

UPDATE: NLRB Regional Director Issues Complaint Against USC, Pac-12, and the NCAA

Labor Relations Update on May 20, 2023

On May 18, 2023, Region 31 of the National Labor Relations Board (“Board”) issued an unfair labor-practice complaint against USC, the PAC-12, and the NCAA for allegedly misclassifying college athletes as non-employees and suppressing their Section 7 rights under the National Labor Relations Act (“Act”).

While significant, this development comes as no surprise: As we covered [here](#), Region 31 issued a finding of merit in this case in December 2022, which under Board procedure, signals that complaint will issue if the parties cannot reach a settlement.

And before that, in September 2021 (as we also covered [here](#)), NLRB General Counsel Jennifer Abruzzo—who guides and oversees prosecutorial decisions across all Board Regions, including Region 31—issued a memorandum asserting that college athletes are employees under Section 2(3) of the Act; announcing that the Board would pursue unfair labor practice charges in appropriate cases against universities that fail to classify student athletes as employees under the Act; and instructing the Regions to submit all cases involving the misclassification of college athletes to the Board’s Division of Advice (enabling GC Abruzzo and her office to help shape policy on this issue).

The charges at issue here were initially filed in February 2022 by the National College Players Association (“NCPA”), a nonprofit advocacy organization, which claimed that USC—along with alleged joint employers, the PAC-12 and the NCAA—misclassified college athletes as “non-employees,” and suppressed their Section 7 rights under the Act, including the right to speak about compensation and working conditions. A Board determination that college athletes are employees could lead to a renewed effort by college athletes to organize and join a labor union for purposes of collective bargaining, as well as expose universities to potential liability under the Act for conduct engaged in vis-à-vis college athletes.

A critical component of Region 31's complaint is its allegation that the PAC-12 and NCAA—the athletic conference and governing body of which USC is a member—are, along with the university, joint employers of college athletes at USC. Indeed, a determination that PAC-12 and the NCAA are joint employers of college athletes not only could subject both entities to potential liability under the Act (both at USC and other universities) but also could establish a possible legal basis for college athletes to seek to collectively bargain at the conference (or NCAA) level—setting up a potential end-run vis-à-vis the Act's coverage-exemption for public-sector employers, such as public/state universities.

The next major step will be a hearing before an ALJ, scheduled for November 7, 2023. If filed, an appeal would be heard by the Board, then to the U.S. Circuit Court of Appeals, and lastly to the U.S. Supreme Court.

We will continue to monitor and provide updates to this and other cases addressing the status of college athletes.

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