

THE NATIONAL LAW REVIEW

State Of The Union - What Are The Ramifications Of Northwestern University Football Players Seeking Union Recognition?

Tuesday, February 4, 2014

Members of the Northwestern University football team have signed a petition with the **National Labor Relations Board** seeking recognition as a collective bargaining unit. While the issue of union organizing by student-athletes has been [championed by entities such as All Players United](#), this effort is particularly noteworthy because of the players involved and the assertions they are making in their petition. Specifically, Ramogi Huma, President of the National College Players Association (a group founded by a former student-athlete to raise concerns in college athletics), filed an election petition with the NLRB on behalf of Northwestern University football players seeking union recognition as the College Athletes Players Association ("CAPA"). Whether the Board will authorize the petition for CAPA (and thus potentially thousands of other student-athletes) to proceed with the union election process will likely turn on whether the NLRB finds that the terms "employee" and "student-athlete" reference one and the same person.

CAPA has received public support from the United Steelworkers and the NFL Players Association. CAPA has outlined two principal concerns for student-athletes that it wants addressed, neither of which involves a paid wage system for student-athletes - (1) covering the true cost of attending a university, including those expenses not currently covered by an athletic scholarship; and (2) reimbursing the student for medical care expenses, which may also encompass continuing expenses when athletic participation has ended. The great irony is that these are the same two benefits that the power conferences of the NCAA have debated recently.

Why is this happening now? Student-athletes are eligible to receive a multi-year scholarship commitments that few other students actually receive, but the scholarship often does not cover the true cost of school, especially at a time where injuries, particularly head trauma, is a prevalent concern in sports medicine. Further, consider that in the last 24 months:

- In no small coincidence to a federal antitrust case challenging its rules against awarding multi-year athletic grant-in-aids, that the NCAA repealed its policy to permit such awards. Despite this change, [very few student-athletes have benefited](#) from multi-year athletic scholarships.
- While the NFL has tried to settle its lawsuit over concussions, a panel of federal judges [recently consolidated nearly a dozen such claims](#) against the NCAA.
- For the first time in its history, [the NCAA recently established a chief medical officer position](#) which not coincidentally, is held by Dr. Brian Hartline, a specialist in neurology.



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In other words – it is a perfect storm for organized activity by student-athletes.

But CAPA faces serious challenges in its efforts for recognition. Its formation stands for the proposition that the educational purpose is secondary and generally incidental to the student-athlete's role with the university. In other words, it raises the question of whether student-athletes should have the status of employees under these circumstances. And this raises its own set of questions: Is it only students in revenue-generating sports or all scholarship athletes? How would other laws applicable to the employer-employee relationship, such as wage-hour and unemployment coverage, apply to these student-athletes? Are the student-athletes employed solely by their academic institution or the product of a joint employer relationship by the NCAA and the university?

Of course, these questions assume that CAPA truly represents a group of "employees" of common interest in an enterprise for paid wages. This will be a challenging threshold for the players to meet. But a finding in the players' favor could very easily accelerate the glacial pace of NCAA rule changes as it relates to permissible athletic aid and amateurism status. The NCAA and its members have long held it is the predominate nature of the academic function to student-athletes that makes it inappropriate to offer stipends, benefits after collegiate attendance, or a right to derive income from their standing as a student-athlete. A determination that student-athletes may organize as statutory employees would throw these assumptions on their collective head.

We along with everyone else in the academic world will be monitoring this petition closely. In the meantime, all private colleges that are NCAA members (the CAPA filing with the NLRB only has implications for private schools, for now) are advised to (1) ensure all academic compliance matters are met on the federal, state, NCAA and institutional level for student-athletes as support for the argument that the student-athlete role in the college is predominately related to the academic purpose; and (2) audit their practices and procedures for scholarship student-athletes, including those policies involving health and medical support for injuries occurring in practice, training or competition. Even if CAPA's effort is unsuccessful, the underlying issues asserted by the Northwestern University football players will remain a point of public focus, including for potential legislative or regulatory action.

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