

## Who will deliver for Kings?

Good work by the NBA, the Maloofs and especially Mayor Kevin Johnson to keep the Kings in Sacramento for another year as they pledge to work toward a new arena agreement. It was the right move, but skepticism abounds given the city's previous inability to create a viable arena plan. The reprieve also rings a bit hollow coming before what could

### How we see it

be a season lost to a lockout. Yet the "stay" offers the city a chance to back up its impressive rally to save the Kings. Johnson had perhaps the finest moment of any mayor in recent memory in handling such adversity. He delivered the goods in front of the NBA board of governors and put the pressure back on the Maloofs.

The family has been a good owner, but one can't overlook what has happened to its financial empire. The Maloofs have been honest in saying they need financial help to survive in small-market Sacramento. A new arena will help, but most importantly, in our mind, so will a revamped revenue-sharing plan that the league vows will come with a new CBA.

Yes, the Maloofs saw big TV money, more arena revenue and even support from prospective partner Henry Samueli. But for the NBA to thrive in low-revenue markets like Sacramento, Memphis and Charlotte, it must share the wealth.

Anaheim officials must wonder what it takes to land a team. But let's not forget that David Stern virtually gave Clippers owner Donald Sterling free run of the market, but he passed it up for Los Angeles.

Now, Anaheim waits to see if Johnson, the city, the league and the Maloofs can deliver on their good intentions.

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MATTLER



# We've been here before, and football on Sundays survived



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Can a lawsuit save the NFL season? At least one group of football superstars thinks so.

And on April 25, Judge Susan Richard Nelson got them to the red zone by issuing an order ending the NFL lockout. Time to celebrate? Not so fast. The NFL has appealed the decision, and, temporary orders notwithstanding, we won't have a good answer until the 8th U.S. Circuit Court of Appeals issues a final ruling this summer.

How the appeals court rules may depend on whether it views this turf battle as a legitimate antitrust challenge, or merely a legal stratagem to force the league back to the bargaining table.

We have been here before. In the late 1980s and early '90s, when faced with a similar logjam, the NFL Players Association decertified, a number of players sued the league under the antitrust banner, and they succeeded in securing free agency rights for the first time in league history. The players are hoping for a repeat victory.

Led by Tom Brady and Peyton Manning, the players are challenging not only the lockout, but several other central NFL practices such as the draft, salary cap and restrictions on free agency. They argue that without a collective-bargaining relationship, the owners can no longer sidestep the antitrust laws and collectively set these uniform practices

to which all NFL players are subject. The players are correct. The nonstatutory labor exception to the antitrust laws does not apply outside of the union context. No union, no antitrust exception. No one disputes this. Where the parties disagree is whether the players really decertified. That is what this case is principally about.

Antitrust lawsuits, however, take years to resolve. So to speed things along in the hope of salvaging the upcoming season, the players asked, and Nelson granted, a preliminary injunction barring the NFL from continuing its lockout. A preliminary injunction is a drastic remedy, granted in only the most extreme of circumstances. The court must be convinced that the players will likely win the case, and that without preliminary relief they will suffer irreparable harm, the type of harm that cannot be remedied with money damages. If the 8th Circuit affirms Nelson's order, the lockout will end and the season will go forward.

The players present a compelling case for preliminary relief. The lockout presents the classic concerted refusal to deal, a per se violation of the antitrust laws. And given the relatively short and precarious careers of these modern-day gladiators, no amount of money can adequately compensate them for missing what could be the key season in their career. Several prior decisions fall squarely on the players' side.

But the NFL argues that those cases do not apply here, that decertification is a sham. Numerous players have admitted as much by acknowledging that the decertification was about getting leverage at the bargaining table. It also seems apparent that the NFLPA is driving the

lawsuit and remains the true collective representative of the players. According to the league, the antitrust laws cannot be invoked through such chicanery.

Using this central charge as a springboard, the league argued that the Norris-LaGuardia Act bars an injunction against a lockout since it arises out of a labor dispute. Given the pro-labor origins of the statute, the irony of the NFL turning the act on its head was not lost on Nelson. She did not buy it and it is unlikely that the appellate court will either.

The league also claimed that before the court can do anything it must wait for the National Labor Relations Board to make a threshold determination on the legitimacy of the decertification. The league set this argument up with the NLRB a few months ago when it knew the parties were heading toward impasse. Finally, the league insisted that the players will suffer no irreparable harm because they can always be made whole with money damages. This is perhaps their strongest argument.

So where do we go from here? We expect the appeals court to uphold Nelson's decision to end the lockout. Nelson's 89-page decision is thorough and well-reasoned and both the law and history are on the players' side. It also seems unlikely that the generally conservative 8th Circuit would force the players to collectively bargain as a union when they say they want to negotiate individually.

But all of this goes out the window if the court questions the legitimacy of the players' action. No court will play the pawn in a private chess match, particularly when the outcome affects so many consumers and businesses.

If Nelson's order is affirmed, we will

be faced with the same situation we faced two decades ago. On the field, football will be played without a collective-bargaining agreement. And off the field, the players and owners will battle it out in the courts. The current lawsuits will move forward. Others will be filed. And ultimately, all will settle because, in the end, the underlying dispute is simply over the money, not restructuring the fundamentals of the player-league relationship.

If the 8th Circuit surprises us and reverses, the lockout will remain intact. The lawsuits will still go forward, but the players will lose their edge and feel tremendous pressure to cut a deal quickly to save the season.

However this legal saga ultimately plays out, we will not be facing a long winter of empty Sunday afternoons. Rest assured, our favorite teams will be on the field this fall.

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