Brady et al v. National Football League et al Doc. 61 Att. 8

EXHIBIT H

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NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

July 8, 2010

VIA EMAIL AND FIRST CLASS MAIL

Jeffrey Pash
National Football League
280 Park Avenue
New York, NY 10017

Re: Your Letter of July 5, 2010

Dear Jeff:

This is in reply to your letter of July 5, 2010 regarding our request for club cost information.

First, I am glad that you recognize your obligation to produce information "which is reasonably required to verify assertions of financial fact" that you have made in support of your proposal. However, your letter goes on to imply that the club cost information we requested in my June 7, 2010 letter does not relate to the assertion of any financial facts which you have made in support of your proposal. In our view, nothing could be further from the truth.

Indeed, to date the sole basis which you have advanced for your proposal to reduce player costs by 18 percent has been the alleged growth in the non-player costs which you listed on the schedule you gave us back in November. And the only "assertions of financial fact" that you have given us in support of that proposal are the ones contained on that schedule and the additional sheets you gave us on January 19. At almost every bargaining session so far, we have asked you why, if the current economic model is in such need of change, did you agree to continue that model in the CBA extensions we agreed to in 1996, 1998, 2002, and again in 2006? Invariably, your answer has been that the costs on that schedule have increased dramatically since the model was originally agreed to in 1993. Our response, therefore, has been to request reliable information that would verify that increase, and to compare it to increases in other cost areas as well as revenues. That request admittedly involves a historical comparison of costs, but it is made because your proposal necessitates that comparison. In fact, and as our labor economics consultants have advised, it would be difficult to imagine anything more relevant to our current bargaining than the "then and now" information we seek. Your letter pretends otherwise, but there can be no dispute that your 18 per cent proposal is grounded in that very information. If it is not, you should take it off the table and we can try to make progress in another way.

Second, your letter is quite disingenuous in stating that we have accepted the "accuracy" of the information on your schedule and that we have accepted your assertion that the owners are being "squeezed" financially by the current system. As for the scheduled non-player costs you gave us, we have made it clear to you that we would not be fulfilling our statutory duty and responsibility to our members if we accepted your bare numbers as a basis for changing the CBA. As we have stated and your side has acknowledged, we have an "information challenge" vis' a vis' our members which we can only meet by obtaining information which verifies your bare numbers, and which verifies your position that these numbers have changed dramatically since the CBA was first agreed to in 1993. And as for the owners being "squeezed" by the current system, what we have acknowledged is that they (and you) have made that claim, not that it is true. To the contrary, DeMaurice Smith specifically stated in one of our meetings that Forbes Magazine reported that average club profits for 2008 were over $30 million, and that did not indicate any "squeezing" of their bottom lines. He also said that we were going to assume that the Forbes figures were accurate, at least until it is demonstrated by you that they were not. And while we have acknowledged that costs in certain areas have been increasing, we have stated that those increases have to be compared to increases in revenues and profits over the same period of time in order to be meaningful.

It is also disingenuous for you to suggest that any financial analysis done by the NFLPA has demonstrated any "squeezing" of the owners' bottom line. The financial analysis we have given you to date instead shows that there has been a decrease in the players' percentage of all revenue since 2006. While you claim that the players received over 70% of incremental Total Revenue since 2006, you ignore the fact that "Total Revenue" is determined by subtracting deductions for certain non-player costs which have increased, thanks to our agreement, from $473 million in 2005 to over $1 billion in 2009. Naturally, if the permitted deductions were to increase as we agreed, the players' percentage of the remaining difference was also going to increase. But as we stressed to you in our analysis, if the players' percentage is viewed (as it should be) as a percentage of all revenue, the trend, if any, has been downward, and not in any direction that would "squeeze" the owners.

Finally, you try once again in your letter to find fault with us for refusing to meet. Let me repeat that we are not refusing to meet. We have only asked that, in advance of meeting, you indicate in writing what information you are willing to provide. As your letter demonstrates, the spoken word can often be misconstrued, while the written word is less subject to debate or misinterpretation. Also, your letter of July 5 indicates a willingness to provide us with the requested club data for 1993, "as an initial matter." I trust that this will be followed by club data for 1994 and subsequent years. If not, please advise.

Meanwhile, we would be glad to meet with you or your representative(s) to discuss any logistical issues in transmitting the information to us.

Sincerely,

Richard Berthelsen
General Counsel

cc: DeMaurice Smith