MLB's Collusion Investigation of Aaron Judge Free Agency Can Teach Antitrust Lessons to Employers

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Major League Baseball recently announced that it will investigate possible collusion between the New York Mets and Yankees involving prized free agent Aaron Judge – a situation that can teach employers of all types some important and timely lessons on antitrust law compliance. According to a November 3 media report, team sources said the Mets decided earlier this year not to bid for Judge if he became a free agent in the off season, given that Mets owner Steve Cohen and Yankees owner Hal Steinbrenner "enjoy a mutually respectful relationship, and do not expect to upend that with a high-profile bidding war." And while recent reports suggest that the Commissioner's office has already dismissed the allegations, what can the situation teach you about antitrust law in the workplace setting?

Allegations of Potential Collusion Lead to Investigation

The details in the recently surfaced media report prompted the MLB Players Association (MLBPA) to ask the Commissioner's office to investigate whether any improper contacts took place between the Yankees and Mets regarding Judge's free agency.

The current CBA prohibits collusion between players and clubs regarding player contracts. Article XX(E) states "players shall not act in concert with other Players and Clubs shall not act in concert with other Clubs." The MLBPA believes this provision may have been violated if the owners of the respective clubs actually discussed Judge's free agency.

Commissioner Rob Manfred responded to the investigation request during owner meetings last Thursday noting that his office has accepted the request and is "absolutely confident that the clubs behaved in a way that was consistent with the agreement." According to a media report from the Athletic, the league was expected to request that Cohen and Steinbrenner provide records of phone, text, and email conversations that took place between them during the period of alleged collusion. And according to reports yesterday, the Commissioner's office has already concluded that no improper collusion occurred, although we have yet to receive a public announcement to that effect.

It is noteworthy that the MLBPA opted to fire request the Commissioner's office investigate this matter instead of filing a grievance pursuant to the CBA. The union may have done so because it would have to prove to an arbitrator that Judge was harmed in order to succeed, which is a hard

standard to meet – especially because Judge seems likely to soon cash in on his free agency with a new contract that could net him in the $300 to $400 million range.

Succeeding on a collusion grievance, however, is not unprecedented. In the late 1980's, the MLB agreed to settle three collusion grievances brought by the MLBPA in the sum of $280 million. In 2006, the MLB again agreed to settle for $12 million to resolve collusion allegations brought in 2002 and 2003.

Antitrust Lessons for Employers

While this case is governed by the requirements of the MLB CBA and thus likely falls outside the purview of federal antitrust law, this story serves as a reminder to employers of the pitfalls involving anticompetitive behavior. As referenced in our recent article, the Department of Justice is taking an aggressive approach to enforcing the Sherman Act — a federal antitrust law that prohibits activities that restrain interstate commerce and marketplace competition – when it comes to the employment market. In fact, the DOJ recently concluded its first-ever criminal prosecution for antitrust behavior in a workplace setting, putting all employers on notice that antitrust activity could lead to significant risk.

Employers should follow the six-step plan highlighted in the article referenced above to ensure that they are compliant with the law. Notably, failure to comply with the Sherman Act has significant consequences for employers as the law provides for treble damages for injured parties. And while the Aaron Judge situation is unlikely to lead to any antitrust violations, your organization should be careful not to engage in similar behavior when it comes to star employees in your industry.

Conclusion

We'll continue to monitor developments in this area and provide updates as warranted. Make sure you are subscribed to the Fisher Phillips Insight service to ensure you receive the latest news directly to your inbox. For further information, contact your Fisher Phillips attorney, the author of this Insight, or any member of our Sports Industry Practice Group.

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