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Does the Northwestern Decision Change the Direction of College Athletics?

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On March 26, 2014, Peter Ohr, Regional Director for the **National Labor Relations Board** ("NLRB"), issued a landmark decision: a group of **Northwestern** football players receiving scholarships qualify as employees of their university, and have the right to form a union and bargain collectively. The decision followed after a petition was filed by the **College Athletes Players Association** ("CAPA"), led by former Northwestern quarterback Kain Colter. The university opposed the petition, arguing that scholarship football players are akin to stipend-receiving graduate student assistants, who have historically been categorized as non-employees by the NLRB.

Using the "right of control" test, Ohr concluded that grant-in-aid football players are employees for the following reasons:

- Scholarships are essentially payment in exchange for playing for the school's team (Ohr noted that scholarship players received as much as $76,000 per calendar year for the "athletic services" they performed);
- The athletes are more devoted to playing football than their academic activity;
- Coaches and the university exercise substantial control over scholarship athletes both on and off the field through behavioral rules, curfews, etc.

The ruling breaks precedent with the 2004 Brown University ruling wherein the NLRB considered the academic emphasis between a university and its graduate student assistants. While the student assistants in Brown were "primarily students," the same could not be said of the athletes because their football-related duties did not have the same nexus to their studies. The ruling specifically excludes "walk on" players because they are not compensated, nor obligated, in the same manner as scholarship athletes.

If the ruling stands, the impact on college athletes and university athletic departments will be enormous – no doubt changing college sports as we know it. Universities could be forced to bargain with athletes about employment terms, covering everything from scholarship amounts, benefits, merchandise royalties, the nature and duration of practices, etc. A players' union could decide to strike in the middle of the season. Similarly, coaches could fire an underperforming "employee" athlete. Other laws would be scrutinized in light of the decision, too. For instance, would the Family Medical Leave Act (FMLA) apply? What implication would this have on Title IX? Would athlete

“employees” be required to pay income tax on their earnings?

There is still a long way to go before this decision is made final or, alternatively, overruled. Northwestern has stated that it intends to appeal this decision. If upheld, the ruling would not apply to public universities, since public colleges and universities are not subject to the National Labor Relations Act. For more on this topic, check back on Wednesday.

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