

Minutes of the  
**NIU Board of Trustees**  
**COMPLIANCE, AUDIT, RISK MANAGEMENT AND LEGAL AFFAIRS**  
**COMMITTEE MEETING**  
May 29, 2014

**CALL TO ORDER AND ROLL CALL**

The meeting was called to order by Chair Robert Boey at 12:30 p.m. in the Board of Trustees Room, 315 Altgeld Hall. Recording Secretary Sharon Banks-Wilkins conducted a roll call of Trustees. Members present were Trustees Robert Marshall, Cherilyn Murer, Marc Strauss, Student Trustee Elliot Echols, Committee Chair Robert Boey, and BOT Chair John Butler. Trustee Anthony Iosco joined the meeting via telephone. Also present were Committee Liaison Nancy Suttentfield, President Douglas Baker and General Counsel Jerry Blakemore. With a quorum present, the meeting proceeded.

**VERIFICATION OF APPROPRIATE NOTICE OF PUBLIC MEETING**

Confirmation of Open Meetings Act notification compliance was given by Board General Counsel Jerry Blakemore.

**MEETING AGENDA APPROVAL**

Chair Boey asked for a motion to approve the agenda. Trustee Strauss made a motion to approve the agenda, seconded by Trustee Echols. The motion was approved.

**REVIEW AND APPROVAL OF MINUTES**

It was moved by Trustee Strauss and seconded by Trustee Butler to approve the minutes of February 27, 2014 meeting. The motion was approved.

**PUBLIC COMMENT**

The Chair asked Board General Counsel Jerry Blakemore if any members of the public had registered a written request to address the Board in accordance with state law and the Board of Trustees Bylaws. Mr. Blakemore noted that no timely requests had been received to address this Board Committee meeting.

**CHAIR'S COMMENTS/ANNOUNCEMENTS**

Chair Boey recognized University Advisory Committee representatives, Dr. Alan Rosenbaum, Executive Secretary of the University Council and President of the Faculty Senate and Deborah Haliczner, President of the Supportive Professional Staff Council. When asked for comments, Dr. Rosenbaum indicated that in the interest of efficiency he would not make a comment. Ms. Haliczner indicated the same.

Chair Boey: Today our agenda includes discussion of a current topic of national interest – Collective Bargaining and Student Athletes. Over the last few weeks, the local and national headlines have been filled with issues related to whether student athletes, particularly football players at Northwestern University, have the right to organize. The purpose of today's session will be to provide a summary of the legal issues associated with this topic, but more importantly, to apprise the committee of the compliance efforts of Northern Illinois University. This is a topic we are familiar with and one which the university continues to place as a high priority. We are proud of the work that our Associate Vice President for Intercollegiate Athletics/Athletic Director and his staff have done in this area and we are

committed to the continued support of our athletic compliance program. I would now like to ask our interim Chief Financial Officer to introduce our presenters for today's discussion.

Nancy Suttentfield, Interim Chief Financial Officer and Committee Liaison, introduced General Counsel Jerry Blakemore and Director of Athletics Sean Frazier along with members of his NCAA compliance staff.

## UNIVERSITY REPORTS

### **Agenda Item 7.a. – Student Athletes and Collective Bargaining: The Legal and Compliance Implications**

Jerry Blakemore indicated that he wished to provide a quick legal perspective on the issue of students and collective bargaining. There were four talking points that Mr. Blakemore touched upon:

- 1) Mr. Blakemore indicated that members of the Board expressed interest when this topic became a public issue to see what, if any, effect what was happening with Northwestern and the National Labor Relations Board (NLRB) would have on our university. Mr. Blakemore wanted to focus on the question that was asked by the Board, but ultimately to turn this over to those issues which are most relevant to Northern Illinois University.

In regard to the initial question, the NLRB's decision to allow for an election or collective bargaining for Northwestern football students does not have an impact on Northern Illinois University or any other public university. The jurisdiction of the NLRB is limited to private entities/institutions, and does not include public entities/institutions. And so, the first talking point generates lots of discussion, but is not particularly relevant or binding at this point on NIU.

- 2) This is the time table of to-date and projected events, but the bottom line is there will not be a legal decision, in the opinion of General Counsel, for at least another year. The NLRB at the regional level has acted; the NLRB Board itself will not even set a hearing date for this case before August or September. It is more likely, than not, that the case, whatever the decision of the NLRB is, will be appealed to the Appellate Court and because this court is in our district, the 7<sup>th</sup> Circuit Court of Appeals, it will actually be heard in Chicago. But again given the magnitude of the decision it is more likely, than not, the decision will probably be taken up by the U.S. Supreme Court.
- 3) There are six legal issues that have been raised in this case. Slides with each issue are part of the presentation; however General Counsel did not speak to them today. These issues are part of the record if anyone has a particular interest in them.
  - Legal Issue #1 – What test should the Board apply to determine whether grant-in-aid scholarship football players are "employees" within the meaning of Section 2(3) of the National Labor Relations Act, and what is the proper result here, applying the appropriate test?
  - Legal Issue #2 – Insofar as the Board's decision in *Brown University*, may be applicable to this case, should the Board adhere to, modify, or overrule the test of employee status applied in that case, and if so, on what basis?
  - Legal Issue #3 – What policy considerations are relevant to the Board's determination of whether grant-in-aid scholarship football players are "employees" within the meaning of Section 2(3) of the Act and what result do they suggest here?
  - Legal Issue #4 – To what extent, if any, is the existence or absence of determinations regarding employee status of grant-in-aid scholarship football players under other federal or state statutes or regulations relevant to whether such players are "employees" under the Act?
  - Legal Issue #5 – To what extent are the employment discrimination provisions of Title VII, in comparison to the antidiscrimination provisions of Title IX of the Education

Amendments Act of 1972, relevant to whether grant-in-aid scholarship football players are “employees” under the Act?

- Legal Issue #6 –
    - If grant-in-aid scholarship football players are “employees” under the Act, to what extent, if any, should the Board consider, in determining the parties’ collective bargaining obligations, the existence of outside constraints that may alter the ability of the parties to engage in collective bargaining as to certain terms and conditions of employment?
    - What, if any, should be the impact of such constraints on the parties’ bargaining obligations?
    - In the alternative, should the Board recognize grant-in-aid scholarship football players as “employees” under the Act, but preclude them from being represented in any bargaining unit or engaging in any collective bargaining, as is the case with confidential employees under Board law?
- 4) The most important point as it relates to Northern Illinois University and where our focus needs to continue to be is on NCAA Compliance as opposed to what is happening, possibly, on the private side. So our focus would continue to be on how we are complying particularly with the NCAA and the reforms being considered. Bottom line – there is a lot of discussion about Northwestern and the football players; however it really has little to do with NIU in the short term. In the event that there are any long term implications it would require state legislative action or federal congressional action in order to have NIU be part of that discussion.

With that Jerry Blakemore turned the floor over to Sean Frazier, the Athletic Director, to discuss NIU Athletics NCAA compliance. AD Frazier indicated that the real issue for NIU which is extremely important is ongoing compliance efforts from the NCAA perspective. AD Frazier brought the NIU Athletics Compliance Team to today’s meeting to present a breakdown of NIU’s compliance efforts. AD Frazier stated that for NCAA compliance, what is most important is to have command and control of those particular metrics that govern the data component of tracking student athletes and then the other piece of it which is extremely important is the regulation of Graduation Success Rates (GSR) or Academic Progress Rates (APR). AD Frazier stated that intercollegiate athletics uses many acronyms and performs at a speed that commands the NCAA to maintain a strong oversight component.

Athletic Director Sean Frazier called up to the podium Deputy Athletic Director Christian Spears, who is nationally recognized in the area of NCAA compliance, and Associate Athletic Director Lindsey Hicks, who is responsible for monitoring the day-to-day components of compliance.

Deputy Athletic Director Christian Spears wanted to touch on how NIU goes about interacting with our student athletes. In 2009, when Spears and Hicks arrived on campus, one of their first initiatives was to build a student athlete data base in coordination with our campus ITS. This was a “home grown” product. Many universities purchase outside products or software to help manage these compliance matters. Instead the Athletics Compliance Team was determined to build it internally with campus support. It was a cooperative effort which took some time to accomplish and get everyone on board to see the “big picture” and what Athletics was trying to accomplish. The data base provides “real time” data to our athletes. The athletes are asked a lot of specific questions about the type of experience they want to have, the type of program they want to see, whether or not they are interested in going to graduate school, and what kind of career opportunities they want after graduation. So no matter what happens with NCAA legislation, no matter what happens with the Northwestern case, for example, NIU is prepared to deal immediately with any student athlete’s concern because we have access to our own internal student athlete data base that can be manipulated, changed, asked different questions, priorities re-assessed, and really deal with the individual student athlete’s concerns in real time, first hand and quickly.

Deputy Athletic Director Spears stated that Associate Athletic Director Lindsey Hicks played an amazingly large role in building this data base and really coordinated the effort on behalf of our intercollegiate

athletics program. Associate AD Hicks along with Brett Russell, the NCAA compliance coordinator, proceeded to walk through some of the data base features showing briefly the backend of the system to give a context and a sense of exactly what is done with the data.

Associate Athletic Director Lindsey Hicks brought up an image of what the data base looks like and explained the advantages of working with an on-campus unit so all the information is pulled in from PeopleSoft and there are none of the security issues associated with hiring an outside company. The system allows Athletics to manage the people who are administrators on this data base and to manage the data that is listed on front and edit the text. This is crucial given the NCAA reforms and changes in legislation. Athletics is able to access and update the data base in-house without going to ITS for technical support. Each July the NCAA issues slight changes in all of the different forms that Athletics is required to have signed off and this system allows for real time updates of the forms to occur. In terms of the time period covered by the data base, 2014 is for the next academic year (2014-2015).

Associate Athletic Director Hicks indicated that with this system, it is possible to look at whether all the information has been submitted and whether the submitted information has been approved by the compliance office. There is also the opportunity to query based on everyone who has been coded or those that are active or inactive. The active/inactive component was something that Athletics worked closely with Internal Audit to establish. Because many times there are student athletes that begin the year but are no longer on the roster by the end of the year, we are able to keep the same data that we need for those athletes that originally filled it out but are now inactive while also having an active list that if we need to get any of this information to anyone all of the coding is done in PeopleSoft and ties directly to the data base.

AAD Hicks stated that access to the system is restricted and only certain people are allowed to fill out the information on the data base. It is done through a link on our website. Access requires a sign-in with their Z-id and password just like they would to access MyNIU. Individuals must complete each screen before moving to the next. A response is required and a question cannot be skipped. Once the information is completed, it is reviewed by the compliance team and approved or if there are questions about the information a follow-up inquiry will be made. One of the greatest things is the ability to generate reports based on every section. Administrators are able to query the data for a certain sport and then export this data. This helps with programming beyond athletics including academics and our life skills program including graduate school plans or career interests or concerns the student athlete may have. So we are able to craft questions specific to what is needed or what we want to know about the student athlete population at that time.

Trustee Boey asked Associate AD Hicks what the current population of the student athletes was. Associate AD Hicks indicated it ranges between 400 and 410 depending on the specific time of year.

Deputy Athletic Director Christian Spears indicated that he had one last thing he wanted to share with the Board. He emphasized that the drop-down menu shows all the different reporting functions from an individual such as: Do we have consent to drug test our student athlete or can you verify your automobile registration? There are all sorts of things that Division I Athletic Programs are required to monitor. This data base does that for us and we specifically ask the questions of our student athletes and we require them to fill it out. So if and when we ever would get accused or "God Forbid" an allegation of some kind of impermissible benefit was provided, we go directly to our data base. Look and see how the student athlete responded and then provide that information whatever it happens to be to an outside NCAA auditor. So we are well positioned to make sure that the Board feels comfortable about how we are managing our athletic programs.

Trustee Strauss inquired: You have a number of regulations that you are responsible for complying with. So I'm wondering whether you have gotten to the point where you've constructed some sort of a dashboard or Christmas tree affair, something that allows you quickly to be able to determine when you have to be able to examine things that are required for compliance and whether or not they are in compliance.

Deputy Athletic Director Spears responded: To be honest with you, we use the self-reported violations that we have as an institution and then we review the self-reported violations that other likeminded institutions have, we usually utilize our own conference the Mid-American Conference to determine that. We're in a situation where our conference has its own infractions committee. There are only two conferences in the country that have their own internal infractions committee – the PAC 12 and the Mid-American Conference. So we get access via Sean or Deborah or Lindsey or myself to every single school's self-reported violation and then we review those to say – do we, could we, will we have a similar problem on our campus and that becomes our dashboard to assess if there are likeminded schools/similarly situated schools involved in these things and maybe we should do a double and triple check to make sure that we are not. I would imagine that other schools do the same thing with our self-reported violations.

Trustee Strauss inquired: But you haven't found a way yet to be able to identify for instance those things that are higher risk to look at them proactively. I'm asking so that we can see whether there are some models that we can apply more generally throughout the university.

Deputy Athletic Director Spears replied that other than assessing our own likeminded institutions and then our roles on national committees (we are in a situation where I'm the past president and Lindsey on the board of directors, Sean the past president of MOAA), we have access to national data that we also have conversations about – are we going to have this issue here or do we need to reassess how we manage a particular process or protocol based on what's happening nationally. So do we have a specific dashboard? No. But do we have a keen interest in understanding what's happening at other institutions and use those things in our own dialogue? Yes.

Lastly, Deputy Athletic Director Spears wanted the Board to see the national metrics. These are the metrics that you as a Board of Trustees and/or the CARL Committee responsible for compliance should be aware of. So the NCAA has the academic progress rate (APR), the key thing here is to understand that the APR of all of our teams are above the 930 cut score. The 930 cut score is very important because it can put you in a situation where you will not be ineligible for post season competition and/or suspensions of particular sports teams or student athletes. We want to stay above the 930 cut score. That is our goal. We have remained above the 930 cut score since the inception of the APR and we hope to continue to do that. We have programs that are near and dear and that are closely related to that 930 cut score that we have processes, policies, programs and protocols in place to ensure that we maintain a high level of scrutiny when and if we do become close to that cut score. We hope to maintain our ability to manage that and we want you to be aware that this is an important metric for us all to understand.

Trustee Strauss asked: I'm curious as to what the impact is on the APR when you have student athletes who leave your program.

Spears responded that Athletics does projection worksheets on every single student athlete. Any time we have a transfer situation or we have a student who becomes ineligible and leaves our institution, we review with the coach and the athletic director as well as the sport administrator the impact of that individual student athlete leaving the program in real time and then we project forward what this will do to our APR in the next year. This is somewhat unique. You would think everyone would do that, but I can tell you that out of 127 Division I football playing institutions not everyone does that. We do, because we want to make sure that we have a real time understanding of a projected forward look on the impact of one student athlete leaving our program.

Spears said the Graduate Success Rate (GSR) is a 6 year graduation rate that includes transfers that leave our institution eligible and transfers that come into our institution and graduate. So it's different from the federal graduation rate in just that respect. We are well above the national average here. We lead the Mid-American Conference in arguably the most visible sport of football with an 85% graduation success rate. We are well positioned to maintain success in our graduation success rate with the way this institution long ago determined our academic program is outside of athletics it reports to the Provost

Office. We have great people in those areas. They make sound decisions. They work critically and appropriately with faculty reviewing our individual student athletes and we are earmarked for success long term because of the decisions that were made long ago on how we manage our academic program here at NIU.

The academic BCS, USA Today and an independent educational council puts out a listing of who does the best job at a football playing institution of graduating their student athletes and ensuring that they are academically successful and you can see for the last two years unfortunately we've been 2<sup>nd</sup>. Hopefully we will be able to right that ship and get to #1.

Trustee Boey concluded: Great! Thank you Sean, Christian, and Lindsey for taking the time and thank you for managing our program so well. We appreciate it. Have a good day.

Boey: Are there any other matters to come before this committee?

#### **NEXT MEETING DATE**

The Chair announced that the next meeting of the Compliance, Audit, Risk Management and Legal Affairs Committee is scheduled Thursday, August 28, at 9 a.m. in DeKalb.

#### **ADJOURNMENT**

Chair Boey asked for a motion to adjourn. Trustee Strauss so moved, seconded by Trustee Butler. The meeting was adjourned at approximately 1:01 p.m.

Respectfully submitted,

Cheryl A. Ross  
Interim Recording Secretary

*In compliance with Illinois Open Meetings Act 5 ILCS 120/1, et seq, a verbatim record of all Northern Illinois University Board of Trustees meetings is maintained by the Board Recording Secretary and is available for review upon request. The minutes contained herein represent a true and accurate summary of the Board proceedings.*