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## Khalil Mack's contract success turns NFL labor pact inside out

Khalil Mack's greatest NFL contribution may, in the end, not be the sacks or tackles he makes on the football field.

While the Chicago Bears' exceptional pass rusher is a generational talent that certainly has transformed the Bears' defense into one of the league's best, his impact as an NFL player realizing and capitalizing on his contractual leverage might have an even greater lasting legacy than his feats on the field.

Mack was drafted by the Oakland Raiders with the fifth pick of the 2014 NFL draft. Almost immediately, he signed an \$18,677,002 contract with the Raiders, in accordance with the NFL collective bargaining agreement, which dictated that all first-round draft picks would sign four-year contracts with a fifth-year team option.

Last summer, after the Raiders exercised their fifth-year option on Mack for the 2018 season, worth \$13,846,000, Mack failed to attend team functions and until the Raiders were willing to sign him to a long-term contract.

Mack was eventually traded from the Raiders to the Bears and thereafter signed a market-setting contract that included \$23.5 million in average annual value, \$60 million in full guarantees and

\$90 million in rolling guarantees.

Mack's power play began a new era in NFL contractual dealings.

Due to the uncertainty of an NFL career, guaranteed money is the holy grail for an NFL player. But, before Mack's holdout, it was widely believed that a player had to play through his entire rookie contract before negotiating for the second contract that includes guarantees.

Most players and player agents believed that the 2011 NFL/NFLPA collective bargaining agreement had largely made training camp holdouts a thing of the past. By codifying significant daily fines, docking a regular-season game check for each pre-season game missed and placing limitations on the accrual of service time toward free agency, this labor pact had mostly made the prospect of a holdout too cost-prohibitive for players.

Then Mack held out and threatened to leave the earnings from the last year of his rookie contract on the table — his bold move that paid off. Former Eagles and Browns executive Joe Banner said that strategy changed "The business part of professional sports forever ... Players have become more aware of their power and many



### SPORTS TORTS

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more are willing to flex that muscle ... Mack was the deal that broke the dam."

Once the dam was broken, many others have followed in Mack's wake. Players that have flexed their muscle by holding out have mostly come out on top.

Pittsburgh Steelers running back Le'Veon Bell sat out the entire 2018 season, letting \$14.5 million in compensation slip by, in exchange for a four-year, \$52.5 million contract with \$19 million guaranteed with the New York Jets.

Former New York Giants' wide receiver Odell Beck-

ham Jr., now with the Cleveland Browns, was looking to avoid the same fifth-year situation that Mack faced and signed the largest contract for a wide receiver ever (at the time): five years for \$95 million, with \$65 million guaranteed.

OBJ's contract was thereafter eclipsed when New Orleans Saints wide receiver Michael Thomas signed a five-year, \$96.25 million extension with the Saints, with \$35.64 million fully guaranteed at signing. Then, this season, Dallas Cowboy running back Ezekiel Elliott signed a six-year, \$90 million contract extension with the Dallas Cowboys with \$50 million in guaranteed money.

So, have the star NFL players realized their power? Yes, but with great power comes great responsibility. Those that have overestimated their power have been burned. Unlike Elliott, Los Angeles Chargers running back Melvin Gordon has not been able to reach a deal with his team despite holding out and demanding a trade. It remains to be seen whether he overplayed his hand with the Chargers organization.

Then, there is the story of former Pittsburgh Steelers' wide receiver Antonio Brown whose mercurial behavior

has kept radio and television talking heads quite busy this season.

His antics have caused him to be traded from the Steelers to the Raiders, then waived by the Raiders and signed by the Patriots, only to be cut 11 days later.

Whether all or some of Brown's \$40,125,000 in supposedly guaranteed earnings will be realized (or voided due to contractual provisions allowing the guarantee to be nullified if Brown "takes any action that materially undermines the public's respect for, or is materially critical of, the [c]lub, [p]layer's teammates or the club's owner-

power back in the upcoming labor negotiations. The current collective bargaining agreement expires in 2020 and the league and the NFLPA have already begun talks on a new labor agreement that will take effect in 2021.

Recently, a legal maneuver threatened to undermine those negotiations entirely. On Aug. 8, a petition was filed with the National Labor Relations Board proposing a new bargaining unit. National Football League, No. 13-UC-246227.

Veronica Patton filed the petition seeking to sever the NFL running backs from the

unsuccessful, it may be an indicator of an interesting twist in upcoming negotiations — position players arguing for differing rules on compensation depending upon position. Or, potentially, decertification of the NFLPA in its entirety.

In 2011, the 8th U.S. Circuit Court of Appeals ruled that the union's decertification did not eliminate the league's antitrust labor exemption. *Brady v. National Football League*, 644 F.3d 661 (8th Cir. 2011).

In the past, the players were able to use antitrust lawsuits as a bargaining tool for pay raises, benefits, free

that practice. *Id.* This decision resulted in the players choosing to be represented by the union or their right to file an antitrust suit.

This opened the door for decertification to become a viable alternative to put economic pressure on the league. The ruling in *Brady* seemingly foreclosed this alternative.

With NFL players recertified and now bracing themselves for a potential lockout looming in 2021, all eyes are on the union. Although the union did not claim any responsibility for the NLRB petition filed by the International Brotherhood of Professional Running



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ship, coaches, management, operations or policies,") is not yet clear.

It would take an entire newspaper to detail the travails of Antonio Brown but one thing is certain: His guaranteed money is at risk.

Despite Brown's apparent missteps, it does appear that NFL players have maximized their leverage in recent years. Certainly, the NFL owners will look to wrestle that

NFLPA, creating the International Brotherhood of Professional Running Backs. The details of the driving force behind this proposition to split the running backs into their own union are unknown as no players have publicly pledged their support for the proposed union.

A week ago, the NLRB general counsel issued a dismissal letter for the petition. Although this petition was

agency and other bargaining topics.

In *Powell v. National Football League*, the court held that the players could not bring antitrust suits while being represented by the union. 930 F.2d 1293 (8th Cir. 1989).

The court reasoned that the players could not challenge a practice as an antitrust violation when, theoretically, they bargained for

Backs, unique strategies may be necessary for the union to effectively bargain for the best result for its members.

Millionaires wrestling power from billionaires — the 2021 NFL labor negotiations will be great theater and certainly dictate the next round of NFL superstar contracts. Khalil Mack, a free agent again in 2024, will be keenly interested.