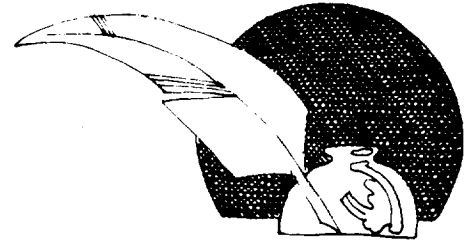


Communications



The football strike of 1987: the question of free agency

PAUL D. STAUDOCHAR

The 24-day strike by National Football League players in 1987 was one of the most interesting in recent years. The strike may have a significant impact on the future of not only football but other professional team sports. What caused the strike? Could it have been avoided? How did the dynamics of the strike affect the positions of the parties in their continuing negotiations? Can the players' union bounce back from its defeat at the bargaining table?

Background

The 1987 strike was a product of the past. As early as 1956, when the National Football League Players' Association was formed, the players were contemplating a strike against the owners. Expenses incurred during training camps were not compensated by owners, and players decided to strike the last preseason game between the Washington Redskins and Baltimore Colts. When the Redskins' owner, George Preston Marshall, said he would go ahead with the game without the strikers, the players capitulated and took the field. This scenario was to be repeated, with some variation, over the next several years.

In the fall of 1968, the players struck training camps over a variety of money and other issues. The NFL owners countered with a lockout of the training camps, and the dispute ended in compromise without much apparent enmity. Essentially, the same situation occurred in 1970, 1974, and 1975. During each of these training camp strikes the players' initial optimism gave way to frustration, as the owners held their ground or gave up little. The 42-day strike in 1974 was particularly discouraging for the union because solidarity crumbled with one-fourth of the veteran players crossing the picket lines. This strike marked the debut of Edward Garvey as the union's executive director.

Garvey, a lawyer who had formerly worked for the law firm representing the union, expressed determination to obtain concessions from the owners in 1982. A new television agreement had increased each owner's annual share of television revenue from \$5.8 million to \$14.2 million, and the players wanted a bigger share as well. Also, the United States Football League (USFL) was going to start play in the spring of 1983, which would create new employment opportunities for NFL players. The timing looked good for a generous settlement for the players' association, if it could maintain solidarity.

The 1982 strike, which lasted 57 days, produced unexpectedly good player solidarity but few gains for the players. Although average player salaries in the NFL rose from \$90,000 in 1982 to \$230,000 in 1987, most of this increase was due to opportunities for players to jump to USFL clubs for a higher salary or to be paid more by their NFL clubs to stay. A number of issues—free agency, pensions, severance pay, and artificial turf—remained in dispute. In 1987, the new television agreement was paying each owner \$17 million annually, inspiring a new struggle between players and owners over revenues.

The negotiators

The chief protagonists in the 1987 negotiations were Jack Donlan, a former negotiator for National Airlines, and Gene Upshaw, Football Hall of Fame guard for the Oakland Raiders. Neither Donlan nor Upshaw was new to football negotiations. Donlan, executive director of the NFL Management Council, had represented the owners in 1982. Upshaw, who succeeded Garvey as executive director in 1983, had been Garvey's chief assistant in the 1982 talks. In the years prior to the 1987 negotiations, Donlan and Upshaw became acquainted and were on friendly terms. This was quite a contrast from the apparent acrimony between Donlan and Garvey that tainted the 1982 talks. So it looked like a fresh start was possible.

But chief negotiators do not operate on their own. An unusual and particularly troublesome aspect of collective bargaining in sports is that negotiating within the organization presents as many (or perhaps even more) problems as negotiating with the adversary. This so-called "intraorganizational bargaining" is crucial in football

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Exhibit 1. National Football League Players' Association and owners' positions on various issues, 1987

Issue	Players' association	Owners
Free agency ¹	Unrestricted for players with 4 years in the league	Modest liberalization of current system of compensation for teams losing a player
Drugs	Testing for probable cause of drug use	Random testing
Contracts	Guaranteed for second-year players on up	Guaranteed for fourth-year players on up
Pensions	Annual \$25 million NFL contribution	Annual \$12.5 million NFL contribution
Minimum salaries	\$90,000 for rookies up to \$320,000 for 13-year players	\$60,000 for rookies to \$180,000 for 13-year players

¹Summarized from Bob Oates and Rich Roberts, "With No Talk of Settlement, NFL Players Taking a Walk," *Los Angeles Times*, Sept. 22, 1987, Part III, p. 1.

because there are 28 teams joined together in negotiations, each with separate ownership.

The NFL Management Council, consisting of one member from each of the 28 clubs, determines the league's labor policy. The Management Council is supervised and coordinated by its Council Executive Committee. The six-member committee consisted of Hugh Culverhouse of the Tampa Bay Buccaneers (chairman), Tex Schramm of the Dallas Cowboys, Joe Robbie of the Miami Dolphins, Michael Brown of the Cincinnati Bengals, Charles Sullivan of the New England Patriots, and Dan Rooney of the Pittsburgh Steelers. It is this group that supervises Donlan.

On the union side, each of the 28 teams has a player representative who handles union business with individual players. As chief negotiator for the union, the executive director, Upshaw, maintains close contact with the player representatives to remain up-to-date on member views. He also deals with the policymaking board for the players, a nine-member executive committee headed in 1987 by Marvin Powell. Complicating the executive director's role further is that he deals with other union executives, who have strong views. As is true of most strikes, in a football strike a key to winning is how well the owners and players are able to maintain solidarity.

The disputes

The disputes which the talks centered on were those brought forth by the players' association. To understand these disputes, it is helpful to look at the conditions that caused them. Football players have short and risky careers that last an average of 3.2 years, the shortest in professional team sports. Approximately half of the veteran players wind up with some kind of permanent disability, usually to the knee or back, that can cause

considerable pain throughout their lives. The NFL veteran is believed to have a life expectancy of about 55 years, far less than the average of 70 years for all American males.¹

While the average player salary in 1987 was \$230,000, the median salary was closer to \$170,000.² The average salary is deceptive because a few very highly paid players pulled it up.

It is therefore not surprising that players seek to maximize their incomes during such short careers. Although the players' association does not represent players in individual salary negotiations, there are several money issues—for example, minimum salaries and severance pay—that concern the union. In addition, there are other issues that can lead to higher salaries, such as free agency, and health issues that can reduce injuries and lead to longer careers, such as elimination of artificial turf. Exhibit 1 shows the key issues in dispute and the parties' positions at the time of the strike.

Negotiations

The old 5-year agreement expired on August 31, 1987. Even before this, there were several reasons to expect negotiations to falter and end in a strike. For one thing, the union has always struck in formal negotiations with the owners. Thus, a strike should have been considered likely. Secondly, there had been a strike in baseball in 1985. Although this strike lasted only 2 days, there is a certain imitative quality about the NFL players' association in following its baseball brethren. The long football strike of 1982 followed the long baseball strike of 1981. In addition, strike incidence is far higher under new leaders, and Upshaw was the new executive director of the players' association. Also, the USFL had discontinued operation the year before. Had the USFL kept playing, NFL owners probably would not have allowed a strike for

fear of losing players and public support to the rival league. Perhaps most important were the perceived inequities by the players—that they were not paid what they were worth, while the owners reaped large profits from the game.

Despite these ominous portents, a strike seemed unlikely. While important issues were on the table, there just didn't appear to be anything worth striking over. There had been too much suffering in 1982 and the level of acrimony in 1987 was down. Moreover, instead of bargaining in one place the negotiations moved around, with sessions in Tampa, San Francisco, Washington, DC, New York, and Philadelphia. The purpose of moving the negotiations was to get more privacy. Also, an attempt was made to avoid the glare of the media. The twice-daily news conferences of the 1982 strike were not held. Though perhaps entertaining for the public, they proved counterproductive as the two parties resorted to insulting each other. This caused attitudes to deteriorate and polarized the negotiators. In 1987, no public announcements were made ahead of negotiating sessions, and news stories emanating from the parties were kept to a minimum. (This policy later broke down.)

What became disquieting to observers, despite all the optimism about a strike-free settlement, was the lack of progress in negotiations. It is customary for negotiations to start well before the expiration of the agreement. The parties in football had several negotiating sessions in the early summer, but progress was negligible and it seemed that the sides were not going to enter serious discussions until late August. By this time, though, the contract had almost expired and the regular season was ready to start. By mid-September strike talk began to circulate. At this point, the union may have been well advised to make major concessions because it had never won a battle with the owners outside of court and there was little reason to expect it would do so in 1987 by striking.

Nevertheless, the players' association went forward with a vote to strike on September 22. Both Donlan and Upshaw appeared before television viewers to plead their case. At this time Donlan observed that Upshaw had not been to the bargaining table in two weeks and was instead out conferring with the players. The owners charged that the players were not bargaining in good faith and filed a complaint with the National Labor Relations Board. This pointed out the dilemma Upshaw was in. He had to try to maintain solidarity among the players by making personal appearances around the country, but in so doing had to sacrifice his duties as a negotiator with management. The prolonged absence by Upshaw may have allowed the owners to stiffen their negotiating position. When the union refused to accept a request by the owners to extend the strike deadline by 30 days, the strike became inevitable.

The owners' revised strategy seemed simple: (1) stonewall in negotiations, (2) use the NFL's public relations program to persuade the fans of the rightness of their position, and (3) divide and frustrate the players by proceeding with the regular schedule using strikebreakers.

This strategy, a throwback to the early 20th century, was calculated to wear down the union. The owners were taking a long-term view. This approach was effective because unlike 1982, the games went on. This, coupled with the breakdown in player solidarity, probably won the strike for the owners. But there was a bargaining issue that also contributed to the union's failure: free agency.

Free agency

Perhaps the most important labor-management dispute in professional sports is free agency. This issue is crucial because it gives players an opportunity to sell their services to several teams rather than only one. Players in baseball and basketball have reaped economic gains from free agency (average salaries in the sports are \$410,000 and \$500,000, respectively). Without significant free agency opportunities, football players could not obtain their free market value which they perceived to be higher than their current salaries because of the profits made by owners and high salaries earned by other professional athletes.

Prior to 1976, football exercised what was called the "Rozelle Rule" on free agency. This rule allowed NFL Commissioner Peter Rozelle to award compensation (players, draft choices, money) to a player's former team when he signed a contract with a new team. From 1963 to 1975, only four NFL players played out their options and signed as free agents with other clubs. Thus, the Rozelle Rule effectively chilled the market for free agents. In December 1975, however, the players' association won the *Mackey* case, filed on behalf of John Mackey of the Baltimore Colts. In this case, the Federal courts ruled that the Rozelle Rule was an unreasonable restraint of trade under the Sherman Antitrust Act of 1890, because it acted as a deterrent to player movement in the NFL.

With the decision in *Mackey*, NFL players could become free agents by playing out their option with the barrier of a compensation penalty to their team no longer in the way. However, in 1977, the union bargained away the rights won in the courtroom and agreed to a new method of determining compensation payments for signing free agents. Under this provision, which was slightly modified in the 1982 contract, only one free agent, Norm Thompson of the St. Louis Cardinals, signed with another club.³

The rationale for negotiating away the free agency won in court is that free agency may not be as meaningful in football as it is in other sports. The players gained increased pension and other benefits for giving up free agency, and felt it was a wise tradeoff. Why don't football

players receive higher salaries under free agency? One reason is that a single player doesn't make that much difference on a team. Football is played with 22 players—11 on offense and 11 on defense. By contrast, one player can have a big impact on a five-person basketball team, but is far less important in football. Second, the NFL owners already operate in stadiums that typically average 95 percent of capacity, so they would not be able to sell many more tickets to justify acquiring a star free agent player. Also, there are fewer games played in football than in other team sports. More important, most teams fill their stadiums regardless of their won-lost record. Third, because football careers are much shorter, there are fewer opportunities for players to become free agents. Finally, the owners proved determined not to fundamentally change the free agency system.

Supposing the players were able to achieve free agency, there may not be much they could make of it because the football owners would not likely fall victim to a bidding game for reasons stated above. It is true that the baseball owners from 1976 to 1984 spent millions on free agents. When they stopped signing free agents in 1985 and 1986, the Major League Baseball Players Association filed a grievance charging the owners with collusion. Arbitrator Tom Roberts agreed with the union.

Ironically, the Roberts' decision came out on September 22, the same day the players' association announced its intention to strike. The union indicated that the baseball decision reinforced its position. The football owners, however, had never signed free agents to any significant degree, thus making guilt of collusion more difficult to prove.

It is against this backdrop that the players' association pushed so hard for free agency. The owners agreed to change the current system so that a team would owe a first-round draft pick if it signed a player earning \$300,000 or more, up from \$140,000. This would have made it easier for some players to change teams. The owners also offered to raise the salary level at which teams could keep players by matching competitive bids under a right of first refusal, which would also have helped player mobility. The union dropped the demand for unlimited free agency without compensation for all players to only those players with 4 years' experience. Despite these concessions the parties remained far apart on free agency. Meanwhile, doubts were expressed by some of the striking players as to whether free agency was worth the sacrifices the strike entailed.

While making small concessions on free agency, the owners made an interesting offer to establish a bonus and salary scale for first-year players. (It should be recalled that it was the players' association that sought a wage scale for all players during the 1982 strike.) Salaries would be determined by the players' ranking in the NFL draft. For instance, rookie salaries would be set at \$60,000

plus uniform college draft bonuses of from \$500,000 for the first pick, \$400,000 for the second pick, on down to \$5,000 for the last player drafted. This offer was a response to veteran player complaints that rookies were making more money than they were. Money saved by the salary scale would be used to provide greater rewards for veterans. Another purported attraction of this proposal is that rookies would no longer need agents to represent them, which would eliminate illegal payments by agents to entice college students to sign with them. On the other hand, a salary scale for rookies might provide owners with an economic incentive to cut veteran players.

Strike impact

The owners were far better prepared for a strike than the players. About two-thirds of the teams signed replacement players who promised to continue the season in the event of a strike. Just two weeks prior to the start of the season there had been 100 players on each NFL team's training camp roster. Eager to play in the NFL, if only for a short time, they gladly took the \$1,000 proffered by the owners for standing by as potential replacements.

Although the players should have realized from the 1982 experience that they needed to take steps to insulate themselves from the impact of a strike, not much was done. There was no union strike fund from which to draw benefits. No line of credit was available for player loans. As a member of the executive council of the AFL-CIO, Upshaw was able to get support from organized labor in NFL cities. This support hurt the owners by reducing attendance at games, and by the embarrassment of AFL-CIO picketing, but did nothing to alleviate the players' financial plight.

Approximately 60 percent of income in the NFL comes from television and 40 percent from gate receipts.⁴ In the first week of the strike games, television ratings were down 3 to 4 rating points from the usual network average of 15. Most observers were surprised that the ratings were that high. Many viewers tuned in to the games out of curiosity. Interest declined, however, and television ratings dropped further as the strike continued. Gate receipts, on the other hand, went in the opposite direction. An average of 17,000 fans, 28 percent of usual, attended the first week of the strike games. Attendance climbed to 25,000 in the second week.⁵

What was the impact on players and owners? The strikers lost an average of \$15,000 per game, and approximately \$80 million altogether. All teams refunded monies to fans who had purchased tickets but did not attend strike games. Although gate receipts and television ratings were down, the owners saved on salaries by paying the replacement players comparatively little. The average owner's profit per game actually rose from \$800,000 before the strike to \$921,000 during the strike.⁶ This

profit was temporary, however, because the league has to refund \$60 million to the networks over the next two seasons for the one missed weekend of play, the reduced ratings, and the decline in advertising revenues.

The strike also affected public opinion of the union. A poll by ESPN, a cable television network, found that fans favored the owners over the players by about 3 to 1.⁷ Although the games were played mostly with unknown players, they had the appearance of major league football. NFL officials crossed the picket lines to referee games, and the regular television announcers were on hand to provide commentary. Although many of these announcers are former players, their sentiments appeared to be on the side of the owners.

Also harming the union position was the erosion of player solidarity. In the first week of the strike several veteran players crossed picket lines. The number of defectors increased as the strike continued. Although about 84 percent of the 1,585 regular players stayed out for the duration, at the time the strike was called off it looked like many players would be returning. The owners, on the other hand, maintained their solidarity. The NFL Management Council spoke with a unified voice and no owners negotiated separately.

The strike ends

On the 20th day of the strike Upshaw appeared on television during the Monday Night Football game to propose an end to the strike. This was a desperate effort by the union to settle because players on a majority of teams were poised to return to work if the strike wasn't settled before the upcoming weekend of October 18. The executive director's proposal contained three parts: (1) reinstatement of all strikers for the rest of the season, including protection of all player representatives and alternative player representatives, (2) the 1982 collective bargaining agreement would remain in effect, and (3) all current bargaining issues would be submitted to mediation for 6 weeks, and after that, all remaining unsettled issues would be submitted to arbitration.

The owners indicated a willingness to protect the player representatives, submit to mediation, and continue the 1982 agreement, but guaranteed the strikers' salaries for only two games and rejected arbitration. Historically, the owners have been wary of arbitration. Arbitration is commonly used in football for grievances and injury disputes, but the owners have never allowed arbitration of provisions that go into a collective bargaining agreement. This points up one of the reasons why arbitration of interests disputes is rare throughout American industry. In negotiations, one of the parties typically has a position of strength. That party would rather go to the bargaining table than allow an arbitrator to decide its fate.

Faced with the owners' rejection of its proposal, the union decided to end the strike on October 15. It is customary when a strike is over for management to welcome back the strikers and get on with business as usual. But the owners surprised the returnees. The owners had established October 14 as the deadline for players to return to be eligible for play in that weekend's games. Because the players ended the strike a day late the owners refused to allow them to play on October 18 and 19. This seemed a violation of trust to some players, and the union protested the legality of the action with the NLRB. However, the owners publicly reasoned that the players were out of condition and would risk injury. Additional motivation for the action may have been that the union had again chosen to use a weapon that had proved menacing to the owners in the past: an antitrust suit.

The lawsuit, filed the same day the strike ended, challenges the college draft, restraints on free agency, and other practices the union alleges are unfavorable to competition in the football labor market. Also, the union filed an unfair labor practice charge with the NLRB, contending that the owners failed to bargain in good faith. The union's lawsuit emulates one filed earlier in the month by the players' union in the National Basketball Association on antitrust issues.⁸ For the players' association, the suit represents an alternative to its frustrated attempts at collective bargaining as well as a way of saving face after the strike.

With the flurry of litigation, it will probably be a long time before everything is resolved. In December 1987, the NLRB's general counsel issued a complaint against the NFL, finding that striking players were discriminated against when they were not allowed to return for the games on October 18 and 19. The owners appealed this complaint with the NLRB, but if it is upheld it could cost them as much as \$25 million in backpay.

A priority with the union in the antitrust suit was to get free agency for players whose individual contracts with their clubs have expired. Judge David Doty, hearing the case in U.S. District Court in Minneapolis, refused the union's initial request for an injunction to release the players, because he was waiting for an NLRB ruling on good faith bargaining. Meanwhile, ruled Judge Doty, the 1982 agreement would remain in effect. When the NLRB dismissed the owners' charge that the union had failed to bargain in good faith, Judge Doty found that an impasse existed. This finding allowed for the chance that approximately 280 players without contracts would be declared free agents when the judge finally ruled on the union's injunction request in mid-July, just before the opening of training camps for the 1988 season. However, Judge Doty denied the injunctive relief, indicating that the potential change of teams by so many players could have had a devastating effect on the competitive balance of the NFL. The judge urged the parties to return to the bargaining

table. Nevertheless, if the bargaining stalemate continues, a decision on the antitrust dispute will eventually be reached by Judge Doty.

In retrospect, there was no real question about who would win the 1987 strike. The players struck reluctantly, without a significant issue to rally behind. When the union leaders were asked to identify their big issue they named free agency, for which few players had much enthusiasm. By striking when so many players preferred not to, the union may have harmed itself. As a result of the strike the players' association lost its dues checkoff privilege. So rather than having the clubs automatically deduct the \$2,400 in union dues, the union has the difficult task of collecting the monies from disgruntled players. But as incensed as some players may be with their union, they are also bitter toward the owners, especially for not letting them play after they had capitulated.

It seems unlikely that the union will die because the owners do not want this to happen. They have expressed preference for some kind of union, albeit a weak one, to no union at all. Were the union to die, the courts and Congress might take action against the owners, who need a collective bargaining agreement to continue to use the waiver system, the player draft, and other practices.

The bottom line on the strike may be that the owners and players will have to put aside their past warfare and try to reach agreement on issues like pensions, severance pay, and artificial turf. These issues are not only important to the players but their costs can be estimated readily. Unless the owners and players work out their problems themselves, the government may intervene in a manner that would be in neither party's interests. Unless a negotiated settlement is reached, the 1987 strike could become just the first step of the longest yard in NFL labor relations. □

—FOOTNOTES—

¹Ron Mix, "So Little Gain for the Pain," *Sports Illustrated*, Oct. 19, 1987, p. 55. Although the life expectancy of 55 is claimed by the players' association, this age is not based on scientific study of all deceased NFL players.

²The median salary is calculated by the players' association and is cited in Paul Zimmerman, "On the Outside Looking In," *Sports Illustrated*, Oct. 26, 1987, p. 56.

³In March 1988, Wilber Marshall of the Chicago Bears signed as a free agent with the Washington Redskins for a reported \$6 million over 5 years. Although the 1987 agreement had expired, the free agency provisions continued in effect pending the outcome of antitrust litigation. The Redskins gave up their first-round draft choice in 1988 and 1989 as compensation to the Bears. Thus, Marshall became the second free agent in 11 years to change teams.

⁴Paul D. Staudohar, *The Sports Industry and Collective Bargaining* (Ithaca, NY, ILR Press, Cornell University, 1986), p. 58.

⁵"In Week Two, Average Attendance Increases From 16,987 to 25,042," *Los Angeles Times*, Oct. 12, 1987, Part III, p. 3.

⁶Robert Johnson, "Team Owners Discover the Strike Brings a Big Benefit: An Improved Bottom Line," *The Wall Street Journal*, Oct. 14, 1987, p. 35.

⁷Poll reported in *Sports Illustrated*, Oct. 5, 1987, p. 17. See also Frederick C. Klein, "Joe Fan Sides With Owners," *The Wall Street Journal*, Aug. 8, 1987, p. 21.

⁸The basketball players' lawsuit was dropped when the union reached an agreement with the NBA in April 1988.