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The National Hockey League's 2020 Collective Bargaining Agreement

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In July of 2020, the National Hockey League (NHL) and the NHL Players' Association (NHLPA) were negotiating an agreement on a return-to-play plan for the 2019-20 season interrupted by the COVID-19 pandemic.[1] At the same time, the two parties were negotiating an agreement to extend the league's collective bargaining agreement (CBA) through the 2025-26 season.[2] The CBA governs various aspects of how the league is run (e.g., length of season and scheduling of games), including how revenue is split between players and owners.

The 2013 CBA

The last time the CBA was successfully re-negotiated, in January of 2013, it ended a 113-day lockout of the players by the owners, during which nearly a half-season worth of games had been cancelled.[3] The lockout's economic impact was not isolated to the hockey world. For example, Canada's largest brewer Molson Coors warned of lower beer sales during the fourth quarter of 2012, due to the absence of professional hockey games.[4]

[1] Greg Wyshynski, "NHLPA executive board backs tentative agreement on return-to-play plan, CBA extension," *ESPN.com*, July 8, 2020, https://www.espn.com/nhl/story/_/id/29419462/nhl-players-union-reach-tentative-agreement-return-play-plan-cba-extension (accessed July 2020).

[2] Ibid.

[3] Patrick Rishe, "NHL Owners, Players Score New CBA Saving the 2012-13 Hockey Season," *Forbes*, January 6, 2013.

[4] John Kell, "NHL Lockout Drying up Beer Sales in Canada for Molson," *The Wall Street Journal*, November 7, 2012.

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One of the centerpieces of the 2013 CBA was a revenue sharing arrangement in which players' compensation (salaries plus benefits) would equal 50% of league revenue each season.[5] If 50% of league revenue was greater than player compensation, a revenue sharing payment was made to the players. If, however, player compensation was greater than 50% of league revenue, owners would "claw back" some of the players' salaries.[6]

The 2013 CBA effectively made a portion of players' salaries in any particular season contingent upon two factors: (1) total league revenue and (2) total player compensation before consideration of revenue sharing. As a result, measuring league revenue became very important, as it determined the size of the pie available for player compensation. Measuring player compensation was also very important because it determined whether the league was required to make a revenue sharing payment or was entitled to a "claw back" payment.

As part of the 2013 CBA, players and owners had to agree on the details for measuring league revenue and player compensation, as well as what the split would be for revenue sharing (i.e., the 50% of league revenue). All three of these items were subject to significant negotiation between the two parties.

The 2020 CBA

For the 2020 CBA negotiation, the players chose Emilie Castonguay as the lead negotiator to represent their interests. She was a player agent whose clients included the NHL's 2020 #1 overall draft pick Alexis Lafreniere. Castonguay had spent significant time modeling the implications of different CBA scenarios for the compensation of Lafreniere and her other clients. For their part, the owners chose NHL Commissioner Gary Bettman as their lead negotiator.

There was no doubt that various aspects of the league's revenue sharing arrangement would be on the negotiating table again. The following is a non-exhaustive list of items that would potentially factor into those discussions:

Regular-season ticket sales. This represents one-off sales of seats to games. Some tickets are purchased individually as late as game day, and some are purchased in advance as part of a season ticket package. Some teams also allow fans to purchase personal seat licenses, which allows them to buy season tickets for a particular seat as long as the team remains in the same arena.

National broadcasting rights. This represents payments for the right to broadcast games both nationally and within a certain geography. These agreements typically cover multiple years and often include a large one-time upfront fee. For example, ESPN could enter into a ten-year agreement with

[5] The 2013 CBA defined a season as beginning on July 1 of a given a calendar year and ending on June 30 of the following calendar year. Games are played between September and June.

[6] Under the 2013 CBA, a portion of players' salaries was set aside in an escrow account to fund any potential "claw back" payment. The specifics of the "claw back" process are outside the scope of this case.

the NHL for U.S. broadcasting rights. ESPN could pay the NHL $175 million each year, and it could also pay an additional $250 million when the contract was signed.

Concessions. This represents sales of food and drink at arenas on game days. Teams that do not own their arenas may or may not receive a share of game day concession sales.

Player salaries. Player contracts typically cover multiple years. For example, a player could sign a four-year contract that pays him $4 million in each of the first two years, $5 million in the third, and $9 million in the fourth.

Signing bonuses. Building on the player salaries example above, the contract could also include a signing bonus of $3 million payable when the contract was signed.

Deferred salary. Player contracts could specify that a portion of salary be deferred until after the expiration date of the contract. Again, building on the player salaries example above, the contract could defer $2 million per year during the first three years to be paid out in years five though seven relative to when the contract was signed.

Contract buyouts. Teams could terminate players' contracts by buying them out through a standardized process that prescribed the portion of the remaining salary due under the contract (either 1/3 or 2/3 depending on player age) and the period over which payments were to be made (twice the amount of time left on the contract). Using the player salaries example above, a buyout of a contract with a $9 million salary in its fourth and final year (assuming 2/3 buyout) would equate to a $6 million buyout payable in two $3 million installments in years four and five relative to when the contract was signed.

As she took her seat at the negotiating table, Castonguay knew that any calculation showing either higher league revenue or lower player compensation would result in a more favorable revenue sharing payment for players under the 2013 CBA. Bettman knew the opposite was true for owners. Both Castonguay and Bettman were also aware that if either of them took too extreme of a negotiating position, it may cause the other to demand a revenue sharing split different from 50/50. Without a timely agreement, lost games, and associated beer sales, would once again become a real possibility.