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MANAGERS STRIKE BACK? WHAT SPORTS ORGANIZATIONS NEED TO KNOW AS MISCONDUCT ACCUSATIONS LEAD GMS TO TEAM UP

Insights

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The recent termination of Portland Trail Blazers General Manager Neil Olshey has brought workplace culture and bullying to the forefront of professional sports' front offices nationwide. As shown in the Olshey case, teams need to be able to react swiftly to allegations of misconduct, particularly from high-ranking officials. But it appears that the NBA's general managers may want to push back on the scrutiny that is sure to be directed at sports organizations across the country, with reports of the formation of an NBA "General Managers Association" to pool resources, provide legal defense funds, and facilitate access to attorneys and public relations consultants. What do franchise owners and leagues need to know about these concerted efforts and how would any such association limit a team's ability to respond to misconduct allegations in the future?

Background

In early November, the Portland Trail Blazers announced it had opened an internal investigation into their General Manager following reports of a toxic work environment, including allegations of profanity-laden tirades directed at non-player personnel. As any employer would do, the Trailblazers took the allegations seriously and even engaged outside counsel to lead its investigation.

While the investigation was pending, rumors swirled that the investigation was aimed at uncovering a reason to terminate Olshey for "cause" under his contract rather than addressing serious workplace misconduct. Regardless of those reports, the Blazers terminated Olshey on December 3 after

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determining he violated the team's code of conduct. While the team declined to provide specifics and cited privacy concerns, [a report soon surfaced](#) that the investigation revealed that Olshey often confronted staffers and cursed toward them and allegedly made an inappropriate comment toward a female staff member.

"General Managers, Unite!"

At the time the investigation was pending, [news of the nascent NBA General Managers Association was reported by ESPN and other sports media outlets](#). These reports indicated that the GMs wanted to band together to form a professional association to collectively support executives. It would serve to provide them with access to legal defense funds, lawyer referrals and public relations professionals.

While these reports indicated that the General Managers Association had been in the planning stages for several months and thus predated the Olshey situation, NBA executives were apparently concerned with the treatment of the Blazers then-GM. According to some reports, there was concern that the team may have had "buyer's remorse" over a recent three-year contract extension awarded to Olshey given the team's mediocre on-court performance and decreased revenues related to the COVID-19 pandemic. The idea that a team could decide to terminate a general manager for one or more basketball-related reasons but simultaneously pursue misconduct allegations with the hopes of finding a reason to terminate the general manager for cause gave executives pause.

This distinction is important for team ownership and executives. As most understand, "for cause" terminations frequently void lucrative buy-out or other monetary provisions in the executives' contracts. Whether or how a general managers association could assert any weight in such a situation remains unseen, but it is certainly something that should be on every team's and league's radar, regardless of your sport.

Is this a Union for General Managers?

The terms "association" and "concerted action" undoubtedly bring to mind the specter of labor unions – especially in each of the North American major league sports, where payers' associations yield considerable power. Unlike the players they frequently draft, sign, and trade, however, general

managers are afforded no protections under the National Labor Relations Act, the federal law which governs labor relations in the private sector. That is because the NLRA specifically exempts “supervisors.”

Instead, individual franchise owners (or the league itself) are under no obligation to bargain with any such general managers association or any other group of executives. At least under federal labor law, you would still be permitted to discipline or discharge team executives who participate in such activities regardless of any association.

In reality, however, it is doubtful that any such associations would take such ill-advised actions, as they would most likely lead to negative publicity and reduce the chances of landing another job for another organization in the future. It is far likelier that the general managers association would advocate for “best practices” to be taken during internal investigations, or seek to adopt standardized contract provisions to help provide additional “process” for general managers accused of misconduct.

What’s Next?

Though it is unclear at this point what effect, if any, a general managers association may have on team or league operations, it should be noted, that similar associations exist for both head- and assistant coaches in the NBA, NFL, and NHL. Those organizations have existed for decades in some instances, with very little, if any, negative interactions with their respective leagues. In fact, the only notable example of a coaches’ association taking a position counter to its league came in a 2011 *amicus* brief filed by the NFL Coaches Association in support of the NFL Players Association during the league-instituted lockout.

Team ownership should be aware of continued developments in this area. Above all, however, you should remember that you have a duty to promptly investigate and remediate any potentially unlawful behavior by their employees—regardless of how high in the organization the alleged perpetrator may be. Team leadership should be cautious of any external attempts to limit the organization’s flexibility to respond decisively to potential misconduct.

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