

## Dartmouth College Men's Basketball Team Held to Be Employees of Institution and Allowed to Unionize

February 14, 2024 | Ashlyn E. Dowd | Articles

In the Matter of *Trustees of Dartmouth College & Service Employees International Union, Local 560*, Case 01-RC-325633 (2024), the Regional Office of the National Labor Relations Board (the "NLRB" or the "Board") has provided yet another expansion of the Board's on-going interpretation of "employee" under the National Labor Relations Act (the "Act") in the midst of an unprecedented string of pro-union decisions.

In the February 5, 2024 [decision](#), Regional Director of the NLRB Laura Sacks declared for the first time that student athletes should be considered employees under the Act. The decision focuses on Regional Director Sacks's determination that the institution compensates the athletes and exerts control over the work they perform.

Dartmouth College argued the athletes should not be deemed employees within the Act because they do not receive compensation in exchange for the work they perform, focusing mainly on the fact that Dartmouth does not provide athletic scholarships to the players. Dartmouth further emphasized that the College does not receive any profit generated from the basketball team, and the players do not receive paid time off, W-2s, or complete I-9s.

Relying heavily on the Board's opinion in *Columbia University*, 364 NLRB 1080 (2016), Regional Director Sacks reasoned that "it is appropriate to extend statutory coverage to students working for universities covered by the Act unless there are strong reasons not to do so." Regional Director Sacks further underscored the broad definition of "employee," stating "so long as an individual meets the broad Section 2(3) definition of 'employee,' they are a statutory employee, regardless of whether their employer is an educational institution, or they are also students while employed."



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Ultimately agreeing with the union's arguments, Regional Director Sacks found the men's basketball team performed work that benefited the College, regardless of the actual profitability, by generating alumni engagement, financial donations, and publicity. In addition, Regional Director Sacks found that the College exercised significant control over the players' work because the athletes are required to provide their services only to Dartmouth and the athletes are required to sign and abide by a players' handbook (which Sacks equated to an employee handbook). Further, she noted that Dartmouth determines the players' schedules, such as practices, games, film review, alumni engagement, travel plans, and other team-related activities.

Last, Regional Director Sacks concluded that the players did receive compensation in exchange for their participation on the basketball team, despite the lack of athletic scholarships. Specifically, the compensation was found to be in the form of "early read" for admission, as well as receipt of equipment, apparel, tickets to games, lodging, meals, and benefits from Dartmouth's Peak Performance Program. Additionally, Regional Director Sacks noted the numerous fringe benefits the athletes receive, 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.

Although the basketball players were found to be employees under these specific circumstances, it is important to note that the definition of "employee" excludes managers, professional employees, and supervisors as defined in the Act.

Dartmouth College is expected to appeal the Regional Director's decision to the full Board. We will continue to monitor any announcements with respect to the appeal and will keep you posted as to any future decision on the matter.