

Legal Challenges Expected Following Dartmouth Athletes' Vote to Unionize, by Aaron Solomon, Esq., 4-9-2024

In an unprecedented move, players on the Dartmouth men's varsity basketball team recently voted to unionize, a pivotal step in making them the first unionized team in college sports.

The efforts to organize, made possible by a directive from a regional office of the National Labor Relations Board (NLRB), is presently being challenged by Dartmouth College, which has reportedly refused to bargain a labor deal with the newly unionized team.

While it faces legal challenges, the NLRB's decision could have sweeping adverse implications for academic institutions with athletic programs as it opens the door for other organizing efforts across colleges and universities nationwide.

It also poses a tremendous burden and expense for educational institutions that would have to wrangle with a host of bargaining obligations including negotiating compensation, benefits and even, potentially, royalties.

Additionally, it could expose institutions to new risks and liabilities related to alleged violations of employment law including those involving wage and hour, workers compensation and benefits claims.

Background

In early February, NLRB regional director Laura Sacks issued an unprecedented decision finding that the men's college basketball players are employees within the meaning of the National Labor Relations Act (NLRA) and could vote to unionize, which they ultimately did on March 5, 2024.

The NLRB's determination was in response to a petition filed by members of the team last September requesting to join Local 560 of the Service Employees International Union (SEIU). Dartmouth had asked for that petition to be dismissed maintaining that the players were not employees under the NLRA. Sacks, in her decision, relied on the common-law definition of employment, noting that "Dartmouth has the right to control the work performed by the men's varsity basketball team, and because the players perform that work in exchange for compensation, the petitioned-for basketball players are employees within the meaning of the Act."

While Dartmouth does not provide athletic scholarships, she pointed to other forms of compensation they receive including valuable apparel, equipment and tickets to games.

This is in opposition to the 2015 decision wherein the NLRB declined to assert jurisdiction in a case involving Northwestern University football players who received grant-in-aid scholarships.

Sacks noted in her decision that when the Board declined to assert jurisdiction in the Northwestern University matter, "Northwestern was the only private school which competed in the Big Ten Conference" and "asserting jurisdiction would not promote stability in labor relations due to the variety of state labor laws that would apply to football teams at state-run institutions."

In her February 5, 2024 decision, Sacks resolved that "the same conclusion is not warranted here," noting that "the Ivy League, unlike the Big Ten Conference, consists only of private universities."

But bigger picture, Sack's decision leaves it open to interpretation as to whether this could eventually impact non-private state universities in the Big 10. Depending upon another NLRB joint-employer case against the University of South Carolina, the Pac-12 Conference and the National Collegiate Athletic Association (NCAA), the NLRB could potentially extend its jurisdiction to public universities if the private NCAA (which includes public schools) is determined to be a joint employer under the National Labor Relations Act. That case centers around athletes in football, men's basketball and women's basketball at USC.

Still for now, the NLRB's order dictates that Dartmouth bargain in good faith with the union. Dartmouth has reportedly appealed the regional office's decision to the full board. In a statement on March 5, Dartmouth maintained their stance that "the students on the men's basketball team are not in any way employed by Dartmouth." In the meantime, on March 14 the NLRB reportedly issued a certification of representation to Local 560 to serve as the union for the Dartmouth players. Four days later, Dartmouth reportedly announced it would not be bargaining with the union.

Long-term Implications

This signals that this contentious decision is far from over; depending upon the outcome of the full board appeal – which due to its current makeup will probably affirm this issue, the matter will probably ultimately end up in federal courts. To be sure, it could be several months (or years) before this issue is decided. During this time period no negotiations will take place.

Also, a change in the Presidential administration could result in this and other NLRB policies shifting if the Republican Party wins the next election.

But one thing is clear, if the decision stands it will create chaos within college athletic programs. Considering only a few NCAA institutions' athletic programs are revenue generators, it would also place a tremendous financial onus on many educational institutions unable to afford to pay their players.

As the case unfolds, Kaufman Dolowich will continue to monitor developments. If you have any questions related to this most recent case or need assistance complying with the NLRA or any other federal legislation, Kaufman Dolowich's team of skilled labor and employment attorneys can help.