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“Fight On”; NLRB’s Regional Office Pursuing Unfair Labor Practice Charges on Behalf of College Athletes against USC, Pac-12, and NCAA

Labor Relations Update on **December 20, 2022**

On December 15, 2022, the Regional Director of the Los Angeles Region of the National Labor Relations Board (“NLRB” or “Board”) found “merit” in the unfair labor practice charges filed by football and men’s and women’s basketball players against the University of Southern California (“USC”), the Pac-12 Conference, and the NCAA.

The charges raise the potentially important question whether college athletes should be deemed to be “employees” entitled to protections under the National Labor Relations Act (“NLRA” or “Act”). Such a determination could lead to a renewed effort by college athletes to organize and join a labor union for purposes of collective bargaining. In addition, colleges and universities (and potentially, athletic conferences and the NCAA) could be held liable for violations of the Act with respect to conduct engaged in toward college athletes.

The charges at issue here were initially filed in February 2022 by the National College Players Association (“NCPA”), a nonprofit advocacy organization, which alleged that USC, the Pac-12, and the NCAA misclassified college athletes as “non-employees,” and suppressed their Section 7 rights under the Act, including the right to speak about compensation and working conditions.

This case comes nearly eight years after Northwestern University football players’ petition to unionize. Then, after the Chicago Regional Director of the NLRB ruled that players receiving athletic scholarships are “employees” under the Act, the full Board ultimately declined jurisdiction on separate grounds, ending the players’ unionization drive, but leaving open the question of whether college athletes are “employees” under the NLRA.

In September 2021, NLRB General Counsel Jennifer Abruzzo stated in a memo that her position is college athletes are “employees” and entitled to protections under the NLRA. GC Abruzzo instructed the Board’s Regional Offices to treat “Players at Academic Institutions” as employees that have the right to join a labor union, paving the way for the charges that the NCPA filed in February.

Based on the NLRB General Counsel’s prosecutorial directive, the Regional Director’s determination to issue a Complaint in this matter is not surprising. The next steps are a trial before an Administrative Law Judge in the coming months, which likely will address the “employee” status of college athletes under the Act; whether the conference and NCAA have any potential liability under a “joint employer” theory; and whether, based on the facts as they are developed, those bodies violated the Act with respect to the college athletes. The losing party will have the right to appeal to the Board, with potential subsequent appeals of rulings to the U.S. Circuit Court of Appeals and, possibly, the U.S. Supreme Court.

Of course, USC, the Pac-12 and the NCAA have significant defenses to the unfair labor practice charges.

The employee status of college athletes is also at issue in a case currently pending before the Third Circuit Court of Appeals, *Johnson et al. v. NCAA et al.*, involving a different federal statute, namely the Fair Labor Standards Act. We will continue to monitor these and other cases relating to the legal status of college athletes.

View original.

Related Professionals

- **Paul Salvatore**
  Partner
- **Adam M. Lupion**
  Partner
- **Joshua S. Fox**
  Senior Counsel