL Players Union working

alongside player John Mackey took the league to court and sued the league alleging that the Rozelle Rule was an unfair restriction on free trade, and as such a violation of the Sherman Anti-Trust Act (Mackey v. NFL 1976).

Mackey v. NFL also created a precedent by the Supreme Court, in which the only things that were free from antitrust oversight in professional sports were wages, hours and conditions of employment. This new precedent laid out the standard for the other professional sports leagues to follow, but limited the potential scope of collective bargaining agreements moving forward. The court created using this case the ability for professional sports leagues to qualify for exemptions moving forward to avoid further antitrust scrutiny, the statutory labor exemption and the non-statutory labor exemption.

Moving forward, the NFL and its players union continued to battle over the ability of its players to freely move upon expiration of their contracts. It was not until 1993, owners agreed to allow the right of free agency within their CBA, in exchange for the players agreeing to a league wide salary cap (Dominique 2008). This system is the same one that stands today, and barring any changes, is the most liberal labor market that professional football players have been involved in.

The National Hockey League also had their own version of a Reserve Clause, that was eerily similar to the Rozelle Rule football. Hockey players were bound under a Reserve Clause to their teams in perpetuity as well. The National Hockey League had for the longest time been operating under the “Non-Statutory Labor Exemption”, giving the players union and more so, the National Hockey League freedom from being sued by the other party regarding anti-trust violations (Pulver 1991). This changed in 1972, when the recently started World Hockey Association, a rival league filed suit against the National Hockey League claiming that the

NHL's use of its reserve clause as well as other contract clauses was a violation of anti-trust law (Pulver 1991). The court subsequently ruled that because the NHL had a dominant market position and that the league, "[s]hould not be allowed to utilize the reserve clause to the detriment of its rival league, the WHA" (qtd. in Pulver 1991). This judgement effectively ended the ability of the National Hockey League to utilize the reserve clause in player contracts moving forward. In replacement of the reserve clause, the NHL adopted a similar rule as the National Football League, creating an option system for players, in which players would have the ability to sign an option-based contract with their new team, resulting in the player playing for the length of his contract, plus an additional player option year (New York Times 1973).

The NBA similarly utilized reserve clauses in its contracts with players restricting their movement and mobility amongst teams. Similar to the other professional sports leagues, the reserve clause in the NBA bound players to the teams that they had signed a contract with. When the ABA presented NBA players with a second, and in most cases, a more lucrative option to take their talents, the conflict resulted in legal action. Rick Barry, seeing an opportunity to play in the ABA for more money and be coached by his father-in-law, Bruce Hale, decided to attempt to make the move to the ABA, in effect violating his reserve clause (Hollander 2013). Barry's previous team, the Golden State Warriors, led by owner Franklin Mieuli, filed an injunction, and a San Francisco judge granted it. The reserve clause stood. The injunction required Barry to either continue playing for the Golden State Warriors in the NBA or sit out a year prior to being able to join the ABA. Barry chose to sit out the year and join the ABA, becoming the first NBA player to join the ABA (Hollander 2013).

Barry's decision to join the ABA after sitting out a year finally began a bidding war between the two leagues. The average NBA salary as a result of this new and legitimate

competition to the NBA resulted in the salary jumping from \$18,000 in 1967 to \$110,000 in 1975. This bidding war became a net positive for both the two leagues and the players. The NBA recognizing the potential danger that was officially emerging from the ABA, decided to submit a formal merger offer (Hollander 2013). The potential merger between two leagues set the stage for an upcoming battle between the NBA/ABA merger and one of the league's biggest and important stars- Oscar Robertson.

## CHAPTER THREE

### ROBERTSON V. NBA

Oscar ‘The Big O’ Robertson, born November 24, 1938 in Charlotte, Tennessee was always destined for greatness from an early age (Laura and George Bilic 2016). As a young player, he led the first all-black team high school team to an Indiana State Championship in 1955, only one of his first pioneering moves within the sport (Laura and George Bilic 2016). Robertson has long said that he was a product of a significant amount of racial discrimination growing up. His neighborhood growing up was a severely racially segregated one, and played at a school that until he came along, a number of all-white teams would often refuse to play under a guise of playing against blacks (NBA History, n.d).

After winning a state title in high school and being named Indiana’s Mr. Basketball, Robertson and his teammates were forced to hold their celebration outside of the city, as city leaders were “Unsure how the celebration would take place” (NBA History, n.d). After dominating high school teams and players from around the country, Robertson moved on to the University of Cincinnati where the racial discrimination continued, the same place he also became the team’s all-time leading scorer while leading his team to two Final Fours appearances, finishing with a 79-9 record over his span. Robertson was the first African-American basketball player at the school, only making a tough situation more challenging. While playing at Cincinnati, when traveling for road games, he was forced to stay in college dorms while his teammates stayed in hotels until his junior year. Robertson is quoted as saying “I’ll never forgive them” in reference to the racial discrimination he experienced (NBA History, n.d). After

graduating from Cincinnati with a Bachelor's in Business, Robertson then went to play for Team USA in the 1960 Rome Summer Olympics (Laura and George Bilic 2016).

Robertson soon turned his attention on the NBA, where he was then selected first overall in the draft by his hometown Cincinnati Royals after they acquired him using territorial rights, a now defunct draft clause. Robertson attacked the league immediately, averaging 30.5 points per game, and leading the league in his inaugural season (Basketball Reference, n.d.). Robertson continued his meteoric tear of the league into the next season, where he became the first player to average a triple-double, something only recently having been achieved by then Thunder, and now Rocket Russel Westbrook (NBA History, n.d.).

Robertson truly was the game's first great switch player, standing at 6'5", and has been described by the Boston Celtic's legendary coach Red Auerbach as being "So great, it scares me" (qtd. in Moore 2015). Robertson was the first big point guard, entering the league and dominating while possessing passing ability at his size, rivaled only by LeBron James. Robertson continued his dominance of the game for over a decade in Cincinnati, before being unceremoniously traded prior to the start of the 1970-1971 season (NBA History, n.d.). Robertson, now a player for the Milwaukee Bucks after spending his entire career with the Royals also became embroiled in the now famous suit attempting to stop the merger between the ABA and NBA.

### **If the Suit Fits, Wear it**

Filed in 1970, and named after him, as the NBPA's President, Robertson filed suit a lawsuit on behalf of the players, naming the National Basketball Association and American Basketball Association as co-defendants. Robertson and the PA filed seeking, "Players wanted better playing conditions, and they wanted to make sure that when they no longer wanted to play for a team they were free to shop their services to the highest bidder... The Robertson rule sought to end the 'option clause', under which a player was bound to a team for life- or until the team wanted to end their relationship" (Rhoden 2017). Robertson is quoted as saying that many players at the time thought that the adaptation of free agency would hurt the game, "It was a tough sell... A lot of guys felt that our stance was really going to hurt basketball. It was going to put a lot of teams out of business. But it did not. It went the other way" (Robertson qtd. in Rhoden, 2016).

Player mobility prior to the filing of the suit was near non-existent. Players being bound under the reserve clause indefinitely until their team either no longer thought they were good enough, or until team owners wanted to keep them at a reduced pay. Robertson became the first person to effectively attempt to stand up to the juggernaut that the NBA was becoming, and in the process became one of the first African-Americans to make a stand in major sports, 23 years after Jackie Robinson broke the color barrier on the baseball diamond. Robertson, the first African-American head of a major sports union resulted in backlash from across the country.

### **The Nitty Gritty**

The lawsuit in its initial filing was seeking a number of things, chief amongst them was an injunction to stop the merger, a ruling on the legality of the college draft system, and the elimination of “The Uniform Contract”, the official term for the reserve clause. The plaintiffs initially claimed in their suit that:

Count One of the complaint alleges that at least since its inception in 1946, the NBA has engaged in a concerted plan, combination or conspiracy to monopolize and restrain trade and commerce in major league professional basketball by: (1) controlling, regulating and dictating the terms upon which professional major league basketball is played in the United States; (2) allocating and dividing the market of professional player talent; and (3) enforcing its monopoly and restraint of trade through boycotts, blacklists and concerted refusals to deal. NBA's purported objective is the elimination of all competition in the acquisition, allocation and employment of the services of professional basketball players "all in violation of Sections 1 and 2 of the Sherman Act.

The first claim being that the draft is unlawful in that it prevents competition amongst clubs for what is considered the preeminent source of basketball talent, stemming from the college ranks. Each team is given a spot in the draft with which are allowed to select specific player with whom they would like to negotiate further. If an agreement between the player and team is not reached, the player is forbidden from attempting to negotiate a contract with other teams, as the initial team that drafted them maintains their exclusive negotiating rights and subsequently reduce competition for players to attempt to receive the most favorable deal.



The second claim the suit makes stems from the Uniform Contract. This was signed yearly by players already in the league, and required of by incoming college basketball players prior to being eligible for the draft. The Uniform Contract provides that “The player shall play basketball for his club, or its assignees until ‘sold’ or ‘traded’; that the club has the absolute right to sell, exchange, assign or transfer the uniform contract on the same terms to another club... and if that player refuses to play, the club may terminate the Uniform Contract or seek an injunction to prevent the player from playing basketball for anyone else” (Robertson v. NBA 1970). This contract all but eliminated player mobility amongst teams and forced them into playing for the team that held their rights, regardless of the players opinion or wishes. Further in the case, players contend that teams within the NBA have effectively boycotted them from attempting to sign with another team, not willing to brave any potential punishment from attempting to sign a player that another team had under “reserve” (Robertson v. NBA 1970). This further restricts the ability to create a competitive market for players to shop their services to, reducing potential compensation that could be earned and stifling the market for players indefinitely.

The third claim that the suit then goes on to assert that the “reserve clause” within the Uniform Contract signed by players is illegal. If a player were to refuse to sign the contract for an upcoming year, the team would be able to unilaterally renew and extend the Uniform Contract for one year under the same terms and conditions, including salary (Robertson v. NBA, 1970). This clause when utilized could essentially bind a player to a team for their entire career, limiting salaries, as well as precluding a free agent market to be created. The reserve clause here further stymies competition by teams for players.

These claims asserted, along with potential boycotts by teams of players under a Uniform Contract resulted in the players asserting that the ABA was all but designated as off-limits to

them. The players stated that the NBA has used everything stated prior to limit players from “Negotiating freely with member clubs of the NBA, but also from negotiating with or playing for clubs in a rival league [the ABA]” (Robertson v. NBA, 1970). Essentially, the NBA and owners were using every possible recourse within the previously negotiated CBA to limit the players from entering into contract with the ABA, while simultaneously attempting to negotiate a merger with the ABA. Owners and league officials were working on both sides of the spectrum, attempting to do their best to block the players from potential career advantages, while trying to deepen their collective pockets and merge with the ABA.

### **The End is Near**

Over a number of years stalling in federal courts as a number of judges traded off the handling of the case, the Robertson case languished until the players, now led by Paul Silas, after the retirement of Oscar Robertson in 1974 received a saving grace: an injunction on behalf of the players. This move by the courts blocked the merger between the ABA and NBA, and all but forced the NBA owners to come to the table and negotiate with the players. In 1976, the two sides reached what became the Robertson Settlement Agreement, or RSA (Dreyer, 2008). . This round of bargaining with the players finally lead to a settlement that included the now famous Robertson rule, finally eliminating the option clause in contracts, freeing players to fully enter free agency and offer their services to any number of teams willing to bid each other up for the opportunity to sign the player.

The Robertson agreement, allowed the players to finally become a commodity with their own freedom to enter in agreements, and once the agreement expired, freely enter into a separate agreement with another team with no restraints on them. As players became their own free commodities, they also saw the meteoric rise in their own salaries, with owners of teams now

bidding against one another, driving the average salary of players skyward rapidly. Salaries in the immediate aftermath of the RSA being signed, jumped to the average player in the 1984-1985 season making \$370,104 (Bender, n.d.).

Free agency rapidly evolved into a sort of show market, where players and their free agency plans became entertainment and news in their own right. LeBron James 'The Decision', where he made his 2010 announcement to the world that he was signing with the Miami Heat, leaving his prior team the Cleveland Cavaliers, drew 9.95 million viewers (Adams 2010). NBA Insiders like Adrian Wojnarowski have gained massive online presences, especially on Twitter where during the early hours of NBA Free Agency, he sends out what have been colloquially termed 'Woj Bombs', exploding free agent deals to the masses in real time for the masses, who eat them up with a fervor.

The roots of today's multimillion-dollar contracts that NBA stars are constantly signing, trace their roots back to Robertson and his fight. Robertson's attempt at taking on the establishment and the league and their powerful owners has evolved over the years into these deals that are worth upwards of \$30,000,000 annually. Current players have Robertson to thank for this.

While Robertson and the NBPA were fighting the league in court, there was simultaneously a second battle between a player and the league that had drastic impacts and resulted in a significant change coming to the way that players entered the NBA. Enter-Spencer Haywood.

Please continue to the 'Power to the Players Podcast', where we spoke with a number of influential individuals who were on the front lines during this initial court battle, and can provide further commentary regarding this case, and the resulting aftermaths that they experienced.

## CHAPTER FOUR

### HAYWOOD V. NBA

Spencer Haywood, just like Oscar Robertson was a force that changed the NBA forever. Born in rural, Silver City, Mississippi, in 1949 one of ten siblings, he grew up in a three-bedroom shack lacking electricity and gas, often sleeping three to a bed in (Merlino, 2011). From the age five, he joined his mother at work, picking cotton in the fields for two dollars a day. Haywood said of his upbringing, “The rules were just different for people like us in a place like that... We just lived. You had babies and you worked and you tried to survive” (Haywood, n.d).

Just like Robertson, Haywood experienced racism from an early age, working in a country club, where he was told by jovial white men who were members, that they’d “Cut his balls off” if the civil rights movement progressed to an extreme where blacks were seen as out of line (Merlino, 2011). The mechanization of cotton in the south in the early 1960’s led to many African-Americans moving north for the first time, Haywood followed, and eventually settled in Detroit with his brother, where his basketball prowess was first able to shine and allow him the opportunity to make a new life for himself.

In 1967, Haywood led the Pershing High School to the Michigan Class A State Title (NBA History, n.d). Haywood then spent a year in junior college at the Trinidad State Junior College in Colorado, where he averaged a blistering 28.2 points and 22.1 rebounds per game (NBA History, n.d). Haywood then went on to play for Team USA in the 1968 Mexico City Summer Olympics, helping lead the team to a gold medal (NBA History, n.d). Haywood then went on to earn himself a scholarship offer to the University of Detroit, where as a sophomore, scoring 32.1 points per game and leading the nation with 21.5 boards per contest as well.

### **Taking His Talents to the League**

After finishing his sophomore, and only year at the University of Detroit, Haywood made the decision to turn professional, forgoing his final two seasons of eligibility, and signed a contract with the ABA's Denver Rockets. While in the ABA, Haywood's greatness shined, earning himself 'Rookie of the Year' and 'Most Valuable Player' honors (NBA History, n.d). Haywood also took home the scoring title in his first year, as well as setting the ABA record in rebounds per game, a record that stood till the leagues dissolution with a remarkable 19.5 rebounds per game. After the signing of Haywood by the ABA, and the four-year rule intact in the NBA, the ABA recognized that they were in the position to sign a number of talented stars away from the NBA, by allowing players to sign with teams prior to them hitting their four year post high school mark, which barred them from signing with the NBA.

While he shined against competition in the ABA, there was still one level left for Haywood to climb before his basketball star status was cemented-the NBA. After his initial year in the ABA, Haywood, who was dissatisfied with his contract with the ABA decided to further his career and made the jump from the ABA to the NBA. In his contract with the ABA, it was initially publicized that he signed a six-year, \$1.9 million-dollar deal, but after taking a look at the actual wording of the contract, it was discovered that Haywood would only be receiving \$400,000 (Jhabvala 2015). The rest of the money was to be stashed into an annuity that would be locked away until he turned 50 (Jhabvala 2015). At the spry age of 21 and disheartened from his experience in the ABA, Haywood signed with the Seattle SuperSonics prior to the start of the 1970-1971 season, and in the process changed the NBA forever.

At the time, NBA rules forbid a player from attempting to sign with or be drafted by a league franchise until their college class had graduated. This meant that Haywood, who was attempting to join the NBA one year before his class would be graduating from college. This rule economically benefitted the NCAA and NBA alike, as the NCAA was able to capitalize on the economic benefits that elite players created, while the NBA took advantage of the ability to control the entry of players into the league, creating an advantage for teams in their later attempts to sign said players.

Under normal circumstances, the league would have made Haywood sit out that year, but for Haywood and the dissident SuperSonics owner Sam Schulman, the draw of his potential on the court was not worth the wait. Haywood, along with Schulman saw the opportunity to break the rule open, and filed a suit, challenging the NBA's rule, alleging that the ban on him playing in the NBA that year created an unnecessary economic hardship, violating federal antitrust laws. NBA commissioner at the time, Walter Kennedy invalidated the contract signed by Haywood, forcing the fight to the courts, and setting the stage for the legal battle to come.

### **Nitty Gritty Round Two**

In the filing of the Haywood v. NBA suit, Haywood and Schulman alleged that the NBA's threat of disciplinary action against him for attempting to play prior to the four years post high school finishing was a group boycott, and created an unfair environment for its players, under the Sherman Antitrust Act, and a restraint on trade, therefore being illegal (Haywood v. NBA, 1970). The NBA subsequently argued, that without the rule banning player entry to the league whenever, that the sudden influx of talent, as well as "Siphoning of talent from college

basketball teams would destroy college basketball, and would ruin the leagues pool of talent” (Rhoden, 2016).

As Haywood’s case wound through the lower level courts, he played sparingly after being granted an injunction by a lower court to play, only appearing in 33 games that year, where he on the road, he received brutal treatment from fans and opposing teams alike. Opposing teams and fans even went to lengths as to spit on him, treatment eerily similar to the racially charged atmosphere he grew up in (Merlino, 2011). Haywood later said “I took on the NCAA, ABA, and the NBA. People were hitting me in the stomach, hitting me in my face, sucker punching me... They would be like ‘Ladies and Gentlemen, we have an illegal player on the floor and he must be escorted off’” (Johnson, n.d.)

The case was initially filed in the United States District Court of Central California, where it initially received an injunction which initially allowed Haywood to play while the case was still being decided. The ruling also included an important point in that

If Haywood is unable to continue to play professional basketball for Seattle, he will suffer irreparable injury in that a substantial part of his playing career will have been dissipated, his physical condition, skills and coordination will deteriorate from lack of high-level competition, his public acceptance as a superstar will diminish to the detriment of his career, his self-esteem and his pride will have been injured, and a great injustice will be perpetrated on him.

This initial ruling by the lower court allowed Haywood to play, while setting the stage for the ruling of the Court of Appeals, and finally that of the Supreme Court.

As Haywood and his case traversed next to the Court of Appeals, the NBA received a win, where the justices attempted to rule with urgency, as the playoffs were upcoming, and a ruling on this case would have a significant effect on the chances of the Sonics to either make or miss the playoffs, depending on the ability of Haywood to play or not play. In his majority decision, Supreme Court Justice William Douglas wrote that “Basketball, however, does not enjoy an exemption from the antitrust laws. Thus, the decision in this suit would be similar to the one on baseball’s reserve clause... This group boycott issue in professional sports is a significant one” (Douglas, 1971). Douglas went on to further write

The matter is of some urgency because the athletic contests are under way and the playoffs between the various clubs will begin on March 23. Should applicant prevail at the trial his team will probably not be in the playoffs, because under the stay order issued by the Court of Appeals he is unable to play. Should he be allowed to play and his team not make the playoffs then no one, of course, will have been injured. Should he be allowed to play and his team does make the playoffs but the District Court decision goes in favor of the NBA, then it would be for the District Court to determine whether the NBA could disregard the Seattle victories in all games in which he participated and recompute who should be in the playoffs. To dissolve the stay would preserve the interest and integrity of the playoff system, as I have indicated. Should there not be a decision prior to beginning of the playoffs and should Seattle make the playoffs then the District Court could fashion whatever relief it deems equitable.

In ruling with Haywood, Douglas who wrote the majority opinion on the brief, allowed Haywood to play, seeking to preserve the integrity of the playoff system, and therefore not force



the NBA and teams to potentially adjust or replay games, had the previous ruling of the Court of Appeals been stayed. In the same statement, Douglas also agreed with the District court's ruling that the NBA's rule essentially created an undue hardship on Haywood, and violated his rights to earn himself a living through their boycott.

### **The Aftermath**

The NBA and Spencer Haywood after receiving the judgement from the Supreme Court set out to resolve the case, and eventually ended in a settlement. From this settlement, the NBA created and established the 'Hardship Rule'. This new rule established a precedent where players could enter the NBA from college early if they could show they needed to for financial reasons (Merlino 2011). This opened Pandora's box for the stars in college to immediately head to the NBA. The rule recognized the economic ties between families and the players that played in the league and "The windfall represented by professional basketball" (Merlino 2011). The rule has evolved over the years, but the sentiment remains the same: Haywood started it all.

The caliber of players that suddenly were able to show financial hardship and were able to take advantage of the new rule introduced an era of prosperity for the league that skyrocketed all aspects of the game. Where would the NBA have been had Michael Jordan stayed for the full four years at UNC and never wound up with Scottie Pippen and the Bulls? Where would the Lakers have been without Magic Johnson leaving Michigan State early? Dynasties in the NBA were created and maintained on the ground floor that Haywood paved alone. Jerseys hang in the rafters of a number of arenas because of Haywood.

## Chapter 5

### POWER

The *Oxford Dictionary* defines “Power” as “The capacity or ability to direct or influence the behavior of others or the course of events”. The average player within the NBA has to some extent at least a small amount of power. They are able to command top dollar for their skills on the court, and often off the court in a number of endorsement deals and other off-court individual revenue generating areas. The role of an NBA player off the court has also shifted significantly. When Oscar Robertson led the fight for free agency in 1970, he was jeered and hated for his apparent political stance, yet today’s players are often called upon to be politically intelligent, speaking out on culturally sensitive topics with a fervor.

#### **The King Commands His Power**

Lebron James, unarguably the game’s biggest superstar commands a presence wherever he goes, rivaling that of the great Muhammed Ali in the 1960’s. He has been known to speak out on sensitive subjects with a regularity, wielding his brand, his voice, and his following with a fervor. One of James most famous acts includes his speech at the 2016 ESPY award show, where he and a number of other superstars gave a grand speech on race relations in this country in front of millions (Chan 2016). As of this writing, James has 45.8 million followers on the social media platforms Twitter, and 63.1 million followers on Instagram (@KingJames). Both of those followings are larger than a number of some country’s entire populations. When Lebron James enters free agency, which he now does regularly, every single team attempts to pitch him on signing with them, and he has his pick of the litter, signing with the Los Angeles Lakers on a 4-year, \$154 million-dollar deal, worth up to \$41 million dollars annually (Nathan 2018). Off the

court, James is the highest paid player in the NBA, taking home \$53 million dollars in endorsements, with deals signed with Nike, Coca-Cola, Beats by Dre, Blaze Pizza and others (Badenhausen 2019). James shoe deal with Nike has been confirmed by his business partner, Maverick Carter, as worth more than \$1 billion dollars over the course of James's lifetime (Knowlton 2016). Whether you love him or hate him, both of which depend on the team one roots for, one cannot deny the power that James wields. When James left his original team in 2007, the Cleveland Cavaliers, the following year, the teams franchise valuation dropped \$125 million dollars (Rovell 2018). No other player has been recorded as having that significant of an effect regarding a franchise's valuation than James.

On the court, LeBron James has changed the game of basketball forever. From his signature chase down blocks (see Game 7 2016 NBA Finals), to his explosive scoring outputs, to his passing ability and setting teammates up like nobody his size has ever been able to do, it is blatantly false to deny his impact on the game, both on and off the court

Lebron James has also created a new way of signing contracts, changing the way that some players are able to approach their new contracts. James, rebuked the typical model of interacting within free agency. Instead of signing the typical long-term deal, he instead signed two-year contracts with opt outs after the first year. These contracts allow James to control his destiny, not allowing himself to be constrained to a single team for an extended period of time, allowing himself the opportunity for the most player movement in the history of the NBA. James commands the power in the relationship with team management, as these short-term deals force team general managers and owners to constantly be proving to him that the team they are putting around him is good enough to win championships.

It has long been joked that LeBron is his own general manager, influencing what other free agents his team signs. James essentially hand picks the team he plays for, his teammates, his general manager, his coach and everything and anything else he feels the desire to control. Fail to do so, and he will take his talents elsewhere. LeBron James knowledge of the salary cap, coupled with him and his business partners intelligence has led to him being the most powerful athlete not just in the NBA, but the world. From this we can observe that extreme athletic abilities, an in-depth knowledge of the CBA, and being the most recognizable influencer in modern sports has allowed LeBron James to wield incredible power both in the NBA and in society.

### **This or That**

The 1988 National Basketball Players Association Collective Bargaining Agreement signed jointly by the players and the National Basketball Association's owners was 158 pages of jointly agreed material by both sides. Conversely, the most recent 2017 agreement that runs through the 2023-2024 season is 482 pages (NBPA 2017). The most recent agreement features intensely securitized wording regarding every part of the game of professional basketball that the players and owners have agreed to. Everything contained within the CBA revolves in some aspect around the wages, hours and working conditions of all employees, both league officials and players.

Contained within the 1988 CBA sits language regarding the salary cap, which spanned a meager 27 pages regarding every facet of the salary caps computation, team exceptions to the cap, as well as team minimum spending limits. By the time league and player lawyers finished the official language of the 2017 CBA that is in effect now, the language regarding the salary cap and every facet of it ballooned to 97 pages. The language within this section of this most recent

CBA has been “legalized” that makes it nearly impossible for any layman to be able to easily understand the basic wording of many of the subsections within it.

In the 1988 CBA, what we now know as Basketball Related Income (BRI), was originally known as Defined Gross Revenues (DRG). DRG’s were defined as, “1. Regular season gate receipts, net of admission taxes...2. Proceeds from the sale, license, or other conveyance of the right to broadcast NBA... regular season and playoff games on radio and television... 3. Exhibition game proceeds...4. Playoff gate receipts, net of admission taxes, arena rentals, and all other reasonable or customary expenses except the player playoff pool” (1988 CBA, 56). The agreement between the owners and players essentially stated that if a musical artist was to arrive and rent out the team’s arena for a show, the NBA players were entitled to a percentage of that money that was generated as a result of renting the arena where their home games are played. Wording in this 1988 agreement also goes on to state that teams and players should “In good faith act and use their best efforts to as to maximize Defined Gross Revenues for each playing season” (1988 CBA, 82). Conversely, the 2017 agreement contains no such clause in which both the owners nor players are to do their best to maximize the BRI, nor is there a concerted effort by either side to attempt this moving forward.

In the 2017 agreement, the definition of BRI has been altered to a point that it is nearly impossible to understand exactly what is included as BRI and what no longer is. Some lucky and incredibly talented individuals have been able to make entire careers out of becoming a “Capologist”, where their entire job revolves around knowing and understanding the salary cap and providing insight to teams when questions arise (Kennedy 2019). These individuals have largely created a new job role in the sports business empire. Having employees on staff that are as knowledgeable about the cap and the implications that every day roster moves have in the

NBA, teams and GM's are able to make salary forecast years in advance, allowing for strategies to be formulated and refined well in advance of a particular interesting free agent season.

Brooklyn Nets General Manager Sean Marks is on record regarding the teams double splash signings of superstars Kevin Durant and Kyrie Irving as having said, "We planned a couple years out that we could have an opportunity here... I think when you have a window or you have an opportunity to swing for it and take a chance, take a challenge, and you can do it with the right people, that's when you have to do it" (qtd. in Mannix, 2019). Teams are finding that the intricacies of the salary cap present unique opportunities to those that are willing to invest into understanding it. Sir Francis Bacon said it best, "Knowledge is power", and it rings ever true now.

### **Relations**

In the accompanying podcast to this thesis and number of recorded materials that have been assembled, a lengthy discussion was had with Charles Grantham. Grantham is the former Executive Director of the NBPA, where he held the position for over a decade. Grantham is on the record discussing a number of topics, but his views on the relationship between the league and the players remains one of the most interesting segments. Grantham believes that now more than ever, the relationship between the two sides is at its most productive and positive that it has ever been.

Adam Silver, the current NBA Commissioner has done a marvelous job in building a more trustworthy relationship with the players and their leadership. Silver was immediately thrown into the fire when he took over from the notorious blustering David Stern, dealing with and managing the fallout from former Clipper's owner Donald Sterling's racist remarks (Wu 2014). Silver gained a respect from the players that has carried over to the negotiating table, as

well as a number of programs and changes made under his leadership. Silver has recognized the power and influence he has within the basketball community and in the world, and is using it in a remarkably positive way. Grantham also felt that the knowledge Silver gained from being under Stern for so many years, coupled with his own brand of negotiating has positioned the league to be in a very advantageous state, allowing the owners the flexibility to remain in a prime position in any negotiations with the players.

In the same set of recorded materials, we spoke with former NBA President of League Operations, Joel Litvin. Litvin shared the same praises for Silver, and shared a number of stories regarding Silver and Stern, both of which he painted to be leaders, lions when they walked in the boardroom, but respected nonetheless. Litvin also shared some areas where in his opinion as a former representative at the bargaining table that the league in his opinion should attack in the upcoming round of negotiations. He cited the escrow system, a system that withholds a portion of the players salary until the completion of the league year, and is used in worst case scenarios to help balance the leagues potential budget windfalls. The current withholdings were negotiated 10%, but a figure that he sees as increasing when negotiations begin again on the next CBA. It was his opinion that the league should seek in the area of 15-20% withheld, and that the events of the early part of the league year, as well as the Coronavirus shutdown necessitate a greater percentage withheld, believing that the prosperity of the league is more important than the short-term withholding of salary from players.

Moving forward there will be great contention between the league and players in the next round of negotiations regarding the results of the Coronavirus shutdown, as well as the expansion of legalized sports betting. Reports of the escrow system being utilized show approximately 25% of player salaries being withheld just in this year alone, resulting in hundreds

of millions of dollars being taken from players and given back to their owners (Wojnarowski 2020). Grantham commented that he sees this now lost revenue as being a contention in the next round of negotiations, something that will see both sides exert their combined power and influence on both the media, as well as each other in search of a compromise.

After speaking with another source working at the NBPA, it was revealed that the NBPA is seeking to establish a precedent of receiving a percentage of sports betting revenues. Sports betting presents an opportunity for new, massive streams of revenue that could be lining the pockets of both the owners and players. Reports show that on average, Nevada took in \$500 million dollars a month in wagers on the NBA alone, along with countless amounts being wagered illegally using offshore accounts (Scott 2019). Even a small percentage of everything wagered annually will be a MASSIVE influx of revenue for the game of basketball, thus presenting a precarious battle over the splitting of this money. Without a doubt gambling, along with the Coronavirus pandemic presents a potential strain on the working relationship of the two sides, something we all will be watching moving forward.

Basketball when played correctly is a game of ebb and flow. One team strings together a run of points, then the other responds back. It is a beautiful flow when done well, and an ugly one when lacking, but just like the flow of a game, the flow of negotiations will mirror that of the game. One side will gain leverage, as the other seeks to gain it back. The battle between owners and players has subsisted for 70 years, and it will continue in perpetuity. Power in basketball is a strange thing, but not something that will ever fade. In the leadup and writing of this paper, I have been extremely blessed to have spoken with a number of wonderful and knowledgeable people regarding the power shift in the game of basketball over the years. One thing is certain,



while a positive working relationship is always desired, there always remains the potential for contentious, heated debates to breakout, but that's sports.

If interested, all conversations that were allowed to occur on the record were recorded, and the Power to the Players podcast will be available for further conversations moving forward. It will be found wherever you listen to your podcasts.

## BIBLIOGRAPHY

- account, LeBron James Verified. "LeBron James (@KingJames)." *Twitter*, Twitter, 20 Apr. 2020, [twitter.com/KingJames?ref\\_src=twsrc^google|twcamp^serp|twgr^author](https://twitter.com/KingJames?ref_src=twsrc^google|twcamp^serp|twgr^author).
- Adams, Russell. "James's Decision Heats Up ESPN's Ratings." *The Wall Street Journal*, Dow Jones & Company, 12 July 2010, [www.wsj.com/articles/SB10001424052748704258604575361052342767746](http://www.wsj.com/articles/SB10001424052748704258604575361052342767746).
- "American Basketball Association Debuts." *History.com*, A&E Television Networks, 16 Nov. 2009, [www.history.com/this-day-in-history/american-basketball-association-debuts](http://www.history.com/this-day-in-history/american-basketball-association-debuts).
- Ashcraft, Jennifer, and Craig A. Depken. "The Introduction of the Reserve Clause in Major League Baseball: Evidence of Its Impact on Select Player Salaries During the 1880s." *International Association of Sports Economists*, Apr. 2007, pp. 1–38., doi:10.2139/ssrn.899390.
- "B-R Bullpen." *BR Bullpen*, Baseball Reference, [www.baseball-reference.com/bullpen/Minimum\\_salary](http://www.baseball-reference.com/bullpen/Minimum_salary).
- Badenhausen, Kurt. "The NBA's Highest-Paid Players 2019: LeBron James Leads With \$89 Million." *Forbes*, Forbes Magazine, 18 Feb. 2020, [www.forbes.com/sites/kurtbadenhausen/2019/02/12/the-nbas-highest-paid-players-2019-lebron-james-leads-with-89-million/#56cdc77625d1](http://www.forbes.com/sites/kurtbadenhausen/2019/02/12/the-nbas-highest-paid-players-2019-lebron-james-leads-with-89-million/#56cdc77625d1).
- Bilicic, Laura, and George Bilicic. "Oscar Robertson's Biography." *The HistoryMakers*, The History Makers, [www.thehistorymakers.org/biography/oscar-robertson](http://www.thehistorymakers.org/biography/oscar-robertson).
- Bradley, Robert. *The History of NBA Labor*, APBR, [www.apbr.org/labor.html](http://www.apbr.org/labor.html).
- Chan, Melissa. "LeBron James Speech at ESPY Awards: Read the Transcript." *Time*, Time, 14 July 2016, [time.com/4406289/lebron-james-carmelo-anthony-espy-awards-transcript/](http://time.com/4406289/lebron-james-carmelo-anthony-espy-awards-transcript/).

“Clayton Act.” *Federal Trade Commission*, 14 Dec. 2018,  
[www.ftc.gov/enforcement/statutes/clayton-act](http://www.ftc.gov/enforcement/statutes/clayton-act).

*Constitution and by-Laws of the National Basketball Association*. NBA, 2018.

Corcoran, Kieran M. “When Does the Buzzer Sound?: The Nonstatutory Labor Exemption in Professional Sports.” *Columbia Law Review*, vol. 94, no. 3, 1994, pp. 1045–1075. *JSTOR*, doi:10.2307/1123250.

Dominique, Alvin. “NFL History: The Road to Free Agency.” *Bleacher Report*, Bleacher Report, 3 Oct. 2017, [bleacherreport.com/articles/18183-nfl-history-the-road-to-free-agency](http://bleacherreport.com/articles/18183-nfl-history-the-road-to-free-agency).

Dryer, Ryan T. “Beyond the Bond and the Box Score: A Look at Collective Bargaining Agreements in Professional Sports and Their Effects and Their Effect on Competition.” *Journal of Dispute Resolution*, vol. 2008, no. 1, pp. 268–292., <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1090&context=jdr>.

Greathouse, John. “Startup Underdogs: The ABA And Negro Leagues.” *Forbes*, Forbes Magazine, 20 Jan. 2015, [www.forbes.com/sites/johngreathouse/2015/01/19/startup-underdogs-the-aba-and-negro-leagues/#349085b469a4](http://www.forbes.com/sites/johngreathouse/2015/01/19/startup-underdogs-the-aba-and-negro-leagues/#349085b469a4).

Hollander, Dave. “One of the Biggest Jerks in the History of Pro Sports Is an Even Bigger Hero.” *Slate Magazine*, Slate, 25 Nov. 2013, [slate.com/culture/2013/11/rick-barry-free-agency-one-of-the-biggest-jerks-in-basketball-history-is-also-one-of-the-sports-worlds-biggest-heroes.html](http://slate.com/culture/2013/11/rick-barry-free-agency-one-of-the-biggest-jerks-in-basketball-history-is-also-one-of-the-sports-worlds-biggest-heroes.html).

Jhabvala, Nicki. “Spencer Haywood: Denver's Greatest Forgotten Star.” *The Denver Post*, [extras.denverpost.com/spencer-haywood/index.html](http://extras.denverpost.com/spencer-haywood/index.html).

Johnson, Todd. “Spencer Haywood v. NBA – A Turning Point for the Draft.” *The History Rat*, 29 Mar. 2013, [historyrat.wordpress.com/2013/03/29/haywood-v-nba/](http://historyrat.wordpress.com/2013/03/29/haywood-v-nba/).

- Kennedy, Alex. "Behind the Scenes with NBA Capologists: The League's CBA and Cap Experts." *HoopsHype*, 3 June 2019, [hoopshype.com/2019/06/02/nba-trades-rumors-capologist-general-manager-front-office-cba-salary-cap-larry-coon-bobby-marks-deal/](https://hoopshype.com/2019/06/02/nba-trades-rumors-capologist-general-manager-front-office-cba-salary-cap-larry-coon-bobby-marks-deal/).
- Knowlton, Emmett. "LeBron James' Business Partner Confirms Lifetime Deal with Nike Is Worth over \$1 Billion." *Business Insider*, Business Insider, 17 May 2016, [www.businessinsider.com/lebron-james-nike-deal-exceeds-1-billion-maverick-carter-says-2016-5](https://www.businessinsider.com/lebron-james-nike-deal-exceeds-1-billion-maverick-carter-says-2016-5).
- "LeBron James (@Kingjames) • Instagram Photos and Videos." *Instagram*, [www.instagram.com/kingjames/?hl=en](https://www.instagram.com/kingjames/?hl=en).
- "Power." *Lexico*, Oxford, <https://www.lexico.com/en/definition/power>.
- <https://casetext.com/case/mackey-v-national-football-league>.
- Mannix, Chris. "Behind the Scenes of the Nets' KD-Kyrie Courtship." *Sports Illustrated*, 9 July 2019, [www.si.com/nba/2019/07/09/kevin-durant-kyrie-irving-brooklyn-nets-free-agency-behind-the-scenes](https://www.si.com/nba/2019/07/09/kevin-durant-kyrie-irving-brooklyn-nets-free-agency-behind-the-scenes).
- Merlino, Doug. "Spencer Haywood, the NBA Draft and the Legal Battle That Shaped the League." *Bleacher Report*, Bleacher Report, 3 Oct. 2017, [bleacherreport.com/articles/691783-spencer-haywood-the-nba-draft-and-the-legal-battle-that-shaped-the-league](https://bleacherreport.com/articles/691783-spencer-haywood-the-nba-draft-and-the-legal-battle-that-shaped-the-league).
- Moore, Jim, and Tim Bonteps. "The ABA Is Long Gone, but It Remains the Soul of the NBA." *The Washington Post*, WP Company, 31 May 2017, [www.washingtonpost.com/graphics/sports/nba-aba-merger/?utm\\_term=.e5259dc6ed0f](https://www.washingtonpost.com/graphics/sports/nba-aba-merger/?utm_term=.e5259dc6ed0f).
- Moore, Terence. "There Is Nobody Quite like Oscar Robertson." *Sports on Earth*, 2 Dec. 2015, [www.sportsonearth.com/article/158612832/nobody-quite-like-oscar-robertson-lebron-james](https://www.sportsonearth.com/article/158612832/nobody-quite-like-oscar-robertson-lebron-james).

Nathan, Alec. "LeBron James Agrees to 4-Year, \$154 Million Contract with Lakers." *Bleacher Report*, Bleacher Report, 2 July 2018, [bleacherreport.com/articles/2781187-lebron-james-agrees-to-4-year-154-million-contract-with-lakers](http://bleacherreport.com/articles/2781187-lebron-james-agrees-to-4-year-154-million-contract-with-lakers).

"NBA-NBPA Collective Bargaining Agreement." *NBPA*, NBA-NBPA, [cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf](https://s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf).

NBA.com. "Legends Profile: Oscar Robertson." *NBA.com*, NBA.com, 24 Aug. 2017, [www.nba.com/history/legends/profiles/oscar-robertson](http://www.nba.com/history/legends/profiles/oscar-robertson).

"Oscar Robertson Stats." *Basketball*, [www.basketball-reference.com/players/r/roberos01.html](http://www.basketball-reference.com/players/r/roberos01.html).

Pulver, Ian Craig. "A Face Off Between the National Hockey League and the National Hockey League Players ' Association: The Goal a More Competitively Balanced League." *Marquette Sports Law Review*, vol. 2, no. 1, 1991, pp. 38–88., <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1053&context=sportslaw>.

"Reserve Clause Replaced By 1-Year N.H.L. Option." *New York Times*, 4 Dec. 1973, <https://www.nytimes.com/1973/12/04/archives/reserve-clause-replaced-by-1-year-nhl-option-compensation-rare.html>.

Rhoden, William C. "Early Entry? One and Done? Thank Spencer Haywood for the Privilege." *The New York Times*, The New York Times, 29 June 2016, [www.nytimes.com/2016/06/30/sports/basketball/spencer-haywood-rule-nba-draft-underclassmen.html](http://www.nytimes.com/2016/06/30/sports/basketball/spencer-haywood-rule-nba-draft-underclassmen.html).

- Rhoden, William. "Locker Room Talk: First Day of NBA Free Agency Should Be Called Big O Day." *The Undeclared*, The Undeclared, 2 July 2017, [theundefeated.com/features/locker-room-talk-first-day-of-nba-free-agency-should-be-called-big-o-day/](http://theundefeated.com/features/locker-room-talk-first-day-of-nba-free-agency-should-be-called-big-o-day/).
- Rovell, Darren. "LeBron James Is Worth Hundreds of Millions to the Cavs and Cleveland." *ESPN*, ESPN Internet Ventures, 13 June 2018, [www.espn.com/nba/story/\\_/id/23769496/lebron-james-worth-millions-economy-cleveland](http://www.espn.com/nba/story/_/id/23769496/lebron-james-worth-millions-economy-cleveland).
- Scott, Ramon. "How Much Money Is Wagered on NBA Basketball?" *American Gambler*, 27 June 2019, [www.americangambler.com/how-much-money-is-wagered-on-nba-basketball/](http://www.americangambler.com/how-much-money-is-wagered-on-nba-basketball/).
- "Sherman Antitrust Act." *Legal Information Institute*, Legal Information Institute, [www.law.cornell.edu/wex/sherman\\_antitrust\\_act](http://www.law.cornell.edu/wex/sherman_antitrust_act).
- Wojnarowski, Adrian. "Sources Tell ESPN the NBA and NBPA Have Agreed on ..." *ESPN*, ESPN Internet Ventures, [www.espn.com/espn/now?nowId=1-29050082](http://www.espn.com/espn/now?nowId=1-29050082).
- Wu, Jon. "Adam Silver Defines Early Reputation with Donald Sterling Ban." *Bleacher Report*, Bleacher Report, 23 June 2017, [bleacherreport.com/articles/2045734-adam-silver-defines-sterling-silver-reputation-with-donald-sterling-ban](http://bleacherreport.com/articles/2045734-adam-silver-defines-sterling-silver-reputation-with-donald-sterling-ban).

## ACADEMIC VITA

### Eric Phythyon

#### Education

**The Pennsylvania State University-**

May 2020

Bachelor of Science in Labor and Employment Relations

Bachelor of Arts in Political Science

**Schreyer Honors College-Paterno Fellow**

**Relevant Coursework:** Analysis of selection systems, Research Methodology, Employment Law, An overview of the history of labor employment, Advanced Business Writing, Analysis and review of Constitutional Law.

#### Experience

**Textron Specialized Vehicles-Compliance Intern, Augusta, Georgia**

May 2019-August 2019

- Hosted an adult education event for over 2000 employees highlighting local universities programs.
- Coordinated team review of over 150 different company policies for OFCCP audit review.
- Developed company policy and implemented various technology designed to clarify international travel regulations for 200 employees.

**Twinsburg Parks and Recreation -Twinsburg Parks, Twinsburg, Ohio**

May 2017-August 2018

- Managed a daily schedule for campers to follow emphasizing safety and fun.
- Supervised a team of 6 counselors to follow and implement city-wide regulations for the children.
- Booked and managed transportation, meals, and guides for over 250 children to various field trips in the surrounding area.

#### Leadership and Accomplishments

**Paterno Fellow Program- College of Liberal Arts**

August 2016- Present

- Accepted as 1 of 20 other students into prestigious program.
- Includes advanced academic coursework, thesis, study abroad, ethics study, and a leadership and service commitment.

**Executive Director -Greek Sing 2019**

April 2019- Present

- Maintained a \$65,000 budget for yearly performance.
- Collectivized 35 organizations on campus to participate in the performance.
- Oversaw 10-person executive board with final decision-making power.

**Director of Security and Logistics -Greek Sing 2018**

April 2018- Present

- Mentored 3 groups of organizations as they collectively developed shows.
- Booked and organized auditoriums for dress rehearsals as an opportunity for groups to present.
- Collaborated with other directors to promote and market Greek Sing to local businesses.

**Scholarship Chair - The Kappa Sigma Fraternity**

January 2016- April 2017

- Designed an academic strategy currently being used by the Inter Fraternal Council.
- Implemented mandatory study hours for 24 brothers, 3 hours a night 4 times a week.
- Developed a peer mentor program for younger brothers resulting in a significant GPA raise.

#### Skills

**Computer** (Microsoft Office, Peoplesoft, Taleo, Minitab, Adobe)

**Intermediate statistical computation** (Regression, confidence intervals, hypothesis tests)