

## NLRB WEEKLY SUMMARY OF DECISIONS, AUGUST 17 – 21, 2015

September 3, 2015 | [National Labor Relations Board, Labor Relations](#)

The Summary of NLRB decisions for the week of August 17 – 21, 2015, is now available. **Summarized Board Decisions *Northwestern University*** ([13-RC-121359](#); [362 NLRB No. 167](#)) Evanston, IL, August 17, 2015. On March 26, 2014, the Regional Director issued a Decision and Direction of Election in which he found that all football players receiving a grant-in-aid scholarship are employees within the meaning of Section 2(3) of the Act. The Board granted review on April 24, 2014, and shortly thereafter issued a notice and invitation to file briefs inviting interested parties to address issues raised by the Regional Director's decision. Northwestern and several of its supporting amici contended, among other things, that the Board should exercise its discretion to decline jurisdiction over this case. In this decision on review, the full Board agreed. In explaining its decision, the Board first noted that even when it has the statutory authority to act, it can properly decline to do so when it concludes that asserting jurisdiction over a particular case would not effectuate the purposes of the Act. The Board then stated that it had determined that, even if the scholarship players were statutory employees (an issue the Board emphasized it was not deciding), it would not effectuate the policies of the Act to assert jurisdiction. Next, the Board emphasized that because the Board has never been asked to assert jurisdiction over any type of college athlete, and the scholarship football players do not fit neatly into any analytical framework that the Board has used in cases involving other types of students or athletes, the Board was not required to assert jurisdiction in this case and therefore it was appropriate to consider whether the Board should exercise its discretion to decline to assert jurisdiction (even assuming it was otherwise authorized to act). In deciding that it should decline to assert jurisdiction, the Board principally focused on two factors. First, the Board observed that NCAA Division I Football Bowl Subdivision (FBS) football resembles a professional sport, given that the individual institutions jointly stage football contests, have formed the NCAA to set common rules and standards, and have given the NCAA the authority to police and enforce rules and regulations governing player eligibility, practices, and competitions. The Board explained that as in professional sports, there was a symbiotic relationship among the various teams, conferences, and the NCAA, and that accordingly labor issues directly involving an individual team and its players would also affect the NCAA, the Big Ten Conference (of which Northwestern is one of 14 members), and other member institutions. On this count, the Board noted that in previous cases involving professional sports, it has stated that it would be difficult to imagine any degree of stability in labor relations if the Board were to assert jurisdiction over only one team, and that in practice all previous Board cases involving professional sports involve leaguewide bargaining units. Second, the Board noted that the structure of FBS football itself also strongly suggested that asserting jurisdiction in this case would not promote stability in labor relations. In this regard, the Board emphasized that of the approximately 125 colleges and universities that participate in FBS football, all but 17 are state-run institutions over which the

### RELATED PRACTICE AREAS

Labor and Employment  
Labor Relations  
National Labor Relations Board (NLRB)

### RELATED TOPICS

Weekly Summary

Board cannot assert jurisdiction, and that Northwestern is the only private school that is a member of the Big Ten Conference. The Board stated that in such a situation, asserting jurisdiction would not promote stability in labor relations due to the variety of state labor laws that would apply to football teams at state-run institutions. As an additional consideration, the Board commented that the terms and conditions of Northwestern's players have changed markedly in recent years, and that there have been calls for the NCAA to undertake further reforms that may result in additional changes to the circumstances of scholarship football players. The Board stated, however, that subsequent changes in the treatment of scholarship players could outweigh the considerations that motivated its decision to decline jurisdiction in this case. By way of conclusion, the Board emphasized that its decision did not concern other individuals associated with FBS football, but was limited to Northwestern's scholarship football players. The Board further emphasized that its decision applied only to football players at Northwestern University, and that it was not addressing what the Board's approach might be to a petition for all FBS scholarship football players (or at least those at private universities). And the Board noted that a decision to decline jurisdiction does not preclude a reconsideration of the issue in the future. To read more, visit the [NLRB's website](#).