
“Double Jeopardy Clause”
Needed in Collective Bargaining Agreements to Protect Employee Rights

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I. INTRODUCTION

“Ray Rice . . . won his appeal against indefinite suspension . . . when a former US federal judge [determined that Rice] had confessed fully to his violent act . . . was released and had been wrongfully punished twice.”

A. Abstract

The National Football League (“NFL”) is experiencing a plague of bad publicity due to the NFL’s star football players’ involvement in criminal matters. The players have engaged in activities ranging from domestic violence to child abuse and in some cases, even homicide. The inaction from the NFL to regulate the behavior of these public figures has led to criticism from domestic violence organizations, women’s rights organizations, and child abuse advocates. However, the opposite end of the spectrum pertains to the dogmatic football fans that log onto their fantasy football leagues and choose these players to win. The fans are disgruntled when sharing the sentiment that employers should not get involved into domestic violence issues, and players should not be subject to termination because of the family issues that are occurring outside of the scope of employment. This article brings to light the issues that the NFL has tried to keep in the dark while proposing how Federal Courts and Congress should respond to the situation by enacting a “Double Jeopardy Clause” in Collective Bargaining Agreements under the National Labor Relations Act. The scope of the proposed clause will focus on the protected class within and the limits of employers to punish their employees multiple times for the same offense, thereby recommending a double jeopardy clause in Collective Bargaining Agreements.

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II. BACKGROUND

The NFL has a duty, to its fans, to its players, and to its sponsors. However, a crossroad occurs when the duty conflicts with the laws of the United States. The NFL operates under the assumption that it is above the law in many respects. For instance, most NFL viewers assume that the NFL fails to address issues that arise in reference to criminal activity involving NFL players.

Hypothetically, when an issue arises and shows up in the media, instinctively the public forms an opinion one way or another about the NFL’s insensitivity toward women’s health, domestic abuse, and even homicide. In some cases like the ones discussed within this article, the NFL retroactively renders punishment twice to players ranging from suspension to indefinite termination of their existing employment contract. But when does the punishment by an employer exceed what is just? Who regulates the extent of punishment by an employer and how should this vigilante double jeopardy activity be regulated?

The NFL players are subjected to criminal investigation and will potentially be subject to criminal punishment ranging from jail time to fines. On top of that punishment, the player is often suspended or even terminated from employment before the criminal guilt phase is even determined. This article illustrates how the NFL feels the impact from sports fans and sponsors when the NFL arbitrarily punishes a player more than once, sometimes resulting in termination of employment.

This scenario gives rise to the content of this article under Collective Bargaining Agreements regulated by federal courts. As discussed within this article, the NFL includes a one-time penalty clause within the Employment Agreement and this article
recommends action from judicial and legislative bodies to adopt a Double Jeopardy Clause in Collective Bargaining Agreements.

But there is an undertone of devil’s advocate since on one hand, an argument is formed that punishment is necessary from the NFL, while on the other hand, the counter argument is that punishment from the NFL toward the players rises to the level of employer overreaching resulting in violation of double jeopardy principles. Before legislation is proposed, it is important to turn your attention to *The Good, The Bad, and The Ugly.*

### III. Analysis

#### A. THE GOOD: Adrian Peterson is the Poster Child for the NFL

“[Adrian] Peterson endured notable traumatic moments as a child . . . he watched his older brother, Brian, get killed by a drunk driver . . . his dad was arrested for money laundering in connection with drug dealing . . . [but despite that, Peterson] eventually was selected with the No. 7 overall pick in the draft by the Minnesota Vikings.”

Adrian Peterson is viewed favorably amongst the public due to his humble nature, community service, and reserved personality. In fact, if you ask any knowledgeable football fan, the common consensus is that Adrian Peterson is an overall class act. Many football fans see Peterson as the poster child of football as he is seen as the epitome of good character with the highest regards as a National Football Player. However, Adrian Peterson’s reputation came crumbling down as jaws across the nation dropped upon the unveiling of child abuse allegations. But before the allegations, Peterson had many accomplishments.

Adrian Peterson’s reputation precedes him. NBC sports highlighted an article in 2013 that stated that “Adrian Peterson had 861 rushing yards in December, the most any

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player has ever gained in any month in NFL history. So it’s not exactly a surprise that he was chosen as the NFC’s offensive player of the month.”

NBC Sports further marginalizes Peterson’s accomplishment by emphasizing that “[o]f the 32 NFL teams, 14 of them didn’t have a single player rush for 861 yards for the entire season . . . he was the biggest reason the Vikings rose a four-game winning streak to the playoffs.” Only the year before, SB Nation illustrated an article describing “Adrian Peterson’s Ridiculous 2012 Season” to demonstrate his tremendous talent on the field. In the 2012 season, “Adrian Peterson was named National Football League’s Most Valuable Player, Offensive Player of the Year, and the Bert Bell Award for Most Valuable Player” But America fumbled when Adrian Peterson was arrested for allegations of child abuse in May 2014.

1. Alleged Child Abuse of 4-Year-Old Child

Appalling reports were released describing a shivering image of a father severely lashing his four-year-old son. News reported, “Adrian Peterson, the star NFL running back indicted on child abuse charges, admitted hitting his 4-year-old son in the testicles with a wooden tree branch – or switch.” The thought of a father hitting his child with a tree branch on his testicles, let alone a vulnerable 4-year-old, provokes one of two reactions from the public: understanding or disgust.

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4 Id.
6 Id.
The public is either repulsed by this action or the public sides with Adrian Peterson and his family believing that the discipline is fine since this kind of familial punishment is custom. For instance, Charles Barkley, Hall of Fame basketball player within the NBA, defends Adrian Peterson’s actions stating, “I don’t know where he’s from, I’m from the South. Whipping – we do that all the time. Every black parent in the south is going to be in jail under those circumstances . . . Yes, I’ve gotten beat with switches.”

However, CBS interviewer Jim Rome contests Barkley’s point of view stating “It doesn’t matter where you’re from: right is right and wrong is wrong . . . But let’s make a distinction between ‘child rearing’ and ‘child abuse.’ That [with Adrian Peterson] was child abuse. There’s no fine line here.” This conversation is the same conversation that is happening in break rooms, kitchens, and living all over the nation. The spectrum ranges from “that is child abuse” to “I got hit like that, so it’s ok.” The fine line occurs when the courts get involved. As widely shown in statutes across the nation, the courts set a standard to determine when child rearing goes too far and when discipline becomes child abuse.

Adrian Peterson had his day in court. The court made it clear that according to these facts, Peterson’s conduct was not child abuse. In fact, “Adrian Peterson reached a plea deal Tuesday [November 2014] and pled no contest to a misdemeanor charge of reckless assault, will pay a $4,000 fine, and will not face jail time.”

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9 Id.
However, it is important to note that in September 2014, a Texas grand jury indicted Peterson on “felony charges of reckless or negligent injury to a child.” Adrian Peterson dodged punishment ranging from “up to two years in prison and up to a $10,000 fine, if convicted.” Apparently, the court agreed with Peterson as he “maintained that he was merely disciplining his child and committed no crime” considering Peterson faced no jail time, paid a minimal fine of $4,000, and had the charge lowered from felony reckless injury to a child to misdemeanor reckless assault, with no mention of a child.

Only speculation can infer the reason for such a lenient punishment. But punishment did not end with the courts. In fact, the NFL reacted to solely the indictment of Adrian Peterson, without a final disposition of guilt from the courts. “Pressures from the public, media and team league sponsors, including Nike and Anheuser-Busch, led to Peterson being placed on the Commissioner’s Exempt list until his legal case was resolved” and the effects of being placed on the list meant Peterson received “paid leave.”

Thus, the question arises as to whether the NFL genuinely cares about domestic violence issues or whether the suspension was just a reaction to threats of pulling funds and sponsorships from the NFL’s pockets.

2. Child Abuse Laws

In Texas, the Texas Family Code governs child abuse laws and provides statutes addressing various child abuse scenarios. Texas is particularly relevant in Adrian Peterson’s case because Harris County, Texas, was the venue for Peterson’s court

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11 Id.
12 Id.
13 Id.
14 Id.
Although not an issue here, the Texas Family Code carves out a statute regarding the False Report of Child Abuse imposing a mandatory civil penalty not to exceed $500. In situations where a defendant is in fact convicted of child abuse, the Texas Family Code created diversion programs including child abuse programs to prevent neglect of children.

Policy governs that the health and safety of a child is important, but even more fundamental is maintaining a healthy family household. Thus, courts are likely to recommend diversion programs to aid in keeping a family together based on the facts of the case.

More importantly, child abuse falls within the civil and criminal arena. Specifically, in Texas, the Texas Penal Code section 22.04 regulates “Injury to a Child” and is likely the provision used to charge Adrian Peterson. The Texas Penal Code describes that a violation of the above provision is “an offense . . . [punishable as] a state jail felony when the person acts with criminal negligence.”

In many counties, the District Attorney allocates a division to specifically address child abuse cases. In Harris County, the District Attorney’s Office provides an interactive flyers on the website for victims of family violence. Additionally, the Harris County District Attorney’s Office provides a brochure on the website instructing a victim

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18 2007 Tex. HB 662 (f).
20 Tex. Penal Code Ann. § 22.04 (g) (West 2013).
how to respond to domestic violence. The brochure provides information regarding protective orders, plans to leave an abusive environment, and more importantly, a legal outlet for victims suffering from domestic violence.

Under the Texas Penal Code Chapter 22, a laundry list of “Offenses Against the Person” illustrates the charges Peterson agreed to in his plea. An assault is classified as follows:

“A person commits an offense if the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person’s spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person’s spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.”

Chapter 22 of the Texas Penal Code details punishment for reckless assault punishment is classified as follows: “An offense under Subsection (a)(1) is a Class A misdemeanor.” The Texas Criminal Defense Lawyers describe Misdemeanor Assault and Felony Assault by stating that “Normally, simple assault that results in minor injury is a Class A misdemeanor, punishable by not more than 1 year in a county jail and/or a fine of not more than $4,000.” Although Peterson only received a misdemeanor assault, as opposed to felony assault, he was punished the maximum fine of $4,000 but faced no jail time.

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22 Harris County District Attorney’s Office, Family Criminal Law Division: Domestic Violence Safety Plan and Protective Order Information, http://app.dao.hctx.net/Forms/VW/FCLD.pdf
23 Id.
24 Id. Tex. Penal Code Ann. § 22.01 (a) (West 2013).
25 Id. Tex. Penal Code Ann. § 22.01 (b) (West 2013).
26 Id.
27 Id.
29 Estes, supra note 10.
Amid the criminal prosecution, the NFL Commissioner Roger Goodell chimed in to deliver punishment. In fact, author Peter King wrote a piece in MMQB that touched on the theme of this article as it describes:

The NFL came down hard on star running back Adrian Peterson, suspending him effectively for the rest of the season without pay despite his having already [been penalized] miss[ing] nine games and had his legal case adjudicated. He and the union strenuously object, and plenty of legal wrangling remains. ³⁰

Since Adrian Peterson was subjected to penalty twice, he could challenge the NFL’s punishment because it exceeds the bounds carved out in the Collective Bargaining Agreement he entered when he began playing in the league.³¹ The double penalty illustrated above triggers the concept of double jeopardy. Although no current agreement includes prohibition from double jeopardy exercised by employers, this article highlights judicial and legislative bodies’ potential to act.

B. THE BAD: Ray Rice Punches Then-Fiancé in the Face Knocking Her Unconscious

“Ray Rice told NFL commissioner Roger Goodell on June 16, [2014] that he punched his then-fiancée in a casino elevator.”³²

Ray Rice punches his then-fiancé in the face as her head hits the side of the elevator and she plummets to the floor motionless.³³ The door of the elevator opens and Ray Rice starts dragging his unconscious fiancé out of the elevator.³⁴ Her dead weight

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³⁴ Id.
prevents him from dragging very far and her feet remain in the elevator as she is faced down lying on the ground.  

1. Ray Rice Charged with Simple Assault, Indicted on Aggravated Assault

After being charged, arrested, and released from jail in February 2014, Ray Rice was charged with simple assault, later dropped.  

In March 26, 2014, a grand jury indicted Ray Rice on “[a]gravated [a]ssault [charges] carrying a maximum sentence of five years in prison.” This case developed into a domestic violence case considering that only a day after Ray Rice was indicted, his fiancée became his wife. Ray Rice’s now-wife, “did not want to go forward with prosecution, [but] that didn’t stop the state from following up.”

Ray Rice entered a plea agreement where if he “completed a 12-month program and stayed out of trouble, the case would not show up on his record” known as a pretrial intervention program. Interestingly enough, reports indicate that New Jersey, between 2010-2013, only granted “less than one percent of all domestic violence cases” in the pretrial diversion program.

Now as far as this article is concerned, the crucial timeline begins on June 16, 2014, when Rice tells the NFL Commissioner, Goodell, the events of the domestic abuse. On July 24, 2014, Goodell “Ray Rice [suspended] for 2 games by the NFL.”

On September 8, 2014, the “[v]ideo surfaces of [Ray] Rice punching fiancée in the face”

35 Id.
37 Id.
38 Id.
39 Id.
40 Id.
41 Id.
42 Bien, supra note 36.
43 Id.
in the elevator. The touchdown implicating double jeopardy principles arise when, on September 8, 2014, NFL suspended Rice indefinitely. This second penalty is in contravention of the Collective Bargaining Agreement, which binds the NFL to refrain from penalizing a player more than once for the same act, discussed in detail later.

2. NFL’S Reaction to Domestic Violence

Congruent to public opinion, NFL Commissioner Roger Goodell “admitted mishandling of the Ray Rice Matter” amidst “the crisis over domestic violence by the NFL players.” It was not until the video leaked to the public did the debate begin causing a wildfire of bad publicity toward the NFL’s egregious mishandling of the Ray Rice situation. “Goodell gave Rice just a two-game suspension – which many thought was too light” and the Commissioner seemed to only react with harsher punishment only when the video surfaced in the public.

In fact, “After the video came out, Rice was fired by his team.” David Johnson, from Strategic Vision whose expertise involves crisis communication, stated “The league is saying things like, ‘We’re sorry. We’ll get it right next time. Let’s overlook this,” saving their own financial interest instead of preserving the health of women, children, and family.

The fact of the matter is simple. Domestic violence is an epidemic that plagues the sanctity of the family. The NFL reacted to the Ray Rice situation when it began

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44 Id.
45 Id.
46 NFL, supra note 31.
48 Id.
49 Id.
50 Id.
51 Id.
“extending education about domestic violence to the high school level, starting with the [NFL] league’s first character-based summit.” 52 Additionally, the NFL began implementing programs with a goal to “prevent violence, impose appropriate discipline, provide professional support resources when appropriate, and publicly embrace a leadership role on the issue.” 53

3. Family Criminal Law Division

District Attorney’s Offices across the nation are active when it comes to domestic violence. In Harris County, the Family Criminal Law Division solely prosecutes cases deriving from family violence. 54 A brochure is provided that helps victims of family violence to navigate the legal system and understand that there is national, state, and local help including the National Domestic Violence Hotline. 55 Protective Orders, Shelters, and Legal Services Referrals are all available to victims.

The problem arises when a witness, such as a wife, states that the act of violence never occurred, a basic principle known as “recanting.” Commonly, the prosecutor usually has no witness at that point and the case will usually be dismissed or the punishment lowered to prevent the case from going to trial, where the wife then testifies on behalf of the defendant.

54 Harris County District Attorney, supra note 21.
55 Id.
The list is astounding of the number of NFL players who have been involved in
domestic violence and child abuse situations.\textsuperscript{56}

1. Adrian Peterson – Vikings – Child Abuse
2. Ray Rice – Ravens – Domestic Violence
3. Aaron Hernandez – Patriots – Homicide
4. Ray Lewis – Ravens – Homicide
5. Ben Roethlisberg – Steerlers – Sexual Assault
7. Ben Roethlishberg – Steerlers – Sexual Assault \textsuperscript{57}

Understanding that domestic violence is an issue in the NFL, it is the
responsibility of the NFL as well as unions to ensure that a player gets justice in receiving
punishment.

4. \textit{Adrian Hernandez Accused of Murder}

In 2013 NFL Commissioner, only a year before the Rice and Peterson domestic
violence fiasco, woke up to a nightmare. Headlines all over the United States focused on
football, not Monday night final scores, but rather how Aaron Hernandez faced charges
of murder.\textsuperscript{58} The details unraveled stating that “Aaron Hernandez was being investigated
for over a week in a murder case,” including play-by-play of Aaron Hernandez’s
behavior.\textsuperscript{59}

Incriminating evidence flooded the news stations indicating that New England
Patriot’s football player had been with the victim on the night victim died; Hernandez

\textsuperscript{56} Tom Sheen, \textit{Domestic Violence in the NFL: Four Players are Currently Suspended But 11 More with
Previous Charges Will Be Able to Play this Weekend}, \textit{THE INDEPENDENT} (Feb. 24, 2015),
http://www.independent.co.uk/sport/us-sport/national-football-league/domestic-violence-in-the-nfl-four-
players-are-currently-suspended-but-11-more-with.previous-charges-will-be-able-to-play-this-weekend-
9740949.html.
\textsuperscript{57} Id.
\textsuperscript{58} See Adrian Carrasquillo, \textit{NFL’s Aaron Hernandez Arrested and Charged with Murder}, \textit{BUZZ FEED
NEWS}, (June 26, 2013 11:34 AM) http://www.buzzfeed.com/adriancarrasquillo/nfls-aaron-hernandez-
arrested-released-by-new-england-patrio#1icig5x.
\textsuperscript{59} Id.
“destroyed his surveillance system and hired professionals to clean his home.”\textsuperscript{60} The NFL terminated Aaron Hernandez as he awaited trial for murder before he was found guilty. \textsuperscript{61} Another instance demonstrating NFL player’s misconduct and termination, which justifies exploration into the agreement that binds the employer and employee in the NFL.

VI. THE UGLY

“The people of the United States have rejected the alternative to a presumption of innocence – a presumption of guilt – as being inquisitorial and contrary to the principles of a free society.”\textsuperscript{62}

A. Guilty Until Proven Innocent: Employer Double Jeopardy

The United States prides itself on the adversarial justice system where an accused is innocent until proven guilty beyond a reasonable doubt. \textsuperscript{63} However, in the realm of professional sports, the notion is that a player, if accused of a crime, is guilty until proven innocent, and sometimes guilty even if proven innocent. \textsuperscript{64} Take Aaron Hernandez for instance, or Adrian Peterson, or Ray Rice, all suspended or terminated before a criminal disposition was adjudicated.

Despite the presumption that an accused is innocent until proven guilty, the NFL determined that Adrian Peterson “could be suspended by the league even if found not

\textsuperscript{60} Id.
\textsuperscript{64} See also Ben Estes, \textit{Adrian Peterson pleads no contest to misdemeanor charge}, SPORTS ILLUSTRATED, (last updated Nov. 5, 2014) http://www.si.com/nfl/2014/11/04/adrian-peterson-minnesota-vikings-trial-plea.
guilty of the charges against him." 65 This situation creates dialogue regarding a perceived double jeopardy where an accused is deemed guilty by the courts and then suffers a second punishment via the employer. In fact, the essence of double jeopardy principles occurs when an employer issuing multiple penalties to an employee for the same act.

There is no discourse regarding this phenomenon in the civil realm, because generally the punishment of an employer to an employee is a contract’s issue, regulated by Collective Bargaining Agreements and the federal courts.

Before moving forward, it is important to note where the concept of double jeopardy derives from. In the United States Constitution, our founding fathers preserved the inalienable right within the 5th Amendment to protect against double jeopardy. 66 The 5th Amendment states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall property be taken for public use, without just compensation. 67

The Constitution protects the rights of citizens as the NFLPA protects the rights of NFL players. Regarding NFL players, the National Football League Players

66 U.S. CONST. amend. V.
67 Id.
Association (“NFLPA”) protects the interests of football players.\(^{68}\) The NFLPA states, “It will do whatever is necessary to assure that the rights of players are protected.”\(^{69}\) The rights of players, as an employee, are preserved by the NFLPA through a Collective Bargaining Agreement, thereby creating a union of football players.\(^{70}\)

In *NFL Players Association v. NFL*, NFLPA stepped in to protect the rights of football players when the NFL issued “an arbitration award suspending certain NFL players for using a banned substance.”\(^{71}\) The United States District Court of Minnesota addressed circumstances surrounding suspension of NFL players who tested positive for a banned substance.\(^{72}\) The court noted, “Not only does the player lose playing time, but his reputation may be irretrievably tarnished.”\(^{73}\)

This commentary by the court alludes to the double jeopardy that this article highlights. Although this case is different from Adrian Peterson, since Peterson faced criminal charges, the concept remains that the player suffers multiple punishments amounting to a sense of double jeopardy, from the criminal prosecution, contractual breach, collective bargaining violations, and criticism from the public. For instance, a player not only has to appear in court and risk suffering irreparable reputational harm, but also finds himself fired or suspended by the NFL.

The NFL is not wholly responsible for the double jeopardy that a player experiences in the midst of controversy. In fact, the media is the catalyst to public and employer double jeopardy. In *Williams v. NFL*, the NFL player awaited test results from


\(^{69}\) *Id.*

\(^{70}\) *Id.*

\(^{71}\) See NFL Players Ass’n v. NFL, 598 F. Supp. 2d 971 (U.S. Dist. Minn. 2008).

\(^{72}\) See *id.* at 982.

\(^{73}\) *Id.*
drug test, but before the player found out about the results, “news of [the player’s] suspensions was leaked to the media and broadcast throughout the country.”

The media creates sensation with headlines that tarnish players’ reputation ranging from issues of infidelity, substance abuse, sexual harassment, and domestic violence. A story that exemplifies the relationship between the media and the NFL is in the New York Times article “NFL Is Compelled to React.” Here, the media outlet, Deadspin, started a frenzy and filled the shark infested waters with blood of NFL player Brett Favre from the Minnesota Vikings. Deadspin purported that Brett Favre sent a photo of his genitals to a former game-day host implicating sexual harassment conduct.

The New York Times said “True or false, the story is tantalizing and sordid gossip . . . and Deadspin [played the story] with a raw, gleeful rush of tabloid energy” and the story had been viewed 1.9 million times. With that type of publicity, the player becomes a center for public scorn, and the NFL is compelled to react with double jeopardy punishment ranging from suspension to termination where players are already crucified by the media and the public.

**B. NFL Subject to Civil Liability Under Collective Bargaining Agreement**

The NFL is opening itself up to civil liability when it penalizes an NFL player multiple times. Under the theory of contractual agreements, the NFL is bound by an agreement entered into with NFL players known as a Collective Bargaining Agreement. Simply put, provisions of the Collective Bargaining Agreement set standards for the NFL

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76 See id.
77 Id.
78 Id.
as an employer to abide by when engaging in labor practices with NFL players as explained in the next section of this article.

More importantly, violations of provisions of the Collective Bargaining Agreement would automatically raise the issue in federal courts. Since the case is in federal court, it is subject to federal interpretation, which would preempt state interpretation since the right to be treated fairly is preserved under Federal Labor Law and Congressional acts such as the National Labor Relations Act. To understand why the NFL should be held liable civilly, the concept of collective bargaining is necessary.

C. Collective Bargaining Explained

Collective Bargaining Agreements are administered and enforced by the Office of Labor-Management Standards (“OLMS”) of the United States Department of Labor which are provisions rooting from the National Labor Relations Act. Collective Bargaining Agreements is defined by the United States Department of Labor as:

Collective bargaining is specifically an industrial relations mechanism or tool and is an aspect of negotiation applicable to the employment relationship. In collective bargaining, the union always has a collective interest since the negotiations are for the benefit of several employees. Where collective bargaining is not for one employer but for several, collective interests become a feature for both parties to the bargaining process.

In essence, collective bargaining is a tool that employees use together, in a union, to hold the employers accountable to Federal Labor Laws. Collective Bargaining is used in various professions and is most commonly known by sports fans when NFL players

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80 See id.
81 Id.
are in “lock-out” where players are fighting for higher wages. Now, although collective bargaining is a concept derived from federal laws to ensure that employers comply with Federal Labor Law standards are followed, collective bargaining has manifested into an agreement between an employee and employer as demonstrated above.

The agreement is standard and it is referenced when the employer is possibly violating a provision within the Collective Bargaining Agreement. When a provision needs interpretation, 28 U.S.C. 412 Section 102 states that:

Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located. 83

Therefore, collective bargaining is a procedure utilized by employees through the use of unions to prevent civil employee unrest when employment playing fields are uneven. Always lurking in a contract, the issue of good faith also arises since the collective bargaining agreement is a fundamentally a contract. Thus, presumptively both parties are to engage in good faith when negotiating the agreement or when the agreement is possibly breached.

D. Collective Bargaining Suit Brought Under National Labor Relations Act

In 1935 Congress protected the rights of employees and employers, encouraging collective bargaining practices when Congress enacted the National Labor Relations Act ("NLRA"). 84 The Act “curtailed private sector labor and management practices, which

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can harm the general welfare of workers, businesses and the U.S. economy.” 85 The goal is to ensure that the employees have a vehicle to pursue equitable and fair treatment in the work environment. Since collective bargaining is the child of federal law as explained in previous sections of this article, the District Courts will alleviate ambiguities in the agreement to maintain and protect the rights of employees in the private sector labor market.

In Pattern Makers v. NLRB, the Supreme Court made it clear that full union membership cannot lawfully be required. 86 Additionally, “even an employee who is not a member is still fully covered by the collective bargaining agreement that has been negotiated between the employer and the union, and the union is obligated to represent the employee.” 87

E. NFL Collective Bargaining Agreement:

The NFL entered into a Collective Bargaining Agreement via the NFLPA and the NFL players who sign the agreement upon employment. Widely understood by the NFL and players, the Collective Bargaining Agreement is thorough and provides the guidelines that the employer, NFL, must follow in regards to numerous issues. For the purpose of the analysis at bar Article 46 section 4 is most notable. Within the Collective Bargaining Agreement this provision addresses “Commissioner Discipline.” 88 Article 46 demonstrates how the Commissioner can discipline NFL players. 89 Article 46 Section 4 discusses penalties. 90 The provisions outlines the following:

85 Id.
86 Pattern Makers v. NLRB, 473 U.S. 95, 106 (1985)
87 See id.
88 NFL Collective Bargaining Agreement, supra note 31, at 204.
89 Id.
90 Id.
Section 4. ONE PENALTY. The Commissioner and a Club will not both discipline a player for the same act or conduct. The Commissioner’s disciplinary action will preclude or supersede disciplinary action by any Club for the same act or conduct.\(^91\)

The NFL has the obligation as an employer to refrain from punishing an NFL player twice for the same act or conduct. The language is explicit and unambiguous. The Collective Bargaining Agreement is binding on both parties. However, when the Commissioner begins to engage in arbitrary punishment to satisfy the public and the media, breach of this provision occurs thereby opening the NFL to civil liability.

Naturally, even the public feels that what the Commissioner and the NFL is doing is wrong. When there is an intuition that rights are being trampled on, the reaction should be to go to the courts. A journalist for Forbes cried out for action in his statement:

> Even if acquitted of murder, [Aaron Hernandez] the weight of it will follow . . . As in the O.J. case, it’s likely a civil suit will follow once the criminal one is settled. Aren’t we setting a dangerous precedent in this country by denying employment and wages to someone just because of an arrest regardless of how strong the evidence appears to be? Maybe Hernandez or someone else will challenge the constitutionality of the CBA allowing the Patriots to terminate Hernandez before a trial or conviction. It seems like a case worth pursuing.\(^92\)

Additionally, Ray Rice, Adrian Peterson, and even Aaron Hernandez have standing. The case is ripe. The elements for a successful suit wide open. These NFL players are subjected to double jeopardy in a civil realm. The law has not caught up to the misconduct of the NFL. Thus, now is the time to act.

\(^91\) Id.
\(^92\) Lariviere, supra note 61.
IV. CONCLUSION

“The YWCA-USA is . . . in the beginning phases of making connections in hoping to form collaboration with the NFL to help guide them through some of these issues in the future.”93

A. Future Ramifications of NFL’s Retroactive Punishment Remains Questionable

It is not until videos surface that the slap on the wrist becomes a lash with a leather belt. The NFL is notorious for retroactively enforcing punishment once there is bad publicity. But what does the slap to the wrist say to the public? That money is more important than women’s health? That only sponsors’ threat of withdrawing funds develops a sense of moral code within the heart of NFL executives? On the other end of the spectrum, what prevents an employer from taking justice into their own hands and seeking vigilante punishment, sometimes resulting in termination?

B. Employment Rights: What is the Big Picture?

Employees are entitled to fair labor practices at the place of employment. As such, a suit brought by Ray Rice, for instance, is ripe and would substantially impact the workplace. A lawsuit brought in a Federal Court calling for the Supreme Court or Congress to establish a workplace double jeopardy standard in reference to disciplinary actions that have been adjudicated would change the face of employment across the nation.

It would mean that an employer would be prohibited from disciplining an employee twice for the same act or conduct once a matter is officially resolved. An employee, NFL player or otherwise, should not have to be subjected to employers who

have licensed themselves to punish arbitrarily with impunity. Arbitrary and continuous punishment is fundamentally flawed and wrong.

NFL players, and employees nationwide, continue to bear the hits of double jeopardy principles in the workplace where the employee is on pins and needles wondering if there will be a second punishment for wrongful conduct, and if so, how harsh?

Even the public feels that what the Commissioner and the NFL is doing is wrong. When there is an intuition that rights are being trampled on, the reaction should be to go to the courts.

Here, Ray Rice has actual standing to pursue this case in Federal Court and it would be an issue of first impression regarding Collective Bargaining Agreement penalty clauses calling for a “Double Jeopardy Clause”. Ray Rice would really drop the ball if he failed to file suit now to push for employee rights across the nation.

C. Calling for Federal Action: Implement A Double Jeopardy Clause In Collective Bargaining Agreements

Americans today may be astonished that a law implemented with such moderate and equitable standards could be so revolutionary. Ray Rice and the NFLPA must reach the end goal and push Federal Courts as well as Congress to interpret the Collective Bargaining Agreements as requiring a Double Jeopardy Clause. This clause would protect fundamental rights of employees, which is at the heart of the National Labor Relations Act.

The employee’s rights preserved would root from the United States Constitution itself, which protects an individual from being tried from the same offense twice by the government. The double jeopardy clause in the United States Constitution ensuring
justice is simple and moderate only requiring that the government not use its resources to try a suspect over and over again. Shouldn’t employers be held to the same moderate standard?

To revolutionize employee rights, Ray Rice and the NFLPA should propose to the federal courts that a Double Jeopardy Clause in Collective Bargain Agreements with labor organizations state the following: “No employer shall subject any employee to penalty for the same wrong or misconduct twice put in jeopardy of reprimand, suspension, or termination” and Congress shall take note to create new law. Because at the end of the day, not even the NFL is above the law, and the NFL should be put on the defensive.