

Katie Lowe

THE PERFECT STORM FOR WNBA COLLECTIVE BARGAINING AGREEMENT NEGOTIATIONS: RECORD RATINGS, AN OPT OUT, AND MEDIA MONEY

The WNBA's exceptional opportunity for CBA negotiations quickly approaches following the end of the 2024 season. After the 2024 WNBA Finals, WNBA players opted out of the 2020 Women's National Basketball Association Collective Bargaining Agreement. The opt out significantly accelerates the collective bargaining process that otherwise was expected in 2027 after the current CBA's expiration. Record ratings, the opportunity to opt out of the current agreement, and an influx of media money create the perfect storm for the WNBPA to negotiate a record-breaking and player-friendly 2025 WNBA CBA. This Essay provides a pathway for the WNBPA to follow to achieve desirable bargaining and negotiation results based upon legal negotiation principles, precedent in other professional sports leagues, experts in the field, and the unique opportunity at hand. Part I of the Essay explains the governing law that oversees both collective bargaining agreements and antitrust implications on revenue sharing. Part II illustrates the significant shifts in women's basketball that rendered the 2020 WNBA CBA unrepresentative of a fair and equitable agreement. In Part III, the Essay proposes revisions and adjustments to the revenue sharing and required player appearances provisions that have the potential to result in a player-favorable 2025 WNBA CBA. Finally, in Part IV, the Essay suggests bargaining strategies and alternative approaches the WNBPA must keep at the ready in case of deadlock or faltering CBA negotiations.

INTRODUCTION

Historic increases in TV ratings, ticket sales, and national fan recognition render the 2020 Women's National Basketball Association ("WNBA") Collective Bargaining Agreement ("CBA") no longer representative of a fair and equitable agreement.¹ Upon 2025 CBA negotiations, the Women's National Basketball Players Association ("WNBPA") must seize the opportunity to utilize legal principles and their newfound national platform to negotiate for player-favorable CBA provisions that increase equality in professional women's basketball.

Each time that women have advocated for increased equality in their respective sports, the right timing, strategy, and societal support were integral in paving the way for change. It seems unimaginable in modern society, but there was a time when women were not allowed on the court at all.² Venus Williams vocalized her call to action for equality in the tennis community by writing an op-ed essay for the Times of London entitled "Wimbledon has sent me a message: I'm only a second-class champion."³ Subsequently, Wimbledon awarded equal prizes to the male and female champions.⁴ Alex Morgan and the United States Women's National Team ("USWNT") players turned to the legal system in suing the United States Soccer Federation for equal pay and playing conditions as their United States Men's National Team ("USMNT") counterparts received.⁵ After years of litigation, a settlement was reached between the parties for \$24 million.⁶

¹ Women's National Basketball Association Collective Bargaining Agreement, WNBA-WNBPA (Jan. 17, 2020), <https://wnbpa.com/wp-content/uploads/2020/01/WNBA-WNBPA-CBA-2020-2027.pdf>.

² Sarah Mervosh & Christina Caron, *8 Times Women in Sports Fought for Equality*, N.Y. TIMES (Mar. 8, 2019), <https://www.nytimes.com/2019/03/08/sports/women-sports-equality.html>, (showing that in 1967, Kathrine Switzer registered for the Boston Marathon as "K.V. Switzer" to hide her female identity, and officials tried to eject her from the course, once they found out that she was a woman).

³ Venus Williams, *Wimbledon has Sent Me a Message: I'm Only a Second Class Champion*, THE TIMES (June 26, 2006), <https://www.thetimes.com/article/wimbledon-has-sent-me-a-message-im-only-a-second-class-champion-f056h05hmzq>.

⁴ Mervosh & Caron, *supra* note 2 (illustrating that Venus Williams and Roger Federer were both awarded \$1.4 million dollars upon winning Wimbledon in 2007).

⁵ *Morgan v. U.S. Soccer Fed'n*, 445 F. Supp. 3d 635, (C.D. Cal. 2023).

⁶ Andrew Das, *How U.S. Soccer and Its Players Got to Equal Pay: a Timeline*, N.Y. TIMES (Feb. 25, 2022), <https://www.nytimes.com/explain/2022/02/25/sports/uswnt->

The WNBA's "once-in-a-lifetime" opportunity turns upon legal action in collective bargaining, which is rapidly approaching following the end of the 2024 season.⁷ After the 2024 WNBA finals, WNBA players opted out of the 2020 Women's National Basketball Association Collective Bargaining Agreement.⁸ The opt out significantly accelerates the collective bargaining timeline that was previously set to be renegotiated after the 2020 WNBA CBA's expiration in 2027.⁹

2025 provides an opening for the WNBA's CBA to evolve and meet the league at its historic apex of growth. The 2020 WNBA CBA was created for a league that could not possibly imagine the drastic increases in popularity and national recognition that the WNBA has captured in the past four years. Nneka Ogwumike, President of the WNBPA, states, "[i]f we stay in the current agreement, we fall behind."¹⁰ The WNBPA intends to begin negotiations immediately. The opt out provides plenty of time for thorough negotiations by allowing the current agreement to govern through the 2025 season.¹¹ The WNBPA announced that they seek "a business model that reflects their true value, encompassing higher salaries, enhanced professional working conditions, expanded health benefits, and crucial investments needed for long-term growth."¹² Kelsey Plum, a WNBA veteran and guard for the Las Vegas Aces, states, "[w]e're not asking to get paid what the men get

soccer-equal-pay (including promises for equal pay, appearance fees and match bonuses for the USWNT and the USMNT going forward).

⁷ Kareem Copeland, *The 'Once-in-a-Lifetime' Event That Will Reset the WNBA*, WASH. POST (June 26, 2024), <https://www.washingtonpost.com/sports/2024/06/26/wnba-new-cba-2026/>.

⁸ Becky Sullivan, *As the WNBA's Historic Season Comes to an End, Players Say it's Time for Higher Pay*, NPR (Oct. 12, 2024), <https://www.npr.org/2024/10/21/nx-s1-5159991/wnba-players-association-opts-out-contract>.

⁹ WNBA *supra* note 1, at 225.

¹⁰ Sullivan *supra* note 8.

¹¹ Tom Friend, *WNBPA Leader Terri Jackson Outlines Core Issues in Upcoming Labor Talks*, SPORTS BUSINESS JOURNAL (Oct. 22, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/10/22/wnbpa-collective-bargaining-opt-out-follow>.

¹² Ben Church, *WNBA Players Union Demands New Collective Bargaining Agreement, Opting Out of Current Deal*, CNN SPORTS (Oct. 23, 2024), <https://www.cnn.com/2024/10/23/sport/wnbpa-collective-bargaining-agreement-deal-spt-intl/index.html>.

paid...We're asking to get paid the same percentage of revenue shared."¹³

Now is the time for the WNBPA to make its record-breaking play. In 2024, players possess national recognition, passionate fan support, and the finalized WNBA media rights deal is set 300%. Emphasizing society's soaring interest in the WNBA and its direct impact on the WNBA's revenue, profitability, and bottom line should be at the forefront of the WNBPA's bargaining strategy. It is integral that the WNBPA bargains for considerable changes in player compensation structure in the 2025 WNBA CBA, for the 2020 WNBA CBA provisions do not reflect the current landscape of the league and fair compensation for players. CBA negotiations generate high stakes at the bargaining table, but they also introduce a rare occasion for direct and profound change. The WNBPA holds a "once-in-a-lifetime" opportunity to make women's sports history, change the livelihood of players, inspire additional fan support, and reach an equitable agreement upon the completion of WNBA CBA negotiations in 2025.¹⁴

As such, this Essay provides a pathway to player-favorable 2025 WNBA CBA provisions through the lens of WNBPA's integral action steps leading up to and during the negotiation process. The WNBPA must capitalize on the opportunities that labor law and antitrust principles have on unions and CBA negotiations, emphasize the WNBA's newfound profitability outlook, set player favorable bottom lines and reservation points that require a new revenue sharing compensation structure, and rely on a robust bargaining strategy.

Part I of the Essay explains the governing law that oversees both collective bargaining agreements and antitrust implications on revenue sharing. Part II illustrates the significant shifts in women's basketball that rendered the 2020 WNBA CBA unrepresentative of a fair and equitable agreement. In Part III, the Essay proposes revisions and adjustments to the revenue sharing and required player appearances provisions that have the potential to result in a player-favorable 2025 WNBA CBA. Finally, in Part

¹³ Emma Hruby, *Kelsey Plum Corrects 'Huge Misconception' About WNBA Pay Gap*, JUST WOMEN'S SPORTS (Nov. 29, 2022), <https://justwomenssports.com/reads/wnba-basketball-kelsey-plum-revenue-sharing-pay-gap/>.

¹⁴ Copeland *supra* note 7.

IV, the Essay suggests bargaining strategies and alternative routes the WNBPA must keep at the ready in the case of deadlock or faltering CBA negotiations come 2025.

I. GOVERNING SPORTS LABOR LAW

Collective Bargaining

Players of the WNBA hold their rights in a collective bargaining agreement. Collective bargaining agreements are “an exclusive privilege offered by the National Labor Relations Act.”¹⁵ The National Labor Relations Act (“NLRA”) requires that players be employees in order to participate in the collective bargaining process.¹⁶ The NLRA states, “[e]mployees shall have the right...to bargain collectively through representatives of their own choosing.”¹⁷ The WNBPA is the WNBA players union. The WNBPA was the first player’s labor union for professional women’s sports.¹⁸ The WNBPA negotiates with the WNBA on behalf of players in creating the organization’s collective bargaining agreement that governs player contracts. The WNBPA states their goal “to get the best deal possible for all players.”¹⁹ The WNBA has a long history of collective bargaining throughout the league’s existence.²⁰

Antitrust Law’s Impact on Revenue Sharing

Revenue sharing is utilized during collective bargaining to “equalize the competitive balance among teams[.]”²¹ The labor law principles that control collective bargaining differ in purpose from those that control antitrust law.²² Labor law and the NRLA hold

¹⁵ Haley C. Dakin, *Equal Pay for Equal (or Better) Play*, 9 Miss. Sports L. Rev. 22, (2020).

¹⁶ *Id.*

¹⁷ 29 U.S.C. § 157.

¹⁸ WNBPA, <https://wnbpa.com/about/> (last visited Sept. 27, 2024).

¹⁹ *Id.*

²⁰ Sarah Kennelly, Note, *Still Looking for that “M”: How Inequity Affects WNBA Players and What the League Should Improve in Its Collective Bargaining Agreement*, 42 Women’s Rights L. Rep. 110, (2020), (illustrating that, in 1999, the WNBA and the player’s union ratified the league’s first CBA, which thus created the first CBA negotiated for a women’s sports team).

²¹ Jessica Cohen, *Sharing the Wealth: Don’t Call Us. We’ll Call You: Why Revenue Sharing is a Permissive Subject and therefore the Labor Exemption Does Not Apply*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 609, (2002).

three purposes including: “a) to protect the public from industrial unrest that could lead to work stoppages; b) to facilitate the peaceful negotiation of labor-management disputes over wages, hours, and other terms and conditions of employment; and c) to ensure equal bargaining power between employers and employees for collective bargaining.”²³ Antitrust and the Sherman Act hold that “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”²⁴ The fundamentally different purposes of labor law and antitrust law clash, thus, statutory and non-statutory labor exemptions have emerged.²⁵

Both the 1914 Clayton Act, 15 U.S.C. § 17 (1982), and the Norris-LaGuardia Act, 29 U.S.C. § 52 (1982), statutorily create a labor law antitrust exemption.²⁶ The statutory labor exemption has a limited scope in that it “asserts that labor unions are not combinations or conspiracies in restraint of trade under section 1 of the Sherman Act.”²⁷ The non-statutory exemption is created by the Supreme Court through case law.²⁸ *Wood v. National Basketball Association* provides a relevant analysis.²⁹ Judge Winters, of the Second Circuit Court of Appeals, explains “no one seriously contends that the antitrust laws may be used to subvert fundamental principles of our federal labor policy as set out in the National Labor Relations Act.”³⁰

The statutory and non-statutory exemptions legally allow collective bargaining for revenue sharing between the WNBA and the WNBPA regardless of antitrust restraint of trade concerns in revenue-sharing agreements. Note that *Reed v. Advocate Health Care* ruled that the “nonstatutory labor exemption to the federal antitrust laws does not apply in a situation where the alleged anti-competitive behavior takes place independent of the collective

²² *Id.* at 619.

²³ *Id.* at 617.

²⁴ *Id.* at 616.

²⁵ *Id.* at 619-623.

²⁶ *Id.* at 619-620.

²⁷ *Id.*

²⁸ *Id.* at 622.

²⁹ *Id.* at 627.

³⁰ *Wood v. Nat'l Basketball Ass'n*, 809 F.2d 954, 959 (1987).

bargaining process[.]”³¹ *Reed* stresses the importance of the WNBPA and the voice that they carry and amplify on behalf of players through the collective bargaining process, for unions hold rights that players do not hold individually.

II. IMPACTS OF A CHANGING LEAGUE

Revenue and Profitability

Although women’s sports have made successful strides toward equality, disparities remain. The statistical comparison between the National Basketball Association (“NBA”) and the WNBA is striking. The average salary in the NBA is \$10.8 million, while the average WNBA salary is a mere \$116,800.³² The NBA average salary lands slightly over 92 times higher than the WNBA average salary. The highest-paid player in the NBA, Steph Curry, makes \$55.7 million per year. The highest-paid WNBA players, Arike Ogunbowale, Jewell Lloyd, and Kahleah Cooper, make \$241,984 per year.³³ Further, the NBA league minimum salary is between \$1.1 million and \$3.1 million, depending on years of experience, while the WNBA minimum salary is \$64,154.³⁴ Statistical comparisons reflect a time in which the NBA is profitable and the WNBA is not. This has traditionally been the situation, as the NBA makes about \$10 billion per year.³⁵ The WNBA historically lost about \$10 million per year.³⁶ The WNBA’s rapid growth in popularity and record media contract, however, positively impact profitability margins. An increase in the WNBA’s profitability directly increases its ability to pay players fair and equitable compensation under the 2025 WNBA CBA.

³¹ *Non-Statutory Labor Exemption to the Federal Antitrust Laws Does Not Bar Class-Action by Employees Against Hospitals*, CROWELL (Apr. 17, 2007), <https://www.crowell.com/en/insights/client-alerts/non-statutory-labor-exemption-to-the-federal-antitrust-laws-does-not-bar-class-action-by-employees-against-hospitals>.

³² Christian Jope, *NBA vs WNBA: Revenue, Salaries, Viewership, Attendance and Ratings*, WSN (Oct. 7, 2024), <https://www.wsn.com/nba/nba-vs-wnba/>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ A.J. Perez & Andrew Cohen, *Entering Its 27th Season, The WNBA Needs To Break From ‘Old Mold’*, FRONT OFFICE SPORTS (Oct. 21, 2024), <https://www.frontofficesports.com/in-year-27-the-wnba-needs-to-break-from-old-mold/>.

The WNBA currently utilizes an incremental revenue-sharing system in which players are only paid shared revenue if the WNBA's cumulative league revenue exceeds the cumulative revenue target.³⁷ The requirement that the WNBA reach a minimum revenue target before players receive revenue sharing payment keeps players' revenue share compensation at around 10% of the league's total revenue.³⁸ The NBA structured its CBA's revenue-sharing provisions to award a percentage of league revenue to the players. NBA players receive about 50% of all the revenue that the league makes.³⁹ Historically, the difference in revenue sharing percentages between the WNBA and the NBA have been attested to their difference in size and time spent as an established brand.⁴⁰ The WNBA is a much smaller and less established league. The WNBA has only been a league since 1996 when it was created by the NBA.⁴¹ In recent years, the WNBA has seen revenues of about \$200 million per year, while the NBA makes about \$10 billion per year.⁴²

In 2025, the WNBA is set to receive an influx of funding from a newly negotiated national media rights deal. The WNBA will receive \$2.2 billion over the next 11 years for media rights and fees from Disney, Amazon and NBC.⁴³ The deal allocates an average of \$200 million per year to the WNBA.⁴⁴ WNBA's current deal is set at a mere \$50 million per year.⁴⁵ The media deal increases the

³⁷ Women's National Basketball Association Collective Bargaining Agreement, WNBA-WNBPA, (Jan. 17, 2020), at 106.

³⁸ Lindsey Darvin, *Caitlin Clark's Move To The WNBA Illuminates Pay Inequities*, FORBES (Apr. 24, 2024), <https://www.forbes.com/sites/lindseyedarvin/2024/04/23/rising-wnba-stars-illuminate-inequities-and-spark-new-calls-for-change/>.

³⁹ *Id.*

⁴⁰ Kelley L. Flint, Comment: More money, Fewer Problems: A Post-Alston v. NCAA Approach to Reducing Gender Inequities in Sports, 25 RICH. PUB. INT. L. REV. 153, 169 (2022).

⁴¹ Kennelly, *supra* note 19.

⁴² *WNBA's Profitability Put into Spotlight Following Clark's Arrival*, SPORTS BUSINESS JOURNAL (Apr. 22, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/04/22/wnba-profitability-player-salaries>.

⁴³ Mike Vorkunov, *WNBA's Media Rights Deals Set League Up to Receive \$2.2 Billion Over Next 11 Years*, N.Y. TIMES (July 16, 2024), <https://www.nytimes.com/athletic/5642386/2024/07/16/wnba-media-rights-deal-negotiations/>.

⁴⁴ *Id.*

⁴⁵ *Id.*

WNBA's media rights revenue 300%. The drastic increase in the media rights deal is due to the tremendous increase in the WNBA's popularity. Sports fans all over the nation want to watch the WNBA, and its accessibility to regular programming has been lackluster in the past. The new media rights deal increases accessibility for viewers seeking to watch WNBA games on both television and streaming platforms.

The increase in interest is largely due to dynamic players coming into the league and excelling. In recent WNBA history, there has been an influx in the popularity of players and the attraction that they bring to their prospective teams. Players deserve to be paid in proportion to the revenues that they bring to the WNBA. Their revenue share cannot feasibly mirror the NBA's 50%, for the WNBA is still on a different revenue plane. The WNBA revenue provisions in the 2025 CBA should, however, take into account the drastic increase in media rights revenue and the new era of profitability that the WNBA is set to attain.⁴⁶ It is only right that the WNBA's 300% increase in media revenue trickles down to players through a newly negotiated provision in the 2025 WNBA CBA.

Due to the WNBA's ascent in popularity, the WNBA has seen quantifiable increases in revenue in addition to the media deal. WNBA league revenues are not published publicly, but estimates have been reported by those familiar with the matter, and they show a steady increase since the 2020 WNBA CBA negotiations.⁴⁷ The 2019 WNBA league revenue was about \$102 million dollars.⁴⁸ WNBA revenue for 2020 has not been reported, but Bloomberg states that their sales were \$56,200,000 taking into account the impact of the COVID-19 pandemic.⁴⁹ The WNBA revenue in 2022 and 2021 was reportedly between \$180,000,000 and \$200,000,000.⁵⁰

⁴⁶ Weston Blasi, *The WNBA's Historic 2024 Season: How Rookie Stars Like Caitlin Clark are Helping the League Grow*, MARKET WATCH (Oct. 21, 2024), <https://www.marketwatch.com/story/heres-how-much-better-the-wnba-did-financially-in-2024-than-in-2023-1e7badba>.

⁴⁷ Jennah Haque, *Women's Basketball Is Raking in More Cash Than Ever, But the Players Aren't*, BLOOMBERG (Apr. 26, 2023), <https://www.bloomberg.com/news/features/2023-04-26/wnba-is-growing-but-players-aren-t-getting-a-penny-of-revenue-share>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Joep, *supra* note 32.

WNBA revenue for 2023 was also reportedly between \$180,000,000 and \$200,000,000.⁵¹

In 2024, increased revenues flowed from multiple revenue streams. Ticket sales increased 93% compared to 2023.⁵² Game attendance increased 48% since 2023 and was the highest in 22 years, totaling 2.3 million fans.⁵³ The WNBA had 154 sellout games, a 242% increase compared to 2023.⁵⁴ Merchandise sales increased a drastic 601% compared to 2023.⁵⁵ Merchandise increases reached the sporting goods and fan gear giants of Dicks and Fanatics. Dicks reported a 233% increase in WNBA merchandise sales, and Fanatics reported an approximately 500% increase in WNBA merchandise sales.⁵⁶ In the first month of the 2024 WNBA season alone, “[a]cross ABC, ESPN, ESPN2 and CBS, WNBA games [were] averaging 1.32 million viewers, nearly tripling last season’s average (462,000 viewers).”⁵⁷ In the first month of play, the WNBA store set the record for the most single-season sales, and transactions have increased by 756% compared to 2023.⁵⁸ The WNBA concluded the 2024 season as the most-watched regular season in league history.⁵⁹ The WNBA averaged 1.2 million viewers across ESPN platforms, an increase of 170% as compared to 2023 viewership.⁶⁰

The 2020 WNBA CBA progressively changed the conditions of play for the WNBA at the time in which it was negotiated.⁶¹ The 2020 WNBA CBA increased the salary cap per team by 30%, created a pool of marketing resources, decreased the years until players

⁵¹ Margaret Fleming, *One Boom Season Won't Close the Hole in the WNBA's Balance Sheet*, FRONT OFFICE SPORTS (June 12, 2024), <https://frontofficesports.com/wnba-balance-sheet-boom-season/>.

⁵² Blasi, *supra* note 46.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Press Release, WNBA, WNBA Opens 2024 Season with Highest Attendance in 26 Years and Most-Watched Games Ever on National TV (June 10, 2024) (on file with author).

⁵⁸ *Id.*

⁵⁹ ESPN PR (@ESPNPR), X (Sept. 11, 2024, 10:46 AM), <https://x.com/ESPNPR/status/1833894851437281637>.

⁶⁰ *Id.*

⁶¹ Mari Bryn Dowdy & Mailise Marks, *The Fight Off the Field*, 328-FEB N.J. Law. 30, 32 (2021).

reached free agency, created better traveling conditions, and drastically increased support for parental rights.⁶² The WNBA came to their current agreement in 2020 with a record player vote of 90%.⁶³ While the 2020 WNBA CBA was a triumph of the time, the landscape of the WNBA drastically changed in the four years since 2020. The 2020 agreement no longer represents a fair and equitable agreement for WNBA players after the 2024 season.

Traditionally, “the equal pay discussion often deteriorates due to the assumption that women’s sports are less popular than men’s.”⁶⁴ This assumption can continue no longer. The WNBA has proven their right to be paid fairly through their record-breaking 2024 season. WNBA Chief Growth Officer Colie Edison states, “[w]hat’s happening now in women’s basketball is confirmation of what we’ve always known: The demand is there, and women’s sports is a valuable investment.”⁶⁵ The WNBPA can capitalize on the rare opportunity to negotiate for a historic, record-breaking 2025 CBA that encapsulates the changes in the WNBA’s newfound profitability and pay the players accordingly.

Promotional Appearances

Under Article XXIV of the 2020 WNBA CBA, WNBA players are required to make promotional appearances on behalf of both the WNBA and their respective teams.⁶⁶ WNBA players are not compensated for any of the first ten promotional appearances during any season and the immediately succeeding off-season.⁶⁷ Upon the eleventh appearance, players are paid \$750 for every third appearance thereafter.⁶⁸ Further, no player can be paid more than \$3,000 total for promotional appearances made according to Article XXIV.⁶⁹ The types of promotional appearances that players

⁶² *Id.* at 32-33.

⁶³ *Id.* at 32.

⁶⁴ Patrick C. Coyne, *A Huge Win for Equal Pay: Women’s National Teams Grab Their Biggest Victories Yet in Recent Contract Disputes*, 25 JEFFREY S. MOORAD SPORTS L.J. 315, (2018).

⁶⁵ Press Release, WNBA, *supra* note 57.

⁶⁶ Women’s National Basketball Association Collective Bargaining Agreement, *supra* note 37.

⁶⁷ *Id.*

⁶⁸ *Id.* at 187-188.

⁶⁹ *Id.* at 188.

make pursuant to Article XXIV vary, but the CBA lists the following as a non-exhaustive list: “youth organization visits, award shows, public service or charitable events, clinics, autograph signing sessions, or hospitality or promotional events involving or relating to WNBA Competitions.”⁷⁰

Many of the required promotional appearances bring positivity into the community and raise awareness for good causes, such as the Connecticut Sun’s partnership with The Village after-school care.⁷¹ Regardless of whether the promotional appearance has the underlying motive of doing good for the community or increasing revenue for the WNBA, each event brings forth a high level of promotional value that the WNBA, almost exclusively, profits from. Star players coming from the NCAA to the WNBA have held notoriety in years past among avid basketball fans, but an extra connection or newsworthy event seemed to be required in order for players to reach national recognition. Sabrina Ionescu’s friendship with Kobe Bryant, Brianna Stewart’s record-breaking four consecutive National Championships with the UConn Huskies, and even Brittany Griner’s arrest and detention in Russia are examples of how players broke through the glass ceiling of national recognition.

2024 has shown the value of star players in the WNBA. What has been coined as “The Caitlin Clark Effect” has fundamentally changed how our nation thinks about women’s basketball.⁷² Players like Caitlin Clark, Angel Reese, and Cameron Brink have become household names due to their abilities on the court. Their names carry recognition that directly increased WNBA TV viewership, arena ticket sales, merchandise sales, social media followers, national buzz, and newsworthiness. Out of the 40 WNBA games with the highest viewership in 2024, Clark, Reese, or Brink played in 33 of them.⁷³ Individual players bring revenue to the

⁷⁰ *Id.* at 187.

⁷¹ *WNBA Stars Bring Basketball Clinic to Village To Help Children Facing Mental Health Challenges*, THE VILLAGE NEWS EVENTS BLOG (Apr. 25, 2023), <https://thevillage.org/news-events/wnba-stars-bring-basketball-clinic-to-village-to-help-children-facing-mental-health-challenges/>.

⁷² Gemma Allen, *The Caitlin Clark Effect: A Slam Dunk Lesson In Female Empowerment*, FORBES (Mar. 25, 2024), <https://www.forbes.com/sites/gemmaallen/2024/03/25/the-caitlin-clark-effect-a-slam-dunk-lesson-in-female-empowerment/>.

WNBA through personal recognition that is not reciprocated through Article XXIV's promotional appearances payment structure provisions. During 2025 CBA negotiations, it is essential for the WNBPA to bargain for a more favorable provision for player-required appearances. Players' appearances create buzz for the WNBA that leads to profit, and the current deal does not recognize the shifts in the league's following that amounted over the last four years.

III. WNBPA BARGAINING TERMS FOR 2025

Worthwhile Investment

The increase in WNBA funds from the 2025 media deal is not the only reason the WNBA's upcoming CBA negotiations should result in a deal more favorable to players. There is public interest in seeing equality reached for the WNBA. Fans are "shocked" to realize the gap in WNBA pay.⁷⁴ For perspective, Caitlin Clark's yearly salary of \$76,000 is lower than the \$78,000 a fan paid for her trading card.⁷⁵ In addition, WNBA superstars are role models for many young, female basketball players. Society has an interest in teaching the next generation of players that they are worth fair compensation.

The WNBA competes with foreign countries that are willing to pay players significantly more to play overseas. Many WNBA players elect to play overseas, because "[i]n many cases, a WNBA player can earn three to four times her base salary by playing overseas when the four-month U.S. season ends."⁷⁶ In 2015, it was reported that WNBA veteran Diana Taurasi was paid around \$1.5 million annually by Russian team UMMC Ekaterinburg.⁷⁷ Playing overseas comes at a cost to WNBA players, including suffering from

⁷³ Matt Johnson, *WNBA TV Ratings: Caitlin Clark Leads Historic Year for Regular Season, WNBA Playoffs TV Ratings*, SPORTSNAUT (Sept. 27, 2024), <https://sportsnaut.com/wnba-tv-ratings/>.

⁷⁴ Jon Wertheim et al., *With Spike in WNBA Viewership, Players Eye Fair Share of League Revenue*, CBS NEWS (Sept. 29, 2024), <https://www.cbsnews.com/news/wnba-playoffs-salary-contracts-negotiations-60-minutes/>.

⁷⁵ *Id.*

⁷⁶ Deon J. Hampton, *Why Many WNBA Players Leave the U.S. to Supplement Their Incomes*, NBC NEWS (Apr. 19, 2024), <https://www.nbcnews.com/news/sports/many-wnba-players-leave-us-supplement-incomes-rcna148192>.

no rest in between seasons, legal issues, etc.⁷⁸ Regardless of these challenges, players have been driven to play overseas to “significantly boost their income.”⁷⁹

Recently on the WNBA’s home court in the United States, Napheesa Collier and Breanna Stewart founded Unrivaled.⁸⁰ Unrivaled is a 3v3 professional women’s basketball league playing during the WNBA off-season.⁸¹ The pay gap in the WNBA has bred competition for their league as players seek both basketball opportunities and salaries elsewhere. Unrivaled is a new, exciting, and home court option, in the United States, for players seeking supplemental income to WNBA salaries. In January 2025, thirty-six WNBA players committed to playing in Unrivaled’s inaugural season, coinciding with the WNBA’s off-season.⁸² Unrivaled has tapped into both markets of veteran and up-and-coming players including Breanna Stewart, Kelsey Plum, Jewell Loyd, Angel Reese, and Riquea Jackson.⁸³ Unrivaled is gaining support from players, fans, the media, and brand partners, such as Ally Bank.⁸⁴ Furthermore, all of Unrivaled’s forty-five regular season games will be broadcast on TNT Sports and streamed on Max.⁸⁵ Unrivaled is making a statement and coming up with the resources to back it up, creating a competitive, well-funded, and timely competitor to the WNBA.

⁷⁷ Ben Pickman, *What do WNBA Players Make Overseas? Not as Much as you’ve Heard*, N.Y. TIMES (Apr. 27, 2024), <https://www.nytimes.com/athletic/4456252/2023/04/27/wnba-salaries-overseas/>.

⁷⁸ The Athletic Staff, *Explainer: Why do WNBA Players Compete Overseas?*, N.Y. TIMES (Nov. 22, 2022), <https://nytimes.com/athletic/3916558/2022/11/22/wnba-overseas-international/>.

⁷⁹ *Id.*

⁸⁰ Jon Wertheim et al., *supra* note 74.

⁸¹ UNRIVALED, <https://www.unrivaled.basketball/> (last visited Oct. 6, 2024).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Mollie Cahillane, *Unrivaled Basketball League Signs Ally as First Founding Brand Partner*, SPORTS BUSINESS JOURNAL (July 19, 2024), <https://www.sportsbusinessjournal.com/Articles/2024/07/19/unrivaled-ally-financial-first-founding-brand-partner>.

⁸⁵ *TNT Sports and Unrivaled Reach Multi-Year Media Partnership Beginning in January 2025*, UNRIVALED, (Oct. 16, 2024), <https://www.unrivaled.basketball/news/tnt-sports-and-unrivaled-reach-multi-year-media-partnership-beginning-in-january-2025-pde6fw4yn4zb>.

Terri Jackson, executive director of the WNBPA, states “we have seen unprecedented growth across all metrics, the players continue to demonstrate their commitment to building the brand, and that the fans keep showing up. There is no excuse to undervalue the WNBA again.”⁸⁶ The revenue sharing and promotional appearances provisions in the 2020 WNBA CBA were created for a time where the WNBA was not profitable, had to fight for public interest, and had little name recognition. In the past four years, the league’s monumental shift created new possibilities for players, teams, and owners. The WNBPA holds significant bargaining power entering into 2025 WNBA CBA negotiations.

Revenue Share

Article XII of the 2020 WNBA CBA details players’ revenue sharing agreement.⁸⁷ WNBA players only receive revenue share, if the league’s cumulative revenue exceeds the cumulative revenue target.⁸⁸ The current cumulative revenue target for the WNBA under the 2020 CBA is calculated by applying a compounding interest of 20% to the 2019 league revenue through the current season.⁸⁹ Applying compounding 20% interest, the yearly cumulative revenue target is as follows: \$122,400,000 in 2020, \$269,280,000 in 2021, \$445,536,000 in 2022, and \$657,043,200 in 2023.⁹⁰ Cumulative league revenue is calculated utilizing WNBA league revenue.⁹¹ The cumulative league revenue is as follows: \$56,200,000 in 2020; \$236,200,000 in 2021; \$436,200,000 in 2022; and \$636,200,000 in 2023.⁹² Finally, cumulative overages total: \$(66,200,000) in 2020; \$(33,080,000) in 2021; \$(29,336,000) in 2022; and \$(40,843,200) in 2023.⁹³ In each year since 2019, the WNBA’s

⁸⁶ Alexa Philippou, *WNBA Targets Better Salaries and Benefits after Media Deal*, ESPN (July 26, 2024), https://www.espn.com/wnba/story/_/id/40643117/wnba-2024-players-focus-salaries-benefits-pension-media-rights-deal.

⁸⁷ Women’s National Basketball Association Collective Bargaining Agreement, *supra* note 37.

⁸⁸ *Id.*

⁸⁹ *Id.* at 107.

⁹⁰ Calculation: (Revenue*0.2) + Revenue

⁹¹ See sources cited *supra* notes 35-38.

⁹² Calculation: League Revenue + Sum of Previous Years League Revenue Since 2019

⁹³ Calculation: Cumulative League Revenue – Cumulative Revenue Target

cumulative overage was negative, thus players received no revenue share. Considering the 300% increase in media money hitting the WNBA books in 2025, WNBA revenue doubles starting next season and positively impacts the revenue sharing statistics drastically.

Revenue Sharing Models

The NBA and the National Football League (“NFL”) utilize similar structures for salary cap CBA provisions. Salary caps are calculated according to revenue share. The NBA utilizes basketball-related income (“BRI”) to determine the salary cap amount.⁹⁴ In one salary cap year, the salary cap equals 44.74% of projected BRI, minus projected benefits, and divided by the number of teams in the NBA.⁹⁵ The NFL’s calculation for one league year is the player cost amount, minus projected benefits, divided by the number of football clubs.⁹⁶ The player cost amount is calculated by adding 55% of projected league media all revenue (“AR”), 45% of projected NFL Ventures and postseason AR, 40% of projected local AR, and if applicable 50% of the net AR for a new line of business projects.⁹⁷ The NBA and NFL utilize a percentage of the revenue share to calculate salary caps, because it provides a flexible measure. The flexibility allows owners to avoid being locked into pre-set figures without having the revenue to pay.

Utilizing an estimated figure for revenue, like the WNBA’s cumulative revenue target, locks players at the number determined at the time of negotiations for the entire period in which the CBA spans. The percentage of revenue share the NBA and NFL use, allows players to reap each season’s profits as it automatically adjusts the calculation each year.

On August 22, 2024, the National Women’s Soccer League (“NWSL”) and the National Women’s Soccer League Players Association (“NWSLPA”) recently negotiated the league’s CBA.⁹⁸ The full 2024 NWSL CBA has not been released to the public, as of December 2024, but a press release by the NWSL explains the updated revenue share model.⁹⁹ The NWSL also calculates the

⁹⁴ Collective Bargaining Agreement, NBA-NBPA (June 28, 2023, at 25).

⁹⁵ *Id.* at 169.

⁹⁶ Collective Bargaining Agreement, NFL-NFLPA (Mar. 15, 2020), at 95-99.

⁹⁷ *Id.* at 95.

⁹⁸ NWSLPA, <https://www.nwslplayers.com/cba> (last visited Nov. 5, 2024).

salary cap using a revenue sharing component.¹⁰⁰ The NWSL salary cap is calculated through two components “(i) a base salary cap at prescribed levels, and (ii) a supplement that will be determined based on the prior year’s media and sponsorship revenue.”¹⁰¹

Revenue Sharing Proposal & WNBPA Reservation Point

The WNBPA must keep the growth and changing circumstances of the WNBA at the forefront of their negotiation strategy for the 2025 WNBA CBA. A reservation point “is the point at which the negotiator should walk away from the table rather than reaching agreement.”¹⁰² The reservation point is also “the point at which a proposed agreement better satisfies [your] interests than [the] best alternative to that agreement.”¹⁰³ Before heading into CBA negotiations, it will be essential that the WNBPA calculates its reservation point. In order to further the goal of valuing WNBA players, and achieving fairness in the revenue sharing structure, a reservation point would serve to protect the interests of players. WNBA players are worth more now than they ever have been before. The WNBA’s media rights deal that is set to come into effect in 2025 increases the current yearly media contract from \$50 million per year to a remarkable \$200 million dollars per year.¹⁰⁴ This increase should guide the WNBPA’s reservation point, as it doubles the current expected revenue of the WNBA.

A hypothetical calculation, predicting the revenue share in 2025, is illustrative. Assuming that the league does not increase its revenue, aside from the influx in media money, in the next two years and the provisions of the 2020 CBA remain the same—both highly unlikely occurrences considering the WNBA’s new following and league revenues rising the past three years—the league would have revenues to share with players. In fact, if the unlikely occurs and the only growth that the WNBA sees in 2025 is the increase in

⁹⁹ Press Release, NWSL, NWSL and NWSLPA Agree to Historic Collective Bargaining Agreement Two Years Ahead of Expiration (August 22, 2024) (on file with author).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Paul F. Kirgis, *Bargaining with Consequences: Leverage and Coercion in Negotiation*, 19 HARV. NEGOTIATION L. REV. 69, 87 (2014).

¹⁰³ *Id.* at 88.

¹⁰⁴ Vorkunov, *supra* note 43.

media revenue, the revenue share still comes out positively at \$544,454.¹⁰⁵

Between the years of 2022 and 2023, the WNBA's revenues increased by approximately \$20,000,000. Speculating that the league's revenue continues to grow along that trajectory and applying the above calculation, the league would make \$220,000,000 in 2024 and \$440,000,000 in 2025. Applying the revenue sharing calculation, the growth of the league increases the potential revenue share to \$42,544,454 in 2025. The increase in media revenue, coupled with the league's growth as a whole, leads the WNBA to reach their cumulative revenue target.

During 2025 CBA negotiations, the WNBPA must prioritize an updated provision for revenue sharing. An ideal revenue share provision for the WNBA would follow the NWSL's recently bargained for structure with amendments ensuring the provision accurately represents the WNBA's newfound profitability. The amended structure should guide the WNBPA's reservation point. The NWSL sets prescribed levels for base salary cap and supplements with revenue share based on the previous year's media and sponsorship revenue.¹⁰⁶ This dual provision for salary caps and revenue share would thrive if the WNBA utilized this structure. The league would be able to continue using some of their current provisional structures while expanding and amending according to significantly increasing league revenues. Under this model, the WNBA would be able to continue setting prescribed salary cap amounts, as they have throughout the term of the 2020 WNBA CBA. Player compensation would then be supplemented dependent upon the revenue share. Further improving upon the NWSL's current agreement, the WNBPA should bargain to supplement the prescribed salary cap with a share of *all* league revenue, not solely a percentage of the previous year's media and sponsorship revenue.

This structural proposal has real potential in aligning with the goals of both the WNBA and the WNBPA during negotiations. It allows players to realize an equitable and fair amount of revenue share in conjunction with the salary cap, the WNBA to have continuity in CBA structure, revitalizes the WNBA CBA according

¹⁰⁵ Calculation: Cumulative League Revenue – Cumulative Revenue Target

¹⁰⁶ NWSLPA, <https://www.nwslplayers.com/cba> (last visited Nov. 5, 2024).

to increases in league popularity and revenue, and has recently been proven to be successfully negotiated in the 2024 NWSL CBA. The WNBA would continue to set fixed salary cap levels, as they have in the 2020 WNBA CBA, but adding a supplement of total, rather than incremental, revenue sharing allows WNBA players receive revenue share proportionate to their abilities on the court and the revenue that they bring to the WNBA.¹⁰⁷ Bargaining for a modified revenue share model that recognizes the league's growth, prioritizes players, yet still finds a middle ground between the WNBA and the WNBPA sets the table up for successful and player favorable WNBA CBA negotiations in 2025.

Promotional Appearances and Media

In the past four years since the 2020 CBA was bargained for, society as a whole has seen a seismic shift in the power of promotion. In 2024, the power of the influencer has been realized by society and adopted in industries across the board.

College athletes now make millions in name, image, and likeness ("NIL").¹⁰⁸ NIL spreads across various sports and provides lucrative deals to male and female athletes. For example, in 2024: Shedeur Sanders, University of Colorado's quarterback, made \$4.7 million; Livvy Dunne, LSU's star gymnast, made \$3.8 million; and Cooper Flagg, Duke Basketball's forward, made \$3.2 million.¹⁰⁹ Before being drafted in April of 2024, Caitlin Clark made about \$3.8 million per year that she played at Iowa.¹¹⁰

Internet influencers have also captured the ability to leverage their social media follower bases in exchange for top-dollar revenues. Influencers utilize brand partnerships, ads, affiliate links, merchandising, etc.¹¹¹ Top influencers made millions in 2024,

¹⁰⁷ Eden Laase, *WNBA Free Agency: How do Salary Cap and Revenue Sharing Work?*, JUST WOMEN'S SPORTS (Jan. 17, 2023), <https://justwomenssports.com/reads/wnba-free-agency-salary-cap-revenue-sharing-explainer/>.

¹⁰⁸ Chris Kudialis, *The NIL Top 10: Who are the Highest-paid College Athletes?*, VOLT (Nov. 13, 2024), <https://volvedu.com/marketing-branding/the-nil-top-10-who-are-the-highest-paid-college-athletes/>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Jennifer Dublino, *Social Media Stars: How Much Do They Really Make?*, BUSINESS.COM (Apr. 10, 2024), <https://www.business.com/articles/social-media-stars-how-much-do-they-really-make/>.

including: Mr. Beast, with about 503 million followers, made \$85 million; Emma Chamberlain, with about 27.6 million followers, made \$9 million; and Alix Earle, with about 11.1 million followers, made \$8 million.¹¹² The influencer industry as a whole is worth \$250 billion as 2024 comes to an end.¹¹³ Many influencers utilize their following and experience from brand deals to shift into entrepreneurship and brand ownership.¹¹⁴

WNBA players utilize influencer type skills to promote the brands that they partner with. Brands seek deals with star WNBA players to capitalize on their recognition, fan base, and athletic abilities. In her first year playing in the WNBA, Caitlin Clark signed a \$28 million contract with Nike.¹¹⁵ The contract is the highest paid to any WNBA player.¹¹⁶ Not all WNBA brand contracts disclose the compensation that goes to players in the deal, but there is no lack of big brands showing their support and valuation of the league's players. In 2024, after being drafted into the WNBA, Angel Reese renewed her contract with Reebok that started as an NIL deal while she played at LSU.¹¹⁷ Kelsey Plum has a contract with Under Armour.¹¹⁸ Breanna Stewart has a contract with Puma that includes a signature clothing line.¹¹⁹ WNBA players make significant income collaborating with brands and making promotional appearances in their personal time. It is also important that WNBA players represent the overarching brand that is the WNBA and WNBA teams. The 2020 WNBA CBA was structured before society widely accepted the amount that

¹¹² Matt Craig et al., *The Creator Economy is Growing Fast-and Growing Up*, FORBES (Nov. 1, 2024), <https://www.forbes.com/sites/stevenbertoni/2024/10/28/top-creators-2024-the-influencers-turning-buzz-into-billions/>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Associated Press, *Caitlin Clark Set to Sign New 8-year Deal with Nike, Reports Say*, ESPN (Apr. 23, 2024), https://www.espn.com/wnba/story/_/id/40008254/caitlin-clark-set-sign-new-8-year-deal-nike-reports-say.

¹¹⁶ *Id.*

¹¹⁷ Shams Charania, *Sky's Angel Reese, Reebok Extend Deal; Signature Shoe in '26*, ESPN (Oct. 24, 2024), https://www.espn.com/wnba/story/_/id/41984465/sky-angel-reese-reebok-extend-deal-signature-shoe-26.

¹¹⁸ *Under Armour Adds Kelsey Plum to its Roster*, UNDER ARMOUR (Nov. 1, 2022), <https://about.underarmour.com/en-us/stories/2022/10/under-armour-adds-kelsey-plum-to-its-roster.html>.

¹¹⁹ Press Release, Puma, Puma Signs WNBA Superstar Breanna Stewart to Groundbreaking Deal (May 12, 2021) (on file with author).

influencers were compensated, influencers leveraged their platforms into million-dollar brands, and premier athletes could make millions of dollars in NIL money while still in college.

While the 2020 WNBA CBA requires promotional appearances to be “reasonable,” its payment structure does not represent the revenue and viewers that players bring to the league through both their skills on the court and personal brands.¹²⁰ WNBA players are now household names since the remarkable rise in the league’s nationwide recognition and fan interest. During 2025 WNBA CBA negotiations, the WNBPA must prioritize restructuring Article XXIV of the 2020 WNBA CBA to represent fair compensation for the required media appearances players make to support the WNBA.

Structure Used in Professional Sports Leagues

Even though the NWSL’s 2024 CBA has not been released publicly in full, the NWSL’s 2022 CBA details their player promotional media structure.¹²¹ The NWSL’s 2022 CBA holds promotional media requirements that mirror those of the WNBA’s 2020 CBA, but the NWSL’s provisions are structured in a way that are more favorable for players. The NWSL separates their appearance provisions into two categories: Article 21 – Media Appearances and Article 22 – Promotional and Commercial Appearances.¹²²

Media appearances are defined as “appearances and/or interviews for television, film, audio/radio, newspaper, digital media, magazine, and other media representatives at the request of the NWSL and/or the Team.”¹²³ Promotional appearances are defined as “any public or community appearance by a Player that promotes the NWSL, an NWSL Team, any NWSL Game, or the sport of soccer and which is not a Commercial Appearance.”¹²⁴ NWSL teams, and the NWSL itself, must “request” promotional appearances from players.¹²⁵ Upon request, players make

¹²⁰ Women’s National Basketball Association Collective Bargaining Agreement, *supra* note 37.

¹²¹ NWSLPA, <https://www.nwslplayers.com/cba> (last visited Nov. 5, 2024).

¹²² Collective Bargaining Agreement, NWSL-NWSLPA, (Apr. 29, 2022), at 35-38.

¹²³ *Id.* at 35.

¹²⁴ *Id.* at 36.

promotional appearances for both their teams and the NWSL.¹²⁶ In each league year, players are not compensated additionally for the first three appearances of two hours or less.¹²⁷ After the first three appearances, players are paid, \$200 by their team or \$300 by the NWSL, for each appearance that is up to two hours and \$100 for each additional hour after the first two hours.¹²⁸ The NWSL cannot require a player to make more than one promotional appearance in a week, and players are allowed to consent to only two promotional appearances per week.¹²⁹ Further, the NWSL cannot require players to make more than ten promotional appearances in a year.¹³⁰

Commercial appearances are defined as “the primary purpose of the appearance is to promote a commercial affiliate or commercial enterprise other than NWSL or its Teams.”¹³¹ The NWSL and NWSL teams pay players a higher level of compensation for commercial appearances. For team commercial appearances, players must be paid a *minimum* of \$450 per appearances for up to three hours, and for every additional hour the player is paid \$300.¹³² For NWSL commercial appearances, players must be paid a *minimum* of \$800 for up to three hours, and for every additional hour the player is to be paid \$400.¹³³ The NWSL cannot obligate players to make commercial appearances.¹³⁴

The NBA and the NBPA’s collective bargaining agreement holds player promotional requirements in Article II, Section 8.¹³⁵ Players are required to make seven individual promotional appearances and five group appearances during each Salary Cap Year.¹³⁶ Players are reimbursed for actual expenses, that are ordinary and reasonable, that result from their required appearances.¹³⁷ Similarly to the NWSL, the NBA’s collective

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Collective Bargaining Agreement, NWSL-NWSLPA, (Apr. 29, 2022), at 36.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 37.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ NWSL & NWSLPA, Collective Bargaining Agreement (2022), at 37.

¹³⁵ Collective Bargaining Agreement, NBA-NBPA (June 28, 2023), at 44.

¹³⁶ *Id.*

bargaining agreement also utilizes “commercial” as a descriptor trigger for player compensation at required appearances.¹³⁸ For commercial appearances with a team’s commercial sponsor, players are to be paid \$3,500.¹³⁹ The importance of promotional appearances is illustrated by the NBA’s imposition of a fine on NBA players that fail to attend their scheduled promotional appearances.¹⁴⁰ If an NBA player fails or refuses to attend a promotional appearance, without a proper and reasonable excuse, the player will be fined \$20,000.¹⁴¹

2025 WNBA CBA Promotional Appearances Proposal

At a rudimentary level, the WNBPA should bargain for WNBA players to be compensated for each appearance that they make. The 2020 WNBA CBA compensates players only after making ten mandatory appearances, and after the first ten appearances, players are only paid for every third appearance.¹⁴² The 2020 WNBA CBA structure does not reflect the notoriety, recognition, and fanbase that now actively engage with the league and directly increase WNBA revenue.

The WNBPA should bargain for the 2025 WNBA CBA’s Article on required promotional appearances to be distinguished by the descriptors of “promotional” and “commercial.” The NBA and the NWSL both recognize that the purpose of the appearance warrants different pay structures—the WNBA should follow suit. Promotional appearances are often grounded in community and do not reap large profits for the league. Appearances at basketball camps or youth centers do not hold the purpose of generating revenues. They are attended for the betterment of the community and to reap the fan engagement and good faith that the team, players, and league subsequently receive. Commercial appearances, in contrast, are designed to create revenue opportunities for the WNBA league or individual teams.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 114.

¹⁴¹ NBA-NBPA, Collective Bargaining Agreement (2023), at 114.

¹⁴² Women’s National Basketball Association Collective Bargaining Agreement, *supra* note 37.

Commercial affiliates or sponsors of the WNBA often contract for commercial appearance opportunities that players are required to attend. Brands understand the recognition, notoriety, and loyal fan bases that players have and want to engage with the markets that players have built for themselves. Commercial appearances are directly tied to creating revenue for the WNBA and the WNBA's sponsors. Thus, they should trigger a higher payment structure for players.

Finally, the WNBPA must bargain for no upper cap to be placed on the amount that the WNBA pays its players for their required promotional and media appearances. The 2020 WNBA CBA places a cap of \$3,000 on the amount that players can be paid for promotional appearances.¹⁴³ Under the conditions of 2024's historic season, there will likely be great interest in having players make commercial appearances, thus their coinciding compensation should not be capped.

IV. BARGAINING STRATEGY

WNBPA Bargaining Outlook

Heading into CBA negotiations, WNBPA leader Terri Jackson explained part of the WNBPA's strategic outlook. At the outset of negotiations, spirits seem to be "beginning at least in an eager, conciliatory light" so far from both sides of the bargaining table, and there is a "desire to start conversations immediately."¹⁴⁴ Jackson explains that women's sports negotiations have a unique dynamic of "very thoughtful, productive, hard conversations" that "ultimately get to where we need to be."¹⁴⁵ Further, Jackson explains the core issues that WNBA players hope to prioritize during negotiations, including "salary structure, family planning, and retirement."¹⁴⁶ In order to reach a favorable outcome for the players, strong bargaining and negotiation strategies will be integral.

¹⁴³ *Id.* at 188.

¹⁴⁴ Friend, *supra* note 11.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

Bargaining Strategies Toolbox

Starting with negotiation basics, Sports Law Attorney Barry Chase provides a guide for sports contract negotiations in order to “ensure the best possible outcome.”¹⁴⁷ Chase’s sports law negotiation strategies include (1) “[u]nderstand the [b]asics,” (2) “[p]repare [y]our [p]osition,” (3) “[d]evelop a [s]trategy,” (4) “[c]ommunicate [e]ffectively,” and (5) “[d]ocument the [a]greement.”¹⁴⁸ These strategies may seem overly simplistic for the complex nature of negotiations between the WNBA and the WNBPA, but the basics are the best place to begin. It is crucial that the WNBPA comes into CBA negotiations prepared with a strategic plan for their targets, communications, and bottom-line reservation points. Without adequate preparation and a clear vision of player needs, the WNBPA will have a difficult road to success in reaching favorable player provisions for the 2025 WNBA CBA.

Harvard Law School’s Program on Negotiation published a special report, entitled *Win-Win or Hardball?: Learn Top Strategies from Sports Contract Negotiations*, which explains strategies for “solving problems, easing tension, and executing win-win negotiations.”¹⁴⁹ These strategies instruct negotiators to (1) “[s]hare information,” (2) “[r]eject the ‘fixed pie,’” (3) “[a]void anchoring on the first offer,” (4) “[s]et concrete goals,” (5) “[t]ake your time,” and (6) “[a]void dwelling on the past.”¹⁵⁰ There will undoubtedly come a time during negotiations in which the WNBA and the WNBPA significantly disagree. Whether this disagreement regards the revenue sharing reservation point, required media appearances, or any other CBA provision, the WNBPA must have a robust negotiation toolbox ready for any situation that is brought to the table.

¹⁴⁷ Barry Chase, *Negotiating Sports Contracts: A Guide for Athletes and Agents*, CHASE LAWYERS BLOG (June 7, 2023), <https://entertainmentlawyermiami.com/negotiating-sports-contracts-a-guide-for-athletes-and-agents/>.

¹⁴⁸ *Id.*

¹⁴⁹ Gail Odeneal, *Discover How to Handle Complicated, High-level Business Negotiations in This Free Report, Win-Win or Hardball? Learn Top Strategies from Sports Contract Negotiations, from Harvard Law School*, HARVARD LAW SCHOOL (Sept. 23, 2016), <https://www.pon.harvard.edu/freemium/win-win-or-hardball-learn-top-strategies-from-sports-contract-negotiations/>.

¹⁵⁰ *Id.*

In *Negotiation Essentials for Lawyers*, editors Andrea Kupfer Schneider and Chris Honeyman's primary purpose is to directly apply attorney negotiation methods in practice.¹⁵¹ In Chapter 49, Honeyman explains strategies for attorneys to use when negotiations are deadlocked.¹⁵² These principles should be adopted by the WNBPA if a deadlock is apparent. First, negotiators need to utilize the "[d]iscrete [c]harm of [a]mbiguity."¹⁵³ When faced with a situation where both sides of the negotiation are motivated by strong interests and principle, "calculated or innocent ambiguity can supply the lubrication necessary for the gears to move."¹⁵⁴ Specifically, within labor agreements, ambiguous contract language often "*implies moderation*."¹⁵⁵ Second, there may come a time in which WNBPA negotiators need to take a step towards reopening deadlocked negotiations.

In Chapter 50, co-author John Wade provides seventeen strategies for reopening negotiations while balancing the "Doberman" and "[d]iplomat" strategies.¹⁵⁶ Diplomats work to build bridges towards settlement while Dobermans put forth an aggressive front.¹⁵⁷ The contrast in strategies broadens the approaches that a negotiator can apply to corresponding countermoves by the other side. To be effective in executing a player favorable negotiation, the WNBA must have negotiation techniques for any situation that WNBA negotiators could bring present. John Wade's strategies that are most applicable to WNBPA CBA negotiations include "[s]uperordinate [g]oals," impose "[f]lexibility on [s]pecific [s]olutions," make "[n]o [u]nilateral [c]oncessions," and "[c]learly [r]eject [u]nacceptable [p]ast [s]olutions."¹⁵⁸

There is no question that the WNBA significantly increased its audience, ticket and merchandise sales, and revenue in the last four years since the negotiation and agreement of the 2020 WNBA

¹⁵¹ *Negotiation Essentials for Lawyers*, (Andrea Kupfer Schneider & Chris Honeyman eds., 2019).

¹⁵² *Negotiate to Win*, ABA (Oct. 2019), <https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/pros-offer-constructive-tips-for-negotiating-/>.

¹⁵³ SCHNEIDER, ET AL, *supra*, note 151, at 315.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 318.

¹⁵⁶ *Id.* at 321.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 322-323.

CBA. The 2020 WNBA CBA is no longer representative of a fair and equitable agreement, especially considering the revenue sharing and required promotional appearances provisions. The 2025 WNBA CBA must evolve with the league. The WNBPA must look to the 2020 WNBA CBA to compare terms, structure, and equity in preparation for 2025 negotiations so they can “[c]learly [r]eject [u]nacceptable [p]ast [s]olutions.”¹⁵⁹ Implementing the aforementioned strategies to CBA negotiations will aid the WNBPA in avoiding a deadlock and the strike that likely comes with it. Deadlock is likely a better path than an unfavorable CBA or a CBA that is below the WNBPA’s bottom-line, but strikes and lockouts have the potential to hurt both parties at the negotiating table.

Unavoidable Deadlock

If CBA negotiations between the WNBA and the WNBPA do not head towards the elimination of incremental revenue sharing and other pro player provisions, WNBA players may want to consider going on strike to preserve their reservation point. Strikes and lockouts have been utilized in many professional sports leagues to emphasize the instigating party’s seriousness about the rights they negotiate for. Strikes are initiated by players, while lockouts are imposed by management and owners.¹⁶⁰ During a lockout or strike, businesses, or teams surrounding professional sports, come to a standstill.¹⁶¹ Owners “refuse to allow players to access team facilities” and players “refuse to play.”¹⁶²

Leagues can play without a CBA in place either after it has expired or after an opt out by the players, but in this situation, lockouts have become common practice in the National Basketball Association (NBA), National Football League (NFL), National Hockey League (NHL), and Major League Baseball (MLB).¹⁶³ All of

¹⁵⁹ *Id.* at 323.

¹⁶⁰ CNN Editorial Research, *Pro Sports Lockouts and Strikes Fast Facts*, CNN (May 12, 2023), <https://www.cnn.com/2013/09/03/us/pro-sports-lockouts-and-strikes-fast-facts/index.html>.

¹⁶¹ James Wagner, *M.L.B.’s Lockout: What Is It? How Does It Work? What’s Next?*, N.Y. TIMES (Dec. 4, 2021), <https://www.nytimes.com/article/mlb-lockout.html>.

¹⁶² *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, JUSTIA (July 14, 2024), <https://www.justia.com/sports-law/collective-bargaining-agreements-in-sports-leagues>.

¹⁶³ Wagner, *supra* note 161.

these leagues have experienced numerous work stoppages due to strikes or lockouts.¹⁶⁴ The NBA has had four work stoppages in league history, the first of which was in 1995 and the most recent in 2011.¹⁶⁵ The NFL has had six work stoppages in league history, the longest of which lasted 136 days.¹⁶⁶ The NHL has had four work stoppages in league history, one of which resulted in missing the entire 2004-2005 season.¹⁶⁷ Finally, the MLB has had nine work stoppages in league history—including a recent stoppage in 2022 that led to a postponement of opening day and the cancellation of two games.¹⁶⁸

Strikes can lead to drastic financial loss, especially if the season is impacted by a lack of play.¹⁶⁹ Ahead of a potential lockout of the NBA in 2012, the league faced a potential loss of “\$4.2 billion in league revenues and \$2.2 billion in player compensation.”¹⁷⁰ The NHL lockout that resulted in missing the 2004-2005 season led to losses of “an estimated \$2 billion in revenues and players giving up about \$1 billion in lost salaries.”¹⁷¹

Additionally, strikes negatively impact sports fans. Sports fans are a passionate group that expects to see their favorite athletes playing each week as scheduled. Without play, sports fans miss out on watching games on TV, listening to sports talk, comparing statistics, sports betting, interacting with their favorite players, and attending sports arenas. During the NHL strike of 2012, hockey fans gathered outside the NHL store in Manhattan in protest.¹⁷² Fans sported signs with phrases such as “FANS SAY NO LOCKOUT” and “ALL I WANT FOR CHRISTMAS IS HOCKEY.”¹⁷³

¹⁶⁴ CNN Editorial Research, *supra* note 160.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 162.

¹⁷⁰ Investopedia, *The Financial Impact Of The NBA Lockout*, FORBES (Jan. 12, 2012), <https://www.forbes.com/sites/investopedia/2011/11/03/the-financial-impact-of-the-nba-lockout/>.

¹⁷¹ Paul D. Staudohar, *The Hockey Lockout of 2012–2013*, U.S. BUREAU OF LAB. STAT., (July 2013), <https://www.bls.gov/opub/mlr/2013/article/the-hockey-lockout-of-2012.htm>.

¹⁷² Laura Depta, *Fans Sticking It to the Man: Sports Edition*, BLEACHER REPORT, (Dec. 15, 2015), <https://bleacherreport.com/articles/2599102-fans-sticking-it-to-the-man-sports-edition>.

¹⁷³ *Id.*

Strikes impact fans, and fans do not look to the players to resolve the issues. They would rather stick it to “the man” and hold the organizations accountable.¹⁷⁴

WNBA players have proven their worth, and the WNBA is seeing an influx of revenue due to the media rights deal, so the WNBPA and players must be steadfast on their reservation points—even if it means initiating a strike. The impact on WNBA revenues from a loss of play and angering fans in their infancy of league support provides leverage for the WNBPA’s negotiations before the initiation of a strike or in negotiations to end a strike.

Lobbying

Another strategy that the WNBPA should consider, if their reservation points are not reached, is lobbying local and federal legislatures to make a change. Politics and sports have intertwined throughout history. Athletes hold visibility and international recognition, so they are “uniquely positioned to drive policy enactment through their calls for support and visible acts of unity, advocating for critical social change.”¹⁷⁵

The lobbying strategy has been successful in the past for professional sports teams, as evidenced by the USWNT. After longtime lobbying efforts by the USWNT, Senator Cantwell, and Senator Capito, the Equal Pay for Team USA Act was passed in the House and the Senate.¹⁷⁶ The Equal Pay for Team USA Act ensured that United States athletes competing globally received equal pay and benefits regardless of their gender.¹⁷⁷ The Cantwell-Capito Equal Pay for Team USA Act then went to the desk of President Biden where it was signed into law on January 5, 2023.¹⁷⁸ The USWNT’s activism and lobbying created a ripple effect that

¹⁷⁴ *Id.*

¹⁷⁵ Lindsey Darwin, *Why Women In Sports Have Always Had To Navigate Politics*, FORBES (July 26, 2024), <https://www.forbes.com/sites/lindseydarwin/2024/07/26/why-women-in-sports-have-always-had-to-navigate-politics/>.

¹⁷⁶ Press Release, U.S. Senate Comm. on Com., Sci., & Transp., Historic Win for Women’s Equality in Sports | Equal Pay for Equal Play Coming to Team USA as Cantwell-Capito Bill Heads to President’s Desk (Dec. 21, 2022) (on file with author).

¹⁷⁷ *Id.*

¹⁷⁸ Press Release, U.S. Senate Comm. on Com., Sci., & Transp., President Biden Signs Cantwell-Capito Equal Pay Bill Into Law, Historic Win for Women’s Equality in Sports (Jan. 5, 2023) (on file with author).

impacted not only the pay equality for the USWNT, but for all athletes competing globally for the United States.

The WNBA and its players have engaged in political matters in the past, including a non-partisan partnership with Rock the Vote to “empower fans and drive voter engagement ahead of the 2024 election.”¹⁷⁹ Lobbying efforts for equality and leverage in advocating for their reservation point in 2025 WNBA CBA negotiations would allow players to amplify their voices with the weight of governmental leaders’ support. This support would not only put pressure on the WNBA to agree on favorable terms for players, but it could also have immense potential for change in women’s sports nationally.

CONCLUSION

The league has drastically transformed in the four years since the WNBA and the WNBPA negotiated the 2020 WNBA CBA. Record ratings, the opportunity to opt out of the current agreement, and an influx of media money create the perfect storm for the WNBPA to negotiate a record-breaking and player-favorable 2025 WNBA CBA. This Article provides the WNBPA with a pathway to desirable results.

The WNBPA must leverage the WNBA’s 300% increase in media revenue to demonstrate the league’s newfound ability to reach positive profit margins and pay players through revenue sharing. A dual provision allowing the WNBA to set salary caps while also supplementing the prescribed salary cap with a share of *all* league revenue will balance the goals of both sides of the bargaining table and give players equitable compensation for their play. Additionally, the WNBPA holds a strong revised compensation plan for required player appearances. Differentiating between promotional and commercial appearances allows players to be paid according to the revenue that they help to bring in, whether it is through their good faith and community interaction or working with a WNBA sponsor.

Armed with a pathway to change and a robust bargaining strategy, the WNBPA will undoubtedly reach a record-breaking

¹⁷⁹ Jordan Robinson, *The Commissioner’s Cup’s Impact on Social Justice in the W, WNBA* (June 4, 2024), <https://www.wnba.com/news/social-justice-comm-cup-2024>.

and player-favorable 2025 WNBA CBA. The ball is now in their court.