Third Circuit Court of Appeals Will Determine Whether Student Athletes Can Be Classified as ‘Employees’ Under FLSA

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Since last year’s significant SCOTUS decision in Alston curtailing the NCAA’s ability to limit student athlete compensation for certain educational benefits, the landscape continues to shift in unprecedented ways. Now, the Third Circuit Court of Appeals will decide whether student athletes can be classified as “employees” under the Fair Labor Standards Act (FLSA), mandating minimum wage and overtime compensation for those covered under the Act.
In *Johnson, et al., v. the NCAA, et al.*, a group of Division 1 student athletes filed a lawsuit alleging that student athletes are “employees” and, therefore, are entitled to payment under the FLSA. The NCAA filed a motion to dismiss the lawsuit, which was denied by the district court.

The district court rejected the NCAA’s amateurism argument, finding it unpersuasive and cyclical to maintain that student athletes are amateurs simply because the schools have established a tradition of not paying them. The district court also declined to find that the athletic programs could be considered “extracurricular activities” because collegiate athletic programs, which generate millions of dollars in revenue each year for the schools, often interfere with the student’s ability to gain the maximum benefit from academic opportunities.

Finally, the court applied the “economic realities test” and determined that some relevant factors, such as whether the program is related to the student’s formal education, whether the program accommodates the student’s academic commitments, and whether the student’s extracurricular activities complement rather than displaces the work of paid employees, weighed in favor of finding the students to be employees. Therefore, the district court determined that the students had stated a plausible claim that they are employees under the FLSA.

The Third Circuit will take up the question of whether student athletes can be classified as “employees” under the FLSA. If the appellate court answers that question in the affirmative, the floodgates may open for further litigation and possible expansion of other employment law protections to student athletes. This case represents one of several recent developments in collegiate sports that could usher in changes on an extraordinary scale. For the world of higher education, it will certainly be an important development to track.

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