

Student Athletes or Employees? The Implications of Student Athletes Unionizing

Legal Alert
March 28, 2014

Contact
Hillary H. Hughes

Garvey Schubert Barer Legal Update, March 28, 2014.

The National Labor Relations Board (“NLRB”) ruled Wednesday that Northwestern University football players who receive scholarships from the University are employees of the University and are eligible to unionize.

The NLRB cited several reasons for its decision, including that the University benefits from the players’ services through the compensation it receives for those services in the form of advertising, sponsorships, media buys, ticket sales, etc. Additionally, it found that the University controls how and when the players perform their services and that these football players receive compensation for their services in the form of scholarships. The NLRB determined that football players receiving scholarships from the University are not “primarily students” and that their activities are rather economic ones that benefit the school. Northwestern University argued that the football players’ relationship with the University is similar to that between the school and its graduate assistants, citing the NLRB’s 2004 ruling in *Brown University* (342 NLRB 483), in which the NLRB found that graduate assistants could not unionize, as their activities were primarily educational in nature. The NLRB rejected this argument, finding the roles of graduate assistants and those of football players receiving scholarships to be different. The ruling currently only applies to Northwestern University.

While the University plans to appeal the decision, the current ruling could have a significant impact on the way student athletes, particularly those receiving scholarships at private institutions (public colleges and universities are not subject to federal labor laws), are classified and even compensated.

Current NCAA amateurism regulations prohibit universities from offering student athletes additional compensation for participating in athletics. However, in recent years, the NCAA has been scrutinized for creating a system that generates millions of dollars for universities that are not shared with the athletes that generate them. The ability for student athletes to unionize and potentially engage in collective bargaining with a university for employee benefits, including compensation, could force private universities to change their practices and the NCAA to change its rules and regulations. The NLRB ruling places the conversation regarding the compensation of student athletes squarely in the center of the student athlete vs. employee debate, particularly with the NCAA preparing to take on an antitrust class action suit filed on behalf of the NCAA's Division I football and men's basketball players in connection with the use of their likenesses in video games and broadcasts without compensation (*O'Bannon vs. NCAA*). The NLRB decision could leave the door open for student athletes to have a stronger voice with respect to use of their likenesses and support the argument for potential compensation for such use.

The issue of whether, and how, student athletes should be compensated for their services and for use of their names and likenesses is very much a hot topic in collegiate athletics that could change the playing field for student athletes by forcing private institutions, and possibly the NCAA, to redefine the role of the student athlete on campus by way of their policies - and their purse strings.

If you have any questions, please contact Hillary, Theresa, MaryLyn, Allison, or Brian.