

# COLLEGIATE SPORTS / HIGHER EDUCATION INFORMATION MEMO

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## **NLRB Asserts Employment Protections for Student-Athletes and Seeks to Hold the University of Southern California, Pac-12 Conference and NCAA Liable**

The National Labor Relations Board (NLRB) General Counsel has issued a complaint against the University of Southern California (USC), the Pac-12 Conference and the NCAA claiming that certain USC student-athletes are employees under the National Labor Relations Act (NLRA), and that the conference and the NCAA, along with the university, can be held jointly responsible employers for the treatment of those students under the law. This NLRB litigation portends fundamental consequences for private college and university athletic programs.

While, in a 2015 decision involving Northwestern University, the NLRB declined to take jurisdiction over those student-athletes, more recently the current NLRB General Counsel, Jennifer Abruzzo, advocated for a reconsideration of the employment status of student-athletes at private educational institutions and opined that [the use of term “student-athlete” itself was unlawful](#).

The General Counsel has now acted on this theory. Last week, the NLRB’s Regional Director in Los Angeles found merit to an unfair labor practice charge filed by the National College Players Association (NCPA) against USC, the Pac-12 Conference and the NCAA. In its complaint, the NLRB alleges that USC’s men’s and women’s basketball and football athletes are employees under the NLRA. According to the complaint, referring to these employees as “student-athletes” is unlawful because it is a misclassification of their status that misleads them to believe that they are not employees, and has a chilling effect on their lawful protected activity. The complaint against USC also alleges, [under the NLRB’s joint employer analysis](#), that the Pac-12 conference and the NCAA have sufficient control over the employee-athletes’ terms and conditions of “employment” that they should be bound to the NLRB’s determination that these athletes are employees and held liable for any violations of the NLRA.

The USC case will now proceed to hearing before an administrative law judge. While the ultimate decision by the NLRB on these issues is well into the future, there is no doubt that the General Counsel intends to aggressively support efforts at USC and other colleges and universities to unionize student-athletes, facilitate subsequent collective bargaining, and defend individual students who engage in protected conduct. In her statement issued in support of the USC complaint, General Counsel Abruzzo stated that USC’s “misclassification deprives these players of their statutory right to organize and to join together to improve their working/playing conditions if they wish to do so,” and highlighted that the NLRB’s aim “is to ensure that these players can fully and freely exercise their rights.”

Those with questions about the NLRB's enforcement actions or other aspects of the evolving college athletics landscape should reach out to [Pete Jones](#), [Rick Evrard](#), [Tom Eron](#), or to any member of Bond's [higher education](#) or [collegiate sports](#) practice groups.

*\*Special thanks to Associate Trainee Paige Carey for assisting with researching and drafting this memo.*

