

## EMPLOYMENT LAWSCENE ALERT: COLLEGE FOOTBALL PLAYERS ARE “EMPLOYEES” UNDER THE NLRA

The National Labor Relations Board (“NLRB”) Regional Director for Region 13 issued a decision on March 26, 2014, finding that college football players receiving grant-in-aid scholarships from Northwestern University who have not exhausted their playing eligibility are “employees” under Section 2(3) of the National Labor Relations Act (“NLRA”). What does this mean for Northwestern football players? It means that those football players who meet the definition of an “employee” of the University can vote for whether they want to be represented by a union and collectively bargain over the terms and conditions of their relationship with the University. In fact, in his March 26th decision, the Regional Director ordered that an immediate secret ballot election be held among the eligible employees in the unit to determine whether they should be represented by the College Athletes Players Association (“CAPA”) in collective bargaining with Northwestern.

In finding that the Northwestern football players receiving grant-in-aid scholarships are employees under the NLRA, the Regional Director relied on the broad definition of “employee” under Section 2(3) of the NLRA, which provides, in relevant part, that the term “employee” shall include “any employee . . . .” The Regional Director also relied on the U.S. Supreme Court’s holding in *NLRB v. Town and Country Electric*, 516, U.S. 85 (1995), that in applying the broad definition of “employee” under the NLRA, it is necessary to consider the common law definition of “employee.” The Regional Director noted that, “[u]nder the common law definition, an employee is a person who performs services for another under a contract of hire, subject to the other’s control or right of control, and in return for payment.”

In finding that Northwestern University football players receiving grant-in-aid scholarships to perform football-related services for the University fall within this definition of “employee,” the Regional Director emphasized the significant amount of revenue the football program generates for the University, the amount of time the players spend on football-related activities, the fact that the players who receive scholarships are required to sign a “tender,” which the Regional Director compares to an employment contract, that the scholarships the players receive are in exchange for the athletic services being performed, and the amount of control the University and the football coaches have over the players and their daily lives.

Although this decision is just one Region's decision, it is noteworthy, as it is the first case in which the NLRB has ruled that student-athletes at a private university qualify as employees under the NLRA and are therefore allowed to unionize. Northwestern has already released a statement confirming its plan to appeal the Regional Director's decision. We are likely a long way from the ultimate conclusion in the Northwestern case. However, this decision may open the door for student-athletes at other private universities and colleges to argue that they, too, are considered employees under the NLRA.

Including student athletes within the definition of "employees" under the NLRA may present a whole host of unexpected issues. For example, if student athletes on scholarship are "employees" of their college or university, should their scholarships be considered taxable income? Are these athletes also covered by other labor and employment statutes like the Fair Labor Standards Act, which requires employees to be paid minimum wage and overtime for all hours worked over forty in a given workweek? These are just some of the issues that may be raised with the recent decision issued by Region 13. The ultimate consequences of this decision out of Region 13, and their significance and reach, remain to be seen.