

NW Case

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SPORT AND SOCIETY FOR ARETE
April 6, 2014

For the first time an official body uttered words that did damage to the term "student athlete." About a week ago a ruling by the National Labor Relations Board defined a football player as an employee of a university. Football players, it concluded, are not primarily students.

It arrived at this startling conclusion on several grounds including the time devoted by a player to the sport, the control of nearly aspect of the lives of the players by coaches and the university, the massive income generated by the players for the university, and that the "scholarship" was clearly awarded for services rendered by the player. In addition the player was recruited primarily because of his athletic prowess.

In the ruling the regional director of the NLRB noted that the common law definition of an employee is "a person who performs services for another under a contract of hire, subject to the other's control or right of control, and in return for payment.

For those of us who have watched the growth of intercollegiate athletics, and in particular football and basketball, over the past few decades, we could only say, "It's about time!" The term "student athlete" was coined by the NCAA Director, Walter Byers, in the 1950s as a means to avoid liability payments to the wife of a football player at Ford Lewis A&M who was died from a head injury received in a football game. The court case turned on whether or not the football player was an employee of the university and therefore entitled to workman's compensation claims. With much at stake the NCAA, joined by several colleges and universities, fought the case on the grounds that this was simply a case of a student injury not the injury of an employee.

Ultimately the Supreme Court of Colorado agreed with the NCAA and the university ruling that the player was not an employee because the university "was not in the football business." One can only begin to guess the size of the mountain of cash this saved for the NCAA and universities over the years.

Because the term was so useful and indeed essential, the NCAA has used "student athlete" ever since, to blow smoke in every possible direction. Some in the NCAA and within the intercollegiate athletic community may actually have come to believe in the concept. Indeed the ruling of the NLRB is not likely to kill the term. This past week it continues to echo through the airwaves of CBS, TBS, and Westwood One. Only Charles Barkley at TBS suggested the term might have little relation to reality.

So will this case have any impact? The immediate result will be an election among the Northwestern football players to determine if they want to be represented by a union. Within hours of the decision university presidents, athletic directors, coaches, assistant coaches, alumni and players were issuing statements warning of the dangers of unions. The combination of self-interest and the general atmosphere on anti-unionism in America will produce a flood of anti-union comment across the intercollegiate spectrum.

Today, the head hypocrite at the NCAA, President Mark Emmert had this to say:

"To be perfectly frank, the notion of using a union employee model to address the challenges that do exist in intercollegiate athletics is something that strikes most people as a grossly inappropriate solution to the problems. . . . It would blow up everything about the collegiate model of athletics." A blow up of the model is precisely what is needed and would be more than appropriate.

In point of fact whether there is a union for football players at Northwestern is not a particularly important issue. The power of any such union would be minimal and its impact negligible.

What is significant is that a precedent has been set and that could have considerable ramifications down the road. The power of the term "student athlete" has been weakened and damaged by the fact that the NLRB has exposed the nature of the Emperor's clothing. It will be increasingly difficult for anyone, even within the NCAA, to use the term without either breaking into laughter or being ridiculed for using it.

What is most important is the fact that a serious discussion can now take place about the realities of intercollegiate athletics. A number of questions need answers. How should we regard those who participate in intercollegiate athletics, particularly those in the high profile, high revenue end of the system? What are the obligations of the NCAA to them? What are the obligations of their employer to them? How should the relationship between these employees, their employers, and the academic community be restructured?

With so much money being generated, how and for what should that money be spent? Given Title IX and its requirements are the university and the NCAA under an obligation to fully and equitably fund women's sports? And, what is the future of "non-revenue" sports in any redefinition of the employee-employer relationship.

This discussion needs to take place and whether it takes place with or without a union is not critical. What is critical is that a vehicle be found for the discussion to include a major role for the athlete-employees and not simply the NCAA, university officials, and television executives. Indeed any discussion should be conducted primarily by the employer and the representatives of the employees.

What is really at stake in this new world is how to redefine the intercollegiate athletic enterprise outside the outdated parameters of such archaic terms as "student athlete." Unless that happens, the continuing regime of corruption, decay, and commercial greed will render the entire enterprise a total and complete farce.

Unfortunately Mark Emmert continues to spout nonsense and remains part of the problem rather than part of the solution.

On Sport and Society this is Dick Crepeau reminding you that you don't have to be a good sport to be a bad loser.

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