

NLRB SACKS COLLEGE FOOTBALL PLAYER UNION ORGANIZING DRIVE

News

Aug 18, 2015

Scott Schneider was quoted in *Biz New Orleans* on August 18, 2015. The article “NLRB Sacks College Football Player Union Organizing Drive” discussed the unanimous decision by the National Labor Relations Board’s (NLRB) five-member panel, that college football players at Northwestern University cannot comprise an appropriate bargaining unit.

Scott said the Board punted the decision about whether those football players were actually “employees” for union-organizing purposes. Instead, it dismissed the action on narrower policy grounds and left the door open to future unionization efforts by student-athletes and other workers.

In 2014, a group of football players at Northwestern University sought to form a union to seek better medical coverage, consistent concussion testing, guaranteed four-year scholarships and the possibility of getting paid for their services, Schneider said. In March of that year, a regional NLRB director in Chicago ruled that the football players on scholarship were “employees” entitled to unionize under the National Labor Relations Act (NLRA). That decision, he said, had the potential to fundamentally alter the landscape for institutions of higher education across the country; the University quickly appealed the result.

Scott said in dismissing the petition yesterday, the Board stated that asserting jurisdiction in this case would not promote labor stability due to the nature and structure of the National Collegiate Athletic Association (NCAA) and the athletic conference in which Northwestern competes (the Big Ten Conference). All of the Big Ten schools, except Northwestern, are state-run institutions. However, under the NLRA, he said the Board does not have jurisdiction over state-run colleges and universities. Because the NCAA and the Big Ten Conference maintain substantial

control over individual teams, the Board ruled that asserting jurisdiction over a single team would not promote stability in labor relations across the league.

Yesterday's ruling, Scott said, suggests that the Board may have been reading tea leaves indicating that members of Congress and the public at large were struggling with the application of traditional bargaining principles to student-athletes, while demonstrating that the Board is willing to show some deference to the ruling authority of the NCAA. The unanimous ruling leaves intact the NCAA's primary responsibility to manage the relationships between its member institutions.

The Board seems to say that exerting jurisdiction on these facts would threaten to undermine the delicate balance among NCAA members, he said. This is particularly true, he said, given the fact that only 17 of the 125 member schools that compete for the NCAA football championship are private institutions and thus under the NLRA's jurisdiction, leaving 108 others to compete on an uneven playing field.

Scott said the Board made very clear that this is a narrowly tailored decision confined to the employment status of Northwestern football players holding grant-in-aid scholarships. The Board specifically chose not to address the question of whether college athletes are actually "employees" under the NLRA. This leaves the door open for future representation petitions targeting other students, he said, or even Division I athletes involved in other sports, let alone a host of other quasi-employees such as interns and resident assistants.

Scott said the Board went out of its way to note that as a private sector institution, Northwestern itself remains subject to NLRA jurisdiction, as do many of its employees. This language seemingly invites future organizing drives by graduate student assistants, student janitors and cafeteria workers, along with coaches and referees, who work for similar schools across the country.

To read the full article, please visit [*Biz New Orleans*](#).