



NLRB Sacks College Football Player Union Organizing Drive

Insights

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Earlier today, the National Labor Relations Board (NLRB) unanimously decided that college football players at Northwestern University cannot comprise an appropriate bargaining unit, squelching their attempt to form the first-ever union comprised of collegiate athletes. The decision by the five-member panel puts to bed this organizing effort – for now.

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.

Decision Reverses 2014 Landmark Ruling

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. 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 had the potential to fundamentally alter the landscape for institutions of higher education across the country; the University quickly appealed the result.

Board Reverses Decision And Dismisses Petition

In dismissing the petition today, 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, 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.

Today’s ruling, in many ways, 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. This is particularly true 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.

NLRB Punts On Bigger Question

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 or even Division I athletes involved in other sports, let alone a host of other quasi-employees such as interns and resident assistants.

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.

If you have any questions about this decision, or how it may affect your institution, please contact your Fisher Phillips attorney or any one of the attorneys in our Education Practice Group.

This Legal Alert provides an overview of a specific NLRB decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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