



A Game-Changing Moment: Collegiate Athletes Win the Right to Unionize

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The notion of classifying collegiate student-athletes as “employees” of the university, therefore enabling them to unionize, has consistently been rejected. However, this once seemingly illogical concept has suddenly gained significant traction.

This Wednesday, Peter Sung Ohr, the Regional Director for the Chicago District of the National Labor Relations Board (“NLRB”), issued a ruling stating that Northwestern University (“Northwestern”) football players are entitled to unionize – effectively allowing these players to establish the country’s first union of college athletes. This NLRB decision has already been deemed a “stunning ruling that could revolutionize [the] college sports industry worth billions of dollars.”

The NLRB was tasked with the issue of deciding whether football players who receive full scholarships from Northwestern are considered university “employees” under Section 2(3) of the National Labor Relations Act (“Act”), and therefore can be represented for collective bargaining purposes. The College Athletes Players Association (“CAPA”) explained that college football as a whole is a commercial enterprise that turns college players’ labor into billions of dollars in profit. As such, CAPA argued that the Northwestern football players are “employees” as defined in the Act. Northwestern, however, countered that the football players are not “employees,” or in the alternative, that the players are merely temporary employees who are ineligible for collective bargaining.

In the ruling,[1] Mr. Ohr noted that an “employee” is one who receives compensation for a service and is under the direct control of managers. Tying this to the present matter, Mr. Ohr concluded that a collegiate football player’s scholarship is the compensation, and the player’s coaches are the managers. As such, the Northwestern football players are considered employees, and therefore have a right to unionize.

Mr. Ohr cited numerous examples setting forth how the college football players are more like employees than students, including the following:

- Northwestern’s scholarship players are initially recruited because of their football skill, and not because of their high school academic achievement.
- Northwestern failed to present evidence indicating that the players were permitted to miss entire practices or games to attend to their studies.

- Evidence suggested that players put upwards of 50 to 60 hours per week into football related activities.
- The football coaches discouraged their student-athletes from taking courses that conflicted with football-related activities, thereby effectively forcing the conflicted student-athletes to discontinue pursuing their academic dreams, including pre-medical studies.
- The players' lives were much more regimented than those of non-athletes, including what the players could eat, where they could live, and whether they could purchase a car.

Reactions to the NLRB's ruling have been mixed. Kain Colter, a former Northwestern quarterback who helped establish CAPA, noted that the NLRB's recent ruling is a significant "step on the journey toward securing the basic protections and rights" for collegiate athletes. Such protections sought by CAPA include guaranteed coverage of sports-related medical expenses for current and former players, better procedures to reduce head injuries, guaranteed scholarships, academic support, and allowing players to pursue commercial sponsorships.

However, Alan Cabbage, Northwestern's Vice President for University Relations, issued the following statement: "While we respect the NLRB process and the regional director's opinion, we disagree with it. Northwestern believes strongly that our student-athletes are not employees, but students." Similarly, according to the National Collegiate Athletic Association ("NCAA"), who disagreed with the idea that collegiate athletes are employees of their respective universities, "[we] frequently hear from student-athletes, across all sports, that they participate to enhance their overall college experience and for the love of their sport, not to be paid."

Early reports indicate that Northwestern will appeal the NLRB's decision to the agency's headquarters in Washington, D.C. If the decision is eventually upheld, the landscape of college athletics could forever be altered both on and off the field. For example, some argue that unionized collegiate athletes will yield increased strikes and lockouts, as well as decrease the overall quality of the universities' athletic teams. Additionally, should unionized players sustain injuries during practice or a game, workers' compensation laws may then apply. Also, how would a college or university meet its Title IX obligations with regard to the payment of female athletes whose sports generally are not revenue generators? With these and many other potential consequences looming, private universities[2] should pay close attention to what happens on appeal.

If you or your institution would like more information regarding education or employment related issues, please email James G. Ryan at jryan@cullenanddykman.com or call him at 516-357-3750.

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[1] A copy of the entire NLRB ruling may be found here:

http://www.cnn.com/2014/images/03/26/Decision_and_Direction_of_Election.pdf.

[2] While the NLRB does not have jurisdiction over public universities, the outcome of this appeal can still severely impact the athletic departments of public universities as well.