

NHL Lockout: Day 73

November 27, 2012 | [Labor And Employment](#)



**Gerald F.
Lutkus**

Of Counsel
(Retired)



The NHL lockout, which has reached Day 73, continues to be one of the biggest labor law stories of the year. And with 2 1/2 months of the season already canceled, you've got to believe that it is becoming less and less likely that we'll see any major league hockey in the 2012-13 season. Already the Winter Classic has been cancelled as has the All-Star weekend originally scheduled for Columbus, Ohio.

The NHL and the Players Association appear to be at a standstill in negotiations. The parties have not met since last week and the latest news is that three mediators from the Federal Mediation and Conciliation Service in Washington have been assigned to the dispute. Negotiators who have used FMCS mediators know that they can be helpful and creative in moving obstacles out-of-the-way during negotiations. But at the end of the day, they have no power or authority to compel the bargaining parties to reach

RELATED PRACTICE AREAS

Labor and Employment
Labor Relations

agreement. As result, if the parties can't agree on a resolution to the dispute, the mediators cannot close the deal.

As [CBS Sports has reported](#), some grumbling has started among more veteran players ready to return to the ice. In addition, the NHLPA appears to be considering whether decertification of the union would be an appropriate strategy at this point. You'll remember that the NFL Players Association used the decertification route during their recent lock-out with the NFL.

To pursue this strategy, 30 percent of the players would need to sign a petition seeking decertification of the NHLPA. That petition would be submitted to the NLRB and a decertification election would then be held. Alternatively, the NHLPA could disclaim any interest in representing the players. That strategy, as recently used in the NFL labor dispute, would allow the players to sue the league under the antitrust laws to end the lock-out. What makes it more difficult here is that seven of the NHL's franchises are in Canada and not subject to U.S. law on this issue. However, as noted by Bill Daly of the NHL, such a move would clearly signal the end of hockey for this year. In addition, the decertification strategy creates leverage but doesn't get a deal done.

Here are several news reports with the latest on the NHL labor negotiations.

Washington Times : [“NHL lockout 2012: Federal mediation part of the talks”](#)

Sporting News : [“NHL Lockout: Don't get too excited about mediator involvement, experts say”](#)

CBS Sports : [“NHL lockout: Your daily hockey fix for Day 73”](#)