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# CLIENT ALERT

## National Labor Relations Board Decides That Student Athletes Are Employees

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On March 26, the director of the Chicago regional office of the National Labor Relations Board (Board) issued a startling decision. The director granted a petition for an election filed by a labor union seeking to represent student athletes on Northwestern University's football team. The decision concludes that athletes who receive scholarships should be viewed as employees under Section 2(3) of the Labor Management Relations Act (LMRA) and thus eligible to form a union and engage in collective bargaining with the University. The ruling defines the appropriate bargaining unit as "all football players receiving grant-in-aid scholarship[s] and not having exhausted their playing eligibility," and excludes students who "walk-on" to the team. The university opposed the union's petition, arguing that scholarship athletes are not employees, but similar to graduate teaching assistants who receive stipends and whom the Board has historically held are not employees.

The university announced its intention to appeal the ruling to the Board. Its request for review is due on Wednesday, April 9. Union representation petitions filed with the Board are subject to complex procedural rules. Final resolution of the dispute, following Board and court appeals, is more than a year away. In the near term, the Board may decide to reject the university's appeal and direct that an election be held within the next several weeks.

It is no exaggeration to call this decision a "game changer." If affirmed, the ruling has the potential to completely reshape college athletics, as it opens the door for scholarship athletes at private universities to engage in collective bargaining with the schools that "employ" them over their "wages, hours and working conditions." Numerous questions arise as to how schools would manage their obligations under the LMRA. The decision has significant ramifications under numerous other federal laws, including Title IX, the Internal Revenue Code and the Fair Labor Standards Act. The decision also implicates wide range of state law, ranging from unemployment compensation to workers compensation to traditional tort law.

The decision does not directly affect public universities, as the LMRA does not apply to employees of state government entities. The ruling is part of the larger struggle over the current unique legal and social status of major college athletics. As the drama plays out, colleges and universities should endeavor to understand their obligations in the alternate universe suggested by this decision. Stay tuned for the next chapter.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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