



## College Football Players as University Employees: What are the Implications?

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The debate about whether or not student athletes should be compensated financially has been waged for decades. Colleges and universities make millions of dollars each year in athletic revenue, while athletes are entitled to receive athletic scholarships for their efforts. Many athletes, so called “walk-ons,” receive no consideration for their participation in college athletics. The NCAA, which governs these institutions, punishes programs and athletes when they fail to follow strict limitations or when athletes receive additional benefits from boosters or other third parties.

The playing field may be changing. Recently, members of the Northwestern University football team, led by quarterback Kain Colter, formed the College Athletes Players Association (CAPA). CAPA is an organization that obtained financial backing from the United Steelworkers and sought to be recognized by the National Labor Relations Board (NLRB). In seeking recognition, CAPA contends that football players who receive grant-in-aid scholarships are not primarily students, but rather are employees of the university because they are compensated for a service (playing football) with athletic-based scholarships. As such, CAPA contends the athletes are entitled to protections guaranteed to other workers throughout the nation, including the ability to form a union. CAPA has stated that it eventually will seek fully guaranteed scholarships, better medical protections for injured players and a fund that will allow athletes to continue their educations after they have finished playing. Player compensation has not been mentioned...yet.

On March 26, the Region 13 of the NLRB, located in Chicago, reached a decision in *Northwestern University v. College Athletes Players Association*, Case No. 13-RC-121359 after two months of consideration. The regional director found that the Northwestern players do qualify as employees of the institution and are within their rights to bargain collectively – a potentially game-changing moment in college athletics, to be sure.

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So what will be the overall effect of this decision on college athletics? The simple answer is that nobody really knows just yet; and won't for quite a while. This is only the very beginning of a long process, with Northwestern announcing that it will appeal the decision to the NLRB national office. Federal court litigation is sure to follow.

For now, the reach of the decision is limited. Technically, it only affects Northwestern University. But student athletes at the other 17 private universities with collegiate football teams that compete at the Division I level can now rely upon this decision as precedent in order to seek similar recognition. Players at state universities, on the other hand, are not affected by the decision, but rather would have to seek recognition under state labor laws.

Michigan's Public Employment Relations Act (PERA) is modeled after the National Labor Relations Act (NLRA), so athletes at a Michigan public university would have to petition the Michigan Employment Relations Commission (MERC) if they wish to be represented by a labor organization for purposes of collective bargaining. MERC would not be bound by the NLRB decision, but frequently looks to NLRB precedent in deciding public-sector labor issues.

Even after the decision, a multitude of questions still exist. What happens to non-scholarship athletes? Should this only apply to athletes that play in what are considered the revenue sports such as football and basketball since they bring in almost all of the revenue? What are the implications on Title IX? Will women athletes have a right to request equal compensation? And what about athletes at public institutions, which make up a majority of the NCAA?

A main point of contention for the NCAA and Northwestern is that there are so many questions and unknown factors flowing from the decision, that it would be almost impossible to implement a workable system for all member schools.

Following the decision, the NCAA released a statement:

"While not a party to the proceeding, the NCAA is disappointed that the NLRB Region 13 determined the Northwestern football team may vote to be considered university employees. We strongly disagree with the notion that student-athletes are employees.

We frequently hear from student-athletes, across all sports, that they participate to enhance their overall college experience and for the love of their sport, not to be paid.

Over the last three years, our member colleges and universities have worked to re-evaluate the current rules. While improvements need to be made, we do not need to completely throw away a system that has helped literally millions of students over the past decade alone attend college. We want student athletes – 99 percent of whom will never make it to the professional leagues – focused on what matters most – finding success in the classroom, on the field and in life."



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There is no guarantee that the NLRB will uphold the decision, at least in the long-term, as it has flip-flopped on similar issues in the past. For example, the NLRB has backed the right of graduate student unionization at private universities in the past (generally when Democratic appointees have controlled the board), but in 2004 (when Republicans have been in control of the board) found that graduate assistants at Brown University were not employees.

Another case of interest is *O'Bannon v. NCAA*, involving whether or not athletes should get a piece of the earnings that NCAA institutions and their partners make off of player likenesses (such as jersey sales and other paraphernalia). Although the *O'Bannon* case was filed four and a half years ago, a judge recently ruled that the case could proceed to trial in June. (Read our blog post about the Rutgers Quarterback victory against EA Sports.)

With all of the questions being raised over compensation in college athletics, there is one thing we can be sure of: From newsrooms to sports radio airwaves, and from governmental agencies to courtrooms across the country, the debate will continue. We will continue to monitor all of these issues and keep you posted as to any new developments. It is definitely uncharted territory for college athletics.

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