

A “Hail Mary”? Northwestern Student-Athletes File Union Petition With The NLRB

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On Tuesday, Jan. 28, 2014, a group of college football players for Northwestern University filed a petition with the National Labor Relations Board (NLRB) asking that they be represented by a labor union. Former Northwestern quarterback Kain Colter announced that the union seeking to represent the players is the College Athletes Players Association, which is backed by the United Steelworkers Union.

This case raises a very interesting labor issue: Are student-athletes “employees” under the National Labor Relations Act (NLRA) who are eligible to be represented by labor unions? The Board, at different times over the years, has taken different positions on whether graduate students are “employees” who can be represented by unions under the Act. The latest definitive ruling on this issue, at least as it pertains to graduate students, came down in 2004 in *Brown University*, 342 NLRB 42 (2004). In that case the Board held graduate students were not statutory employees on the basis that graduate students have a primarily educational versus economic relationship to universities. The current Board, however, was set to re-visit the ruling in the *Brown University* case last year in the case of *New York University*, 2012 NLRB LEXIS 367 (2012), but the case was withdrawn by the parties in December 2013 before the Board issued a decision.

The Northwestern case will be the first time the Board has considered whether student athletes qualify as statutory employees, and it could give the current Board a chance to re-visit, and possibly overrule, the *Brown University* case’s holding that university students are not “employees” under the Act. If *Brown University* is overruled, or if the Board rules student athletes constitute statutory employees independent of the *Brown University* precedent, it will have far reaching effects on U.S. colleges and universities because it could open the floodgates to countless union petitions by various groups of students around the country.

An initial hearing on issues related to the Northwestern players’ petition is set to take place within the next few weeks at the NLRB’s Chicago Office. Keep an eye on the Blog for further developments in this landmark case.

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