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Football Is A "Year-round Gig": The Briefs Are In On Unionizing College Athletes

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The parties have now submitted briefing on the question of whether the College Athletes Players Association ("CAPA") can organize a bargaining unit comprised of Northwestern University college football players and students. Specifically the briefs, which can be accessed here and here, debate whether CAPA is an appropriate labor representative and whether the students are actually employees within the meaning of the National Labor Relations Act. CAPA's brief argues that the students "perform valuable services for Northwestern University. They have substantial football-related responsibilities year-round, performed under the strict supervision and control of the Northwestern coaches and Athletic Department staff. Their football activities are separate from the players' academic pursuits as students at the University. In return for their football services, the players are compensated by the University through scholarships . . ." CAPA argues that "this case is not about how much money Northwestern makes from football, or whether Northwestern is a good employer, or whether the compensation provided to the players is fair. Nor is it about the quality of the education that the players receive at Northwestern. Indeed, the players view Northwestern as a good employer. They appreciate that they receive an excellent education and they take pride in the academic success they achieve while performing what amounts to a full-time job for Northwestern's football program. But an employee is an employee, whether his compensation is generous or parsimonious, whether he has excellent or tenuous job security, and whether his employer is enlightened or unreasonable. If the employee provides services for and at the direction of the employer and is compensated for doing so, the employee is an employee, and is entitled to the rights and protections of the Act." Northwestern's brief contends that the players are students first and not employees. "At Northwestern, academics always trump athletics. The University's student-athletes, even those who are recruited and receive athletic scholarships to participate on the football team, do so in order to receive a world-class education. Northwestern is well aware that a student who chooses to participate in its football program faces challenges on and off the field. But meeting those challenges is part of the education that Northwestern seeks to provide, and part of shaping the class Northwestern aspires to graduate." The athletes have a "predominantly academic, rather than economic, relationship with the University" and as a result are students and not employees. While CAPA argues that the students are actually employees under the Supreme Court's test in *NLRB v. Town & Country, Inc.*, 516 U.S. 85, 90 (1995) (the definition of 'employee' [is] any 'person who

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works for another in return for financial or other compensation'"), the central legal issue centers around the viability of *Brown University*, 342 NLRB 463 (2004). In *Brown*, the NLRB found graduate assistant teachers not to be employees because their teaching duties were an integral part of their post-graduate degree program. In fact, in CAPA's brief, while it denies the applicability of *Brown*, the association nonetheless argues that the NLRB should overturn that Bush era decision. Instead, CAPA argues, the Board should apply the Obama era precedent in *New York University*, 356 NLRB No. 7 (2010).