



See what the Cowboys, other NFL teams did during the national anthem 2:48

DALLAS COWBOYS

## Is Jerry Jones' anthem stance legal? Here's what labor lawyers say

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Jerry Jones is free to bench his players if, in his mind, they “disrespect the flag” during the national anthem, according to legal experts.

The Dallas Cowboys owner announced his intention to bench players after Sunday's loss against the Green Bay Packers. Jones became the first NFL owner to publicly state an organizational policy that includes discipline if players protest during the national anthem.

No Cowboys player has kneeled during the anthem, although the team met Wednesday to discuss Jones' comments. Two players, defensive linemen David Irving and Damontre Moore, raised fists at the end of Sunday's anthem.

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As far as what constitutes “disrespecting the flag,” Jones said: “You’ll know it when you see it.”

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Local 100 of the United Labor Unions filed a charge with the National Labor Relations Board in Fort Worth on Tuesday, saying that Jones has violated the National Labor Relations Act with his threats. It asks the NLRB to “investigate preemptively in order to prevent illegal firings of players.” The union represents workers Texas, Arkansas and Louisiana.

Labor lawyers, though, feel the charge doesn’t have much of a chance. The first issue is standing – NFL players are represented by the NFL Players Association, not Local 100.

“I don’t think this unfair labor practice charge will go very far because, one, it hasn’t been filed by the NFL Players Association, which is the union that represents the players,” said Russell D. Cawyer, a Fort Worth-based lawyer who is a partner and chairman of Kelly Hart’s labor and employment practice group.

“There’s nothing that I’ve seen that shows the union that did file the [unfair labor practice] has any connection with the NFL Players Association, the NFL, or any particular player. So I think the likelihood on the basis of that charge alone, that this gets much steam, is probably unlikely.”

Added Dallas-based labor lawyer Rogge Dunn of Clouse Dunn: “Jones can do what he wants. Private employers always have the right to control the language and the speech, just like they can impose a dress code and ethical performance obligations. In other words, if you get arrested for DUI or arrested for a crime even though you weren’t at work and it had nothing to do with work, an employer can fire you.”

In addition, most agree that kneeling during the anthem doesn’t meet Section 7 of the National Labor Relations Act, which addresses organized activities related to terms and conditions about employment, wages and working conditions.

NFL players who have kneeled have done so for varying reasons. Former San Francisco 49ers quarterback Colin Kaepernick began the movement last season to protest racial injustice and police brutality against people of color.

When the Cowboys, including Jones, took a knee before the national anthem in Week 3 at Arizona, wide receiver Dez Bryant said they did so because of President Donald Trump’s remarks earlier in the week saying NFL owners should fire any “son of b-----” who kneeled during the anthem.

Irving and Moore have not said why they raised their fists at the end of the anthem.

But those political motives of kneeling likely would not protect the players from discipline. However, if they were to kneel in protest of something such as the NFL not having guaranteed contracts, that would be a different subject matter.

“That is clearly a term and condition of employment,” Cawyer said. “That’s not why they’re kneeling, but if it were, that would be something that would clearly be a protected activity.”

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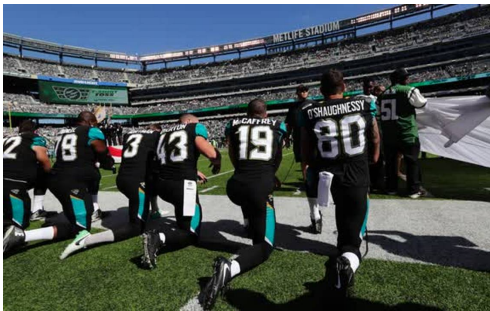
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Wade Rathke, chief organizer of Local 100, accused Jones of “bullying” his players in an attempt to “establish a previously nonexistent condition of work.”

Rathke said there is no distinction between benching a player for a game or firing him outright by releasing him.

“Either way it’s a threat and you can’t threaten someone’s job for concerted activity,” he said. “The point is he is threatening anybody and everybody. We are trying to send Mr. Jones a message that there is a law here. The law here is that you have the ability to act with your co-worker. You can’t just roll over someone’s rights when they are a worker. You can’t bully workers on the job. President [Donald] Trump might not get that. Jones might be confused. But these are workers with rights with the National Labor Relations Board.”

Michael Z. Green, a Texas A&M law professor, believes there may be a little more leeway for the players because of how involved Trump has become on the subject.

“There’s been cases that have been pretty broad in terms of the concerted activity, terms and conditions of employment could be pretty broad,” Green said. “Now that the president has gotten involved in it and you’ve seen owners responding by at least stating they will take disciplinary action, it makes it closer to being related to terms and conditions of their employment.”

Like the others, Green doesn’t feel Local 100 has the legal standing to make the case.

But until a Cowboys player takes a knee or does something that Jones deems is “disrespectful to the flag,” the policy will likely never be tested.

“The remedy for this stuff is to cease and desist,” Green said. “Right now, it’s all anticipatory, no action has been taken.”

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