
A Unanimous NLRB Sacks the College Athletes Players Association's Attempt to Organize College Athletes

By Thomas P. Brady / Aug 18, 2015

On August 17, 2015, a unanimous National Labor Relations Board (the Board) dismissed the representation petition filed by the College Athletes Players Association (CAPA). In March 2014, CAPA petitioned the Board to represent the grant-in-aid scholarship students on the varsity football team. The Director for Region 13 of the Board, found that grant-in-aid scholarship students, who played football for Northwestern University's varsity football team, were employees as defined by the National Labor Relations Act (Act) and could vote to have CAPA represent them in a representation election held by the Board. *Northwestern University and College Athletes Players Association*, NLRB Case No. 13-RC-121359. Northwestern appealed to the Board. While the appeal was pending, the football players were allowed to vote, but the ballots were impounded and not opened.

In its decision, the Board refused to assert jurisdiction over Northwestern's varsity football team because it would not "effectuate the policy of the National Labor Relations Act." The Board gave several reasons for its decision:

- The overwhelming majority of competitors in the Football Bowl Series (FBS) division, in which Northwestern competes, are public institutions which the Board cannot assert jurisdiction over. In the FBS, 125 universities compete and only 17 are private universities over which the Board has jurisdiction.
- In Northwestern's case, it is the only private university in the Big Ten. The remaining 13 schools are state universities which the Board cannot assert jurisdiction over. Asserting jurisdiction over Northwestern would not promote stability in labor relations in the Big Ten.
- The nature of college sports leagues gives the Big Ten Conference and the National Collegiate Athletic Association control over Northwestern's varsity football team and its athletes. The Big Ten and NCAA pass rules regulating scholarship players, including requiring them to enroll as full-time students and meet various academic requirements.
- As a result, labor issues involving only one team, like Northwestern, would also affect the NCAA and Big Ten and other member institutions. According to the Board, "it would be difficult to imagine any degree of stability in labor relations: if the Board asserted jurisdiction in a single team case."

The Board dismissed the CAPA petition.

The Board did not address whether scholarship players were employees. The Board reserved the right to address this approach if the circumstances of the underpinnings of the Board's conclusions regarding jurisdiction warrant reassessment.

The Board may revisit this issue if presented with different facts or where considering a different collegiate sport such as basketball.

If you have any questions, please contact Thomas P. Brady at (313) 965-8291 | tbrady@clarkhill.com, or another member of Clark Hill's Labor and Employment Law Practice Group.