



Will players' latest move re-start talks? Maybe, maybe not, say experts

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By **Mary Schmitt Boyer, The Plain Dealer**

CLEVELAND, Ohio -- While the NBA Players Association ended contract negotiations with the league on Monday, one labor law expert thinks the players actually made a move that could get them back to the bargaining table soon.

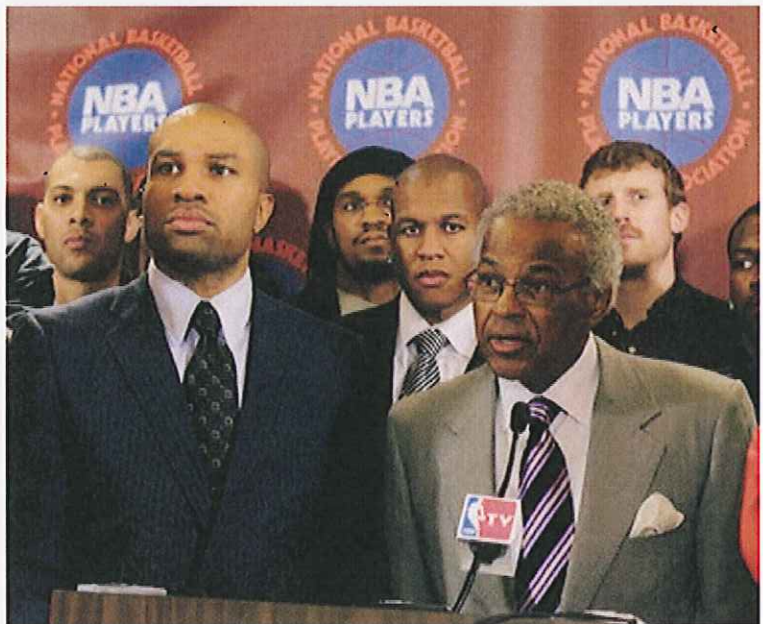
According to Michael McCann, director of the Sports Law Institute at the University of Vermont who acts as Sports Illustrated's legal analyst, a key development was the players association choosing to file a disclaimer of interest rather than decertifying.

"Decertification is a more comprehensive process," McCann said on NBA TV. "It requires a wait of 45 to 60 days.

Disclaimer of interest, on the other hand, is a less formal process that enables the players association to essentially walk away from the players and players can then file an antitrust lawsuit. Both mechanisms allow the filing of an antitrust lawsuit. ... The benefit of disclaimer of interest is that it allows us to reverse that process relatively easily.

"Decertification, on the other hand, requires a voting process. It requires approval by the National Labor Relations Board. So the players are thinking in essence, 'we can file an antitrust lawsuit but also get back to bargaining table really quickly if we want to.'

"As great as that sounds, the NBA is going to say to the National Labor Relations Board and also to a court that the union isn't bargaining in good faith and what they're trying to do is use antitrust law to sue owners and to reach a settlement that way and that's not consistent with the goal of the labor law."



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Seth Wenig, Associated Press

The strategy chosen by NBA players union president Derek Fisher (left) and director Billy Hunter might actually re-start negotiations with the owners, says one legal observer.

Some question the timing of Monday's decision.

"It's harder for the players now because they've already gone through the negotiation process," said Keith A. Ashmus of the Cleveland law firm Frantz Ward, a labor law expert and past president of the Ohio State Bar Association. "They've got management having taken actions under the labor antitrust exemption and made an offer. So management can now just sit there and say, 'We're just continuing on the status quo. No agreement here. The agreement that we had was while we were protected. We don't have anything to start a season with.'

"Had it been the other way, like the NFL starting earlier in the process, the action of the owners to have a lockout might have been easier to attack."

Ashmus was asked if he thought the decertification of the NFL Players Association at the start of the negotiation process had any impact on getting a deal done last summer.

"I think it did," he said. "I think there was pressure because the judge had decided that there was potential violation there, and I think it provided some impetus for the owners to make a deal. It wasn't the sole thing -- they didn't want to lose the season -- but it did provide some leverage."

Ashmus was asked why there doesn't seem to be a lot of sympathy for the NBA players association here after the big victory for collective bargaining rights in last week's election.

"Sports unions don't act like regular unions," he said. "How many millions can you have?"

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