

NHL union lays the basis for massive concessions for hockey players

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The National Hockey League (NHL) continues to lock out its players and cancel portions of the season. Now at more than 11 weeks, the attempt by the league and its owners to impose pay cuts and extract other concessions from players has resulted in the loss of approximately one third of the regular season, as well as the Winter Classic and All-Star Game.

Players remain bitterly opposed to demands that their current contracts' values and lengths be reduced, while the team owners are, like owners in other industries around the world, intent on lining their pockets at the expense of their workers.

The league's principal aim in the negotiations is to reduce the players' share of hockey-related revenue (HRR) to 50 percent, from their current share of 57 percent. Because the salary written in players' contracts is paid out of this monetary figure, such a change in the collective bargaining agreement (CBA) would mean a reduction in players' salaries, regardless of what their contracts state. The 50 percent share of revenue was part of an offer the league proposed to players on October 16. Although this preserves a larger share of revenue to players than the initial offer of 46 percent, and largely keeps the current definition of HRR, it would still result in significant pay cuts for players.

Indeed, the league's initial offer was carefully crafted, with a proposed share of revenue so low and with terms so unacceptable, that any subsequent offer would look reasonable and generous by comparison. Proceeding in this manner, they could rely on the credulous reporting of sports journalists, many of whom are urging the players to agree to the league's terms at the supposedly "fair" 50 percent split of revenue. These journalists and the large media organizations for which they work have a definite

monetary interest in the resumption of play, and their reporting plays a crucial role in shifting fan sentiment towards a settlement.

The league's current proposal also adjusted some of the proposed contract terms, with the time to unrestricted free agency moving to eight years, instead of the initially proposed ten, a year longer than under the current CBA. However, the league is still committed to limiting all contracts to five years, even current ones, which would mean many players with long-term contracts would see those modified. Entry-level contracts would go from three years to two, instead of the proposed five. In the league's own statement, these modifications are aimed at securing more revenue to established players, at the expense of younger players. Left unstated is the league's obvious goal of driving a wedge between older and younger players.

Although the NHL Players' Association's (NHLPA's) officials and bargaining committee agreed in principle to a reduction in the players' share of HRR, they initially resisted the move to change the absolute level of the player's share of revenue, at least in the short term. Instead, they proposed a number of schemes that would have temporarily shifted large portions of HRR to the owners, but would not have touched the actual percentage, supposedly in order to leave open the possibility that with growth of league revenue in future seasons, the status quo might be reasserted.

The last CBA, which also came after a lockout and the cancellation of the entire 2004-2005 season, imposed a salary cap and involved a pay cut amounting to 24 percent from existing contracts, which players are anxious not to see repeated. Accordingly, much of the recent negotiation between the NHLPA and the league

has revolved around a “make-whole provision,” which would finance current contractual salaries outside of the normal CBA that pays that amount out of HRR.

Although touted as a salary protection mechanism, it does nothing of the sort. The make-whole provision and the NHLPA bargaining surrounding it is in fact a smokescreen through which the league and NHLPA hope to negotiate an end to the lockout on the basis of significant player concessions.

The version of the make-whole provision in the league’s last proposal would have the owners create a fund of \$211 million, out of which would be paid some portion of the difference between what the players would have been paid had they played a full season under the previous agreement and had the season met revenue projections, and what they will make under the proposed 50 percent split of revenue. Notably, this would only apply to the first year of the agreement, after which cuts would apply.

A counterproposal from the union that raises this fund to \$393 million has been the basis of widespread reports that the two sides are \$182 million apart. Far from any kind of make-whole, according to the leaked memo from the NHLPA in which this figure was found, the sum would not give the players the full value of their contracts but would only “partially honor player contracts and ease the transition to 50/50.”

If it is acknowledged that even \$393 million would not amount to a make-whole, players must understand that they will be facing pay cuts once again. This eventuality, which they wished to avoid above all else, comes even after the NHLPA hired Donald Fehr, the former executive director of the Major League Baseball Players Association, to lead the union and head up negotiations, on the basis that he would “play hardball.”

As with other unions, the aim of the NHLPA is not to win for their players higher wages or living standards, but to work with owners to reduce their costs and to act as business advisers. This is most vividly illustrated by the attention paid by the union to various schemes that would transfer money from the higher-revenue teams to lower-revenue ones.

Fearing that a settlement on the basis of a 50 percent share of revenue and a \$211 million make-whole provision would not furnish the union leadership enough cover, the NHLPA is desperate for the owners

to move closer to their figure of \$393 million. Owners remain opposed to this higher figure, however, as they see no problem with demanding that players adjust their living standards downward.

In response to the league’s refusal to move toward the union’s position, reports have emerged that the NHLPA is contemplating a move to have itself decertified as the players’ union, so that it could, as a “trade association,” file an antitrust lawsuit against the NHL in order to have the lockout declared illegal. The National Basketball Players Association attempted the same maneuver, but was ultimately unsuccessful and reached a settlement with its league before the suit was decided—though not before being sued itself by the NBA for doing so.

Divisions have also emerged between players, with some wishing to start playing again immediately, regardless of whether it is at a reduced level of pay. This position was expressed in the call by Washington Capitals’ defenseman Roman Hamrlik for an immediate player vote on whether to accept the league’s offer. Older players like Hamrlik are worried that if the season is canceled entirely they may not be able to play in the next one.



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