

Los Angeles Times

NBA goes on the offense against players

League files claims against the National Basketball Players Assn., one with the National Labor Relations Board and another in federal court, 'in an effort to eliminate the use of impermissible pressure tactics by the union.'

By Lisa Dillman

August 2, 2011 7:41 p.m.

The NBA opted for not one but two moves on the chessboard of litigation Tuesday, filing claims against the players' association with the National Labor Relations Board (NLRB) and a separate action in federal court in New York.

This came less than a day after NBA Commissioner David Stern questioned whether the players were negotiating in good faith after a nearly three-hour session Monday between the sides. It was their first official meeting since the NBA locked out its players July 1.

In filings in federal district court, the league alleged Tuesday that the National Basketball Players Assn. has "threatened on more than two dozen occasions to abandon or renounce its role as the exclusive bargaining representative of NBA players."

Adam Silver, NBA deputy commissioner, said, "These claims were filed in an effort to eliminate the use of impermissible pressure tactics by the union which are impeding the parties' ability to negotiate a new collective bargaining agreement."

Just call it a race to embrace the high ground of good-faith bargaining. The players union shot back on that issue, and others, with an edgy response from Executive Director Billy Hunter.

"The litigation tactics of the NBA today are just another example of their bad faith bargaining and we will seek the complete dismissal of the actions as they are totally without merit," Hunter said in a statement. "The NBA Players Association ... has been engaged in good faith bargaining with the NBA for over two years.

"We urge the NBA to engage with us at the bargaining table and to use more productively the short time we have left before the 2011-12 season is seriously jeopardized."

The NBA has said the league lost more than \$300 million last season and it wants a significant reduction in players salaries, and the union objects to a big pay cut and a hard salary cap.

Legal experts said the NBA's legal moves were a pre-emptive strike and smart venue shopping. The suit was filed in the Second Circuit, an often-friendly NBA venue and known to be pro-employer.

"They're going on the offensive here, rather than playing defense," said Dan Lazaroff, a professor at Loyola Law School, specializing in sports labor issues.

Said Dana Kravetz, managing partner of Michelman & Robinson and a specialist in employment counseling and litigation: "Given the potential threat of [union] decertification, it's an aggressive move. ...

"Getting into court first is sometimes the name of the game and you're dealing with the Second Circuit ... has been somewhat

favorable when it comes to the NBA and issues of antitrust. It's an aggressive move but none of it stops the negotiations from still going on."

Stern, in an interview Tuesday with ESPN, was asked why the unfair labor practice charge was filed against the players union.

"Because they're not serious about making a deal with the NBA," he said. "They're so busy talking about their decertification strategy, following the lead of their attorney Jeffrey Kessler who did it for the NFL players.

"And engaging in conversations with agents about it and talking about it constantly, that we think that is distracting them from getting serious in making a deal."

One of the more succinct reactions, from the players, came from Philadelphia 76ers center Spencer Hawes on his Twitter feed.

"Nice waking up to see we were being sued by our employers today for failing to agree to an \$8 billion giveback and decade-long pay freeze," said Hawes.

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