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Labor and Employment Law

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NLRB Regional Director Finds College Football Players Qualify as Employees and Can Unionize

In a stunning and potential landmark decision, a Regional Director of the National Labor Relations Board has found that football players receiving grant-in-aid scholarships from Northwestern University (the "University") are "employees" under the National Labor Relations Act. In his decision released on March 26, 2014, the Regional Director determined that "players receiving scholarships to perform football-related services for [the University] under a contract for hire in return for compensation are subject to [the University]'s control and are therefore employees within the meaning of the Act." Accordingly, the Regional Director ordered that an election be conducted among all football players receiving grant-in-aid scholarships who have not exhausted their playing eligibility for the University.

In support of his decision, the Regional Director found that the players receive compensation for the athletic services they perform in the form of scholarships, which pay for the players' tuition, fees, room, board, and books and can total as much as \$76,000 per calendar year for up to five years. Furthermore, the Regional Director found that the players are under the strict control of the University throughout the year. The coaches determine the location, duration, and manner in which the players carry out their football-related activities; they monitor the players' adherence to NCAA and team rules; and they control "nearly every aspect of the players' private lives," including their living arrangements, applications for outside employment, off-campus travel, social media posts, and communications with the media. In contrast, the Regional Director held that "walk-ons do not meet the definition of 'employee' for the fundamental reason that they do not receive compensation for the athletic services that they perform."

The University has confirmed that it plans to appeal the decision to the full National Labor Relations Board in Washington, D.C. If upheld, the decision has the potential to dramatically alter the world of big-time athletics in higher education as it would open the door for scholarship athletes at all private universities to unionize. Indeed, the decision could have implications for scholarship students in a number of areas beyond athletics.

The Union, College Athletes Players Association ("CAPA"), which has the financial backing of the United Steelworkers, is seeking, among other demands, financial coverage for former players with sports-related medical expenses and the creation of an educational trust fund to help former players graduate.

To learn more, contact [Katherine Ritts Schafer](mailto:kschafer@bsk.com) at (315) 218-8243 or kschafer@bsk.com.

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