

NFL sides prepare for uncapped year

By DANIEL KAPLAN and LIZ MULLEN

Staff writers

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The prospect of an uncapped NFL season, once regarded as a poison pill in the league's collective-bargaining talks, is being increasingly embraced by owners and players.

Many of the league's 32 owners, who in 2006 agreed to a labor extension they now loathe in part to keep the cap, have shifted to arguing that not having a cap for the 2010 season might put them in better position to overhaul the system in their favor. It's a stand that runs counter to the conventional thinking in sports: that management always wants a cap in order to control costs, particularly in the NFL, where the cap has been credited with underpinning the league's growth into an \$8 billion a year business.

The NFL Players Association, meanwhile, maintains its long-stated position that once the cap is gone, it won't return, though some players, as is the case among the owners, might find more benefit than others in an uncapped season.

League and union officials have until March to reach a new deal before the current CBA makes 2010 an uncapped season, the first such season for the league since 1993. The CBA would expire after that uncapped year. While both sides say reaching a new deal remains their goal, getting to that new contract might now require an uncapped season first.

"There is a strong reality we will be in an uncapped year," said NFL Commissioner Roger Goodell last week

To be sure, a season without a cap would not be a season of unfettered spending. Restrictions are in place that limit a complete free-for-all.

For the players, years of service required for unrestricted free agency jumps from four to six. That means that more than 200 players who would be eligible for free agency under the current, capped system would lose that designation in 2010. Free agents, however, could sign deals for dollars likely unattainable with a cap in place.

"There are lots of players who would like the fact that next year would be uncapped, because it is open season on contracts," said NFLPA general counsel Richard Berthelsen. "Once you have a year without a cap, the players are not going to go back, and that has always been the feeling of the leadership."

On the owners' side, the teams that finish in the top eight on the field this year would have some restrictions on their access to free agents. Perhaps more importantly, though, the loss of a cap



also means the loss of a salary floor. Currently, teams are required to spend around 85 percent of the salary cap. Without a floor, teams would be free to operate as do some MLB clubs, who work in a capless system. Some teams, instead of spending millions on a season that all but certainly will end with losses both on the field and on the balance sheet, opt to rein in their spending so that at least the off-the-field losses are minimized.



Jeff Pash
NFL General Counsel

“[The owners] think an uncapped year is not necessarily worse than the current arrangements they have, and if going into an uncapped year is necessary to help get to a better system down the road, that is something they are prepared to do,” said Jeff Pash, the NFL’s general counsel and chief labor negotiator.

In 1993, the last season without a cap, player payroll spending reached 70 percent of revenue, an amount even higher than the 60 percent figure of today that the owners contend is too high. That happened despite the existence then of the very type of restrictions that would be in place for 2010.

It also, however, happened with the owners’ knowledge that a cap could be triggered for 1994 by their spending in 1993.

“There was a cap coming in that next year,” Pash said. “If you assume 1993 was at a certain level, then the cap came on in 1994.”

Berthelsen said he thinks owners will spend again next year if there is an uncapped year.

“There may be owners who want to go on the cheap and increase their profits,” he said, “but I think they will be in the small minority because by doing so, they are saying they don’t want to compete.”

Berthelsen added that the union would be watching the player market extremely carefully in the event of an uncapped 2010 “to ensure there is no collusion.”

The NFLPA’s Richard Berthelsen says many players look forward to an uncapped year.

The NFL declined to comment on that suggestion.

For their part, some players have expressed concern for what losing the cap could mean for retirees’ benefits. Concern also exists for prospective free agents who are not front-line players. Baltimore cornerback Dominique Foxworth, an executive committee member, spoke of both this summer to the Carroll County (Md.) Times.



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“It’s devastating to the retired players,” he said. “You lose the benefits and the salary floor. While the big-name guys may break the bank, everybody else is going to be working for much less than what their value is.”

Josh **Zuckerberg**, a partner with Pryor Cashman who has represented both union and management interests, said “most player unions support free-market conditions.”

“What I am wondering about is whether there are players within these ranks who are more vulnerable in a purely market-driven economy and who may have benefited more from structured payment minimums.”

As for NFL agents, opinions differ on both the likelihood of an uncapped year and what its effect could be.

“The game appears healthier than ever,” said Jonathan Blue, whose agency, BEST, represents 60 players. “Sometimes it is better not to tinker with things.”

Other agents, who would speak only on the condition of anonymity because they are certified and regulated by the union but are not authorized to discuss union business, said big-market club owners or those teams with high revenue streams would spend freely in an uncapped season and would find a way around the restrictions in the system.

Said Berthelsen, “Some of the best contracts ever obtained in this league have been by restricted free agents.”

Pash would not comment on specific restrictive free agent scenarios, but when asked whether the uncapped year gave leverage to the players or owners, he said, “I think the uncapped year was designed to be a balance. Yes, there is no cap, but there are many other mechanisms to hopefully preserve competitive balance.”

Both Pash and Berthelsen agree that the current system, designed by former NFL Commissioner Paul Tagliabue and the late NFLPA Executive Director Gene Upshaw, intended that the NFL never get to the uncapped year because of the potential negative ramifications for both sides.

“We would like to have a deal tomorrow and we continue to have March of 2010 as a very important deadline,” Berthelsen said. But he added that while Pash and other NFL officials have said they don’t want to lock the players out in 2011, “We still remain without a proposal [for a new labor deal], and that is a matter of great concern to us.”

The NFL would not comment on that directly, but Pash did say, “We are a long way from shutting any business down ... and that is not our goal. Our goal is to make a deal.”