



MARCH 2014

NLRB REGIONAL DIRECTOR FINDS COLLEGE FOOTBALL PLAYERS ARE “EMPLOYEES” ENTITLED TO UNIONIZE

By Stanley L. Goodman and Matthew R. Porio

In his first novel, *Player Piano* (1952), Kurt Vonnegut wrote of a time in the future when colleges abandon the pretense of amateur athletics and openly recruit professional football players to play on college teams. Well, once again, life imitates art.

Northwestern University’s scholarship football players are university “employees” under the National Labor Relations Act, the Regional Director for National Labor Relations Board (NLRB) Region 13 found on March 26, 2014 – potentially opening the door for union representation of college athletes.

Because he found that the players are employees – rather than in a category akin to graduate assistants, who the NLRB has ruled are *not* employees – Chicago NLRB Regional Director Peter Sung Ohr ordered an election in which players receiving grant-in-aid scholarships will vote whether to be represented by the newly formed College Athletes Players Association (CAPA), a spinoff of the United Steelworkers Union.

In holding that the scholarship players are Northwestern’s “employees,” Ohr cited NLRB precedent defining “employee” via a common law test as “a person who performs services for another under a contract of hire, subject to the

other’s control or right of control, and in return for payment.” In this regard, he found the following:

- That the players “perform valuable services for their employer” in the form of monetary revenue generated by the football program – for which the players are compensated in the form of “tuition, fees, room, board, and books” up to \$76,000 per year for up to five years. Further, he found that the players’ “tenders,” which they each sign before each period of their respective scholarships, amount to employment contracts.
- The scholarship players “are subject to the employer’s control in the performance of their duties as football players.” He noted that players spend between 40 to 50 hours per week on football-related activities and that “coaches have control over nearly every aspect of the players’ private lives by virtue of the fact that there are many rules that they must follow under threat of discipline and/or the loss of a scholarship.”

The decision applies only to private colleges, as state colleges do not come under the jurisdiction of the NLRB. Northwestern has until April 9 to appeal the regional director’s decision to the NLRB in Washington and has announced its

intention to do so. Should the NLRB uphold Ohr's determination, Northwestern will have to lose the election and refuse to bargain with CAPA in order to challenge the ruling as to employee status since there is no direct appeal to the federal Court of Appeals of the NLRB's decision in a representation case.

For more information about this Alert, please contact Stanley L. Goodman at 973.994.7520 or sgoodman@foxrothschild.com, Matthew R. Porio at 973.994.7810 or mporio@foxrothschild.com, or any member of Fox Rothschild's Labor and Employment Department.



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