



Will university scholarship athletes soon be filing workers' compensation claims?

By Anna M. McFaul • April 7, 2014

The National Labor Relations Board (NLRB) issued a decision on March 26, 2014, which found that university scholarship football athletes are “employees” under the National Labor Relations Act.¹ In the decision, Regional Director Peter Sung Ohr, of Region 13 (Chicago), noted that the combination of the university’s restrictions on the activities that scholarship football athletes could engage in; the time requirements it placed on the athletes; recruitment of the athletes for solely their athletic abilities; payment to the athletes in the form of large scholarships; the athletes generate millions of dollars in revenue for the institution; and special rules governing the athletes beyond those applied to other students amounted to control over the athletes which fell within the definition of an employer-employee relationship. The University has indicated that an appeal will be filed to this determination.²

This case involved scholarship football athletes at Northwestern University, a Division I non-profit, non-sectarian university, in Illinois. The athletes filed a request to unionize with the university as they felt they were not receiving adequate representation in decisions affecting them. The university denied their request to unionize. Subsequently, the athletes petitioned the NLRB for relief and requested they be deemed “employees” within the National Labor Relations Act, and have the right to unionize. Regional Director Ohr, in his decision, found that the university did not meet its burden in excluding university scholarship football athletes from unionizing.

While this decision affects the scholarship athletes’ collective bargaining rights under the National Labor Relations Act, it is not yet clear whether this decision will apply to Washington workers’ compensation claims filed under the Industrial Insurance Act. It should be noted that the National Labor Relations Act is a federal law; whereas, the Industrial Insurance is a Washington state act. This decision from Region 13 (Chicago) has not been adopted by the full Board in Washington, D.C., and therefore has no controlling authority in Region 19 (including Washington and Oregon). Furthermore, the Legislature has not expressly addressed whether student athletes are covered employees for the purposes of workers’ compensation coverage. It remains to be seen whether the Industrial Insurance Act will be interpreted to favor coverage of the scholarship athlete.

(NLRB) Regional Director Ohr, in his decision, found that the university did not meet its burden in excluding university scholarship football athletes from unionizing

Continued



Anna M. McFaul is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.452.7250 or at annam@rwwcomplaw.com.

Will university athletes be filing workers' compensation claims? (continued)

The decision's potential effect may also be decreased as the Industrial Insurance Act indicates that persons who receive aid or sustenance only from a religious or charitable organization are excluded from coverage under the Industrial Insurance Act.³ Clarification will be needed to determine whether a charitable organization is different from a non-profit organization which would broaden the scope of the decision's influence. Also, an employer can choose whether to provide coverage for "student volunteers" who do not receive wages but receive maintenance and reimbursement for expenses incurred in performing the volunteer duties.⁴ It remains to be seen whether athletes receiving scholarships are not "student volunteers" but employees for the purpose of the Industrial Insurance Act. These are only a few of the potential interesting arguments surrounding this exciting new decision.

If this decision is found applicable to the Industrial Insurance Act it could cause an interesting development in workers' compensation law. For example, if a university scholarship football athlete is injured while in a game, could he be entitled to benefits under the workers' compensation system? Would instant-replays of a football game become common subjects in a request for discovery? Could the recent phenomenon of concussions and the related after affects in football players become the responsibility of the workers' compensation system? Finally, if this decision is upheld, would universities stop offering football scholarships or terminate football programs entirely in order to avoid this liability? While some of these questions may appear academic on their face, they are within the realm of possibility and offer interesting food for thought.

The decision by Regional Director Ohr contains several weaknesses in its analysis that could be used to the advantage of employers. For example, in his discussion of the NLRB's Brown University decision,⁵ which differentiated teaching assistants from scholarship athletes, he explained that "football-related duties are unrelated to their academic studies unlike the graduate assistants whose teaching and research duties were inextricably related to their graduate degree requirements." This analysis is flawed because it hinges on a student's academic course of study. For instance, if a football player was pursuing a major closely related to football (e.g. physical education, physical therapy or sports psychology), it appears the NLRB could then apply the analysis in the Brown University decision. In addition, if a university modifies its graduation requirements to require that all students participate in an extracurricular activity, the university could then argue that scholarship athletes are merely completing a graduation requirement and should not be deemed "employees".

Whether or not this decision changes the field of workers' compensation law is yet unclear. For now, we will await the beginning of spring training

Continued

Online and printed firm materials are for educational purposes only. Please consult your attorney for legal advice on a specific claim, case or issue.



**Reinisch
Wilson Weier PC**
LAW OFFICES

© 2014 Reinisch Wilson Weier PC. All rights reserved.

PORTLAND: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 • T 503-245-1846 / F 503-452-8066
SEATTLE: 159 South Jackson Street, Suite 300, Seattle, WA 98104 • T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com



Will university athletes be filing workers' compensation claims? (continued)

and opening day of our favorite college sports to see whether a workers' compensation claim will be filed by a scholarship athlete. ■

¹ *Northwestern University v. College Athletes Players Association (CAPA)*, No. 13-RC-121359 (March 26, 2014).

² Labor Board: Northwestern University Football Players Can Unionize, www.cnn.com March 26, 2014.

³ RCW 51.12.020(4).

⁴ RCW 51.12.170.

⁵ *Brown University*, 342 NLRB 483 (2004).

Online and printed firm materials
are for educational purposes only.
Please consult your attorney for
legal advice on a specific claim,
case or issue.