

Major League Soccer To Exercise Force Majeure Clause To Reopen Negotiations With Its Players To Address COVID-19 Financial Realities

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Major League Soccer (MLS) has informed the MLS Players Association that it intends to exercise the force majeure clause that was recently added to the parties' collective bargaining agreement (CBA) to negotiate additional contract modifications in good faith for 30 days. If a new agreement is not reached during the 30 day period, the league will be permitted to consider terminating the current agreement and initiating a lockout of its players.

Following the league's notification to the MLS Players Association, the union responded by strongly criticizing the league's decision to exercise the force majeure clause. Echoing MLS Players Association Executive Director Bob Fosse's statement from earlier this month that the league's decision to exercise the force majeure clause "would be a mistake," the union issued the following strongly word statement:

After a 2020 season of extreme sacrifice, immeasurable risk to personal health, and a remarkable league-wide effort to successfully return to play, this tone-deaf action by the league discredits the previous sacrifices made by players and the enormous challenges they overcame in 2020.

MLS and its players association had reached an agreement in principle on the terms of a new collective bargaining agreement on January 31, 2020. However, the five year agreement which was negotiated between the parties and scheduled to run through the 2025 season was never ratified as a result of the COVID-19 pandemic.

Lacking formal ratification, MLS was able to reach agreement on a renegotiated CBA with the MLS Players Association in June. The renegotiated agreement included substantial economic concessions from the union following a near three month COVID-19 delay to the start of the 2020 season. While the agreement that was originally negotiated between the parties included more liberal free agency rights for the league's players and drastic increases in minimum salary levels for veteran players, the modified CBA delayed the effective date of those modifications.

According to Executive Director Fosse, the modified CBA provided player economic concessions in excess of \$100 million, including a 5% reduction in player wages, in addition to a \$5 million cap on performance and individual bonuses.

The alterations to the CBA also involved the introduction for the first time of a force majeure clause, which allowed MLS to opt out of the revised agreement in the event of a catastrophic event, such as the continuation of the pandemic or its reoccurrence.

While MLS reportedly attempted to negotiate a force majeure escape provision based upon specific attendance numbers in the event of a second wave of COVID-19, the players refused to agree to any type of attendance language in the clause. Rather, the final version, agreed upon by the parties, **allowed the league to potentially opt out of the contract with 30 days' notice if an event made the CBA economically unfeasible.**

According to published reports, the force majeure clause specifically authorizes MLS to terminate the CBA with 30 days' notice "if an event or condition makes it impossible for the league to perform its obligations under the CBA, frustrates the underlying purpose of the CBA or makes the CBA economically impracticable."

The league now seeks to utilize the force majeure clause to conduct further negotiations with its players union and to seek additional concessions to lower costs as the financial realities of the pandemic continue to impact the league. While projected financial losses for the 2021 season have not been released, ***MLS Commissioner Don Garber has reported that MLS lost nearly \$1 billion in revenue in 2020.***

While the parties begin plans to initiate another round of negotiations for the third time in less than a year, the ongoing economic impact of COVID-19 and the anticipated restrictions on attendance at sporting events, such as professional soccer, will continue to have a drastic financial impact on MLS and other professional sports leagues well into 2021.

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