

May 7, 2014

The Honorable John Kline
2439 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Representative Kline:

On behalf of the American Council on Education (ACE), the coordinating association of all sectors of American higher education, I write in connection with your May 8 hearing, "Big Labor on College Campuses: Examining the Consequences of Unionizing Student Athletes."

ACE is deeply concerned about the March 26 finding by a National Labor Relations Board (NLRB) regional director that Northwestern University varsity football players, who are on athletic scholarships, are employees of the University. We strongly hold that the football players are student-athletes, not employees, and that a contrary interpretation of the National Labor Relations Act (NLRA) would have deleterious consequences for American higher education and the nation.

To adopt the novel proposition that student-athletes who receive athletic scholarships are employees would disserve the students' education and impede colleges' and universities' ability to perform their essential missions. Such a dramatic change in federal policy should not be made by an administrative agency. If our government is to address this weighty and consequential policy matter, the proper forum is the legislative branch.

Students with diverse talents and backgrounds come to the nation's colleges and universities for an education. They come to learn not just in the classroom, but in college newspaper pressrooms, on the stages of concert halls, and on the sports field. A college education is the product of countless teachable moments from all aspects of college life, but especially from institution-provided curricular, co-curricular, and extra-curricular activities. Institutions facilitate these moments with an overriding goal: to build on and interact with each student's unique gifts to educate the whole person.

For more than a century, dating from long before Congress enacted the NLRA, college and university educational offerings have included intercollegiate athletics. Intercollegiate athletics are among the most challenging and character-building opportunities colleges and universities offer. Participation provides an exceptional education in teamwork, leadership, time management, and hard work. Student-athletes must meet an institution's academic standards for admission and academic progress before they can set foot on an intercollegiate field or court. The overriding goal for student-athletes and colleges and universities alike is education. And student-athletes complete their educational programs at a rate at least as high as that of the student body generally.

Congress neither intended nor provided that student-athletes be considered employees under the NLRA. In the course of numerous hearings on intercollegiate athletics, Congress never to our knowledge suggested that players at private universities should be considered employees under the NLRA. Nor are we aware of any state that considers student-athletes at public universities to be employees under state collective bargaining laws.

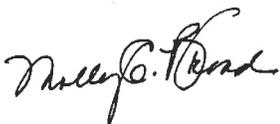
To treat student-athletes who receive athletic scholarships as employees, as the NLRB regional director ruled, would have a range of negative and troubling consequences. For example:

- Were student-athletes employees, they would logically no longer be amateurs, but professionals barred from playing in National Collegiate Athletic Association (NCAA) athletics.
- Athletic scholarships and other benefits would no longer constitute “qualified scholarships” under the Internal Revenue Code and would become taxable income, potentially leaving such athletes with less ability to finance their higher education.
- Collective bargaining between such athletes and their colleges and universities would undermine the collegial, academic culture and compromise the athletes' relationships with educators, including faculty members and coaches. Union leaders would have the power to negotiate “workplace” issues that affect educational matters, which are in the purview of faculty. For example, athletes could potentially negotiate over academic course loads or the manner in which coaches instruct players and conduct practice.
- To the extent collective bargaining increased compensation of athletes who participate in sports that generate net revenues, the reallocation would jeopardize institutions' ability to offer other sports and the educational opportunities they provide to male and female athletes who may not receive athletic scholarships.

Congress enacted the NLRA in 1935 in reaction to large, violent strikes that preceded and punctuated the Great Depression and were adversely affecting the commerce of the United States. The NLRA presupposes management at loggerheads with labor, with competing economic interests best resolved by collective bargaining. The NLRA focuses on the economic interests of management and labor. The NLRB is not in a position to consider all of the collateral consequences of a decision that student-athletes receiving athletic scholarships should be treated as employees. If the federal government is to change the legal status of student-athletes, that judgment should be deliberated by the Congress, not announced by the NLRB.

Thank you for your consideration of these comments.

Sincerely,



Molly Corbett Broad
President