

NLRB

Board Members Defend Punting on College Athlete Union Question

BNA Snapshot

- NLRB was right to avoid deciding whether student athletes are employees for bargaining purposes, two board members say
- Acting chairman says issue still gaining attention, may be addressed elsewhere



By Chris Opfer

The National Labor Relations Board rightly declined to decide whether Northwestern University football players have the right to unionize, a bipartisan pair of board members said March 27, discussing a controversial case from two years ago.

The board in 2015 avoided the hot-button question of whether college athletes should be considered employees empowered to collectively bargain. Instead, it ruled in a unanimous decision that allowing the players to unionize wouldn't serve the purposes of federal labor law

because the National Collegiate Athletic Association, rather than the university, exercises substantial control over players and the public schools that make up the majority of college football's highest level are not covered by the law.

"Asserting jurisdiction over a single team in this case would have likely had ramifications for those other teams' members," NLRB member Mark Gaston Pearce (D) said during remarks at the City University of New York. "Our assertion of jurisdiction over a single team under those conditions would be more of a destabilizing influence, and we are about bringing stability to the situation."

Philip A. Miscimarra (R), the NLRB's acting chairman, added that the "NLRB is not the only entity that passes on these issues."

"I think the prominence of that question is certainly higher now that it was then, but we're certainly not the only place where that issue can be addressed," Miscimarra said. "Over the past two or three years since Northwestern was decided, we've seen those same issues or similar issues that have arisen in other forums."

To contact the reporter on this story: Chris Opfer in New York at copfer@bna.com

To contact the editors responsible for this story: Peggy Aulino at maulino@bna.com; Terence Hyland at thyland@bna.com