

MARCH 21, 2024 | TRADITIONAL LABOR RELATIONS

Dartmouth Basketball Unionization and What's Next

By: Samuel Rose

As March Madness officially begins in college basketball, it seems like the perfect opportunity to discuss the recent unionization buzz amongst college basketball athletes.

Background

College athletes have attempted to unionize before. On March 26, 2014, the Regional Director of the Chicago District of the NLRB ruled that Northwestern University scholarship football players were employees under the National Labor Relations Act (the "Act") and directed an election to take place. The players held a secret election, the results of which remained under seal while Northwestern appealed the decision to the full Board. On August 17, 2015, the Board dismissed the players' petition, finding "that it [would] not effectuate the policies of the Act to assert jurisdiction in this case," predominantly because public universities are not subject to the Act. The Board never ruled on the merits of whether the players were employees.



Fast forward to February 5, 2024, the Regional Director of the Boston District of the NLRB ruled that men's college basketball players at Dartmouth College were employees under the Act, despite not receiving scholarships, and directed an election to take place. The Regional Director pointed to the fact that the NCAA has historically held a tight grip on the economic, operational, and on-field aspects of college athletics. Specifically, the Regional Director noted that players were not historically entitled to traditional forms of compensation because of the NCAA's rules and regulations.

Dartmouth filed a request with the Board to stay the election, which was denied. On March 5, 2024, in an election supervised by the NLRB, the Dartmouth men's basketball players overwhelmingly voted in favor of joining SEIU Local 560. Unlike the Northwestern vote, the NLRB denied Dartmouth's request to keep the votes secret. The vote was 13 in favor, 2 against.

On March 18, 2024, Dartmouth announced that it was refusing to enter collective bargaining negotiations with

SEIU Local 560.

What Happens Next?

While a union comprised of college athletes would be unprecedented, we are a long way from Dartmouth players becoming the first to do so.

Dartmouth likely will appeal the Regional Director's decision that the players are employees to the full Board. The Board could take the same position that it took in the Northwestern case and refuse to assert jurisdiction. That said, there are distinct differences between the Northwestern case and the Dartmouth case. First, the Northwestern case was limited to players who received scholarships. Dartmouth, part of the Ivy League, does not provide scholarships to its players. Second, Northwestern was the only private university in the Big Ten Conference. Dartmouth is in the Ivy League, which only has private universities. These differences provide an opening to the Board to issue a decision on the merits.

While Dartmouth pursues that appeal, it is widely expected that SEIU Local 560 will file an unfair labor charge with the NLRB as a result of Dartmouth's decision not to engage in collective bargaining negotiations. Dartmouth stated that it would appeal such a filing, which would send the case to federal court.

We will continue to follow this case as it progresses and will provide updates here as they occur.