

## THE EMPLOYER'S LEGAL RESOURCE: NLRB RULES NORTHWESTERN PLAYERS CANNOT UNIONIZE

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On August 17, 2015, the NLRB unanimously rejected Northwestern University football players' petition to unionize by declining to assert jurisdiction in the case. We first wrote about this issue in an [article](#) last Spring when the NLRB's Chicago regional office held that scholarship football players at Northwestern were university employees and could therefore form what would have been the nation's first student-athlete union. The university appealed the regional director's ruling to the NLRB, which resulted in the players' voting ballots being sealed until the NLRB's decision was released. With the recent announcement that the players will not be allowed to unionize, the ballots have been destroyed.

"In the decision, the Board held that asserting jurisdiction would not promote labor stability due to the nature and structure of NCAA Division 1 Football Bowl Subdivision (FBS)," the NLRB announced in a statement. "By statute the Board does not have jurisdiction over state-run colleges and universities, which constitute 108 of the roughly 125 FBS teams. In addition, every school in the Big Ten, except Northwestern, is a state-run institution. As the NCAA and conference maintain substantial control over individual teams, the Board held that asserting jurisdiction over a single team would not promote stability in labor relations across the league."

This decision is a clear victory for the NCAA, as the Northwestern players have no recourse for an appeal through the NLRB. Had the NLRB affirmed the 2014 decision of the Chicago regional director, it almost certainly would have permanently altered the college sports landscape. As state labor boards have traditionally followed NLRB decisions, a different outcome would have paved the way for collegiate players across the country to unionize.

While the NLRB's decision does not preclude reconsideration of this issue in other cases, it is unlikely that the NLRB will rule differently in the future. The NLRB has indicated that it does not want to undermine the delicate balance among institutions that are strictly regulated by the NCAA. Unless we see a change in the landscape of college football, the Board is going to have a difficult time justifying a change in its position.

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