

# Electronic Alert

Volume 27, Issue 6

February 20, 2024

---

## **NLRB Regional Director Rules that Dartmouth Basketball Players are Employees**

By Nicole Elgin & Natalie Pattison

On February 5, 2024, the National Labor Relations Board (NLRB) Regional Director for Region 01, issued a decision that Dartmouth College's men's basketball players are employees under the National Labor Relations Act (NLRA) and may vote to unionize (a vote which could make them the first unionized NCAA athletes).

### **Dartmouth Basketball Players are Employees**

The Regional Director concluded the Dartmouth men's basketball players are employees under the NLRA based primarily on the following:

- A. The basketball players perform work that benefits Dartmouth, regardless of whether the basketball program is profitable;
- B. Dartmouth has the right to control the work performed by the men's varsity basketball team; and
- C. The basketball players perform that work in exchange for compensation.

Compensation: Although the players do not receive athletic scholarships, the Regional Director concluded that they still received compensation in other ways, including equipment and apparel (e.g., basketball shoes), tickets to games, lodging, meals, the benefits of Dartmouth's Peak Performance program, and other fringe benefit payments such as academic support, career development, sports and counseling psychology, sports nutrition, leadership and mental performance training, strength and conditioning training, sports medicine, and integrative health and wellness. According to the Regional Director, another form of compensation is the benefit of "early read" for admission prior to graduating high school.

### **Vote to Unionize Scheduled**

Upon determining that the basketball players are employees within the meaning of the NLRA, the Regional Director issued a direction of election to allow the approximately fifteen students who comprise the men's basketball team to vote on whether to be represented by Service Employees International Union (SEIU), Local 560.

A vote to unionize is scheduled for March 5, 2024.

### **Appeal of Decision Likely**

Dartmouth is reportedly appealing the decision to the NLRB in D.C. The NLRB previously addressed student-athletes at private universities in a 2015 case involving Northwestern University, but ultimately declined to exercise jurisdiction over the football players seeking to unionize.

**Other Proceedings & Proposals Pending**

The overarching question in this case is a familiar one: are student-athletes employees? Although the NLRA does not apply to public employers, the *Dartmouth* ruling is just the latest development in a wave of various proposals and proceedings that could require colleges and universities to convert their student-athletes to employee status. (See our previous [E-Alert](#) for more details on one of those proposals: the *College Athlete Right to Organize Act*).

*For questions, contact Natalie Pattison at 503-276-2104 or [npattison@barran.com](mailto:npattison@barran.com), or Nicole Elgin at 503-276-2109 or [nelgin@barran.com](mailto:nelgin@barran.com).*