



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### NLRB Sacks Northwestern Football Players' Attempt to Unionize

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On August 17, 2015, the National Labor Relations Board (NLRB) unanimously declined to assert jurisdiction over whether football players at Northwestern University may form a union. As a result, the NLRB has dismissed the Northwestern players' petition, effectively vacating a 2014 ruling in favor of those players by the NLRB's Chicago Regional Director. The NLRB explicitly did not rule on whether the players are employees under the National Labor Relations Act, leaving the door open to legal challenges in the future.

The NLRB declined to assert jurisdiction over the Northwestern players' petition under the rationale that to do otherwise "would not promote stability in labor relations." Of the 125 football programs in the NCAA's Football Bowl Subdivision (FBS), only 17 are private schools. In addition, every school in the Big Ten Conference, except Northwestern University, is a public institution. The NLRB only has jurisdiction over private schools, while state labor boards oversee the public institutions that make up a majority of the FBS schools. As the NCAA and football conferences maintain substantial control over teams, the NLRB held that asserting jurisdiction would not promote stability in labor relations across the league.

The NLRB also highlighted the changes undertaken by the NCAA since the filing of the Northwestern players' petition. For example, the NCAA recently allowed FBS teams to award guaranteed four-year scholarships to its scholarship athletes, rather than the single-year renewable scholarships previously available to student athletes. While the Northwestern players' petition was stopped in its tracks by this decision, the NLRB specifically stated that as the circumstances of student athletes change, the NLRB may revisit its policy in this area.

**Client Tip:** *The NLRB essentially punted on whether scholarship athletes can be considered employees under the National Labor Relations Act. As the landscape of NCAA college football continues to change, this decision leaves open the door for reconsideration on this important issue.*