

February 14, 2011

L. Robert Batterman
Member of the Firm
d 212.969.3010
f 212.969.2900
rbatterman@proskauer.com
www.proskauer.com

By Fax and Mail

Ms. Karen Fernbach
Acting Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza, Room 3614
New York, NY 10278

Re: National Football League
and
National Football League Players Association

Dear Ms. Fernbach:

On behalf of our client the National Football League, we are filing the attached unfair labor practice charge against the National Football League Players Association for breach of its duty to bargain collectively and in good faith concerning the terms of a new collective bargaining agreement covering all NFL players.

A statement of position analyzing the factual and legal issues will be submitted tomorrow, to be followed within several days by an affidavit from Jeffrey Pash, the NFL's Executive Vice President and General Counsel.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,


L. Robert Batterman

LRB/lb
Enclosure

cc: Mr. Elbert F. Tellem, Assistant to the Regional Director
Jeffrey Pash, Esq.
Dennis Curran, Esq.
Peter D. Conrad, Esq.
Howard Z. Robbins, Esq.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

| DO NOT WRITE IN THIS SPACE | |
|----------------------------|------------|
| Case | Date Filed |

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

| | | |
|--|---|-------------|
| a. Name National Football League Players Association | b. Union Representative to contact DeMaurice Smith, Executive Director | |
| c. Address (Street, city, state, and ZIP code) 1133 20th Street, N.W., Washington, DC 20036 | d. Tel. No. 212.756.9100 | e. Cell No. |
| | f. Fax No. 202.756.9317 | g. e-Mail |

h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On or about June 3, 2009, the National Football League Players Association ("NFLPA" or the "Union"), the recognized collective bargaining representative of all players in the National Football League ("NFL" or the "League"), and the NFL Management Council ("NFLMC"), acting on behalf of the member clubs of the NFL, began formal negotiations of a new collective bargaining agreement. The current agreement (the "CBA") expires March 3, 2011.

During the course of the bargaining that has followed, the NFLPA consistently has failed to confer in good faith with the NFLMC regarding wages, hours and other terms and conditions of employment of the NFL players as required by Section 8 (d) of the National Labor Relations Act (the "Act"). As shown below, the Union's conduct amounts to surface bargaining and an anticipatory refusal to bargain.

(Continued on attachment)

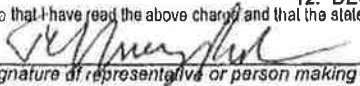
| | | |
|--|------------------------------|-------------|
| 3. Name of Employer National Football League and its Constituent Member Clubs | 4a. Tel. No. 212.450.2033 | b. Cell No. |
| | c. Fax No. 212.681.7571 | d. e-Mail |

| | |
|--|---|
| 5. Location of plant involved (street, city, state and ZIP code) Nationwide | 6. Employer representative to contact Jeffrey Pash, Executive Vice President and General Counsel |
|--|---|

| | | |
|--|--|--|
| 7. Type of establishment (factory, mine, wholesaler, etc.) Professional sports league | 8. Identify principal product or service Football | 9. Number of workers employed Approx. 2,000 (players) |
|--|--|--|

| | | |
|--|-------------------------------|-------------|
| 10. Full name of party filing charge National Football League | 11a. Tel. No. 212.450.2033 | b. Cell No. |
| | c. Fax No. 212.681.7571 | d. e-Mail |

| |
|---|
| 11. Address of party filing charge (street, city, state and ZIP code.) 280 Park Avenue, New York, NY 10017 |
|---|

| | | |
|--|--|--------------------------|
| 12. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief. | | Tel. No. 212.450.2033 |
| By  Jeffrey Pash (signature of representative or person making charge) (Print type name and title or office, if any) | | Cell No. |
| | | Fax No. 212.681.7571 |
| | | e-Mail |
| Address 280 Park Avenue, New York, NY 10017 | | |
| | | (date) 2/14/2011 |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment to Unfair Labor Practice Charge
Against National Football League Players Association

(Continuation of Section 2 of Charge)

More specifically, since the commencement of formal negotiations, the NFLPA has engaged in a course of conduct calculated to avoid reaching an agreement with the NFLMC by, inter alia, (i) delaying the scheduling of bargaining sessions; (ii) failing to respond in a timely and/or meaningful manner to the NFLMC's contract proposals; (iii) inducing the NFLMC to make proposals that were then categorically rejected by the NFLPA; (iv) insisting upon disclosure of financial data to which the NFLPA has no legal right and then suspending negotiations unless and until such data is produced by the NFLMC; (v) conditioning contract proposals on the NFLMC's agreement to a nonmandatory subject of collective bargaining, *i.e.*, extension of the United States District Court's oversight of this collective bargaining relationship via extension of the Stipulation and Settlement Agreement in *White v. NFL*, an antitrust case through which the Court has exercised jurisdiction over the terms and conditions of employment of NFL players' employment in this unionized industry; and (vi) engaging in other actions demonstrating that the Union has approached these negotiations with no intent to reach agreement through good faith collective bargaining.

These tactics have been and are integral to -- indeed, they are in preparation for -- the NFLPA's announced strategy to run out the clock and, after the CBA expires on March 3, purport to "disclaim interest" as the representative of the NFL players, a strategy utilized by the Union in a prior negotiation and one that the NFLPA often has threatened to resort to in this negotiation should it be deemed more advantageous to the players than the collective bargaining process that the Union is obligated by law to follow. On the false premise that the bargaining relationship would effectively be terminated as a result of its sham disclaimer, the NFLPA has made plain that it will then seek (i) to enjoin, as a supposed antitrust violation, any effort by the League/Clubs in support of their bargaining demands to exercise their rights under federal labor law lawfully to lock out the players, and (ii) once again to achieve a favorable agreement with the NFLMC through the threat, commencement and subsequent settlement of antitrust litigation, rather than through the give and take of good faith collective bargaining contemplated by the Act and enforced by the National Labor Relations Board.

As in the past, the NFLPA's threatened disclaimer as the representative of the players, together with the now-familiar antitrust litigation that is expected to follow, is a ploy and an unlawful subversion of the collective bargaining process, there being no evidence whatsoever of any (let alone widespread) disaffection with the Union by its members. It is both the reason for and proof of the NFLPA's failure to approach these negotiations with a sincere desire to reach a new agreement at the bargaining table as opposed to the courthouse. The NFLPA's statements and conduct over the course of the last 20 months plainly establish that it does not intend to engage in good faith collective bargaining with the NFL after the CBA expires or otherwise meet its obligations under Section 8(d) of the

Act, and that it instead will pursue its goals on behalf of the players by pretending to disclaim interest as their Section 9(a) representative and then sue the NFL under the antitrust laws. The Union's strategy amounts to an unlawful anticipatory refusal to bargain.

The Union is contriving, through its inevitable sham disclaimer, to make the NFL's post-expiration conduct appear "sufficiently distant" from the collective bargaining process that the Union's pursuit of antitrust remedies would not significantly interfere with that process.¹ The Union will not, however, genuinely be defunct or otherwise irrevocably removed from the NFL/NFLPA collective bargaining relationship.

For all the foregoing reasons, the Union's conduct violates Section 8(b)(3) of the Act.

¹ *Brown v. NFL*, 518 U.S. 231 (1996). This charge seeks the Board's detailed views—as the Supreme Court requested in *Brown*—as to whether the Union's sham disclaimer would make terms and conditions of players' employment sufficiently distant from the collective bargaining process that antitrust intervention would not significantly interfere with that process.