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SECOND CIRCUIT REVIEW

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Court Upholds the National Football League's Eligibility Rules

In this month's column, we discuss the recent decision by the United States Court of Appeals for the Second Circuit reversing a district court judgment, ruling that Maurice Clarett, a college football player who completed his first year at Ohio State University, was ineligible to enter the National Football League draft and holding that the NFL's eligibility rules do not operate as an illegal restraint of trade.

Maurice Clarett applied to enter the NFL draft after playing one season as a running back for Ohio State. The NFL's eligibility rules prohibit a player from entering the NFL draft unless he has completed at least three football seasons out of high school. Rather than deferring his professional prospects, Clarett filed an antitrust suit in federal district court challenging the NFL's eligibility rules as an unlawful agreement in restraint of trade. The district court granted Clarett's motion for summary judgment, and issued an injunction ordering that Clarett be included in the draft for the upcoming 2004 NFL season.

The Second Circuit issued a stay pending appeal and then reversed the district court judgment. In an opinion written by Judge Sonia Sotomayor and joined by Judge Robert D. Sack and Judge Lewis A. Kaplan, sitting by designation, the court ruled that the NFL's eligibility rules are immune from antitrust



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scrutiny because they are the product of collective bargaining and thus are protected under the implied labor exemption. The antitrust laws accommodate certain types of concerted activity, such as collective bargaining. But the outer boundary of the labor exemption has never been clearly defined. By granting the NFL immunity from suit, the Second Circuit indicated that the labor exemption will be broadly construed, especially in a unionized industry like professional football, if the activity subject to antitrust attack is a mandatory subject of bargaining, and the injury alleged is to employees in a labor market, rather than to employers in a market for products or services.

Clarett attended Ohio State, and was the first freshman to start as a running back for the school in over fifty years. After leading Ohio State to an undefeated season, and scoring the winning touchdown in the championship game, Clarett was suspended from playing for Ohio State prior to his sophomore season. Clarett then decided to enter the NFL draft.

Clarett's attempt to enter the draft violated a long-standing NFL rule that required players to wait three football seasons from their high school graduation before turning professional.¹ The history of this rule, and its relationship to

the NFL players' union, played significant roles in the litigation. The NFL has maintained an eligibility requirement since 1925, long before the players elected the NFL Players' Association as their union in 1968.² For much of this time, the eligibility rule required that a player be at least four football seasons out of high school before entering the draft. In 1990, the NFL Constitution and Bylaws were amended to authorize the NFL commissioner to grant "special eligibility" to any player seeking to enter the draft who is at least three NFL seasons out of high school. In 2003, the Bylaws were again amended, such that the "season" used to measure the adequacy of a player's length of time out of high school was changed to a "college season" and the commissioner again was authorized to grant special eligibility only to players who played college football. Since it was the practice of the commissioner to grant "special eligibility" to any qualifying player who requested it, the time that must elapse before Clarett would be eligible for the draft is three college seasons, making Clarett ineligible for an additional year.³

The current collective bargaining agreement between the Players' Association and the NFL expires in 2007. The bargaining agreement — which governs the terms and conditions of employment of NFL players and contains detailed provisions involving, inter alia, selection of rookies through the draft and rookie compensation — is silent on the topic of the eligibility of players for the draft.⁴ The agreement, however, contains provisions that refer to the Bylaws and thus relate to the draft eligibility requirements in a general sense. Article III, Section I, entitled "scope of the agreement," states:

This Agreement represents the complete

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understanding of the parties as to all subjects covered herein, and there will be no change in the terms and conditions of this Agreement without mutual consent... The [Players' Association] and the Management Council waive any rights to bargain with one another concerning any subject covered or not covered in this Agreement for the duration of this Agreement, including the provisions of the NFL Constitution and Bylaws; provided, however, that if any proposed change in the NFL Constitution and Bylaws during the term of this Agreement could significantly affect the terms and conditions of employment of NFL players, then the [NFL] will give the [Players' Association] notice of and negotiate the proposed change in good faith.⁵

Further, the union waived the right to sue the NFL regarding any provision of the Bylaws, but retained the right to maintain any grievance against the NFL regarding any provision of the Bylaws that "pertain[s] to the terms and conditions of employment of NFL players," using the bargaining agreement's duly-authorized grievance procedures.⁶

The implied labor exemption was construed by the Supreme Court in *Brown v. Pro Football*,⁷ another case involving a football player's antitrust challenge to NFL requirements. Writing for the Court, Justice Breyer noted that the exemption was based both on logic and history:

"As a matter of logic, it would be difficult, if not impossible, to require groups of employers and employees to bargain together, but at the same time to forbid them to make among themselves or with each other any of the competition-restricting agreements potentially necessary to make the process work or its results mutually acceptable." Labor law promotes a policy of " 'free and private collective bargaining.' [T]he [implied labor] exemption recognizes that, to give effect to federal labor laws and policies and to allow meaningful collective bargaining to take place, some restraints on competition imposed through the bargaining process must be shielded from antitrust sanctions."⁸

The labor exemption also may be inferred

from the history of the National Labor Relations Act and the statutory exemptions contained in the Clayton Act and the Norris-Laguardia Act that immunize from antitrust liability traditional union activity like pickets, boycotts and strikes.⁹ Although enacted to deal with business practices like monopolies and trusts, the Sherman Act was initially invoked by courts to prohibit union activity like boycotts and strikes. The labor laws give the [National Labor Relations] Board, not antitrust courts, primary responsibility for policing the collective bargaining process.¹⁰ Thus, one of the purposes of the federal labor laws — and the implied labor exemption derived therefrom — is to remove from the purview of the federal courts the "authority to determine, through application of the antitrust laws, what is socially or economically desirable collective-bargaining policy."¹¹

The district court, which rejected the NFL's implied labor exemption defense, held that the draft eligibility requirements were so distantly related to collective bargaining between the NFL and the Players' Association that the implied labor exemption did not apply.¹²

In so ruling, the district court relied principally on its views that (i) the Players' Association and the NFL had not expressly bargained about the draft eligibility requirements, and (ii) the draft eligibility requirements were not mandatory subjects of collective bargaining. The district court also emphasized that the eligibility requirements predominantly affected players like Clarett, who were not members of the bargaining unit.¹³

The Second Circuit reversed the district court's ruling and adopted an entirely different approach from that taken by the district court. For the Second Circuit, the central issue was "whether subjecting the NFL's eligibility rules to antitrust scrutiny would subvert fundamental principles of our federal labor policy."¹⁴ The court reasoned that it was not dispositive that the NFL and the Players' Association had not bargained over the draft eligibility requirements. The parties certainly could have negotiated on that issue: by allowing the eligibility requirements to remain in the Bylaws, without objection, the union in fact agreed to them.¹⁵ The court further held that "the labor law policies that warrant withholding antitrust scrutiny are not limited to

protecting only terms contained in collective bargaining agreements. The reach of those policies, rather, extends as far as is necessary to ensure the successful operation of the collective bargaining process and to safeguard the unique bundle of compromises reached by the NFL and the players union as a means of settling their differences." That unique bundle of compromises, and the collective bargaining process itself, would be undermined if players could use antitrust suits to attack the results of collective bargaining.¹⁶

The court also held that the NFL's eligibility requirements were mandatory subjects of bargaining under the NLRA, considering them as conditions of employment that were closely connected to other conditions of employment, such as job security. The fact that the eligibility rules burdened or primarily affected employees outside the bargaining unit did not make these requirements any less mandatory subjects of bargaining.

In the end, the court reasoned that Clarett's antitrust lawsuit represented little more than a prospective employee's disagreement with the criteria for hire determined by an employer and a union. According to the Second Circuit, any remedy for Clarett's grievance must be founded on labor or employment law, rather than antitrust law.



1. Id. at *4-6.
2. *Clarett v. NFL*, 306 F Supp 2d 379, 384, 386 (SDNY 2004).
3. 2004 US App. LEXIS 19171, at *6-13.
4. Id. at *7-8.
5. Id. at *10.
6. Id. at *11.
7. 518 US 231 (1996).
8. Id at 236-37 (italics omitted).
9. Id at 236-37.
10. 518 US at 242.
11. Id at 236-37.
12. 306 FSupp 2d at 392-93.
13. Id at 395-96.
14. 2004 US App. LEXIS 10171, at *43.
15. Id at *54-58.
16. Id (italics omitted).