The original documents are located in Box 77, folder "Football" of the Edward Hutchinson Papers at the Gerald R. Ford Presidential Library.

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NOV -3 1975

September 12, 1975

Honorable Edward Hutchinson
U. S. House of Representatives
2336 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Hutchinson:

As a professional football player, I am extremely interested in the progress of H.R. 2355, a bill to protect the rights of professional athletes. The bill would outlaw certain restrictions on a player's ability to negotiate for his services.

I understand that in early October hearings will be held on H.R. 2355 by the House Monopoly Subcommittee of which you are a member. On behalf of professional athletes like myself, as well as future players, I hope that you will give this issue careful attention and study.

Professional athletes are entitled to the same dignity and freedom as other employees.

If you need any information in this regard I will be happy to supply it. Meanwhile, I would appreciate hearing from you on the subject.

Sincerely,

Dave Pureifory

Dave Pureifory
2982 Roundtree
Bldg. 9 Unit 58
Ypsilanti, Mich. 48197

Green Bay Packers

Honorable Edward Hutchinson
U. S. House of Representatives
2336 Rayburn House Office Building
Washington, D. C. 20515

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20515

OFFICIAL BUSINESS

Peter W Rodino
M.C.

Hon. Edward Hutchinson
2336 Rayburn

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515
Telephone: 202-225-3951

OCT -9 1975

October 9, 1975

MEMORANDUM

TO: Members, Monopolies and Commercial Law Subcommittee

FROM: Dan Cohen, Counsel

RE: October 14th Hearing on H.R. 2355

On Tuesday of next week, October 14, the Subcommittee will be meeting during the Columbus Day recess to consider the bill H.R. 2355, "to protect the civil and constitutional rights of professional athletes".

A hearing has been scheduled for 11:00 a.m. in Room 2141 Rayburn Bldg., the main Committee Hearing Room.

Witnesses will include Pete Rozelle, Commissioner of the National Football League and Ed Garvey, Executive Director of the NFL Players Association. In addition, it is expected that Mr. Garvey will be accompanied by several active members of the Association. Former Judiciary Committee Chairman Emanuel Celler has been retained as Washington counsel for the Players Association and he, too, may make a brief statement.

The bill, introduced last January by Mr. Seiberling, would essentially outlaw as anticompetitive the standard player contract operative in the major professional sports leagues. A copy of the bill is attached.

Briefly, the legislation would create a right for professional athletes to enter into contracts with their respective team owners which would not grant to the owners the right to control the player's subsequent contract rights - that is, a right to sign a contract without agreeing to give the owner control over the player upon the expiration of the contract.

* * * * * * * *

The major professional sports leagues in this country enjoy near complete monopoly status. Major league baseball, in fact, enjoys a total monopoly and has an expressed judicial exemption from the antitrust laws.

The National Football League (NFL) is a near monopoly with only very slight competition from the financially unstable World Football League. In 1966, the NFL was given Congressional approval to merge with a very real competitor, the old American Football League which is now the American Conference of an expanded National League.

(A critical issue may arise as to precisely what it was that was exempted from the antitrust laws by the 1966 legislation authorizing the merger. The statute enacted provides that the antitrust laws "shall not apply to a joint agreement by which the member clubs" of the two leagues combine their operations into an expanded single league. The legislative history makes clear that the intent of Congress, and the understanding of the parties, was that the exemption applied to the sole act of merger, nothing more; nonetheless the language of the exemption applies to the "joint agreement" by which the leagues merge. It is argued by some, therefore, that Congress exempted more than the mere merger - it is argued that Congress exempted the wider range of league agreements.)

The National Basketball Association (NBA) and the National Hockey League (NHL) also enjoy near monopoly status, although each has been challenged mildly in recent years by the advent of a second league. In 1971, the basketball leagues unsuccessfully sought congressional approval for a merger, but recently the two most lucrative teams of the rival league have applied for NBA membership.

Historically, the leagues have entered into what they would agree amount to horizontal agreements between member teams that restrict competition for player talent. The binding nature of the player contracts, with their "reserve clauses" or "option clauses", and the common draft method of player selection are the basic manifestations of these agreements.

There is no question that an effect of these agreements is the elimination of intraleague bidding for player services. As a result, it can probably be argued that player salaries are reduced below the truly competitive price. The issue raised by the bill, however, is whether the antitrust laws are nonetheless consistent with these restrictive practices by virtue of the necessity to preserve competitive balance between teams, which is necessary to the entertainment value of the games and ultimately, it may be argued, to the continued viability of the leagues.

Ongoing private litigation is testing the validity of many of these practices particularly in the case of the National Football League. Historically, however, the federal courts including the Supreme Court have answered the threshold issue of blanket exemption by ruling that baseball, and only baseball of all our professional sports, enjoys an antitrust immunity. Again, the antitrust "reasonableness" of many of the specific league practices is still being tested.

Initially,in the 1922 Case of Federal Baseball Club of Baltimore v. National League, (259 U.S. 200), the Supreme Court ruled that professional baseball was "not a subject of commerce" and was thus exempted from the federal antitrust laws.

The court took a second look at the question in 1953 in Toolson v. New York Yankees, refusing to overturn the earlier decision and asserting that any change should come from the legislature, not the judiciary.

However, since 1953, the Supreme Court has made it clear that baseball stands alone. This inconsistency, the Court tells us, is to be resolvedby the Congress.

Professional boxing was denied antitrust exemption in United States v. International Boxing Club,(348 U.S. 236, (1954)) and in Washington Professional Basketball Corporation v. NBA, (147 F. Supp. 154), the Federal District Court for the Southern District of New York held in 1955 that:

> The business of professional basketball conducted on a multistate basis, coupled with the sale of rights to televise and broadcast games for interstate transmission is trade or commerce among the several states within the meaning of the Sherman Act.

Professional basketball chose not to appeal that holding to the Supreme Court. But, in 1957, the Court considered Radovich v. National Football League, (352 U.S. 445), a case seeking a judicial antitrust exemption for pro football on a set of facts similar to the baseball cases.

In its decision, the Court ruled that football was entitled to no such exemption and that the principles of antitrust law were governing. In announcing the Court's opinion and refusing to extend the reasoning of the baseball cases, Mr. Justice Clark wrote:

> If this ruling is unrealistic, inconsistent, or illogical it is sufficient to answer * * * that were we considering the question of baseball for the first time upon a clean slate we would have no doubts.
>
> But Federal Baseball held the business of baseball outside the scope of the act. No other business claiming the coverage of those cases has such an adjudication. We, therefore, conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision.

> Congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation * * *
>
> Of course, the doctrine of Toolson and Federal Baseball must yield to any congressional action and continues only at its sufferance.

In 1972, the Court called upon Congress once again. On June 19 of that year, in resolving the much celebrated Curt Flood litigation, the Court, in Flood v. Kuhn, (407 U.S. 258), upheld baseball's exemption but called it an established "aberration" in light of the consistent holdings that other interstate professional sports are not similarly exempt.

Mr. Justice Blackmun, writing for the court, noted: "With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. Federal Baseball and Toolson have become an abberation confined to baseball * * *

> If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court."

(Additional cases of relevance include Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club Inc.(351 F. Supp. 462, (1972)) and Haywood v. National Basketball Association (401 U.S. 1204, (1971)).

* * * * * * *

As an additional note, the term "Rozelle Rule" may be thrown around in the course of the hearing and deserves explanation.

The "Rozelle Rule" is the NFL league agreement which requires the paying of compensation by a team signing a "free agent" (a player whose contract with his prior team has expired) to the team to which he was previously under contract. In the case of an inability of the teams to come to an agreement, the Commissioner - Mr. Rozelle - names the compensation. In other words, if the Redskins sign a "free agent" from the Bears, the Redskins must give the Bears a player acceptable to them, or Commissioner Rozelle steps in and names the player or players.

The effect of the Rule, opponents argue, is to discourage the signing of "free agents" and to further restrict player mobility. The Rule is currently being tested by private antitrust litigation in a federal district court.

Finally, it is probably important to mention that even as the antitrust issues have been debated and have crystallized over the years, the employment structure in these sports has undergone significant change.

Players' unions are recognized, and bargain with their leagues. In 1972, a baseball players strike delayed the opening of the season and curtailed the schedule. There have been NFL player strikes in 1974 and 1975, and an NBA player strike is remotely possible.

Also, just this week,the NHL Players Association reached a bargaining agreement with the owners of the National Hockey League teams requiring a compensation rule for the signing of free agents, but providing for an impartial arbitrator to settle compensation disputes.

It is probably worth at least noting then that the old antitrust issues have been placed in the perspective of these new employment relationships.

However, the Chairman has asked that the focus of the hearing be kept within the more narrow antitrust parameters, and that the more strictly collective bargaining and labor issues be left for a more appropriate forum.

DC:md

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C.

DEC 17 1975

Mr. Hutchinson,

The attached article may be of interest to you in view of the hearings that the Subcommittee held in October with respect to the Rozelle rule.

Frank Polk

December 17, 1975

THE WALL STREET JOURNAL,
Monday, December 15, 1975

Tackling the Pros

Antitrust Forces Study Possible Big Changes In Professional Sports

Key Issue Concerns the Hold National Football League Gives Teams on Players

Anyone for a Tennis Case?

By MITCHELL C. LYNCH
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—To Commissioner Pete Rozelle, his National Football League is pretty small potatoes, ranking "somewhere behind the shoelace industry in economic terms."

All 26 teams in the league combined don't draw as much revenue as does a big-city department store, he says. Anyway, Mr. Rozelle adds, the game itself "is nothing more than a form of entertainment."

Downbeat stuff for a man who is paid to be the NFL's biggest booster. But friend and foe agree Mr. Rozelle knows what he's doing: he is trying to persuade the government to stop taking football and other professional sports so seriously.

For many people in Washington are scrutinizing professional sports, and they aren't entertained by what they see. A growing number detect nothing less than a string of monopolies and oligopolies that appear to be making a lot of money and breaking the antitrust laws. The result is a new militant attitude in government that is likely to change the way pro sports are run. Some indications:

—Staff members at the Justice Department's Antitrust Division are completing new investigations of professional sports, concentrating on football, tennis and hockey. The initial findings: Football and tennis violate antitrust laws, while hockey with its two competing leagues is a borderline case.

—The House subcommittee on monopolies for the first time is seriously considering legislation that would shake up pro sports. It would end the way sports leagues switch players from team to team, regardless of players' wishes.

—The House communications subcommittee is putting final touches on a bill that would permanently block NFL clubs from refusing to broadcast home games that are sold out in advance. (A temporary anti-blackout law expires at the end of this season.)

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515
Telephone: 202-225-3951

JAN 14

January 12, 1976

Hamilton Carothers, Esq.
Messrs. Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

Dear Mr. Carothers:

This letter is written to inquire if and when you are to comply with my request for specific information, as you indicated you would some three months ago before the Subcommittee on Monopolies and Commercial Law. On October 14, 1975, the Subcommittee held hearings on H.R. 2355 and H.R. 694, bills to protect the civil and constitutional rights of professional athletes. I believe that you have been provided with a transcript of those hearings since you were a witness. As I am sure you will recall, after Commissioner Rozelle offered to submit a copy of the "Pro Forma Combined Statement" to the Subcommittee which had already been prepared and submitted to a district court, I objected to the adequacy of such information (transcript, page 115). Thereupon, I requested much more specific and detailed information broken down by individual teams, which you agreed to provide to the Subcommittee (transcript, page 117). As of this date, that information has not been received.

On December 16, 1975, a Thomas C. Williams, a member of a different firm but representing himself as "Attorney for the National Football League" forwarded to the Chairman a copy of the Pro Forma Statement. However, his transmittal letter contained the following comment: "We are hopeful that the Statement will be responsive to Congressman William S. Cohen's request for financial information."

Since my request was predicated on the inadequacy of the Pro Forma Statement, no one can misunderstand my intention.

Am I to infer that Mr. Williams was responding for you?

I continue to wait for the requested data. That data is available to you. Otherwise the Pro Forma Statement could not have been fashioned. Needless to say, my patience is wearing thin.

Very truly yours,

William S. Cohen, M.C.

WSC/sls

cc: The Honorable Peter W. Rodino, Jr.
The Honorable Edward Hutchinson

Congress of the United States
House of Representatives
Washington, D.C. 20515

OFFICIAL BUSINESS

William L. Hungate
M.C.

Hon. Edward Hutchinson
2336 RHOB

INSIDE MAIL

Ed Hutch

5502 Walshire Drive
Columbus, Ohio 43227
January 25, 1976

JAN 29 1976

U. S. Representative Edward Hutchinson
2436 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Hutchinson:

According to Representative Devine, you have received my letter concerning legislation about the reserve system. I would like, now, to amplify my views.

The first provision of the legislation would give the National Football League an exemption from antitrust laws for its college draft and any other drafts, such as expansion drafts, as it may hold. This is to insure the competitive balance of the National Football League. This would be accomplished by an amendment to the Sherman Antitrust Act.

Another provision relates to baseball. This is a reserve clause compromise, by stating that players with ten years of service in major league baseball shall, if they play one year without signing a contract, to be free agents, provided, that there shall be compensation. The two teams will agree to the compensation within thirty days, or else, the Commissioner of Baseball will name the compensation. This is a compromise solution to the reserve clause problem. This provision would expire December 31, 1979, to allow a review of the situation. This law would require that this provision be inserted in the contracts of eligible players.

For pro football, pro basketball, and pro hockey, the provision would be that ten-year veteran players could, after having completed their ten years in the sport, sign a contract with any team they wished, without compensation. This law would require that such a provision would have to be inserted in an eligible player's contract, and the provision would expire June 30, 1980, for purposes of review.

Sincerely,

C. Kevin O'Brien

C. Kevin O'Brien

C. K. O'Brien
5502 Walshire Drive
Columbus, Ohio 43227

U. S. Representative Edward Hutchinson
2436 Rayburn House Office Building
Washington, D. C. 20515

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Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Telephone: 202-225-3951

January 30, 1976

Mr. Alvin Rozelle
Commissioner
National Football League
410 Park Avenue
New York, New York 10022

Dear Mr. Rozelle:

It has been more than three months since your appearance before the Subcommittee on Monopolies and Commercial Law, at which time your attorney, Mr. Hamilton Carothers agreed to provide specific financial information regarding the members clubs of the National Football League.

Specifically, Mr. Carothers agreed to a request by Congressman William S. Cohen for data and figures on payrolls, gross income, ticket prices, stadium capacity and attendance for each of the twenty-six NFL teams. An offer to submit that statement of averages provided to the District Court was rejected as inadequate.

Nonetheless, the "Pro Forma Combined Statement" is all that has been forthcoming, and Congressman Cohen has been advised by your attorneys that this is all they are now prepared to provide voluntarily.

The Subcommittee on Monopolies and Commercial Law has determined that the financial information requested is essential to its consideration of H.R. 2355 and other measures relating to organized professional team sports. I regret that the National Football League has to date been unwilling to submit the data as agreed to. Still, I am hopeful that the information will be forwarded promptly so that more formal action by the Committee can be avoided.

Sincerely,

Peter W. Rodino, Jr.
Chairman

PWR:dcd

WILLIAM S. COHEN
2D DISTRICT, MAINE

412 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-6306

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Washington, D.C. 20515

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523 MAIN STREET
PRESQUE ISLE, MAINE 04769
(207) 764-3266

February 4, 1976

Honorable Peter W. Rodino, Jr.
House Judiciary Committee
2137 Rayburn House Office Building
Washington, D. C.

Dear Chairman Rodino:

Thank you for the copy of your letter to Commissioner Rozelle.

I believe the record should indicate that Mr. Williams did not refuse to supply the Subcommittee with the information that I requested. Rather, he expressed some apprehension that a public disclosure of the information would, as a practical matter, amount to disclosing the identity of the teams furnishing the information.

It was in this context that I raised his question about the public dissemination of the information requested. I indicated to Mr. Williams that I could not and would not make a unilateral determination as to how the Subcommittee should proceed but that I would seek its judgment at our meeting on January 28th. If the Subcommittee determined that we should have the data supplied as part of our permanent record, then Mr. Williams could determine whether he would or would not comply with our request.

Frankly, I think there has been too much delay and foot dragging on this matter, but I do want the record to show that Mr. Williams did not in his conversations with me refuse to supply the information.

Sincerely,

William S. Cohen

WSC:b

cc: Alvin Rozelle
Tom Williams

THE NATIONAL FOOTBALL LEAGUE

410 PARK AVENUE, NEW YORK, N.Y. 10022 • PLaza 8-1500

5 February 1976

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

We are in receipt of the Committee's letter of January 30, 1976. I would like to personally apologize for any confusions which may have arisen with respect to the subject matter of your letter.

Mr. Carothers accompanied me to the hearing because of his familiarity with the antitrust issues posed by the bill. Since that date Mr. Carothers has been extensively involved in litigation. Issues of the form and content of the information the Committee desired to have submitted was dealt with by others. It is my understanding that a considerable number of discussions have been held with the Committee's staff and with Representative Cohen.

Much of the information requested by Representative Cohen is not presently available to the League office. The League does have information on club ticket prices, stadium capacity, and game attendance, but member club financial statements are not filed with the League office. Antitrust authorities would be the first to question such practices if they led to exchanges among the clubs of their expense and cost items.

Reliable financial information relating to member club operations has occasionally become an issue in two League contexts. The NFL member clubs, through their Management Council, periodically engage in collective bargaining with the NFL players union. Under certain circumstances, the players union is entitled to request disclosure of certain forms of member club financial information. When this has been required, the clubs have complied with the applicable labor-law requirements. It is my understanding that the Committee has already been offered all financial information developed by the clubs for that purpose and available to the League.

Occasionally also, NFL member clubs, as defendants in antitrust litigation, have been required to produce various forms of member club financial information. In all such instances, the financial information required to be produced has either been limited to financial information already developed for collective bargaining purposes or the information has been produced subject to tight protective orders barring any form of disclosure of such information until the Court orders otherwise. To date, information produced in response to litigation interrogatories would not meet the terms of your Committee's request for information or serve to clarify any issue the Committee is now investigating.

The problem basically arises because the clubs do not make use of common charts of account. With only two exceptions, NFL clubs are privately owned. They are therefore not subject to SEC reporting requirements and their financial statements are prepared solely for individual use by their own stockholders or partners and for tax purposes. Within the limits of permissible accounting practices, their accounting techniques therefore vary widely. Even gross income figures are widely distorted, with some clubs taking visiting team shares into their income accounts and others taking in only their home team shares.

Club "payroll" accounting is particularly subject to these variations. Deferred player compensation committments may be allocated as paid or as earned; bonuses may be amortized over the period of the player's contract or charged when paid; individual club "payroll" accounts may or may not include player post-season game salaries, player medical costs, meal money, team travel expenses, or a wide variety of varying pre-season camp player costs.

As a result, whenever it has become necessary for the NFL clubs to develop financial information by expense classifications (or even by defined revenue classifications), it has been necessary for the clubs collectively to make use of the services of outside accountants capable of defining the particular classification and transposing each club's raw data into the predetermined expense or revenue classification. Without such pre-definition and translation, comparisons of club figures, team-wide averages, or averages by particular classes of clubs would be quite meaningless. Thus a simple request by the League for "payroll" information from the clubs would produce little meaningful information.

In light of the Committee's request for information, the League will promptly furnish the Committee information now available in the League office relating to member club ticket prices, stadium capacity, and attendance. The

League will also immediately discuss with the Management Council as well as with the outside accounting firm retained by that organization a possible time schedule for the development and submission of "payroll" information for the member clubs. Thereafter, the League, on behalf of the clubs, may wish to discuss with the Committee such methods as are available for avoiding the possible damaging effects of public disclosure of payroll figures for any member club on an identifiable basis.

I hope the above is viewed as a satisfactory response to your letter.

Respectfully,

PR:te

PETE ROZELLE
Commissioner

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Telephone: 202-225-3951

February 26, 1976

1976

MEMORANDUM

FEB 27 1976

TO: MEMBERS OF THE MONOPOLIES AND COMMERCIAL LAW SUBCOMMITTEE

FROM: CHAIRMAN PETER W. RODINO, JR.

RE: NATIONAL FOOTBALL LEAGUE DATA

Attached are copies of correspondence regarding the Subcommittee's request for information from the National Football League.

As you will note, Commissioner Rozelle in his letter of February 5th indicated the League would promptly be complying with our request relating to member club ticket prices, stadium capacity, and attendance. Those materials have in fact now been furnished to the Committee and are in Committee files.

It is hoped and expected that the gross income figures will also be available to the Committee very shortly.

Commissioner Rozelle, however, raises in his letter some real concerns regarding the submission of payroll information. As the Commissioner indicates, the League may wish to discuss with the Committee methods for avoiding the possible damaging effects of publicly disclosing these figures.

PWR:dcd

Attachments

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Telephone: 202-225-3951

May 6, 1976

MEMORANDUM

TO: Members, Monopolies and Commercial Law Subcommittee

FROM: Peter W. Rodino, Jr. - Chairman PWR

RE: Subcommittee Meeting of May 12th

Among other matters to be addressed at next Wednesday's meeting, I want to raise the issue of the status of the Subcommittee's request for financial material from the National Football League.

Three of the five items requested from the League have been received, but the Subcommittee needs to clarify its request and explore other matters relating to payroll data and gross income figures.

PWR:dcd