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## Happy Belated Labor Day, Commissioner Goodell

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# Happy belated Labor Day, Commissioner Goodell



**DELAWARE VOICE**  
MICHAEL J. GOLDBERG

Quarterback Tom Brady's recent victory in his "deflategate" battle with NFL Commissioner Roger Goodell was a wonderful Labor Day reminder of one of the most important benefits labor unions bring to the people they represent: due process in the workplace.

That's not the first benefit of union representation most people would think of. That would probably be higher wages and better fringe benefits. For that reason, someone like Tom Brady would be the last person they would think needs a labor union. As one of the all-time best in the world at his profession, paid millions of dollars a year by his employer and millions more for commercial endorsements, what would Tom Brady need with a labor union?

Thank you, Commissioner Goodell, for answering that question for us.

Even someone as rich, famous, and talented as Tom Brady sometimes needs protection against arbitrary and unfair treatment by his boss. Unfortunately, most Americans have absolutely no right to due process on

the job. The main exceptions are public employees, who often have civil service protection and are covered directly by the Due Process clauses in the U.S. Constitution.

Most employees in the private sector, however, have very little protection against arbitrary or unfair treatment by their employer. The due process protections of the Constitution only apply to abuse by the government, not by private employers. Civil rights laws make illegal some forms of unfair treatment in the workplace, but not all arbitrary treatment is a result of discrimination against a particular demographic.

In the private sector, it is the grievance procedure contained in just about every collective bargaining agreement that is the main source of protection against arbitrary treatment at the hands of the boss. Unfortunately, less than 10 percent of employees in the private sector have the benefit of working under a union contract.

Fortunately for Tom Brady, he is one of them. Yes, it was a federal court that lifted the four game suspension the NFL had imposed on him, but it was Brady's union, the NFL Players' Association, that fought the NFL in court on Brady's behalf. More important, it was the grievance procedure contained in Brady's union con-

tract with the League that was the legal basis for his victory in court.

Due process under the contract required advanced notice of prohibited conduct and potential discipline, and a fair hearing before discipline could be imposed. The court ruled that Commissioner Goodell's treatment of Brady violated Brady's contractual due process rights in both respects. The NFL had never put players on notice that the violation Brady was charged with could result in a punishment as severe as a four game suspension, and Goodell denied Brady a fair hearing by refusing to allow his lawyers to examine one of the league's lead investigators and by denying them equal access to the investigators' files.

The lesson here is not that a unionized employer cannot discipline an employee who breaks the rules. The point is that when that employer seeks to do so, it must do so in a fair manner, providing the employee with notice of the charges and the potential penalties, and an opportunity for a fair hearing before an impartial decision maker. In the private sector, for most employees, that is something only union representation and a collectively bargained grievance procedure can provide.

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