

Players union vote a secret, for now



By Eli M. Kantor

On April 25, Northwestern University football players cast a historic vote on whether to unionize. However, their ballots were sealed, and the result of the secret ballot election will not be known for months — possibly years. This is because the day before, the National Labor Relations Board granted Northwestern's request for review of the NLRB regional director's March 26 decision finding that the university's "grant-in-aid" scholarship football players are employees within the meaning of the National Labor Relations Act. Accordingly, the ballots will be impounded until the NLRB issues a decision affirming, modifying or reversing the regional director's decision, later this year.

It is widely expected that the NLRB will affirm the decision because three of its five members have strong union backgrounds. Thereafter, Northwestern may appeal the board's decision to the federal Court of Appeals.

Regardless of the ultimate result of the vote, the impact on the NCAA is already being felt. Thus, on April 24, the same day that the board granted Northwestern's request for review, the National Collegiate Athletic Association board of directors endorsed a restructuring of its governance model, which would shift to its member universities the authority to determine the amount of scholarships that they provide to student athletes and medical insurance to cover injuries.

These issues are key demands of the College Athletics Players Association. The union president,

Ramogi Huma, stated, "They're being forced to go in the right direction after fighting us for 13 years. This is not being done voluntarily. They're doing it because players are mobilizing and speaking up."

Northwestern conducted an aggressive anti-union campaign. The university distributed a 21-page document for the football team addressing key questions. It stated, "you can still express your desire to get back to being students by voting 'No.'" Northwestern Coach Pat Fitzgerald has campaigned against unionization, meeting with players individually and as a group. Position coaches also have met with players and their parents. Former Northwestern president Henry Bienen has even suggested that Northwestern would consider the elimination of Division I football before they would consider the idea of

bargaining with a players union. According to Huma, "they're looking at anything and everything to invoke fear in the players."

In the event that the board, as expected, upholds the regional director's decision that the football players are employees, the ballot box will be opened and the ballots counted.

If the union loses, they will probably file objections claiming that the "laboratory conditions" standard that the NLRB demands for elections were tainted by Northwestern threats made to the football players, and demand a new election.

If the union wins, it will demand to bargain with Northwestern over the terms and conditions of a collective bargaining agreement. Northwestern would probably refuse to bargain, sending the dispute to the Court of Appeals, a venue where the university has a

greater chance of success.

In the event that the NLRB agrees with Northwestern that the football players are not employees, and overturns the regional director's decision, then the votes would not be counted. That would be the end of the case.

In a related development, former UCLA basketball player Ed O'Bannon is leading an antitrust class action against the NCAA, which could strike down the NCAA's restrictions on the use of player names, images and likenesses and result in the redistribution of billions of dollars in media and video game revenues. While the case started with O'Bannon seeking compensation for the use of his avatar from Electronic Arts video games, EA has settled the case and it now is focusing on the revenues from broadcasts of games. It is set to go to trial June 9.

Regardless of the ultimate outcome of the Northwestern case, the structure of the economic model of college sports will be changed forever. The NCAA will be forced to loosen its control over college players. It has already given individual universities the autonomy to determine the amount of scholarships and the ability to

provide full medical coverage to student athletes. Ultimately, they may allow student athletes to receive compensation for endorsements, and for their appearances in game broadcasts, without losing their amateur status.

Eli M. Kantor has extensive experience as an attorney in private practice. He represents employers and employees in all aspects of labor, employment and immigration law. He can be reached at (310) 274-8216 or eli@elikantorlaw.com.

