NLRB Tosses Northwestern University Football Team's Representation Petition

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In early 2014, the National Labor Relations Board approved a union election by Northwestern University football players. Earlier this week, the NLRB unanimously dismissed the players' representation petition on purely jurisdictional grounds. The players originally sought to unionize in March of 2014 and took the position that they were University employees who should be permitted to collectively bargain.

In its decision, the Board declined to exercise jurisdiction over the case without addressing the central question in the matter: whether football players are University employees. It recognized that while scholarship players may be analogized to professional athletes who are considered employees for collective bargaining purposes, collective bargaining in the professional athlete context "has never involved a bargaining unit consisting of a single team's players." Labor issues involving only an individual team would affect the entire NCAA, the different athletic conferences, and other institutions within the conferences in terms of recruiting, scholarships, and players' statuses. Because 108 of the 125 Football Bowl Subdivision member institutions are public schools, many of the schools cannot be considered "employers" pursuant to Section 2(2) of the National Labor Relations Act, and a decision in favor of the Northwestern players could lead to a patchwork problem between public and private schools where some athletes are employees and others are not. Moreover, scholarship athletes are subject to a number of academic requirements, and they are prohibited from participating in a number of activities in which professional athletes are free to engage.

The Board's decision only applies to the Northwestern football players and noted that the case was in stark contrast to graduate assistants, student janitors, or cafeteria workers, whose status the Board has previously considered. The players' engagement in an activity that has been traditionally viewed as extracurricular, albeit an extremely lucrative activity in the national spotlight, sets them apart from the other NLRB decisions regarding college students. Because the Board did not address the substantive issue of whether student athletes are employees, attempts by college athletes to unionize may continue.

We will continue to monitor this issue and provide updates of further developments. Please contact John K. Baker (610.782.4913; bakerj@whiteandwilliams.com) or any member of our Labor and Employment and Education Law Groups for further assistance.