STATE OF NEW YORK

2748

2023-2024 Regular Sessions

IN SENATE

January 24, 2023

Introduced by Sens. BAILEY, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to collective bargaining rights for college athletes, and authorizes the public employment relations board to exercise jurisdiction over institutions of higher education and college student athlete employees of such institutions in relation to all collective bargaining matters

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York college athlete right to organize act".

§ 2. Legislative intent. (a) The National Labor Relations Act (29 U.S.C. 151 et seq.) seeks to remedy the inequality of bargaining power between employees and employers primarily through establishing and protecting the rights of employees to self-organize and designate representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. Labor organizations often originate to remedy unfair and exploitative labor practices by employers through assisting employees in securing more equitable terms and conditions of their employment, including fair compensation and safe working conditions, which individual employees would be unlikely to negotiate successfully for on their own. Labor organizations serve unique and essential purposes for professional athletes competing in sports leagues, where it is desirable to establish uniform rules and standards across multiple employers. These rules and standards bear significant consequences to the athletes in terms of compensation, health and safety, and the ability or lack thereof for athletes to choose their employer, among other issues related to the athletes' well-being. The formation of labor organizations representing athletes in professional sports leagues in the United States has helped end exploitative practices by team owners and management, partic-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ularly through establishing collective bargaining agreements that have secured athletes a fair share of the revenues their talent and labor produces, as well as more equitable terms of their employment and protections for their short- and long-term health.

(b) College athletes face exploitative and unfair labor practices by the National Collegiate Athletic Association (referred to in this section as the "NCAA") and its member institutions, primarily through the denial of the basic economic and labor rights of such athletes, which the NCAA and its member institutions have justified by defining college athletes as amateurs. The NCAA and its member institutions have denied college athletes a fair wage for their labor by colluding to cap compensation; they maintain strict and exacting control over the terms and conditions of college athletes' labor; and they exercise the ability to terminate an athlete's eligibility to compete if the athlete violates these terms and conditions. College athletes exhibit the markers of employment as established under the common law definition of the term "employee": They perform a valuable service for their respective colleges under a contract for hire in the form of grant-in-aid agreements; these agreements assert significant control over how athletes perform their work and the conditions under which they work; and they receive compensation in the form of grant-in-aid and stipends in exchange for their athletic services.

(c) To establish more equitable terms and conditions for college athletes' labor, college athletes need representation of their own choosing to negotiate collective bargaining agreements with their respective colleges and the athletic conferences that help set rules and standards across the state. To organize effectively, college athletes must be able to form collective bargaining units across institutions of higher education that compete against each other, including within athletic conferences in the state.

§ 3. Section 718 of the labor law is renumbered section 700-a and a new section 718 is added to read as follows:

§ 718. Collective bargaining rights for college athletes. 1. The board shall exercise jurisdiction over institutions of higher education and college student athlete employees of such institutions in relation to all collective bargaining matters under this chapter pertaining to such employees, including any representation matter, such as recognizing or establishing a bargaining unit for such employees and any labor dispute, involving such institutions and employees.

2. For the purpose of establishing an appropriate bargaining unit for college athlete employees at institutions of higher education in an intercollegiate athletic conference, the board shall recognize multiple institutions of higher education within an intercollegiate athletic conference as a multiemployer bargaining unit, but only if consented to by the employee representatives for the intercollegiate sports bargaining units at the institutions of higher education that will be included in the multiemployer bargaining unit.

3. No person shall enter into or induce any person to enter into any agreement (including a grant-in-aid agreement, as defined in section 3(15) of the National Labor Relations Act (29 U.S.C. 152(15)) or legal settlement that waives or permits noncompliance with this section.

4. As used in this section, "intercollegiate athletic conference" means any conference or other group or organization of institutions of higher education that: (a) exercises authority over intercollegiate sports at such institutions of higher education; and (b) is engaged in commerce or an industry or activity affecting commerce; provided, howev-

er, that such term does not include the National Collegiate Athletic Association.

§ 4. Subdivision 2 of section 701 of the labor law is amended by adding a new paragraph (c) to read as follows:

(c) The term "employer" includes a public institution of higher education as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) and located within the state with respect to the employment of college student athlete employees of the institution.

§ 5. Subdivision 3 of section 701 of the labor law is amended by adding a new paragraph (d) to read as follows:

(d) The term "employee" or "college athlete employee" shall include any individual who participates in an intercollegiate sport for an institution of higher education located within the state and is a student enrolled in such institution of higher education if:

(i) the individual receives any form of direct compensation, including grant-in-aid, from the institution of higher education; and

(ii) any terms or conditions of such compensation require participation in an intercollegiate sport.

§ 6. Section 701 of the labor law is amended by adding a new subdivision 13 to read as follows:

13. The term "grant-in-aid" means a scholarship, grant, or other form of financial assistance that is provided by an institution of higher education to an individual for the individual's undergraduate or graduate course of study.

§ 7. Nothing in this act, or any rule or regulation promulgated pursuant to authority granted by this act, shall:

(a) cause any type of direct compensation described in section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) that was not previously treated as income for which a tax may be imposed under the Internal Revenue Code of 1986 to become a type of direct compensation for which a tax may be imposed under the New York state tax law;

(b) cause any individual to be treated as an employee, or cause any amounts received by an individual to be treated as wages, for purposes of any provision in the New York state tax law relating to employment taxes or the withholding of taxes by an employer if such individual or amounts would not otherwise be so treated;

(c) affect the treatment of qualified scholarships under section 117 of the Internal Revenue Code of 1986; or

(d) otherwise affect the treatment of any direct compensation described in such section 2(3) in determining income, including gross income or adjusted gross income, for purposes of -

(i) reporting requirements under the New York state tax law; or

(ii) determining eligibility for any form of state financial assistance available to student athletes.

§ 8. Severability. If any provision of this act or the application of such provision or amendment to any person or circumstance is held to be invalid or unconstitutional, the remainder of this act and the application of the provision or amendment to any other person or circumstance, shall not be affected.

§ 9. This act shall take effect immediately; provided, however, that this act shall be deemed repealed if any federal agency determines in writing that this act would render New York state or any student athlete ineligible for the receipt of federal funds or any court of competent jurisdiction finally determines that this act would render New York state out of compliance with federal law or regulation provided, further, that the commissioner of labor shall notify the legislative

bill drafting commission upon the occurrence of such determination in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.