

NLRB to Decide Whether Northwestern's Scholarship Football Players Are Students or Employees

April 24, 2014

By [C. Thomas Davis](#)

Late this afternoon, the National Labor Relations Board (NLRB) in Washington, D.C. granted the request for review (i.e., an appeal) filed by Northwestern University in the much-watched case involving the status of Northwestern's grant-in-aid scholarship football players. Northwestern is asking the NLRB to review and reverse the decision of the....

Late this afternoon, the National Labor Relations Board (NLRB) in Washington, D.C. granted the request for review (i.e., an appeal) filed by Northwestern University in the much-watched case involving the status of Northwestern's grant-in-aid scholarship football players. Northwestern is asking the NLRB to review and reverse [the decision of the regional director of the NLRB's Chicago office, finding that Northwestern's scholarship football players \(but not walk-ons\) are "employees" under the law and eligible to vote on the issue of union representation](#). While the order granting the request for review sheds no light on how the issue will ultimately be decided, the order found there to be "substantial issues warranting review." The order granting review was signed by three NLRB members (Members Hirozawa, Johnson, and Schiffer), but all five NLRB members are expected to participate in the ultimate decision.

What will happen now? First, a secret ballot election scheduled to take place between 6 a.m. and noon tomorrow, April 25, will take place. All players eligible to vote on the issue of union representation should cast a ballot during one of the two voting periods set for tomorrow. At the end of the second voting period, the ballot box will not be opened and the votes will not be counted, but rather will be "impounded." What that means is that the ballots will stay in the possession of the NLRB agent and will be opened and counted only if the NLRB ultimately affirms the decision that these student-athletes are employees under the National Labor Relations Act.

How quickly will the NLRB answer the question of whether student-athletes are employees? It is hard to predict. While the parties have already extensively briefed the issues, they will have the opportunity to do so again. Likewise, the Board is going to invite interested non-parties to file amicus briefs. The Board will issue a

briefing schedule shortly. While the Board may attempt to move this case along quickly, given the high-profile nature of the issues involved, a final decision from the NLRB is unlikely before mid-to-late summer.

If a majority of the NLRB ultimately finds that these students are also employees (either under the same theory or a different theory from the regional director's), the ballots will be counted and a result announced. If the NLRB majority reverses the regional director and finds the players are students, not employees, the ballots will never be opened.

AUTHOR



C. Thomas Davis

Shareholder, [Nashville](#)

TOPICS

[Higher Education](#), [Sports and Entertainment](#), [Traditional Labor Relations](#)