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NBA-Age Restrictions: Should the NBA Follow In the Footsteps of Major League Baseball?

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NBA-Age Restrictions: Should the NBA Follow In the Footsteps of Major League Baseball?

Abstract

This paper will discuss the outlook of current NBA prospects and the development of age restrictions. It will also shed light on several key cases and Collective Bargaining Agreements including: *Wood v. National Basketball Association*, and *Denver Rockets v. All Pro Management, Inc.* and the NBA CBA. After that, an analysis of Sherman Antitrust Law and current case law concerning age restrictions in sports, and analyze the possibility for age-restrictions to be argued through the court system. Finally, this paper will look into the NBPA's duty of representation towards NBA prospects and how the NBPA can take ideas from a comparable professional sport (Major League Baseball), to provide proper representation.

Keywords

NBA, basketball, age restrictions, athletes, collective bargaining

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NBA-AGE RESTRICTIONS: SHOULD THE NBA FOLLOW IN THE FOOTSTEPS OF MAJOR LEAGUE BASEBALL?

BRYAN KELLY

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INTRODUCTION: LOWERING THE AGE RESTRICTION IN THE NATIONAL
BASKETBALL ASSOCIATION TO 18 WILL ALLOW ATHLETES TO RETAIN
VALUABLE RIGHTS

The National Basketball Association (“NBA”) should lower the age restriction for prospective players from 19 (or one year of collegiate/international play) to the age 18. This would allow players who have finished playing high school basketball to enter the NBA, creating popularity for the NBA, and profit in terms of revenue further developing the league. Given the current age restriction in place by the NBA, prospective players face several issues, such as limits to the value of their individual images, risks of career-ending injuries, and wasted earning potential. These issues present real concerns for much of today’s youth seeking careers in the NBA as a professional athlete.

This paper will first review the role of the NBA Players’ Association (“NBPA”) current NBA Collective Bargaining Agreement (“CBA”). Then, an analysis of Antitrust Law and its connection to labor law in the world of sports will explain why the age restriction rule in place have been problematic for the court system. Finally, this paper will discuss the NBPA’s duty of representation towards all athletes and what it can do in future negotiations to alleviate legal issues surrounding the age restriction rule. It will review the MLB CBA, its draft rules, and farm system. These ideas present an opportunity for the NBPA to take ideas from as an

analogous system for future negotiations. This will further support the conclusion that the NBA should lower the age restriction to 18.

COLLECTIVE BARGAINING AGREEMENTS: THE NBA AND NBAPA'S
COMMITMENT TO EXCELLENCE.

The history of the NBA is riddled with CBA negotiations and player lockouts. The development of the league has led to the growth of player's rights and representation throughout the league. To understand the issues surrounding the age-restriction rule, it is important to understand the development of the NBPA, and the current CBA in place.

A. The development of the NBAPA: Player's Rights and Representation.

The NBA was established in 1946.¹ It began with 11 teams, playing a 60 game schedule.² Several years passed, and the game continued its growth seeing players become stars before their very eyes. As star power and popularity in the NBA rose, so did player needs, which led to the development of the NBPA.

The NBPA attempted to organize NBA players in 1954.³ At this time, the NBA had no minimum wage, no health benefits, or pension plans were available.⁴ The negotiations, however, were not realized until 1964 when

¹ Lenoard Koppett, NBA HISTORY, http://www.nba.com/heritageweek2007/newleague_071207.html (last visited April 30, 2017).

² *Id.*

³ NBPA, <http://nbpa.com/about/> (last visited April 30, 2017).

⁴ *Id.*

the players threatened to strike for the first televised NBA All-Star Game.⁵ Negotiations continued until 1976 where the NBA and the NBPA reached a settlement in the landmark case, Robertson v. National Basketball Association.⁶ The role of the NBPA, was to make sure all players' rights were upheld and taken into consideration.⁷ This role continued as the league grew.

By 1980, NBPA's role in negotiations became essential to the growth of the league. The CBA has developed a salary cap, the first of any kind seen in professional sports, as well as other league revenue sharing in benefit of the players.⁸ Other exceptions such as the Larry Bird Exception (allowing teams to exceed the salary cap when signing free agents in limited circumstances) have been negotiated by the NBPA.⁹ These exceptions allowed players to gain more star power, financial stability, and overall power in determining their futures.

As demonstrated throughout the years of the NBA, the NBPA's power has also grown exponentially. The NBPA's power for prospective athletes,

⁵ NBPA, *supra* note 3.

⁶ *Robertson v. National Basketball Association*, 72 F.R.D. 64 (S.D.N.Y. 1976).

⁷ NBPA, *supra* note 3.

⁸ See, Melanie Aubut, *When Negotiations Fail: An Analysis of Salary Arbitration and Salary Cap Systems*, 10 SPORTS LAW. J 189, 218 (2003).

⁹ Larry Coon, *Larry Coon's NBA Salary Cap Faq.*, (December 4, 2016), <http://www.cbafaq.com/salarycap.htm>. (last visited April 29, 2017)). Note that the application of the Larry Bird exception has several subtle yet complex variations that are outside the scope of this article. For a thorough explanation of this exception, see Larry coon, NBA Salary Cap FAQ <http://www.cbafaq.com/salarycap.htm> (last visited April 29, 2017).

in addition to the current athletes in the NBA has led them to become a powerful front in CBA negotiations. The NBPA's power, has been most recently demonstrated through the current CBA negotiations seen below.

B. The Current CBA Concerning How Players Enter the League.

As the NBA and the NBPA have grown, so has the CBA explaining a variety of topics such as free agency, salary cap restrictions, and prospective player eligibility. Vital to the discussion of the age restriction rule, is the NBA CBA explanation of Player Eligibility. As cited in the current CBA, players who are at least nineteen (19) years of age during the calendar year in which the Draft is held are eligible for the draft upon a laundry list of other needed qualifications.¹⁰ Among these qualifications include, one (1) NBA Season elapsed since the player's graduation from high school, the player has no further intercollegiate basketball eligibility due to attending all four years and graduating from a college or university, a player who has allowed four calendar years to elapse since such player's high school graduation, the player in question having signed a player contract with a different professional basketball team and has rendered such services under a contract prior to January 1, of the immediately preceding Draft, expressing desire to be selected in the Draft in writing to the NBA at least sixty (60) days prior to the Draft, or if they player is an international

¹⁰ NBA, *Collective Bargaining Agreement*, (Jan. 19, 2017), <http://3c90sm37lsaecdwt32v9qof.wpengine.netdna-cdn.com/wp-content/uploads/2016/02/2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf>.

player with the guidelines of the CBA.¹¹ Thus, the current age restriction only allows players who have reached a certain age to participate in the NBA.

The age restriction rule above, reveals the NBPA's desire to negotiate these terms, and thus demonstrate a duty of representation owed to prospective athletes. These CBA requirements were negotiated by the NBPA, without any acknowledgement by any prospective athletes entering the NBA. Therefore, it is vital to take the age-restriction rule seriously.

THE HISTORY OF ANTITRUST LAW AND LABOR LAW AND ITS IMPACT THE
PROFESSIONAL SPORTS WORLD BY LIMITING INCOMING TALENT.

The quarrels over between the NBA, NBPA, and prospective players have been well documented throughout time. These issues can be analyzed through numerous cases. To first determine whether or not an age-restriction rule is applicable in a CBA, a court must first determine whether or not it a question of antitrust law. If it is determined to be antitrust law, then the outcome must be determined similarly to what is found in Denver Rockets.¹² If it is questionable that it is not antitrust law, then the Eighth Circuit's analysis of the Mackey Test to determine if the age-restriction should be reviewed by antitrust scrutiny or non-statutory labor exemption.¹³ Finally, if it is still questionable as to whether or not it is reviewed by the

¹¹ NBA, *supra*, note 9.

¹² *Denver Rockets v. All-Pro Management, Inc.*, 325 F. Supp. 1049 (C.D. Cal. 1971).

¹³ *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976).

non-statutory labor exemption, courts will look at the Second Circuit's Clarett Balancing Test to determine if it should allow an antitrust analysis, or if the court's decision ruling for the prospective athlete will cause federal labor law policy issues.¹⁴

A. Antitrust Law Evaluation: the Haywood Method.

To determine if an age-restriction rule is proper, the first analysis must determine whether or not the term falls under antitrust law. Under the antitrust law analysis, the age restriction rule may be found invalid. As shown through the Denver Rockets case, restrictions imposed on entry into a professional sports league through assertions of the rule in question may be invalid under antitrust law.¹⁵

In the Denver Rockets case, the Ninth Circuit held that it was per se illegal to limit eligibility for the NBA draft to those players that were not yet four years out of college.¹⁶ Spencer Haywood, a professional basketball player, sought NBA eligibility even though he was not yet a college graduate.¹⁷ Haywood, who was a player who contracted with the Denver Rockets in the American Basketball Association ("ABA"), continued to pursue a career in the NBA, as contractual disputes continued with the Rockets.¹⁸ Haywood began to seek a contract with the Seattle Supersonics,

¹⁴ Claret v. NFL, 369 F.3d 124 (2nd Cir. 2004).

¹⁵ *Denver Rockets*, 325 F. Supp. at 1060.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

but saw the NBA disapproved the contract, citing that he was not yet eligible under the four-year college rule established by the NBA rules.¹⁹ The provision in question prevented Haywood from contracting with any NBA team, causing him to seek an injunction to allow him to sign with NBA teams.²⁰

Upon this ruling, Haywood, sought injunctive relief through the Ninth Circuit, citing that the rule was in direct violation of Anti-Sherman trust Laws.²¹ Upon review, the Court determined that no provision for hearings before the four-year college rule existed, therefore, the rule was in violation of Section 1 of the Sherman Act.²² The Court ruled that partial summary judgment limiting the extent of ruling that the four-year college rule was improper was granted.²³

This case is extremely relevant to the issue of age restrictions, because it would be considered a group boycott and concerted refusal to deal with any under that age, as demonstrated through the Denver Rockets case.²⁴ Prospective athletes who are younger than the age of 19, would fall into the category of the group boycott, because NBA owners, as a whole, would refuse to deal with anyone under that age group. Given that the age

¹⁹ *Denver Rockets*, 325 F. Supp. at 1060.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

restriction is analogous to the previous NBA rule requiring athletes to be college graduates to be drafted, a similar court ruling may be gained.

The NBA, however, may counter that argument by contending that the Rule of Reason analysis is justifiable. For the NBA to demonstrate this argument, they must provide a legitimate business purpose for the age restriction rule, and provide evidence that it is no more restrictive than necessary.²⁵ As previously argued, this argument by the NBA would most likely consist of the need to protect younger athletes, save the league money for development of athletes in general, as well as show that the age restrictions promotes competitive balance.²⁶ This argument will nevertheless fail in the eyes of the court because only factors that affect economic competition may be considered to determine the legality of a restrictive practice under antitrust laws.²⁷ Therefore, the NBA could only that the product value would decline if the rule is not implemented. This, however, has been disproven through the NBA's growth in the 2000's with players such as LeBron James playing at younger ages than the required age limit.²⁸ Thus, a Court could find that the proposed rule is subjected to

²⁵ *Mackey*, 543 F.2d at 620.

²⁶ See, Scott R. Rosner, *Must Kobe Come Out and Play? An analysis of the Legality of Preventing High School Athletes and College Underclassmen from Entering Professional Sports Drafts*, 8 SETON HALL J. SPORTS & ENT. L. 539.

²⁷ *National Society of Professional Engineers v. U.S.*, 435 U.S.679, 690 (1978).

²⁸ See, John Depmsey, "*Hoops Droop at ABC*," DAILEY VARIETY, April 12, 2004. The article claims that one of the two major reasons the NBA received a \$106.5 Million dollar increase in its television contract with ESPN and Turner Broadcasting is because of "the star power of LeBron James and Carmelo Anthony."

antitrust scrutiny in this scenario and is invalid.

B. Non-Statutory Labor Exemption: The Mackey Approach.

Although it is arguable that the age-restriction rule may be invalid under antitrust scrutiny, several courts have found that an age-restriction rule may be protected from antitrust scrutiny by non-statutory labor exemptions.²⁹ This is because the rule is presumed to be collectively-bargained.³⁰ Given the growth of the CBA, and the role of the NBAPA over the history of the league, there is a likelihood that a court would rule in favor of the exemption given the Mackey Test.³¹ When first determining if a court determined that the age-restriction rule in question should be reviewed under a non-statutory labor exemption, one must look at the Mackey Test and establish it fits all three prongs.³²

If a court were to ask whether or not the age-restriction rule in question was protected from antitrust scrutiny, the NBA would need to demonstrate that all three prongs of the Mackey Test were established.³³ This means that if a prospective player is capable of showing that just one of these prongs are not met, the court in question would have to find that the

²⁹ *Mackey*, 543 F.2d at 614.

³⁰ *Id.*

³¹ Nicholas E. Wurth, *Article: The Legality of an Age-Requirement in the National basketball League After the Second Circuit's Decision in Claret v. NFL*, 3 DEPAUL J. SPORTS L. CONTEMP. PROBS. 103, 125-127 (2005).

³² *Mackey*, 543 F.2d at 620.

³³ *Id.* at 620-623.

age-restriction rule in question should be subjected to antitrust scrutiny, and therefore is not protected by the non-statutory labor exemption.³⁴ The first prong that must be shown is that the age-restriction is a mandatory subject of collective bargaining in this scenario.³⁵ The second prong that must be established is that it primarily affects only the parties of the collective bargaining relationship.³⁶ Finally, the last prong that must be shown is that the subject in question, age restriction, is a subject that is a bona fide arm's length bargaining item.³⁷

In arguing the first prong, the prospective athlete may argue that he is not a member of the collective bargaining relationship, given his inability to take part in negotiations. This argument, however, is impractical given the standing that prospective athletes are deemed employees under the negotiated CBA they enter.³⁸ All future players are considered part of the negotiations in this instance.³⁹ Thus, more likely than not the first prong under the Mackey Test, would be met.

If the first prong under the Mackey Test is easily met, the prospective athlete would have to attempt to disprove the second prong. Here, it must be found that the age-restriction rule primarily affects only the

³⁴ *Mackey*, 543 F.2d at 620

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Zimmerman v. NFL*, 632 F. Supp. 398 (D. D.C. 1986).

³⁹ *Id.* at 398.

parties of the collective bargaining relationship.⁴⁰ This prong, however, has also been reviewed by courts. As demonstrated in the Woods case, the collective bargaining relationship in the NBA relates to mandatory topics, including but not limited to: the draft, conditions of employment such as location, and eligibility.⁴¹ Therefore the second prong is met, so long as the term is necessary to the bargaining agreement.⁴² Thus, more likely than not, the second prong under the Mackey Test is also met.

After arguing both the first and second prong under the Mackey Test, the last prong is the only way a prospective athlete could attempt to show that antitrust scrutiny should be applied. Here, the third prong asks whether or not age restriction is a bona fide topic for arm's length bargaining, is reviewed.⁴³ Under this analysis, the prospective athlete may argue that the rule was not in past collective bargaining relationships, therefore it was implemented unilaterally. This argument, however, fails given that the NBAPA's willingness to previously bargain on the topic, implements that this topic is for bargaining in all arguments.⁴⁴ Thus, it is more likely than not that the second prong under the Mackey Test is also met.

Given that all prongs of the Mackey Test are more likely than not

⁴⁰ *Mackey*, 543 F.2d at 620-623.

⁴¹ *Wood v. National Basketball Asso.*, 602 F. Supp. 525 (S.D.N.Y. 1984).

⁴² *Mackey*, 543 F.2d at 620-623.

⁴³ *Id.*

⁴⁴ *Wurth*, *supra* note 36, at 127-128.

met, the age-restriction rule in courts following the Mackey Test will be deemed reviewable under non-statutory labor exemption. If it is found to be a non-statutory labor exemption, then a prospective athlete can further inquire as to whether or not it is an antitrust violation through the Clarett Balancing Test.

C. Application of the Clarett Balancing Test

Following the Mackey Test, several courts apply a similar balancing test as seen in Clarett, to support its decision.⁴⁵ This balancing test determines whether the antitrust violation would undermine fundamental principles of labor law. For the age-restriction rule, it would more likely than not stand up to an antitrust charge through this analysis.

To contend that the Clarett Balancing Test should provide for an antitrust scrutiny, the court in question must find that the age-restriction would eliminate competition among themselves through selection of a collective bargaining representative, that the collective bargaining agreement in question provides exclusive assignments of such prospective athletes for only a certain team, and that the agreements in question subject other prospective athletes to an agreement to adverse circumstances.⁴⁶ This can be met through several ways, including that prospective players are assigned to teams through a draft, have their rights retained by a particular

⁴⁵ *Clarett*, 369 F.3d. at 124.

⁴⁶ *Id.* at 127.

team for an extended period of time, and that they do not have representatives in the CBA negotiations. This argument, however, is ultimately flawed, given that the NBA can argue that the federal labor law policies in place would suffer.⁴⁷ Thus, this prong tends to favor a non-statutory labor exemption, and would more likely than not fall in favor of the NBA in its attempts to provide an age-restriction rule.

Under the above analyses, for a prospective athlete to have any chance of establishing an antitrust violation existed, one should seek it to be either illegal per se, or through a Rule of Reason Analysis. It is clear that the age-restriction rule has caused significant issues in the court system, and is difficult to comprehend. Given that the age-restriction rule is currently in place, the NBAPA should then seek other alternatives to combat the issues presented.

WHAT'S NEXT? HOW THE NBAPA CAN MEET THEIR DUTY OF
REPRESENTATION TOWARDS PROSPECTIVE ATHLETES BY LOOKING AT OTHER
THE MLB MODEL.

As this paper has discussed, the NBA, NBPA, and CBA are all intertwined. The NBPA, has shown duty to represent all parties, prospective athletes and current athletes in such a way that all rights are protected. It is vital to note this duty of representation, because as through the above analysis of antitrust law and labor law, the collective bargaining process can

⁴⁷ *Clarett*, 369 F.3d. at 127.

alter the path a professional sports league. Given the NBPA's ability in past CBA negotiations to relinquish rights of prospective students for the benefit of current NBA players, it is now time for the NBPA to look towards the future and work towards protecting incoming players as well. For this to happen, the NBPA should look at other sports current structures, towards inspiration. One sport that the NBA should consider looking at for improvement to the current structure is MLB. MLB was founded through several leagues starting in 1876 until its present construction.⁴⁸ Throughout the years, players have negotiated with teams, contracted with them, and have used prospective athletes much like the NBA. The MLB, however, has a substantially different stance on the incorporation of players and how they develop them over the years. As demonstrated by the rules of the First-Year Player Draft, in addition to, the MLB farm system, the MLB provides players with numerous opportunities to enter the world of professional baseball, regardless of age restrictions.

A. The MLB Draft, a System That Provides the NBA with the Best of Both Worlds.

The NBA Draft eligibility is significantly different when compared to the MLB Draft eligibility. As outlined above, the NBA restricts the age of players who enter into the league to the age of 19.⁴⁹ This is unlike the

⁴⁸ MLB HISTORY, <http://mlb.mlb.com/mlb/history/> (last visited April 30, 2017).

⁴⁹ MLB, *Collective Bargaining Agreement*, (Jan. 1, 2012), http://www.law.tulane.edu/uploadedFiles/Sports_Law/Collective%20Bargaining%20Agreement.pdf.

MLB Draft, where there are several times where a prospective athlete can enter the MLB Draft. As developed through the MLB First-Year Player Draft, there are several scenarios where players may enter into the MLB Draft.⁵⁰

First, high school players are allowed to enter the draft, if they have graduated from high school and have not yet attended college or junior college.⁵¹ This is already vastly different from the NBA's current structure. Players who believe they are talented enough to enter the MLB draft are provided the opportunity to take this opportunity to determine whether or not they wish to pursue a professional career. The player in this scenario, is also given the option to sign, or pass on signing the contract provided by the MLB team, and pursue higher education.⁵² If the player passes on signing a contract with a MLB team, the player can re-enter the draft at a later date.

The second chance where a player can enter into the MLB draft is when he is a college player. A college player may enter the draft having either completed their junior or senior years at a college/university, or are at least 21 years old.⁵³ This is a second option for players, who both have previously entered the draft and decided against signing with a team in hopes of getting a degree from a college may choose. This option is most

⁵⁰ MLB FIRST-YEAR PLAYER DRAFT, <http://mlb.mlb.com/mlb/draftday/rules.jsp> (last visited April 30, 2017).

⁵¹ *Id.*

⁵² MLB, *supra* note 50.

⁵³ *Id.*

similar to what the NBA has in place currently, concerning some form of collegiate requirement. This, however, is given to players who have decided against signing with a team in the first option, or who did not pursue it.

A final option for players who seek to enter into the MLB Draft is for those who play at a Junior college.⁵⁴ These players are allowed to enter the MLB Draft, regardless of how many years of school they have completed.⁵⁵ This third option again gives prospective players numerous opportunities to seek employment as a professional baseball player. Overall, these different opportunities are just some ways the NBPA can look to widen the age-restriction rules, while allowing the NBA to continue the limitations on what players are eligible to enter the NBA Draft.

B. MLB Farm Systems and the NBA D-League Similarities.

Another way that the NBPA could argue for lowering the age-restriction rule currently implemented is by utilizing the NBA D-League in a way that is similar to the MLB Farm Systems (Minor Leagues). Here, the NBPA could argue that the development of the NBA D-League could follow the current system in MLB, allowing players to continue development in a NBA setting, where the NBA can monitor the development of key young players, further grow their fan base, and ideally gain profits from additional advertisement.

⁵⁴ MLB, *supra* note 50.

⁵⁵ *Id.*

Under the MLB CBA, a negotiated right of the any MLB Team is that they can assign players who are on their rookie contracts to minor league clubs.⁵⁶ The MLB Team who assigns the contract of a player to the Minor Leagues, will continue to maintain the rights of the player in question, but this will provide the player with the opportunity to continue development away from the Major Club.⁵⁷ This approach has already begun to take place, as the value in the NBA D-League has grown exponentially and the number of D-League teams have grown, as just recently 22 teams were in play over the 2016-2017 season.⁵⁸ Thus, this further provides a way for the NBPA to further argue that the age-restriction rule is a further impairment on a system that could further both the NBA and NBPA's objectives further.

CONCLUSION

Overall, the NBA CBA's age restriction provides numerous legal issues, and questions profitability of the NBA as a whole. Given the previous success of players under the age of 20, and the development of the NBA D-League, the topic of age restrictions in the NBA should be a topic of discussion for years to come. If the NBAPA determine that the prospective players' rights are something of value during their next CBA negotiation; it

⁵⁶ MLB, *supra* note 49, at Article XIX, Assignment of Player Contracts.

⁵⁷ *Id.*

⁵⁸ Jeff Zillgitt, *NBA D-League Growing by the Year with 22 Teams in Play for 2016-17*, USA TODAY SPORTS (2016), <https://www.usatoday.com/story/sports/nba/2015/11/12/nba-d-league-growth-30-teams-within-five-years/75665740/> (last visited April 30, 2017).

would strongly favor them to do so, as the growth of the league and the profitability of both the players and the D-League depend on it. Thus, the age-restriction rule should be lowered from the age of 19, to the age of 18.