**COACHING CONTRACTS**

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We are now well past the peak of the season when disappointed football fans and athletic administrators turn to next year and the “coaching carousel.” This season coincides with the Hot Stove League for baseball players. Fans of our National Pastime focus primarily on “free agents,” veteran players whose contracts have expired. However, athletic directors find it no burden to lure contractually-bound coaches to greener pastures. This is because, unlike most professional athletes and coaches, college coaches’ contracts typically contain “buyout clauses” that allow the coach to terminate a successful employment relationship, leaving alumni, students, and their players in the lurch.

As a former Antitrust Division and FTC lawyer, I’m committed to free markets and therefore support any talented coach’s ability to obtain whatever favorable contract terms the free market provides. Yet, coaches shouldn’t be able to have it both ways, being able to recruit top high school athletes with vague assurances that they will guide them from “boyhood’s gate” into becoming young men, while insisting on contract terms that allow them to leave whenever it suits them.

Borrowing from English law, the Pennsylvania Supreme Court held in 1902 that Hall of Fame second baseman Napoleon Lajoie could not jump from the Phillies to the cross-town rival Athletics (the leagues began their currently amicable agreement the following year). The ploy didn’t work: Lajoie was traded to the Indians, and an Ohio court would not issue an injunction against his playing in Cleveland. But the legal principle was established that employment contracts for highly skilled employees cannot be easily broken. Buyout clauses, therefore, benefit the employee, not the employer, when the former is very difficult to replace and damages for contract breach cannot be easily measured.

Although a large buyout clause might be mutually beneficial to universities and coaches, it would be even better if there were no buyout clause. A coach’s skilled agent can certainly negotiate a series of conditions that would allow the coach to terminate the contract for foreseeable and understandable reasons (famously, legendary Lou Holtz had a specific clause allowing him to leave Minnesota for Notre Dame, but only the Fighting Irish). The lack of a buyout clause would demonstrate that the coach was literally putting his money where his mouth is when he tells a recruit he is staying to guide the player through college.

There is another huge benefit to a contract without a buyout clause: the current team can sue poachers. If Florida State or USC contacted Penn State’s James Franklin, Minnesota’ PJ Fleck, or another coach (all under contract), absent a buyout clause this would constitute the tort of “interference with contractual relations” and they would be potentially liable for millions in money damages. But there is no liability if a school discusses with the coach whether he will exercise his contractual right to a buyout (paid, of course, by the new school).

To be sure, some programs that would welcome being used as a stepping stone for a highly successful coach. No one outside of the Sunshine State ever heard of Florida Gulf Coast before their Cinderella run in 2013, and FGCU would be most ungenerous to be ungrateful for Andy Enfield for their success, even though he immediately capitalized by taking a new job at USC. Nor would it have been likely to harm the Eagles’ recruiting efforts if it became known that Enfield had a modest buyout and could leave if they achieved unparalleled success.

Historically, university lawyers who were experts in higher education law were no match for skilled specialist lawyers and agents who represent leading coaches. Although some places now have veteran ADs and skilled counsel, they are still dealing with a market set by others. One reason that the market for college coaches is so lopsided, besides legal expertise, is that those in sports in greatest need of sound legal counsel don’t get it: star high school recruits. If they did, coaching buyouts would not be a problem: elite student-athletes would receive legal advice that the coach’s current contract poses little bar to his decision to leave if he finds greener pastures, and competition would likely lead to coaches at elite programs to voluntarily increase their buyouts, to demonstrate their long-term commitment.

That’s the point: it’s a free market, but coaches should have to choose: accept a low buyout and the challenge of recruiting elite players who know you might leave, or make a binding promise to stick it out. Studies show that elite players suffer significantly in the draft when their coach departs. Other players, and their families, commit to a coach for other reasons. Coaches don’t have to make promises, but their contracts should be transparent, so recruits know what is in store.

COMMENTS INVITED! Please send them to Steve Ross at sfr10@psu.edu with “CONTRACT CONTRACTS comment” in the subject line.