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Employment within the NCAA: Precarious Working Conditions of Student-Athletes

Jamie Brackpool & Laura Neil

Abstract:

This paper explores the precarious working conditions of student-athletes through an analysis of the exploitative structure of the National Collegiate Athletics Association (NCAA). We will discuss the case of Northwestern University football players' attempt to unionize we will then demonstrate that the classification of "student-athletes" has prevented college athletes from obtaining standard employment relationship rights. The following report aims to position student-athletes as employees and suggest alternative strategies for future action and avenues for future research.

Introduction:

For decades, student-athletes have competed under the precarious conditions governed by the NCAA. With the ability to exploit student-athletes embedded so deeply in its business model, stopping the unethical practices of the NCAA is extremely difficult. While the lack of uniformity in the governance of college athletics means wholesale policy change is currently unachievable, incremental steps are being taken to improve the precarious conditions of student athletes. This paper aims to demystify student-athlete working conditions, outline the controlling structure of governance, and suggest new methods to support student-athletes.

Literature Review:

An abundance of literature exists on collegiate-level sports and athletics. However, much of this literature narrowly focuses on sports and its relation to media culture. As many scholars have argued, sports as an industry has yet to find a place within both the cultural and creative industries outside of the United Kingdom (Rowe 199). Many of these scholars (such as Cunningham, 2013, as well as McKinley and Smith, 2009) speak to the ways in which, for many countries, sports was not considered to be a part of any notion of creative labour or a creative sector. For instance, there was no mention of sport in any articles published by the

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Creative Industries Journal between 2008 and 2013. Although a single, definitive reason for the exclusion of sports as a creative industry has not yet been determined, David Rowe, Professor at the Institute for Culture and Society, has provided some insight into why this might be the case, suggesting that “it has been historically common for some, especially artists and their advocates, to criticize the influence of sport on culture and creativity, complaining that it is anti-intellectual, unaesthetic, aggressive and instrumental” (Sports, Media and Audiences 413). Consequently, topics such as athletic labour policy, athletic activism, and student unionization have been largely excluded from major research and discussion.

While the rigorous intellectual study of sports vis-à-vis commercial ethics is a recent phenomenon, the distinction between student-athlete and paid labourer dates back to the mid-twentieth century. The term “student-athlete” was coined in the 1950’s by former NCAA president Walter Byers. Researchers agree that the term is used to avoid liability in cases of worker compensation (Branch; Wade; Williams and Masterson); the NCAA, however, insists that the term was designed to protect the ‘nobility’ of amateurism in college sports (Wade). “Student-athlete” and “amateurism” are, thus, key terms when discussing the precarious position of college athletes. Williams and Masterson explain how the term “student-athlete” prevents college players from being classified as employees. Although Walter Byers did not deny this claim, the NCAA’s preference was that these athletes should be seen as students. However, the NCAA’s supposed academic priorities have been easily disputed by Mans and Gibbs (2011), Zimbalist (1999), and Farrey (2014), who examine multiple cases where students were given an ultimatum and forced to choose between academia and sports. Athletes are frequently expected to take classes that fit with their practice schedules as well as to select majors that require less effort and time commitment.

Academic and journalistic work that studies the terms “student-athlete” and “amateurism” explains that the NCAA uses these terms as justification for its own existence. In its manual, the NCAA outlines the principals of amateurism, defining them as a tool used to prevent student-athletes from being ‘exploited’ by ‘professional and commercial enterprises’ (2015-2016 NCAA Division I Manual, 2.5). To cement the terms student-athlete status into the NCAA’s culture, Byers had the terms embedded into as many of the NCAA legal documents as possible (Branch; Wade).

Scholars such as William Casement agree that amateurism is an important concept within the NCAA, though it may require reform. In general, Casement argues that amateurism helps to maintain the academic integrity of colleges (Casement). He also argues, however, that, Casement also agrees that the way teams are

governed needs serious reconsideration. Casement suggests that teams be owned by alumni organizations and run off of donations from affiliate professional teams looking for tax breaks. In this way, he proposes a complete separation between athleticism and the athletic environment, arguing that the athletes should be paid a salary instead of a scholarship. The eligibility rules would still apply and players would still need to be students who adhere to a certain academic standard. Casement's primary goal would be to restrict the NCAA to limited governance roles, taking away their profit-making role.

The leading voice within the discussion of student-athletes as employees, however, is Peter Sung Ohr, the regional director of the Chicago office for the National Labour Relations Board (NLRB). In one famous case, Ohr, on behalf of the NLRB, ruled in favour of a group of Northwestern Football players who were attempting to unionize by declaring them employees. In his verdict, Ohr provided two main reasons why these athletes should be considered workers. Ohr saw firstly that the time student-athletes commit to their teams is incredibly high, and secondly, that coaches have tremendous control over player scholarships, control which Ohr saw as a valid contract for compensation (Williams and Masterson). This ruling was a huge step for student-athletes, although it ultimately had little long-term impact (Ferry; Staples).

Scholars such as Lori Mans and Evan Gibbs also draw connections between student-athletes and employees. Much like Ohr, Mans and Gibbs' arguments focus on the time commitment of athletes and the control that coaches have over players. Mans and Gibbs also argue that the revenue that athletes generate should classify them as employees. According to Mans and Gibbs, athletes are the driving profit-producers behind the NCAA, which begs the question as to why these students are not being financially compensated.

The arguments against the classification of student-athletes as 'employees' come mostly from the NCAA itself. For example, Donald Remy, a legal spokesman for the NCAA, questioned Ohr's classification of student-athletes as employees. The reasoning behind this refusal to call student-athletes 'employees' is that the former group receives no payment or salary. However, this is an example of circular reasoning. This places the student-athletes in a unique position; the NCAA refuses to call them 'employees' because they do not get paid, yet it refuses to pay them because the sad truth is, there are amateurs and not employees (Boudway). Consequently, student-athletes often find themselves in a precarious economic situation.

Precarity is a key term guiding this research. Therefore, it is important to understand and define the meaning of precarious work, as well as the position

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such work holds within the creative industries. More specifically, it is important to understand the ways in which precarity manifests within the realm of collegiate athletics. Precarity, broadly defined, refers to intermittent, insecure forms of employment marked by conditions of low pay and long hours. Additionally, precarity is most commonly associated with people holding jobs within the creative economy. The key to understanding precarious labour is to define its opposing employment structure. This employment structure has been referred to by Wayne Lewchuck, Professor at McMaster University in the School of Labour studies, as ‘the standard employment relationship.’ Lewchuck defines the standard employment relationship as a policy that “provided workers with job security and training that enables them to advance within a given organization. They [benefit] from government policies that [protect] their right to bargain collectively and to form unions” (17). The lack of such policies leaves workers in precarious working conditions.

Methodology:

The purpose of our research is to demystify the student-athlete experience, situate the athlete as a working professional, and uncover the answers to the following questions: What are the key dimensions of precarity endured by student-athletes? What efforts, if any, have been made to protect the rights of student-athletes as workers? And what still needs to be done to improve the working conditions of student-athletes?

As previously stated, a key term guiding our analysis is that of precarity. We will examine the various forms of precarity endured by student-athletes working within the National Collegiate Athletic Association (NCAA). Additionally, we will position the student-athlete as a working professional by employing a historical and contextual approach, treating the issue like a case study. In order to establish parallels between the position of the student-athlete and working professional, we will explore the recent case of the Northwestern University’s football team’s attempt to form a union.

Key Organizations:

This section of the paper aims to provide a brief overview of key organizations surrounding the discussion of employment relations of student-athletics in the NCAA. The National Labor Relations Board (NLRB) is an independent federal agency in the United States which protects the rights of private-sector employees to join together, with or without a union, in order to improve their wages and working conditions. The board began operating during the Great Depression in 1935 and continued to operate through World War II and the ensuing economic

instability. The board's goal is to guarantee the rights of employees to bargain collectively. The agency has the power both to safeguard employees' rights to organize and to determine whether to form a union to serve as the employees' bargaining representative. In doing so, the NLRB often conducts elections, investigates allegations of unjust labour practices, facilitates settlements, decides cases, and enforces orders. Importantly, the board has previously worked on several cases in the realm of organized athletics at both professional and amateur levels. For example, in 1994, the NLRB was responsible for the \$30 million dollar back pay for professional football players involved in the players' strike of 1987.

Because this research paper focuses primarily on the Northwestern Football unionization case, references to the NLRB refer mainly to the board's Chicago division. In relation to the case, the NLRB played a major role in the ruling on whether student-athletes should or should not be considered employees of accredited NCAA institutions. Chicago's NLRB Director, Peter Sung Ohr, is a prominent figure in our research because his work outlines various reasons for considering student-athletes as employees.

On January 28, 2014, former college football player Ramogi Huma announced the formation of another key organization, the College Athletes Players Association (CAPA). Shortly after this announcement, the CAPA stated that it wished to be recognized by the NLRB as the Northwestern scholarship football players. The CAPA's current goal is to win the case on behalf Northwestern scholarship athletes; however, the CAPA recognizes the need to fight for other efforts as well. The CAPA, ultimately, hopes to represent all student-athletes in the NCAA, bargaining for causes including the improvement of student-athlete graduation rates, the reduction of sports-related brain trauma, and the allowance of student-athletes to receive commercial sponsorships (collegeathletesplayersassociation.com).

Student-Athletes in the NCAA:

Collegiate athletics started when students self-organized in order to play sports at their institutions. After collegiate sports began to grow in popularity, competition between different institutions became more common and eventually the first intercollegiate event occurred, a rowing competition between Yale and Harvard in 1852. Alongside the growth in popularity of these competitions, many new sports were introduced and some of the events started to receive sponsorships. For example, "Boston, Concord & Montreal Railroad Company was the official transportation sponsor of the [Yale vs. Harvard rowing] competition" (Bass, Schaeperkoetter, and Bunds 3). These competitions were organized by students

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until the late 1800's when universities started to realize the potential economic value of college sports. In 1895, university officials gathered to discuss potential ways in which they could administer college athletics. Several universities came together and formed the Big Ten, the first organized group dedicated to regulating the game of college sports (Bass, Schaeperkoetter, and Bunds 4).

The next major development in collegiate athletics came in 1905 when President Theodore Roosevelt called a meeting with members of Harvard, Yale, and Princeton Universities to discuss the game of American Football. Since the sport had only been invented a few decades prior and had only been played between Rutgers and Princeton, the actual rules of the sport were not yet codified. The unfortunate result was the death of 18 players and 140 serious injuries in the relatively brief history of the sport. After the meeting with President Roosevelt, 62 schools joined in 1906 to form a new governing body, the Intercollegiate Athletics Association of the United States (IAAUS). In 1910, the organization renamed itself the National Collegiate Athletics Association (NCAA) (Bass, Schaeperkoetter, and Bunds 4).

Since then, the NCAA has undergone major changes. To start, the organization elected their first president, Walter Byers, in 1951 (Bass, Schaeperkoetter, and Bunds 6). From this time onward, the NCAA's grip on college athletics became ever stronger. In 1973, the NCAA divided member schools into three divisions. The division of teams was based on the amount of revenue each school collected; the most profitable schools were placed in Division I, the less profitable schools were placed in Division II, and the least profitable schools were placed in Division III. The classification of these schools in divisions impacted the treatment of students. Division I schools allowed student-athletes to receive 'full-scholarships' for athletics, Division II only allotted partial scholarships for athletics, and Division III did not give students any scholarships for athletics contributions. Division I was later divided further into Division I-A, I-AA, and I-AAA, with revenue becoming the main filtering tool (Bass, Schaeperkoetter, and Bunds 9). Since its inception, the NCAA has grown into one of the largest sporting franchises in the world, raking in massive amounts of money from television and sponsorship deals, despite claiming to be a not-for-profit organization. Aside from administrative and coaching roles, all of the NCAA's labour is free labour and the association justifies its treatment of students by using two terms: "student-athlete" and "amateurism."

A key aspect of the NCAA financial model is the exchange of athletic contributions for scholarships. Athletic scholarships, also known as Athletic Aid Agreements (AAA's), vary depending on both the institution providing the scholarship as well as the player receiving the financial aid. There are some standard

AAA agreements that require the student be a member of the school and remain accountable to the NCAA division-wide rules. It should also be noted that once a student receives an athletic scholarship, they are usually not allowed to receive any additional funding opportunities (Frank).

The Northwestern University Case:

This paper follows the case of the Northwestern University football team. The players' attempt to unionize is groundbreaking and demonstrates the precarious living conditions of the student-athlete as well as the current efforts being made to improve these conditions. The case started on January 28, 2014, when the CAPA filed a petition to the National Labor Relations Board (NLRB) on behalf of the Northwestern football players with scholarships. The petition asked permission for the CAPA to be recognized as the union representative for the scholarship student-athletes of Northwestern football. The university opposed the petition, declaring that NLRB jurisdiction only applies to employees, a classification to which scholarship athletes did not conform (Mans and Gibbs 34).

On March 26th 2014, Northwestern University lost its leverage when Peter Sung Ohr, declared student-athletes to be employees based on the time commitment student-athletes gave to the sport, as well as the contractual relationship between player and coach being similar to that of an employee and an employer. While, technically, Ohr's ruling only applied to scholarship football athletes at Northwestern, his decision could potentially be extended to other privately owned Division I NCAA schools (Staples). Also it is important to note that the ruling was made not due to the working conditions or treatment of student-athletes, but instead was due to the relationship between the athletes and the university resembling an employee-employer relationship (Strauss and Eder).

This 'victory' for unionization was short-lived. On August 16, 2015, the NLRB refused to acknowledge the ruling that NCAA athletes be considered employees. The NLRB board based its decision on the fact that any ruling the board enforced would set a precedent only for private schools like Northwestern, since NLRB jurisdiction does not extend to public universities, thereby disrupting stability within the league. While the NLRB suggested that it might reconsider its stance in the future, they refused to take any current action (Farrey).

Although this distinction between student-athlete and employee may seem trivial, excluding college athletes from identifying as employees prevents such athletes from receiving many of the benefits their labour entitles them to, such as workers compensation or the right to unionize. In this section of the paper, we will argue that student-athletes should be identified as employees. As previously

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mentioned, the most prominent name in this discussion is Peter Sung Ohr. Ohr, the regional director of the Chicago NLRB, has been outspoken on this matter, claiming that, in the case of the Northwestern Football Team, college athletes ought to be considered employees (Staples). Ohr's position is based on several reasons, mainly the sizable athlete time commitment as well as the resemblance between the athlete-coach dynamic and an employee-employer relationship (Williams and Masterson 52-53).

The argument that college athletes, put as much time into athletics as many people put into their careers, is justified. The time commitment student-athletes dedicate to sports includes not only in-season training, but also a year-round cycle (Mans and Gibbs 35). Mans and Gibbs lay out the year-round training schedule for the Northwestern University Football Team as follows. From the beginning of August until the beginning of the season, athletes spend approximately 50-60 hours per week taking part in team-oriented training, and "their days during training camp are spent in various types of rehabilitation and athletic training activities, practice on the field, meetings, and participation in team meals" (Mans and Gibbs 35). At the end of the training camp, the regular 12-game season begins and lasts from September to November. During this time, athletes spend roughly 40-50 hours per week participating in football activities and their weekday schedules often start at 6:30am, while on Saturdays they begin games at 7:30am. For away games, the team usually travels to the opposition school's city the night before the actual game, making some game days a whole-day commitment. Once the season finishes, players partake in fitness and cardio training starting in mid-January, which consists of around 12-15 hours a week. In mid-February, the time commitment goes up to 20-25 hours per week as the team gets back on the field for its spring football camp. In mid-April, the camp ends and each player is expected to continue with his own spring workout training until the end of the academic year. At the beginning of June, the athletes finally get to rest, as they are allowed to return home for the summer. Unfortunately, this break is short-lived, lasting only two weeks. At the end of that time, the athletes return to school where they take part in 20-25 hours of workouts until training camp begins in August (Mans and Gibbs, 35). This level of time commitment is arguably more than that of a full-time worker (Strauss and Eder).

Ohr's second argument is that the contractual relationship between a student-athlete and a coach/university is similar to the relationship between an employee and an employer (Williams and Masterson 53). The relationship between an employee and an employer is a contractual agreement stating that the employee will provide labour in exchange for compensation. The purpose of this labour is

to benefit the employer, who receives profit and monetary return. College athletes serve the same purpose for their affiliate universities. The service they supply to their 'employer' is playing high-level sports; when these athletes compete, they attract spectators to purchase merchandise and tickets, driving revenue up and contributing to external interest resulting in lucrative television deals. For example, the NCAA received between \$30 and \$40 million dollars at the beginning of the 1980's from CBS and ESPN (Bass, Schaeperkoetter, and Bunds 21-22). Although athletes are 'compensated' through scholarships, these small packages are usually only enough to pay for tuition, living accommodations, and meals (Mans and Gibbs 34). Due to the previously mentioned comparisons between student-athletes and employees, Ohr ruled in favour of the Northwestern Football Players, stating that they should be considered university employees. This ruling allowed the players to take their first steps towards unionization, which was a massive blow for the NCAA and the Northwestern University Athletics Department (Staples).

In most standard employment relationships, both employee and employer gain equal benefits. Employees receive fair compensation for their labour, while employers and/or companies generate profit and improve their professional reputation. The terms and conditions of 'work' between student-athletes and the NCAA function much like those of standard employment. However, a remarkable difference exists in beneficial compensation. In the world of college sports, the student-athlete is effectively a labourer and the NCAA an employer, but both parties do not benefit equally. The NCAA operates as a business fuelled solely by the efforts of student-athletes who receive zero profit for their labour. So, who benefits from this relationship?

First and foremost of the beneficiaries are the NCAA and its accredited institutions. The NCAA has grown into a billion dollar industry by commercializing student-athletes through a 'reliance on outside entities such as corporate sponsors, ticket sale revenues, and television broadcast payouts.' In essence, 'athletic departments function more like a business than almost any other university unit' (Bass, Schaeperkoetter, and Bunds 23). In fact a large portion of the NCAA's revenue comes from the licensing and branding of athletic merchandise, as "the sport licensing industry ranks as one of the top revenue producers in the licensing world" (Mooreman and Hambrick 161). To manage this extensive revenue stream, the NCAA employs an external body, known as the Collegiate Licensing Company (CLC). Sports merchandise has become so popular that sports companies and leagues hold five of the top twenty spots among the world's leading licensors, with the CLC clinching the fourth spot with a net worth of 2.5 billion dollars (Mooreman and Hambrick). The problem, according to unionization activists, is that "the

NCAA, the CLC, and others receive compensation for the sales of student-athlete merchandise without compensating the athletes for the value they afford the related licenses and products” (161). Under NCAA regulation, student-athletes’ names are not to be used or sold on athletic merchandise; only an athlete’s number may be used by these organizations. Although the merchandise is not branded by name, however, the athlete’s number transposes a specific student-athlete’s merit onto the object, and in turn, the athlete’s labour results in non-athletic commodification for which he is not properly compensated.

With such large sums of money to be made in branding, the NCAA has recently made three significant investments to further grow its licensing potential. Peter Davis, director of corporate alliances for the NCAA, outlines these three areas of investment: first, online investments, intended to push the sales of a larger volume of merchandise; second, promotion and marketing investments calculated to generate interest in premium branded merchandise created in partnership with many of the NCAA’s corporate sponsors. As a result of these investments, Mooreman and Hambrick report that, as a result of investments like these by companies and sports leagues around the world, ‘revenues from global licensed sport apparel and other goods grew by \$3.1 billion in 2008 to \$19.9 billion in one year” (To License or Not to License). Not only do the NCAA’s profits increase through merchandise and ticket sales, but also this commoditization turns the NCAA and its accredited institutions into viable brands to be fetishized by consumers. Branding, thus, builds the NCAA’s reputation while feeding a continuous cycle of profit-generating consumerism.

Television broadcasters are another major beneficiary of student-athletics, especially as “the development of national and international sporting competitions, the ‘maturation’ of media advertising, and the emergence of broadcast media for which there was no or limited direct payment by the ‘consumer’, [created] new revenue streams and users of sports media” (Sports, Culture and the Media 66). Collegiate athletics has become an ever-present sector of the television media landscape, and TV stations fight for the rights to own a share of NCAA sports broadcasting. In fact, today’s industry practically requires that any viable network have sports in order to help raise the profile of its other properties. Of course, the NCAA still generates the majority of profits while the athletes receive none.

The Columbia Broadcasting System (CBS) was the original broadcaster of NCAA sports, and “after the epic 1979 NCAA men’s basketball championship... the NCAA increased its television rights deal with CBS” (Bass, Schaeperkoetter, and Bunds 21). Shortly after the championship, the NCAA struck a deal with a newly formed broadcasting company, ESPN, which then aired all of the men’s

tournament games not covered by CBS. Television deals were lucrative for the NCAA, evidenced by the fact that “for the first part of the 1980’s the NCAA received between \$30 million and \$40 million annually combined between CBS and ESPN for television rights for the NCAA tournament” (Bass, Schaeperkoetter, and Bunds 22). To further capitalize on market opportunity, the NCAA started to alter major tournament schedules. These schedules were extended in order to generate a larger profit for broadcasters. For example, March Madness, the popular annual college basketball tournament, was extended to a three-week-long event. This decision not only increased broadcasting revenue but also generated large amounts of sponsorship money.

In 2010, the NCAA added a fourteen year combined partnership with CBS and Turner Sports for \$10.8 billion in profits. The abundance of media coverage transformed college basketball, as well as college football, into a nationally-popular commercial product, and college football experienced a similar growth. In fact, college football television deals represent the largest revenue source out of all collegiate-level athletics. With low production costs, the CBS, ESPN, and Turner Sports networks further benefitted from the creation of low-cost, sport-specific channels and subscription packages. As an example of how extensive TV broadcasting contracts are, “ESPN and its associated platforms (ABC, ESPN1, ESPN2, ESPNU, etc.), aired more than 450 college football games during the 2012 season”, available to viewers through a basic satellite-cable fee (Bass, Schaeperkoetter, and Bunds 23). At the same time, ESPN and other networks offer ‘pay-per-view’ or On-Demand exclusive access to major championship matches such as March Madness, with providers like ESPN claiming that, for a small purchasing fee, these premium services heighten viewing experience for the sports connoisseur. Therefore, “not only have these [lucrative television] contracts had the effects of raising subscription levels, but ... they have [also,] in some cases, included a pay-per-view element, with its opportunities for the kind of direct economic exchange between sports provider and sports spectator” (Sports, Culture and Media 77). Rowe further explains the profitable nature of mediated sport, noting how a single live sports television broadcast can not only be shown in real time to both a live and televised audience, but also that it can also be replayed, cut up, and packaged in a myriad of economical ways (71). The repackaging of live sports reached its acme when networks began capitalizing on the sale of online streaming access through websites such as NCAA.com and CBSSports.com.

There are also numerous external corporations and manufacturers who benefit from student-athletic labour. Currently, the company drawing the most media attention is Electronic Arts Inc (EA), a software company based in Redwood

City, California that develops sports-related video games. EA is well known for its realistic representations of both professional and collegiate-level sports teams in games such as Madden NFL Football and NCAA Football. These games are re-made and re-released annually. The first NCAA-related sports game created by EA was Bill Walsh College Football. Released in 1993, Bill Walsh College Football was the first of twenty-one collegiate football games made by EA between 1993 and 2013.

EA's sports-related games allow fans to actively to actively participate in major competitions between sports teams. In particular, they are known for their realistic depictions of sporting events (Mooreman and Hambrick 160). Recently, the games' realistic representations have embroiled EA Sports in numerous legal battles with college athletes. These athletes claim that "EA Sports profited off the likeness of players while offering no compensation for the college athletes featured in the games" (Catangay-Liew). On July 31, 2013, Samuel Michael Keller (a former American football quarterback) and Edward O'Bannon (a former UCLA Bruin) filed a class-action lawsuit against EA Sports and the NCAA for profiting off of their likenesses while providing them with no benefits. The gist of Keller's argument is that "the defendants used student-athletes names, voices, signatures, photographs, images, likeness, distinctive appearances, gestures and mannerisms for commercial gain without proper consent from the athletes" (Mooreman and Hambrick 161). Keller and O'Bannon, along with 20,000 other student-athletes, have filed claims due to these allegedly unjust software sales by EA and the NCAA. The NCAA operates under a manual of bylaws, with section number 12.5 specifically dedicated to the protection of student-athletes in promotional activities. Keller essential argument is that "EA violated NCAA ... bylaw 12.5, which specifically prohibits the commercial licensing of an NCAA athlete's name, picture, or likeness and the NCAA has allowed the company to do so without penalty" (Mooreman and Hambrick 160-161). Although EA Sports wanted to pay the players represented in the video games, the NCAA's strict guidelines prohibited EA from doing so. The game producers attempted to lobby NCAA policy makers to change the guidelines to allow EA to compensate the athletes with a portion of the "\$80 million in annual revenue generated by the NCAA series games" (Catangay-Liew). However, the NCAA would not reconsider its stance on the issue. Part of the NCAA's reluctance to change its decision can be linked to the institutional profit derived from the games. If the athletes are unable to accept compensation for their athletic image and status, more money is available to be paid directly to the NCAA. Consequently, Roger Noll, Stanford Sports Economist, describes the NCAA as a "powerful profit-driven 'cartel' that rules the big-budget business of

college sports” (Talep). The NCAA can be considered a ‘cartel’ insofar as it holds considerable power over the marketplace of college athletics because its rules govern which schools can participate in athletic competitions and forbid players from getting paid.

Claudia Wilken, the judge presiding over the Keller-O’Bannon case, ruled that \$60 million dollars should be paid to the NCAA athletes. In the end, the athletes who filed motions against EA Sports and the NCAA each received around \$7,200 for their labour. With the NCAA unwilling to budge on commercial compensation, EA was forced to cease creation of collegiate athletic video games. The triumph of the athletes involved in this case serves as evidence that the multi-million dollar student-athletics industry is fuelled by the exploitation of free labour.

One of the strongest defenses the NCAA offers against the payment of its athletes is that its students receive fair compensation in the form of tuition scholarships. However, even though scholarships are given, however, a ‘meaningful’ education is usually not provided. Because of the students’ extreme commitment to sports, the quality of their education suffers. Technically, the NCAA is correct in claiming that its scholarships give student-athletes access to meaningful educations; however, the combination of intense training schedules and rigorous academic standards required for player eligibility means that certain majors are unrealistic for students who wish to succeed equally in athletics and academia. There are numerous cases of student-athletes receiving educations that are inferior to their non-student-athlete counterparts.

Athletes are often required to maintain certain grade point averages in order to remain eligible for college athletics. In order to remain eligible, athletes must be “enrolled in at least a minimum full-time program of studies, be in good academic standing, and maintain progress toward a baccalaureate or equivalent degree” (2015-2016 NCAA Division I Manual, 14.01.02). The manual also requires students to be in ‘good academic standing,’ a term now defined by the colleges individually (2015-2016 NCAA Division I Manual, 14.01.01 – 14.02.01). Moreover, the NCAA is no longer able to determine the meaning of academic standards because these standards were continuously lowered in order to allow less academically inclined student-athletes to remain eligible to play. The NCAA even claims that half C’s and half D’s are too difficult for athletes to achieve (Zimbalist 22). As a result, many academic institutions have attempted to raise the standard of academic success by requiring that students maintain a higher GPA than was previously expected by the NCAA.

What the NCAA fails to comment on is the type of education students are getting. Some athletes, realizing that their eligibility depends on their ability

to achieve good grades, opt to take ‘easy’ majors that require little effort. During the late 1980’s, when there was concern over the notion of freshman eligibility in NCAA athletics, universities saw this trend of athletes taking ‘meaningless’ majors become a harsh reality. For example, “University of Iowa president Hunter Rawlings, humiliated after several Iowa football players admitted that they majored in Water Coloring and Archery, declared that if the NCAA did not abolish freshman eligibility he would do so unilaterally” (Zimbalist 22). However, this does not mean, however, that all student-athletes are indifferent to academics. Some student-athletes wish they could take certain courses, but they understand that, realistically, many demanding and rewarding majors require more time than they have available. Kain Colter, co-founder of the CAPA and an ex-Northwestern Football player, claims that he had to take into account the 40-hour training schedule for football when declaring his major. He admits that his athletic commitments required that he make academic sacrifices, such as giving up on his preferred pre-med major (Farrey).

Sometimes, the NCAA even blocks its student-athletes from taking on opportunities that could improve their careers outside of athletics. The case of another ex-Northwestern player, Darnell Autry, serves as a striking example of this behaviour. Autry was the star running back on Northwestern’s team. He defied expectations by taking the team to the Rose Bowl, the pinnacle of college football, for the first time in nearly 50 years. The summer after this dream season, Autry, who was majoring in acting and looking to make a career as a professional actor, was offered a role in a movie in Rome. Obligated to seek permission, Autry asked the NCAA if he could accept the role. The NCAA responded by saying that Autry would not have received the role if not for his athletic accomplishments and, since the NCAA forbids athletes to receive any compensation for their athletics, he would have to forfeit his remaining two years of athletic eligibility in order to take the role. After a drawn-out legal battle, the NCAA agreed that, in the future, student-athletes in Autry’s position would be able to accept such roles so long as they received no compensation for their work (Zimbalist 17).

The NCAA justified its decision to stop Autry from realizing his acting dream by claiming that, in their eyes he was already being compensated for his work. On numerous occasions, the NCAA has argued that accepting compensation for athletic work would tarnish athletic amateurism, which is a key principle of the NCAA. In the NCAA’s opinion, the classification as an amateur protects student-athletes from the influences of professional sports and corporate entities. Regardless of the NCAA’s justification, compelling evidence suggests that the quality of student-athletes’ education is poor, and we therefore claim that schol-

ships are not fair compensation for the billions of dollars these student-athletes generate for the NCAA.

Collegiate-level athletic labour is also an example of a new form of work called hope labour. Hope labour is a type of motivation or voluntary participation that can be “defined as un- or under-compensated work carried out in present, often for experience or exposure, in hopes that future employment opportunities may follow” (Kuehn and Corrigan 9). By taking on positions categorized as hope labour, the individual generally exerts more than they gain in return. These positions are common in the creative industries and are marked by high levels of precarity. The precarious nature of these jobs is often overlooked because many of these labourers focus on the utopian values that accompany their work such as flexibility and autonomy. As a result, they tend to ignore these jobs’ instability. Similar to the rise of the precariat class, hope labour has become normalized and neutralized through romanticized, neoliberal ideologies. Inspired by this idealized vision of hope labour and the creative industries, many young boys and girls grow up with dreams of playing college and professional league sports. Unfortunately, according to the NCAA, of the roughly eight million children competing in high-school-level athletics, only 460,000 of these students will compete at the college level. Of those who make it into the NCAA, only a small fraction will realize their goal of becoming professional athletes. Figure 1 outlines the professional probabilities for those competing in the top-grossing NCAA sports. Looking specifically at college football, only 1.6% of those competing in the NCAA will obtain professional status, leaving many to question why collegiate-level student-athletes continue to invest vast amounts of precarious labour with little chance of return. The problem for all but the most skilled athletes is that hope labour functions as a meritocratic system in which “work is viewed as an investment that pays off for individuals based on merit” (Kuehn and Corrigan 9-10). In relation to the labour performed by student-athletes, the link between personal talents and future career success becomes evident, and the sad truth is that the vast majority of hopeful youths will never possess the talent to become professional athletes.

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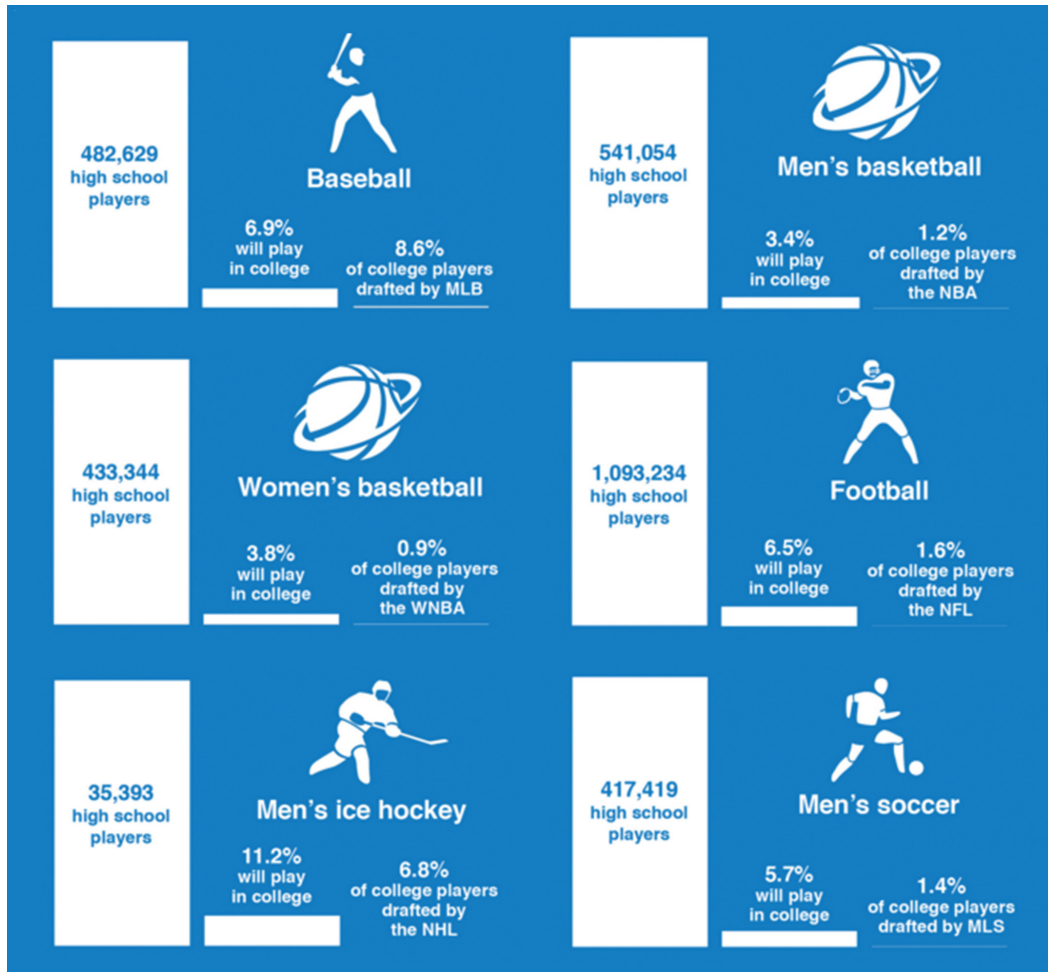


Fig. 1 Possibility of competing beyond high school and college (NCAA).

One major reason why athletic hope labour continues to thrive is a direct result of the utopian ideals surrounding professional athletic jobs. As mentioned earlier, sports and media culture are closely intertwined. For this reason, the NCAA has many popular cultural outlets at its disposal for disseminating these preferred ideologies. At the same time, popular media independent from the NCAA also functions as propaganda perpetuating the “coolness” associated with life as a professional athlete.

A second reason hope labour appeals to young people is the ability of meritocracy, a concept innate to hope labour, to silence inequalities and minimize the impact felt by those in precarious employment environments. These individuals

operate under the impression that his or her personal ‘merit,’ recognized as their skills and talents, will ultimately afford them further career opportunities. Many of the students who enter the NCAA expect to receive high-level coaching, which in turn will improve their athletic abilities or ‘merit’ and put them at an advantage for further career advancement. Not only do collegiate athletic programs offer quality training, but athletes also view the experience as a way to gain exposure to recruiters. These recruiters are solely responsible for assessing an athlete’s ‘merit’ and stand between each athlete and their career advancement. Theoretically, if an athlete is skilled enough, he or she will merit a career in one of the most idealized professions in the world, and in an age that places more and more emphasis on the absolute uniqueness and specialness of every child, it is not difficult to understand the popularity of athletic hope labour. Kain Colter, Northwestern quarterback, is one of the many young athletes who perpetuate the idea that athletes are motivated mainly by their “love of the game” and this passion makes it easy to disregard precarious working conditions and low probability of employment in the athletic profession (Keohane).

Policy:

This section of the paper will: provide a brief reiteration of some of the recent policy attempts dedicated to improving the precarious lifestyles of student athletes, highlight the gaps that have led to the failure of these attempts, and provide suggestions for future action.

In many countries, sport is not yet considered a sector of the creative industries. For this reason, relatively little literature exists surrounding labour politics for collegiate-level student-athletes. With sport becoming a growing sector of the creative economy, greater attention ought to be paid to the compensation of NCAA athletes. Student-athlete compensation has become a highly debated issue, since many scholars have opposing views on whether student-athletes should be compensated beyond athletic scholarships. There exist two major schools of thought: on the one hand, several scholars, including Cankle, Handy, and Williams (1995), believe that the importance of amateurism in college sports precludes student athletes from receiving compensation. This view is summed up by James M. Crook, who claims that “paying student athletes is a bad idea [because...] it would bring the athlete away from the amateur level and into the professional realm” (69). Donald Remy, chief legal officer for the NCAA, further solidifies the ‘student first’ mentality by stating, “we strongly disagree with the notion that student-athletes are employees” (“Academics”)

On the other hand, a vast amount of literature encourages the implementa-

tion of a salary system for student-athletes as a way to combat the precarious labour conditions endured by these individuals (including scholars such as Williams and Masterson 2014; Crawford 1995; Mans and Gibbs 2015; Carpenter 1994; Doss and Donahoo 2012; and Wolohan 1994). National Labor Board Director, Peter Sung Ohr, presents four factors outlining the ways in which student-athletes could be considered employees of the university. These factors are: (1) time commitment, (2) coaches' control over players, (3) risk of injury, and (4) the structure of athletic programs as comparable to those of work environments (Williams and Masterson 52-56). Unionization is presented in Ohr's argument as a way to create an equilibrium of rights across all collegiate athletic programs.

In an attempt to identify existing gaps within labour politics surrounding student-athletics, an investigation of current resistance strategies was undertaken in this paper. We will focus on the most recent attempts at unionization, which have come from two student-initiated lawsuits against the NCAA. The Northwestern University football programs' attempt at unionization in January of 2014, as outlined in the *Journal of Labor and Employment Law* by Lori Mans and Evan Gibbs, was the first attempt at resistance. Later, Samantha Sackos, a University of Houston soccer player, demanded minimum wage pay for student athletes in October 2014. While Sackos' was a significant case, our current analysis will be limited to the Northwestern University example.

The Northwestern case is the most noteworthy attempt to change the policies creating precarity for student-athletes. The case started when the CAPA submitted a petition to the NLRB in an attempt to be recognized as the union representatives for the Northwestern scholarship football players. The issue was that the NCAA and Northwestern university, despite CAPA's petition to become the union representative for the football players, still refused to recognize the players as employees, and because the NLRB's decree only applied to employees, the CAPA's attempt at unionization appeared to be stymied. The next major breakthrough came when Peter Sung Ohr sided with the CAPA and ruled that players were, in fact, employees. A year later, however, the NLRB refused to partake in any ruling that would grant Northwestern athletes the ability to unionize. The NLRB, which only had jurisdiction over private schools like Northwestern, believed that allowing only Northwestern to unionize while many other schools were stuck with the old system would create instability in the entire division. Even though in the end the CAPA's request was denied and Northwestern was left without a union, the case gained vast amounts of media attention and broke boundaries regarding the treatment of student-athletes.

The collapse of the Northwestern players' attempt to unionize was, thus,

largely the result of the governance surrounding college athletics. The NLRB refused to act because it was unable to create a policy that would affect all parts of the NCAA. At the time, Northwestern football players were the only ones looking to unionize under the CAPA, which meant that the ruling would have only affected one school. Although the Northwestern failure was a blow to the efforts made by the CAPA, the NLRB's decision was likely the right one. It was not the right time to make policy changes, since, as they stated, doing so would have caused nothing but instability in the league.

So, when will be the right time, and what will need to happen in order for student-athletes to be considered employees? Currently, NCAA universities have policies that are influenced by different sectors. Some legislation comes from the state level, while other issues are decided by local university governance. The NCAA members' schools are allowed to create their own terms of agreement between students and institutions, meaning that student-athletes are tied to different contracts across the league. This lack of consistency in regulation makes it impossible to pass any bills that affect all student-athletes across the NCAA.

We suggest that, before attempting to create policies that change the precarious nature of student-athletics, groups such as the CAPA should direct their efforts toward fostering a clearer understanding of the real contractual agreements between student-athletes and institutions. A federally enforced agreement on the employment status of student-athletes across all divisions, states, and institutions is critical before trying to create any reforms such as unionization. This research still leaves an important question unanswered. Still to be determined are which steps still need to be taken, and who should do so, in order to position student-athletes as workers worthy of compensation by the National Labor Relations Act.

A suggestion for further action would be for student-athlete representatives from each NCAA sport, division, and institution to come together and create a worker collective, though not necessarily a conventional union. With the decline of union representation, labourers within creative industries have undertaken a new form of collective action. Journalist Josh Eidelson calls this new form of worker organization "alt-labour." Alt-labour groups typically encompass a body of labourers within a certain sector which comes together to voice a common goal by campaigning to improve rights and working conditions through legislation. Some of the better known alt-labour movements have petitioned for the creation of a Bill of Rights for domestic workers in New York as well as a wage increase for taxi drivers through the formation of Taxi and Limousine Commission. Janice Fine from the School of Management and Labour Relations at Rutgers University has studied this new form of worker organization for the last two decades.

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Given the decline of unions, Fine “was trying to understand what type of organizations might have been stepping in to fill the void.” Instead, what she found was a “growth of community-based worker organizing projects” (Alcorn). Additionally, since the NCAA relies on student-athletic labour to run its ‘business,’ the students are in a position of power. If the student-athletes were to unite in an alt-labour group, they could better wield this power to effect substantial change.. If the student-athletes were to unite in an alt-labour group, they could better wield this power to effect substantial change. For example, if the student-athletes collectively chose to withhold their labour, the NCAA might become more susceptible to bargaining for improvements in the student-athletes working experience. With alt-labour groups becoming a more prominent organizational strategy, we suggest that this form of collective organization and its ability to foster common goals may be a viable option for student-athlete lobbying. Only through protest will an overarching understanding of the student-athlete position gain credence, leaving the door open for the future improvement of working conditions.

In summation, NCAA student-athletes currently work under precarious labour conditions. The various versions of NCAA jurisdiction that mandate the position of student-athletes as both employees and non-employees of their accredited institutions is morally wrong and should be considered an area of potential reconsideration. Much of the current research on and around intercollegiate athletics focuses on the relationship between sports and media culture while little attention is paid to the working conditions of student-athletic labour. Further research into the effects of the student-athlete classification and the right of collegiate-level athletes to be considered employees is needed in order reduce the precarity created by the unjust NCAA legislation.

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