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Adam Epstein

Paul M. Anderson

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ARTICLES

THE RELATIONSHIP BETWEEN A COLLEGIATE STUDENT-ATHLETE AND THE UNIVERSITY: AN HISTORICAL AND LEGAL PERSPECTIVE

ADAM EPSTEIN* & PAUL M. ANDERSON**

INTRODUCTION

This article discusses the contractual relationship between the student-athlete and the universities that they attend among the more than 1,200 members of the National Collegiate Athletic Association (NCAA), in this case specifically those universities at the Division I level.¹ In fact, when high school athletes are recruited by college coaches and commit to the school on signing day, they sign a contract with the university known as a National Letter of Intent in exchange for an athletic scholarship, binding the school and the student-athlete to a one to five year contract.

This contractual relationship has been well established for decades, as courts have consistently found that when a student-athlete enters into a contractual relationship with the university that they attend, they are provided with an athletic scholarship in the form of a grant-in-aid that supports tuition, room and board, and books, in exchange for the athlete's promise to remain eligible to participate in athletics. However, in addition to this basic contractual relationship, there are many other facets of the relationship between a student-athlete and their college or university.

THE COLLEGIATE MODEL AND AMATEURISM

The collegiate model of NCAA level sports is grounded on the NCAA's

* J.D., M.B.A., Professor of Legal Studies, Department of Finance and Law, Central Michigan University.

** B.A. Philosophy and Economics, 1991, J.D. 1995, Marquette University. Director, and Adjunct Professor, Sports Law program and National Sports Law Institute of Marquette University Law School. Professor Anderson has taught courses on amateur athletics and specifically collegiate athletics for the past two decades.

1. National Collegiate Athletic Association, *Membership*, <http://www.ncaa.org/about/who-we-are/membership>

Fundamental Policy that “intercollegiate athletics [is]. . . an integral part of the educational program and the athlete [is]. . . an integral part of the student body and, by doing so, retain a clear line of demarcation between intercollegiate athletics and professional sports.”² Within this collegiate model, student-athletes are considered to be amateurs,³ and as such can only receive grants-in-aid (i.e., athletic scholarships) to help pay for their college education while competing in college sports. If student-athletes are paid to play, they are no longer amateurs under NCAA rules and are ineligible to compete in varsity athletic competition.⁴ This notion of amateurism has come to be known as the amateurism defense supported by courts in challenges to the NCAA and its bylaws, in many ways starting back in 1984 when the United States Supreme Court said that in order to maintain collegiate athletics, “athletes must not be paid.”⁵

PARTICIPATION IN SPORT: PRIVILEGE V. RIGHT

Even though the NCAA and its member schools have worked under the amateurism framework for years, student-athletes who lose the opportunity to participate continue to claim that the decisions by administrators, coaches and others are a violation of their rights. There have been a variety of legal claims, mostly losses, in which courts have essentially held that students do not have a legal right to play college sports, instead, participation is viewed as merely a privilege by courts and therefore when the student-athlete alleges wrong-doing on the part of the institution, the school usually wins. As the court stated in *NCAA v. Yeo*, “students do not possess a constitutionally protected interest in their participation in extracurricular activities.”⁶ Instead participation in athletics is a mere privilege governed by the promises made by the student-athlete (to remain academically and physically eligible), and the school (to provide financial aid and the opportunity to participate in athletics), within the athletic scholarship.

Examples of claims by current or former student-athletes against their institutions begin with Kevin Ross, a star basketball player who left his school (Creighton University) in 1982 allegedly possessing the language skills of a

2. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2015-2016 NCAA DIVISION I MANUAL art. 1.3 (effective Oct. 1, 2015).

3. *Id.* art. 2.9; Adam Epstein & Paul Anderson, *Utilization of the NCAA Manual as a Teaching Tool*, 26 J. LEG. STUDIES EDUC. 109 (2009).

4. Josephine Potuto, William Lyons & Kevin Rask, *What's in a Name? The Collegiate Mark, the Collegiate Model, and the Treatment of Student-Athletes*, 92 OR. L. REV. 879, 882 (2014).

5. *NCAA v. Bd. of Regents*, 468 U.S. 85, 102 (1984).

6. *NCAA v. Yeo*, 171 S.W.3d 863, 865 (Tex. 2005).

fourth grader and the reading skills of a seventh grader. He sued the school for failing to give him a meaningful education, including the failure to provide tutoring. The court held that his claim was an illegitimate “educational malpractice claim” re-packaged as a contract claim.⁷ The court also reminded the parties that the “basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract.”⁸

Other claims by student-athletes that have failed include a claim brought by wrestler Jeremy Hart who claimed that Appalachian State University took away his right to participate when it did not give him the chance to compete.⁹ In a case decided in 2001, the court held that he did not have a constitutional right to play college sports and so he could bring no claim against the university.¹⁰

Student-athletes also have no claim against the school even if the school’s own error led to their ineligibility. College baseball player R.J. Hendricks transferred to Clemson University and met with an academic advisor who gave him bad advice that led to his inability to meet the NCAA’s academic progress rules. As a result, Hendricks was ineligible and never played baseball at Clemson. Hendricks sued claiming that the advisor’s error’s breached the contract he had with the university and its duties to him under that contract.¹¹ In a 2003 decision the court disagreed finding that the claim that the university assumed a duty to provide proper academic advising was similar to the educational malpractice claim rejected in other cases, and that the nothing in his contract with the university ensured he would maintain his academic eligibility.¹²

Most recently, on January 21, 2015 two former University of North Carolina Chapel Hill (UNC) student-athletes, Rashanda McCants and Devon Ramsay, filed a lawsuit against both UNC and the NCAA alleging that they represent hundreds of thousands of student-athletes across the nation who were promised an education in return for generating millions of dollars in revenue each year, yet received an inferior educational environment.¹³ The NCAA is accused of being aware that some of its member institutions knew they were committing academic fraud by promising educational opportunities to student-athletes, but that they failed to implement adequate monitoring

7. *Ross v. Creighton Univ.*, 57 F.2d 410 (7th Cir. 1992).

8. *Id.* at 416.

9. *Hart v. NCAA*, 209 W. Va. 543 (Ct. App. W.Va. 2001).

10. *Id.* at 549–50.

11. *Hendricks v. Clemson Univ.*, 578 S.E.2d 711 (S.C. 2003).

12. *Id.* at 717.

13. *McCants v. NCAA*, Class Action Complaint, Jury Trial Demand, 15 CVS 1782 (Super. Ct. NC, Jan. 22, 2015).

systems to prevent such fraud from occurring. Specifically, the lawsuit takes aim at “the NCAA and UNC’s abject failure to safeguard and provide a meaningful education to [scholarship] athletes who agreed to attend UNC—and take the field—in exchange for academically sound instruction.”¹⁴ Based on the precedent so far related to advising and educational malpractice claims, it remains to be seen whether or not this claim will be successful.

Although still the subject of claims against schools and the NCAA, in the end, “[s]tudent-athletes are not entitled to participate in collegiate athletics; it is a privilege (with many benefits) to participate.”¹⁵

SPECIAL RELATIONSHIP AND DUTY OF CARE

The discussion between participation privilege, right, and allegations of negligence continues as other courts have made clear that universities do enter into more than just a contractual relationship, especially in relation to their recruited student-athletes. Since the early 1990s courts have found that a special relationship exists between a college and a recruited student-athlete based on the nature of the college’s efforts in bringing that specific student to campus with a promise to provide him or her with an athletic scholarship.

The case that began this notion of a special relationship involved a lacrosse player who was injured on the practice field and died because emergency services did not get to him in time. The player’s estate sued the university claiming that it had a duty to provide proper care to him because the university specifically recruited him to play lacrosse and he died during a scheduled athletic practice.¹⁶ The court agreed in 1993, finding that a special relationship existed and that the university owed him a duty of care as an intercollegiate athlete.¹⁷ Although some courts have not agreed that there is this special relationship between a university and a recruited student-athlete leading to a duty of care,¹⁸ the majority of courts have found that this special relationship leads to a duty for schools to give adequate instruction in athletic activity, supply proper equipment, make a reasonable selection or matching of participants, provide non-negligent supervision of the particular contest, and take proper post-injury procedures to protect against aggravation of the injury.

At times student-athletes have attempted to use this special relationship in claims against a university when it tries to protect the student-athlete from harm

14. *Id.* at 1–2.

15. Barbara Osborne, *The Myth of the Exploited Student-Athlete*, 7 J. INTERCOLLEGIATE SPORT 143, 145 (2014).

16. *Kleinknecht v. Gettysburg Coll.*, 989 F.2d 1360 (3rd Cir. 1993).

17. *Id.* at 1372.

18. *Orr v. Brigham Young Univ.*, 1997 U.S. App. LEXIS 6083 (10th Cir. 1997).

by barring him or her from participation. Nicholas Knapp was recruited by Northwestern University to play basketball but before enrolling he suffered cardiac arrest during a high school pick-up basketball game. Although he recovered, the university would not allow him to participate in basketball, although it continued to honor his scholarship. In fact, the NCAA eventually held that he was permanently medically ineligible and he sued claiming violations of various disability laws.¹⁹ In 1996, the court agreed with the university and found that based on the special relationship between Knapp and Northwestern, the university had a duty to protect him and other student-athletes when the chances of harm are reasonably evident.²⁰

COST OF ATTENDANCE SCHOLARSHIPS, AND THE EVOLVING CONTRACTUAL RELATIONSHIP

The athletic scholarship agreement itself is the starting point for an understanding of the relationship between a university and its student-athletes as courts have repeatedly found that “it is well established in law that the relationship between a student and a college is contractual in nature.”²¹ Student-athletes enter into a direct contractual relationship with their schools, not the NCAA, and instead are merely third party beneficiaries of the contractual relationships between the NCAA and its members.²² In addition, although the media often portrays schools as pulling scholarships away from student-athletes, typical claims that reach the courts focus on student-athletes who do not hold up their end of the bargain and so in effect breach the contract themselves.

An early example of this type of situation involved Gregg Taylor, a football player at Wake Forest University. Unable to maintain Wake Forest’s grade point average, Taylor stopped participating in practices and other football activities after his freshman year. Even though he refused to participate in football activities, the university continued to provide Taylor with a scholarship until after the end of his sophomore year. Finding that under his contract with the school Taylor was required to maintain both his academic and physical eligibility, and that refusing to participate in football activities showed he did not maintain his physical eligibility, the court found that “he was not complying with his contractual obligations.”²³

On the university side of the agreement, since the 1970s, NCAA

19. Knapp v. Northwestern Univ., 101 F.3d 473 (7th Cir. 1996).

20. *Id.* at 476.

21. Barile v. Univ. of Virginia, 2 Ohio App. 3d 233, 238 (Ohio Ct. App. 1981).

22. Bloom v. NCAA, 93 P.3d 621 (Ct. App. Colo. 2004).

23. Taylor v. Wake Forest Univ., 16 N.C. App. 117, 121 (Ct. App. N.C. 1972).

regulations have limited the amount of support Division I student-athletes can receive within their athletic scholarship to the “cost of attendance.”²⁴ Defined by each individual institution, this amount includes “the total cost of tuition and fees, room and board, books and supplies, transportation, and other expenses related to attendance at the institution.”²⁵ Although this definition has fluctuated over the years, this specific wording has been used since 1994. The actual cost of attendance then fluctuates at each school each year.²⁶ Universities cannot unilaterally modify a scholarship they had agreed to provide to a student-athlete during the term of that contract. Many of the cases focusing on the nature of the relationship between a university and a student-athlete similarly focus on this contractual relationship.

Although much of the discussion on collegiate athletics at present is on this cost of attendance limit, the NCAA did try to pass legislation in 2011 increasing the amount of money available to student-athletes as part of their athletic scholarships. This proposal was defeated by NCAA member schools who argued that they could not afford to increase their grants in aid to this amount at that time.²⁷

The cost of attendance limitation has been the subject of numerous legal claims over the years, but the most well-known litigation started in 2009 and involved former UCLA basketball player Ed O’Bannon. Although focused mainly on antitrust claims related to the use of student-athlete names, images and likenesses in video games, in 2014, federal Judge Claudia Wilken ruled that the NCAA violated antitrust laws and could not stop member schools from depositing revenues from the use of student-athlete’s names and likenesses into a trust account for the student-athlete at an amount no lower than \$5,000.²⁸

On appeal in the fall of 2015, the United States Court of Appeals for the Ninth Circuit, affirmed Judge Wilkens’ decision that NCAA rules barring compensation to student-athletes were subject to antitrust scrutiny, however, the appellate court reversed the decision allowing student-athletes to receive compensation unrelated to their educational expenses.²⁹ The court noted that the district court’s decision to allow for payments to student athletes “ignore[s]

24. NCAA, *supra* note 2, at art. 15.1.

25. *Id.* art. 15.02.2.

26. For examples of cost attendance at select universities, see Marquette Central, *Cost of attendance*, http://www.marquette.edu/mucentral/financialaid/resources_ugrad_coa.shtml (last visited December 1, 2015); Central Michigan University, *Scholarships and Financial Aid, CMU Cost of Attendance*, https://www.cmich.edu/ess/OSFA/Pages/Cost_of_Attendance.aspx (last visited December 1, 2015).

27. NCAA *Shelves \$2,000 Athlete Stipend*, ASSOCIATED PRESS (Dec. 16, 2011), http://espn.go.com/college-sports/story/_/id/7357868/ncaa-puts-2000-stipend-athletes-hold.

28. O’Bannon v. NCAA, 7 F. Supp. 3d 955, 1008 (N.D. Cal. 2014).

29. O’Bannon v. NCAA, 802 F.3d 1049, 1053 (9th Cir. 2015).

that not paying student-athletes is *precisely what makes them amateurs*.³⁰ Reinforcing the many decisions in support of the NCAA's amateurism model, the court vacated the district court's permanent injunction and requirement that the NCAA allow schools to pay student-athletes deferred compensation.³¹

The actual impact of this decision remains to be seen as several conferences have already moved to pay student athletes more than the amounts in dispute in the *O'Bannon* litigation. In January of 2015, the newly named Power 5 conferences (the Atlantic Coast (ACC), Big 12, Big Ten, Pacific-12 (PAC 12) and Southeastern (SEC) conferences) voted to redefine the amount that could be provided to student-athletes so that it would now include incidental costs associated with attending college such as transportation and miscellaneous personal expenses.³² Now a rule that conferences and individual schools can all follow,³³ several other non-Power 5 conferences, including the Mid-American Conference, the Horizon League, and the Big South, and some schools, such as the College of Charleston and Towson State soon adopted this rule agreeing to provide their athletes with aid up to the cost of attendance.

At the same time that the amount of money a student-athlete can receive as a part of his or her athletic scholarship has increased, the actual length of that scholarship has changed as well. Until 2011, although there was some variation by conference, athletics scholarships were only provided as one-year renewal contracts. In other words, a student-athlete had to sign a new scholarship contract each year, and often allegations were made that if coaches did not think the student-athlete performed at a certain level, or the coach left the university and the new coach did not want the student-athlete on the team, then the university would not offer the student-athlete a new scholarship.³⁴ Although perfectly legal, as the contracts only lasted one year and then had to be offered once again by the university the next year, advocates consistently pushed to have longer term contracts offered. This change occurred in 2011 when NCAA rules for the period of the award changed to allow universities to provide student-athletes with scholarships with up to five year terms.³⁵

30. *Id.* at 1076 (emphasis in original).

31. *Id.* at 1079.

32. Steve Berkowitz, *NCAA Increases Value of Scholarships in Historic Vote*, USA TODAY (Jan. 17, 2015.), <http://www.usatoday.com/story/sports/college/2015/01/17/ncaa-convention-cost-of-attendance-student-athletes-scholarships/21921073/>.

33. NCAA, *supra* note 2, art. 5.3.2.1.2.2.

34. See, e.g., Josh Levin, *The Most Evil Thing about College Sports*, SLATE (May 17, 2012), http://www.slate.com/articles/sports/sports_nut/2012/05/ncaa_scholarship_rules_it_s_morally_indefensible_that_athletic_scholarships_can_be_yanked_after_one_year_for_any_reason_.html

35. NCAA, *supra* note 2, at art. 15.02.7.

ARE STUDENT-ATHLETES EMPLOYEES?

Although the amount of scholarship aid that student-athletes can receive continues to evolve, courts have typically found that the scholarship itself is a form of pay, and this had led to many criticisms and legal challenges claiming that student-athletes are actually employees of the university and should be receive benefits similar to any other employee. For the past sixty years this issue has come up most often in workers compensation claims nationwide.

Student-athletes have sought state worker's compensation benefits due to temporary or permanent physical injuries, but courts for the most part have not been open to such claims. Because the student-athlete must first be found to be an employee in order to recover worker's compensation benefits, the relationship between the student-athlete and university has been scrutinized in this employment context as well. The majority of courts have found that student-athletes are not covered employees under worker's compensation statutes.

For example, in one of the earliest decisions on this issue in Colorado, a court denied workers' compensation benefits to the widow of Fort Lewis A&M player Ray Dennison who was killed in 1955 after an injury suffered during a football game against Trinidad Junior College, finding no existence of a contractual obligation to play football between the decedent and the university. This, then, disqualified a claim for compensation.³⁶

Three other well-known and more recent football related decisions combined to help secure that student-athletes were not entitled to worker's compensation. In *Rensing*, the Indiana Supreme Court found no evidence of an employer-employee relationship.³⁷ In *Coleman*, the Michigan Court of Appeals opined that there was no employment contract between the university and the student-athlete.³⁸ Finally in *Waldrep*, the Texas Court of Appeals emphasized that there that there was no intent on the part of Texas Christian University (TCU) or football player Kent Waldrep that his scholarship should constitute payment for his football services, thereby not creating an employer-employee relationship that would fall under worker's compensation statutes.³⁹

The few cases that have found employment within the workers' compensation context have done so because, in addition to their involvement in athletics, the student-athlete was separately employed by the university. For example, in a different case in Colorado, the court found that Ernest Nemeth, a

36. State Comp. Ins. Fund v. Indus. Accident Comm'n, 314 P. 2d 288 (Colo. 1957).

37. *Rensing v. Ind. St. Univ. Bd. of Tr.'s*, 444 N.E. 2d 1170 (Ind. 1983).

38. *Coleman v. Western Mich. Univ.*, 336 N.W. 2d 224, 228 (Mich. Ct. App. 1983).

39. *Waldrep v. Texas Emp'rs Ins. Assn.*, 21 S.W.3d 692 (Tex. App. 2000).

college football player who had also been employed and compensated by the university in various capacities in exchange for his participation on the football team, qualified for workers' compensation after sustaining injuries during a football practice.⁴⁰

Though student-athletes are not entitled to receive workers compensation, the NCAA has established an insurance plan covering every student who participates in college sports, including managers, trainers, and cheerleaders. In 1990, the NCAA established the *Exceptional Student-Athlete Disability Insurance* program (ESDI) program which protects student-athletes in football, men's and women's basketball, baseball, and ice hockey who, based upon their athletic talents, are projected by the professional leagues to be potential first-round draftees.⁴¹ Today, this program affords insurance in the event a student-athlete is injured, but such aid is not a state-sponsored workers' compensation program.⁴²

Although not in the workers compensation or insurance context, in 2014 the Chicago district (Region 13) of the National Labor Relations Board (NLRB) ruled that Northwestern University's scholarship football players were employees of Northwestern University under the National Labor Relations Act (NLRA) and could unionize and bargain collectively.⁴³ This initial NLRB decision rendered and authored by Regional Director Peter Sung Ohr concluded that Northwestern football players receive the substantial economic benefit of scholarship money in exchange for performing football-related services under what amounts to a contract for hire.⁴⁴ Of particular interest to Ohr was the amount of control exerted over the student-athletes daily lives, and that the year-to-year athletic scholarship could be revoked for any reason.⁴⁵

Ohr's potentially groundbreaking decision seemed contrary to a long line of NLRB decisions, such as the 2004 *Brown University* decision, holding that student graduate research assistants were not university employees eligible for union representation, because their activities were primarily educational.⁴⁶ Breaking from this tradition, Ohr found that the Northwestern University

40. *Univ. of Denver v. Nemeth*, 257 P. 2d. 423 (Colo. 1953); see also Adam Epstein, *Surveying Colorado Sports Law*, 2 ROCKY MOUNTAIN L.J. 4–8 (2013) (discussing the *State Compensation Insurance Fund* and *Nemeth* cases).

41. NCAA, *Student-Athlete Insurance Programs*, <http://www.ncaa.org/about/resources/insurance/student-athlete-insurance-programs>.

42. ADAM EPSTEIN, *SPORTS LAW* 132–33 (2013).

43. *Northwestern Univ.*, Case 13-RC-121359 (N.L.R.B Region 13, Mar. 16, 2014).

44. *Id.* at 14.

45. *Id.* at 16.

46. *Brown Univ.*, 342 NLRB 483, 483 (2004).

football players' activities were primarily economic.⁴⁷

Perhaps fearing the impact of this decision, the states of Michigan and Ohio soon drafted, passed and implemented laws barring student-athletes from the right to unionize at all.⁴⁸

Although the Northwestern football players did vote on whether to unionize, the results of their vote were not made public as the decision was immediately appealed and eventually dismissed in 2015.⁴⁹ On appeal the Board noted that even if it were to find that scholarship student-athletes were employees, "it would not effectuate the policies of the Act to assert jurisdiction," because, due to the nature of NCAA Division I Football Bowl Subdivision (FBS) football and the fact that there are so few private universities who are members, "it would not promote stability in labor relations to assert jurisdiction in this case."⁵⁰ In other words, where the Board strives to assert jurisdiction to "promote uniformity and stability," deciding that only football players at the 17 private universities who are part of the 125 member FBS football division were employees would "not have that effect because the Board cannot regulate most FBS teams."⁵¹ As a result, to date, student-athletes have not been found to be employees under the NRLA.

Most recently, Samantha Sackos, a former soccer player at the University of Houston, filed a complaint in the U.S. District Court for the Southern District of Indiana.⁵² The suit alleges that the NCAA and its Division I member schools violated the Fair Labor Standards Act (FLSA) by failing to pay college athletes for hours worked while practicing and playing college sports.⁵³ The complaint asserts that student-athletes meet the criteria for being characterized as temporary employees of NCAA Division I schools under the FLSA.⁵⁴ Several public universities have been dismissed from this litigation due to the potential that as state actors they may be immune from FLSA liability,⁵⁵ and Samantha Sackos resigned from the case and former University

47. *Northwestern Univ.*, Case 13-RC-121359.

48. Student's not employee's based upon athletic participation, Ohio Rev. Code §3345.56 (2015); Definitions; rights of public employees, Mich. Comp. Laws 423.201 (1(e(iii))) (2015).

49. *Northwestern Univ.*, 362 NLRB No. 167 (Aug. 17, 2015).

50. *Id.* at 3.

51. *Id.* at 5.

52. *Sackos v. NCAA*, Complaint and Jury Demand, Civil Action No. 1:14-CV-1710 WTL-MJD (S.D. Ind. 2014).

53. *Id.* at 23–24.

54. *Id.* at 10.

55. See *Berger v. NCAA*, Cover Letter to Amended Complaint, Civil Action No. 1:14-CV-1710 WTL-MJD (S.D. Ind. March, 18, 2015), & *Berger v. NCAA*, Notice of Voluntary Dismissal of Certain Defendants, Civil Action No. 1:14-CV-1710 WTL-MJD (S.D. Ind. March 19, 2015).

of Pennsylvania Women's Track and Field athletes Gillian Berger, Lauren Anderson, and Taylor Henning became the named plaintiffs in the lawsuit.⁵⁶ In the fall of 2015, plaintiffs asked the court to certify a class and invite potential class members to join the dispute.⁵⁷

On February of 2016, the court denied the motion to certify a class and only allowed the plaintiffs to bring their lawsuit against the University of Pennsylvania where each had participated.⁵⁸ The court noted that the "students at Penn who choose to participate in sports – whether NCAA sports, club sports, or intramural sports – as part of their educational experience do so because they view it as beneficial to them," and that "the existence of thousands of unpaid college athletes on college campuses each year is not a secret and yet the Department of Labor has not taken any action to apply the FLSA to them."⁵⁹ As a result the court found that "the fact that the Plaintiffs participate in an NCAA athletic team at Penn does not make them employees of Penn for FLSA purposes."⁶⁰

Although litigation over the issue has continued, the courts have been consistent finding that student-athletes are not recognized as employees under any legal standard, whether bringing claims under workers' compensation laws, the NLRA or FLSA.

THE FUTURE OF STUDENT-ATHLETE RIGHTS AND WELL-BEING

Concerns over the relationship between student-athletes and their colleges and universities, and the overall well-being of student-athletes is a contemporary issue in these changing times. Given the advent of social media such as Twitter, Instagram, and Facebook, concerns and opinions are easily expressed by those involved and by the world-at-large over the role of college sports in higher education and the welfare of the student-athlete. For example, former University of Illinois offensive lineman Simon Cvijanovic lashed out at his former coach on Twitter alleging mistreatment after he sustained injuries.⁶¹ The university investigated the allegations and within three months fired coach Tim Beckman for mishandling student-athlete injuries.⁶² Announcing his

56. *Berger v. NCAA*, Cover Letter to Amended Complaint, Civil Action No. 1:14-CV-1710 WTL-MJD.

57. *Anderson v. NCAA*, Civil Action No. 1:14-CV-1710 WTL-MJD (S.D. Ind. Sept. 8, 2015).

58. *Berger v. NCAA*, 2016 U.S. Dist. LEXIS 18194, *18 (2016).

59. *Id.* at *39-40.

60. *Id.* at *42-43.

61. Ellen Staurowsky, *The Case of Former University of Illinois Football Player Simon Cvijanovic Points To Need for Independent Players' Association*, HUFFINGTON POST (May 18, 2015), http://www.huffingtonpost.com/ellen-j-staurowsky/the-case-of-former-univer_b_7302500.html,.

62. Shannon Ryan & Jodi S. Cohen, *Illinois Fires Football Coach Tim Beckman Over Mishandling*

decision, athletic director Mike Thomas noted that it “was based on the health and well-being of our student-athletes.”⁶³

No doubt, the movement to providing multi-year scholarships coupled with changes in rules that now allow student-athletes to be paid the difference between their scholarship and the actual cost of attendance at the university, at least in the Power-5 conferences, are sincere attempts by the NCAA and its members to provide more benefits to student-athletes.

In fact, the desire to maintain student-athlete well-being is found in several places in the 2015-2016 NCAA Division I Manual and is grounded in the NCAA’s Commitment to the Division I Collegiate Model, specifically as follows,

The Commitment to Student-Athlete Well-Being.

Intercollegiate athletics programs shall be conducted in a manner designed to enhance the well-being of student-athletes who choose to participate and to prevent undue commercial or other influences that may interfere with their scholastic, athletics or related interests. The time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize interference with their academic pursuits. It is the responsibility of each member institution to establish and maintain an environment in which student-athletes’ activities, in all sports, are conducted to encourage academic success and individual development and as an integral part of the educational experience. Each member institution should also provide an environment that fosters fairness, sportsmanship, safety, honesty and positive relationships between student-athletes and representatives of the institution.⁶⁴

In 2013 this same language was incorporated into Bylaw 20.9.1.6, also called *The Commitment to Student-Athlete Well-Being*.⁶⁵ In addition, within its *Principles for the Conduct of Intercollegiate Athletics* is the *Principle of Student-Athlete Well-Being*, the NCAA provides that “[i]ntercollegiate athletics programs shall be conducted in a manner designed to protect and

of Injuries, CHI. TRIB. (Aug. 28, 2015), <http://www.chicagotribune.com/sports/college/ct-tim-beckman-fired-illinois-football-20150828-story.html>.

63. *Id.*

64. NCAA, *supra* note 2, at xiv.

65. *Id.* at art. 21.1.9.6.

enhance the physical and educational well-being of student-athletes.”⁶⁶ This commitment to student-athlete well-being is also part of each institution’s self-study that is part of the Institutional Performance Program.⁶⁷

An example of this commitment to student-athlete well-being occurred in 2006, when upon pressure for college athletic reform groups and others concerned about student-athlete well-being, the NCAA broadened its rules related to transferring from one institution to another, also known as initial transfer exception rules.⁶⁸ Under the current rule at the time, football and other revenue sport student-athletes could only use the exception if the institution that granted the undergraduate degree did not offer the desired graduate degree.⁶⁹ This allowed former University of Mississippi quarterback Jeremiah Masoli, who had already earned his bachelor’s degree from the University of Oregon, but was kicked off the football team after legal problems, to transfer to the University of Mississippi without having to sit out a year.⁷⁰ The NCAA claimed that his primary purpose for the transfer was for an athletic rather than educational purpose.⁷¹ However, the NCAA eventually reversed itself and allowed Masoli to compete at Ole Miss, thereby offering a ruling that seemed favorable to student-athletes who have already graduated from one institution allowing them to transfer to another institution and participate with immediate eligibility.

CONCLUSION

Although well-grounded in contract law, the relationship between a student-athlete and the collegiate institution that recruits and enrolls that athlete has many facets demonstrating the special relationship it encapsulates. This article explored the history of the relationship between the student-athlete and their institution. Like many relationships, the contractual relationship between the student-athlete and their institution is not static. For decades, this relationship was on a year-to-year basis, but with changing times come changing rules and perspectives. As such, member schools may now offer

66. *Id.* at art. 2.2.

67. *Id.* at art. 22.01.

68. Dennis Dodd, *Football Coaches Start Pushback Against New Transfer Rule*, CBSSPORTS (May 26, 2006), <http://www.cbssports.com/collegefootball/story/9463380>; NCAA, *supra* note 2, at art. 14.5

69. John Wagner, *Switching Teams: Falcons Kicker Had Been a Wolverine*, TOLEDO BLADE (Sept. 22, 2010), <http://www.toledoblade.com/BGSU/2010/09/22/Switching-teams-Falcons-kicker-had-been-a-Wolverine.html>.

70. *NCAA Denies Jeremiah Masoli’s Waiver*. ESPN.COM NEWS SERVICES (Aug. 31, 2010), <http://sports.espn.go.com/ncf/news/story?id=5516909>.

71. *Jeremiah Masoli Eligible at Ole Miss*, ESPN.COM NEWS SERVICES (Sept. 4, 2010), <http://sports.espn.go.com/ncf/news/story?id=5528636>.

multi-year scholarships for student-athletes and scholarship dollar amounts available to student-athletes continue to grow.

The autonomy provided to the Power 5 conferences and their immediate decision to raise scholarship amounts, along with the *O'Bannon* and *Northwestern University* litigation have also sought to change this relationship. In recent years, new legal challenges have been filed attempting to provide student-athletes with more benefits associated with their participation in athletics.⁷²

Within this litigious climate the NCAA maintains its overall commitment to student-athlete well-being. However, this commitment is acted upon mainly by the university as it is the university that enters into a contract with the student-athlete, has a duty of care to protect its' student-athletes, provides scholarship support, and should student-athletes become employees they will be employees of these same universities and not the NCAA.

72. *See for example*, In Re: NCAA Grant-in-Aid Cap Antitrust Litigation, Second Amended Complaint and Class Action Seeking Injunction, 14-cv-02758-CW (N.D. Cal. 2015).