In the spring of 2014, a ruling from the National Labor Relations Board (NLRB) shook the world of college athletics—and perhaps eventually the workers compensation insurance market.

The ruling from a Chicago-based NLRB regional director found that a group of Northwestern University football players were employees of the university and have the right to form a union and bargain collectively.

Interestingly, the Northwestern players are not seeking salaries. Instead, they want to use collective bargaining to:

• Significantly increase scholarships and coverage for sports-related medical expenses
• Minimize the risk of traumatic brain injury through measures such as reduced contact in practice
• Improve graduation rates with help from an "educational trust fund"
• Secure due process rights

The decision in favor of the athletes was based on a number of factors, including the time scholar athletes devote to football (as many as 50 hours some weeks), the control exerted by coaches, and scholarships, which were deemed a contract for compensation.

During the regional hearing, Northwestern attempted to rely on an earlier decision involving Brown University graduate assistants, in which the NLRB found that the graduate assistants are not employees of the university (Brown University, 342 NLRB 483 [2004]).

However, the NLRB regional director rejected this argument by distinguishing graduate assistants from football players. Graduate assistants receive academic credit for their additional activities, and their work supports their central purpose for attending
the university (education), while playing football does not support the central purpose of the university or that of students.

Understandably, Northwestern—with the backing of the National Collegiate Athletic Association (NCAA)—has appealed the decision to the full National Labor Relations Board in Washington, DC. Their argument is that college football players are primarily students, not employees. (Because the National Labor Relations Act excludes employees of federal, state, and local governments, the decision does not apply to public universities, and is only applicable to private universities such as Northwestern.)

So what’s the workers comp angle to all this?

Workers Comp Implications
In terms of college athletes being recognized as employees, there are several workers compensation implications, including:

- **Availability of Coverage**
  - Would comp carriers be interested in this new market?
  - Is workers comp the best means of providing coverage for college athletes?
  - Many schools already self-insure their workers comp exposures

- **Medical**
  - College athletes would be entitled to the same benefits as any other employees
  - There is a heightened emphasis on the long-term effects from head trauma

- **Indemnity**
  - Would this be the end of scholarships in favor of true “pay for play”?
  - Are college athletes subject to wage and hour laws? (The Fair Labor Standards Act [FLSA] would mandate that players be paid at least minimum wage, plus overtime, for any hours worked more than 40 per week.)
  - What’s included/excluded when calculating payroll?

Steps Toward a Middle Ground?
Interestingly, while Northwestern and the NCAA vow to fight the regional NLRB ruling, there are steps being taken to address some of the health and compensation issues that may have been motivated by the actions of the Northwestern football players.

For example, the NCAA Division I Board of Directors voted to give five conferences—the Southeastern, Atlantic Coast, Pacific-12, Big Ten, and Big 12 Conferences—the right to award cost-of-living stipends, improve health insurance benefits, loosen rules on player contact with agents, and help players’ families with postseason travel expenses. While the new rules do not go nearly as far as the Northwestern decision, they do appear to be a step in the direction of payment for college athletes.

At the professional level, in 2014 a federal judge approved a multi-million-dollar settlement to compensate retired National Football League (NFL) players suffering from concussion-related injuries. The settlement does not require players who receive awards from the NFL fund to release any concussion claims against the NCAA or other amateur organizations.

Obviously, concussion claims are not limited to football injuries. In August 2014, soccer players and parents filed a lawsuit against Fédération Internationale Football Association (FIFA—the international soccer federation) and US-based soccer organizations in federal court. The lawsuit does not seek monetary damages but demands that FIFA adopt effective guidelines for dealing with soccer-related head injuries.

Similar concussion-related lawsuits have been filed against the National Hockey League (NHL), World Wrestling Entertainment (WWE), and the NCAA. The NCAA tentatively agreed to pay $70 million for diagnosing and testing student athletes, but a federal judge denied preliminary approval of the settlement and urged the parties to continue negotiating.

Examples of State Legislation Addressing Athletes and Workers Compensation
While the NLRB ruling continues to be challenged, a number of states have introduced legislation that attempts to address the questions surrounding athletes (both amateur and professional) and workers comp claims.

For example:
- **Iowa HB 40** would have amended the workers compensation law to state “[i]n the case of an employee injured in the course of performing as a professional athlete, the basis of compensation for weekly earnings shall be one-
fiftieth of the total earnings which the employee has earned from all employment for the previous twelve months prior to the injury."

The bill was introduced in 2013 but did not advance out of committee.

- **Louisiana** considered legislation in 2014 that would base the calculation of the average weekly wage for professional athletes in the state on the employee’s actual earnings at the time of his injury. The proponents of the Louisiana legislation argued that the amendment treats professional athletes like other workers in the state, while advocates for the players argued that the legislation would negatively impact those athletes injured outside of the NFL’s regular season.

The bill passed the House but died in the Senate.

- **New York S 2357** would exempt members of a supervised collegiate summer baseball league from the definition of employee for purposes of workers compensation insurance.

The bill was introduced in 2015.

- **New York AB 1981/S 503** would amend the workers compensation law by establishing a mixed martial arts injury compensation fund for professional combative sports participants.

The bill was introduced in 2015.

- **Ohio** introduced legislation stating that college athletes are not employees under state law.

Ohio passed this legislation as part of the state’s budget bill (HB 483), effective September 15, 2014.

**Extraterritorial Laws**

In yet another wrinkle, a handful of states have enacted laws stating that employees injured while temporarily working for their employer in another state are to receive workers compensation benefits under their home state’s law. These laws impact NFL football players injured while playing in another state that has a more favorable workers compensation law.

- **Florida HB 723 (2011)**—Provides that Florida employees injured while temporarily working for their employer in another state are to receive benefits under Florida’s Workers Compensation Law. Employees who work in another state for no more than 10 consecutive days, or a maximum of 25 total days in a calendar year, are considered to be “temporarily working” in that state.

- **Tennessee HB 864 (2013)**—An employee is considered to be temporarily in a state working for an employer if the employee is working in a state, other than the state where the employee is primarily employed, for no more than 14 consecutive days, or no more than 25 days total, during a calendar year. Employees injured while temporarily working in another state are entitled to receive benefits under Tennessee’s Workers Compensation Law.

While a final decision is expected soon in the NLRB Northwestern case, the broader issues surrounding athletes as employees are expected to generate continued discussion in the months ahead. NCCI continues to monitor and study the implications of the NLRB ruling as well as the overall issue of athlete employees and their right to workers compensation benefits as determined by the states.

- Mona Carter is a senior division executive for NCCI's Regulatory Services Division. She works with national organizations that include insurance carriers, insurance regulators, labor boards, legislators, insurance agents, and others that partner with NCCI in the workers compensation field.