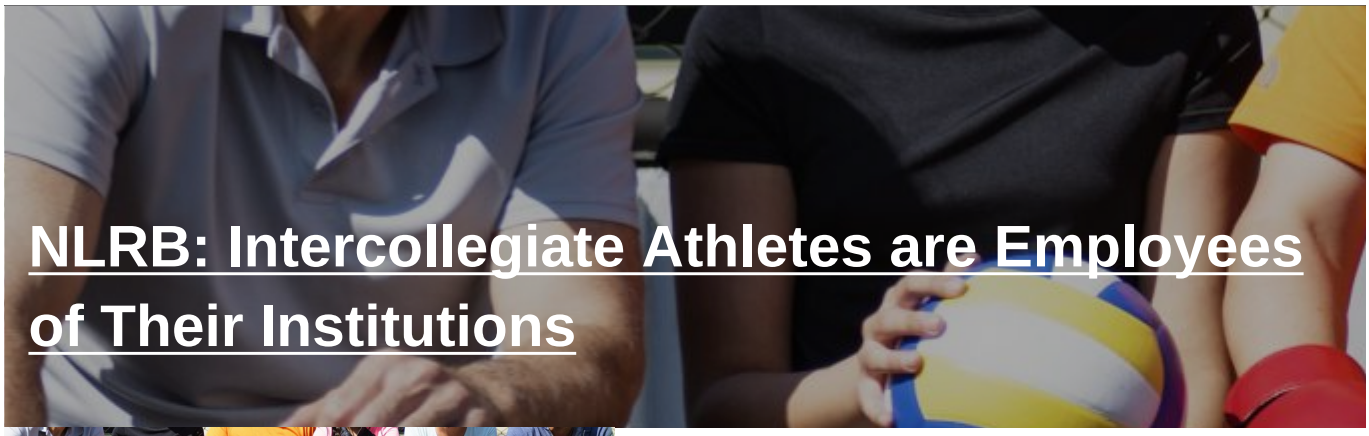
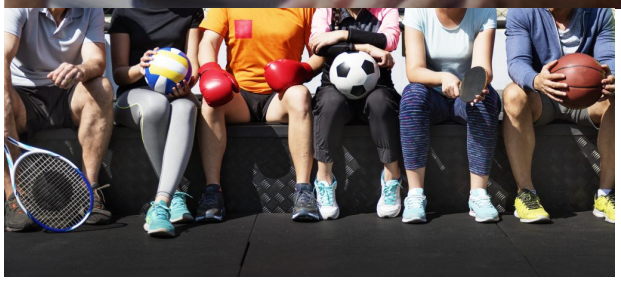


NLRB: Intercollegiate Athletes are Employees of Their Institutions



October 1, 2021

By Curry Sexton and Greg Whiston

The National Labor Relations Board's (NLRB) General Counsel, Jennifer Abruzzo, issued a memo on Wednesday explaining why she believes intercollegiate athletes are employees of their respective institutions and are, therefore, entitled to statutory rights consistent with employee recognition under the National Labor Relations Act (NLRA). Citing recent developments in intercollegiate athletics, including the United States Supreme Court decision in *National Collegiate Athletic Association v. Alston* and changes to NCAA policy regarding student-athletes' ability to receive compensation for their name, image, and likeness, Abruzzo stated, among other things:

"Players at Academic Institutions perform services for institutions in return for compensation and subject to their control. Thus, the broad language of Section 2(3) of the Act, the policies underlying the NLRA, Board law, and the common law fully support the conclusion that certain Players at Academic Institutions are statutory employees, who have the right to act collectively to improve their terms and conditions of employment."

Abruzzo further stated, "My intent in issuing this memo is to help educate the public, especially Players at Academic Institutions, colleges and universities, athletic conferences, and the NCAA, about the legal position that I will be taking regarding employee status and misclassification in appropriate cases."

This is not the first time the NLRB has taken this position or a similar position. For instance, in 2014, the NLRB said that football players at Northwestern University had the right to unionize and that they were employees of the school. In January 2017, then-general counsel, Richard Griffin, issued a memo offering an opinion similar to that of Abruzzo.

To be clear, Abruzzo's memo does not effectuate any immediate change. The NLRB only has jurisdiction over private employees, including private colleges and universities, and even then, Abruzzo, as general counsel, does not have a vote on matters that could alter precedent – the only votes belong to the five members of the NLRB. The NLRB does not have jurisdiction over public universities, which are governed by state labor laws and related agencies.

Although this memo will not result in any immediate changes for college athletes, it marks yet another development in the intercollegiate athletics landscape relating to the rights of college athletes, and universities and university administrators should be aware of this memo and any future developments on this subject.

Stay tuned for further development on this subject and other subjects affecting intercollegiate athletics.

This article is general in nature and does not constitute legal advice. The authors of this article, Curry Sexton and Greg Whiston, are members of Seigfreid Bingham's Sports and Entertainment Group and routinely represent clients in collegiate athletics. If you or your organization have questions about the impact of the NCAA's most recent announcement, please contact either author at 816-421-4460.