

ARBITRATION: SOLVING COLLEGIATE FOOTBALL'S COMPENSATION PROBLEM

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The problem facing collegiate athletes, specifically high profile, talented collegiate football players, is their inability to generate personal income. The National Collegiate Athletics Association (NCAA) and universities generate millions of dollars annually from collegiate football. The NCAA had a \$71 million surplus in the fiscal year of 2012, an all time high for the organization.¹ The highest grossing university in the fiscal year of 2013 was the University of Texas at Austin; they spent \$27 million on their football program, but the program brought in over \$109 million.²

Because the NCAA has an amateurism requirement, the players cannot be compensated monetarily for their play, aside from their scholarships, which usually entail free tuition and room and board. One report used four major universities and averaged out what a typical football scholarship costs them annually; they found that a scholarship is worth \$41,686.³ Some low-income student athletes are also eligible to receive Pell Grants, which do not have to be repaid; that is an additional \$5,500 a year.⁴ Even with all these benefits, some of the athletes do not have enough money to cover their daily living expenses. Recently, Shabazz Napier, starting point guard for the University of Connecticut men's basketball team and national champions, stated that he goes to bed hungry some nights because he could not afford to eat.⁵ This

¹ <http://www.usatoday.com/story/sports/college/2013/05/02/ncaa-financial-statement-surplus/2128431/>

² <http://ope.ed.gov/athletics/index.aspx> - This website ("Equity in Athletics" data site) allows the public to view data on any school receiving Title IV funding and that have an intercollegiate athletics program.

³ <http://bleacherreport.com/articles/1094781-so-whats-a-college-football-scholarship-worth-anyway/page/5> - The article mentions that the number is not all-inclusive because there are also other benefits that are harder to quantify, such as medical benefits and the NCAA Student Assistance Fund.

⁴ <http://bleacherreport.com/articles/1094781-so-whats-a-college-football-scholarship-worth-anyway/page/8>

⁵ <http://www.cnn.com/2014/04/07/us/ncaa-basketball-finals-shabazz-napier-hungry/>

is just one example of the type of stories that come out every year about athletes' struggles and yet little has changed.⁶

Yes, the students are provided a tremendous opportunity to go to college and have it all paid for, but in doing so they are essentially giving up their ability to work. Students who get their scholarships via a different means are not precluded from gaining employment and earning money to cover their daily living expenses. I believe this is where the root of the problem lies. The student athletes who are devoting countless hours to the football team cannot also hold a steady job.⁷ Football and academics take up the vast majority of their time.

The National Football League, NFL, also factors into this equation because they have a requirement that states a player must be three years removed from high school before being eligible to play.⁸ This forces the athletes to turn to collegiate sports because it is the best route for them to achieve their dreams of playing in the NFL. The other professional and semi-professional leagues that do not have the minimum three-year requirement do not afford the athletes the best opportunity. This has created a "free" amateur farm system for the NFL, and the NCAA and universities have

⁶ On April 15, 2014, the NCAA Legislative Council approved a long debated proposal that would allow Division I schools to provide student athletes with unlimited meals and snacks. This would lift the restriction on how much food can be provided and allow the schools, which are in a better position to deem what their athletes need, to determine what is within their budget and how much food to provide. This proposal is still pending because it has to be approved by the NCAA Board of Directors. Their next meeting is April 24th. - <http://www.ncaa.org/about/resources/media-center/news/council-approves-meals-other-student-athlete-well-being-rules> - Some believe that this was done in response to Napier's comments and the attention they brought. My paper will not discuss this recent development and my system will not take it into account because it is so new and still pending. However, this would certainly impact any "play for pay" system because one of the major points of contention, and arguments in favor of paying athletes, is that athletes cannot even afford to eat and this would be a step in resolving that issue.

⁷ <http://www.sbnation.com/college-football/2014/3/27/5551014/college-football-players-union-northwestern-nlrb> - Peter Sung Ohr, Director of the National Labor Relations Board (NLRB) Region 13, found that on average Northwestern football players dedicated about 40-50 hours a week to football while in season.

⁸ This is a different, and larger and more complex problem that needs to be analyzed on its own. I will not do so in this paper.

been able to profit from this as well because the premier players of tomorrow are playing on their platforms. What it boils down to, is a free workforce, setting aside their scholarships, that generates millions of dollars in profit. With the ever-growing popularity of American football, and with that the growing revenue stream, the collegiate athletes whom have created this market do not share in the spoils. The specific problem that needs to be examined is how to fairly compensate these student athletes.

Seeing the recent news about the Northwestern football players being allowed to unionize and hoping to avoid any lawsuits, Blake James, Athletic Director for the University of Miami has approached me to design a system that may fairly and justly monetarily compensate the players.⁹ He came to me on behalf of the University as a whole as well, stating that they wanted to be at the forefront of dealing with this issue. The only specifications given to me in designing the system were to ensure it was a fair one, and that it could be used as an example for other universities across the nation. Mr. James stressed how important it was to the university that they are seen as being proactive and trying to address the problem head on, as this would help with any future legal issues that may arise. He has given me assurances that I may speak with anyone within the university and have access to all its resources. As far as budget goes, there is no ceiling. I have been told to keep the system within a “reasonable” price range. The university will not be approving of the system, only the cost of its implementation. My compensation for designing the system is \$15,000 and will be paid by the university. It will be doubled if another university uses it, and tripled if two or more universities use it.

I decided to take on the challenge for a couple of reasons. The first being that I played football at Dartmouth College for four years, a Division I program, and have experienced this issue. Not to the same degree as the higher level programs, but enough so that I have been invested in this conversation. Some of my teammates and best friends garnered weekly accolades and made the

⁹ I decided to focus solely on the University of Miami because it allows me to address the issues more in depth. If I tried to make a blanket system for the whole NCAA and all the universities, too many other issues arise. Like how to account for cost of living differences, and profit differences.

Dartmouth Football Program visible again. The visibility could be attributed to them because the media and fans alike sought out their attention, where they had not cared about the program beforehand. I am also a sports fan and have followed many stories of athletes who are struggling to feed themselves when they could otherwise be providing for their families. All the while, the institutions that govern them are making a substantial profit. I feel it is time that this antiquated system be re-assessed and updated.

With an issue involving this much money there are many stakeholders. The main ones are the football players, universities, and the NCAA. These three groups will be the most directly affected. The players are continuing to produce an on-field product that generates millions of dollars in profit. The universities and NCAA are the ones who are directly benefitting and not compensating the players for their work. Within the universities there are multiple stakeholders.¹⁰ The two direct stakeholders are the athletic department and school administration. The athletic department, including coaches, is running the football program and is overseen by the school administration, which the profits ultimately go to.

There are many indirect stakeholders.¹¹ Several of them are part of the universities, such as other student athletes.¹² There is a sentiment that if collegiate football players are to be paid then so too should other student athletes. This is an important sub-issue to address because of the consequences imposing my system may have. Paying all of the other student athletes would cut into the profits being generated, which the direct stakeholders may be against. My reasoning for not including the other student athletes

¹⁰ There are also multiple stakeholders within the NCAA because not all of the departments/committees deal with collegiate football, and therefore some will be less affected. But for this paper I will continue to refer to those who are directly affected as the "NCAA."

¹¹ Some indirect stakeholders include: school boosters (donors), fans, media outlets, corporate sponsorship, families of the football players, and, families of other athletes. These groups are affected because they give money, benefit from football, and/or have an interest in what happens in collegiate sports. But, I will not be addressing their possible issues within the paper because I want to remain focused on the immediate problem.

¹² There are other indirect stakeholders within the universities, such as students and faculty. But these stakeholders do not have a major role and I will not be addressing their possible issues within the paper.

in a play for pay system is two fold. The first reason being because I have not been asked to include them. The second reason is because the other student athletes are not generating a profit. Most non-football sports teams cost their schools money because they do not generate enough revenue to cover their own expenses.¹³ They too are dedicating a lot of time towards their sports and may be giving up an opportunity to seek employment like the football players, so an argument can be made. But it is weakened by the fact that they are not generating a profit with their sports like the football players.¹⁴

My first intuition as a designer is to set up an arbitration like system because the outcome of that system would be binding on both parties. If the parties are not bound by the process than whichever side is unhappy with the result will continuously object and refuse to abide by the resolution that has been produced. Arbitration is normally a one and done type of deal, but this process will be an ongoing one. The system will be designed so that it can remain in place, and continuously adapt or modify with new information or events. An arbitral tribunal will make the decisions, unanimously. This will provide for the fairest treatment to all parties involved. It will also provide that each stakeholder is represented in the decision making process, as well as their interests, and that neutrals may also be involved. A tribunal will also give the correct amount of weight to the impact that this decision will have. Statisticians and numbers can decide exactly what is the correct amount of money that should be given, if any, but will fail to take into account the human aspect of that decision. The unanimity will also mean that within the tribunal there will be negotiation.

Before anything can happen and the system begins its process, an arbitral tribunal must be assembled because they are the ones reviewing the information and making the final decisions,

¹³ On the Equity in Athletics website, the majority of universities' expenses and revenue streams can be seen without the inclusion of basketball or football, which bring in the most money. Almost all schools will have posted a loss in this category. Even so, not many basketball teams generate profits for their schools.

¹⁴ Some non-football programs generate a profit, and it may be that those student athletes should also be compensated, but in this paper I will stay focused on the football team at the University of Miami.

and for those reasons they are the most important part. The tribunal will be a diverse group, composed of seven representatives who are nominated from each of the direct stakeholder groups as well as a neutral who will be appointed by me. The NCAA, university athletic department, university administration, will each receive one representative. They are direct stakeholders and deserve representation to ensure fairness. One issue in having so many administrative representatives is balancing the tribunal. There cannot be too many of either side because it will taint the decision and give either side too much perceived power.

To remedy this in part, the football coaches will be given a representative who must be nominated from the current coaching staff. The coaches are a sub-group of the athletic administration, but will help to bridge the gap between the players and administrative bodies. Their interests lie in the middle, or on both sides of the fence so to speak, and they provide a unique point of view. Their inclusion will also help to balance an otherwise unbalanced panel without going too far in the other direction.

The players will receive two representatives, one must be a former player and the other may be anyone whom the players wish to nominate to represent their interests. As direct stakeholders they deserve representation in the decision making process. Giving the players two representatives helps to balance the tribunal, without creating a possible three on three deadlock.

The final member, and head of the tribunal will be an economist of my choosing. I will choose them because I do not trust the parties to find the correct person to head the tribunal; and they are paying me to design a system that works so I want to ensure that the head of that system is the right person to get the job done. Ideally the economist will also be a statistician, experienced in labor and employment disputes, and somewhat familiar with the current situation, but a neutral and have no prior allegiances to either side of the argument. The economist is like the coach representative, because their interests may lie somewhere in the middle. Where they differ, I believe, will be in their objectivity. The economist will approach this situation and hopefully remain objective.

All of these individuals will be compensated by a modest salary, paid for equally by the NCAA, the university out of its own operating budget excluding the athletic department's allocation, and the profits earned via the football program. This will ensure that all stakeholders are contributing to the tribunal financially and helps to eliminate perceived unfairness or imbalance in the system. If one party were to foot the bill and a favorable outcome was given, then it would be perceived as being because of the money being paid. Ideally, all of the representatives will be there to provide justice, and fair result to the parties. The tribunal's offices will be placed in an available wing of the administrative building, or if it is ready in time, the new athletic building.

Gathering the correct information is pivotal to this system being a success. The most important information is what interests do each of the direct stakeholders have. I believe that this will show that the football players have an interest in receiving some of the profits they are generating. And that they also have an interest in justice, or at least what they and others perceive to be justice. The athletic and school administrations and NCAA will have an interest in retaining all or as much of the current profits as possible. But in order to avoid future greater harms, like lawsuits and strikes, I believe they would be interested in compensating the players fairly. They would want that compensation to be a reasonable and sustainable one.

To gather this information I will first send out a survey to the football players. The survey will include questions gauging their interest in being paid, spending habits, and what they would spend extra money on. Assuming the players would like to be paid, which is a safe bet, it is important to see how they are currently spending any money they do receive. Are they spending money on extra food, clothes, every day living expenses, supporting their children/family, or even sending some money to their parents? Questions will be short answer, for example "on average how much money a week do you spend on food for yourself? For others?" This information will provide a foundation on which to base any monetary award on. It will not be disclosed to anyone but the tribunal.

The next step will be to speak with different administrative stakeholders. Athletic Director Blake James has already expressed

the interests of the university but that was not part of the formal process. The tribunal will have members from the school and athletic administration come in for private meetings. Not all members of the tribunal need to be present, because it might be too intimidating, but the interviews will be videoed so that any absent tribunal members will have access to them. It will not be an interrogation, rather more of an open dialogue. Questions such as “do you think the players should be paid? how much?” might be asked. Whatever the tribunal feels is necessary to acquire the interests of the parties. A similar process can be used to interview the NCAA. Skype or another form of communication might need to be used if in-person interviews are too costly or otherwise unavailable. With this interview process, the tribunal will also receive copies of all financial records they require dating back twelve years. It will include ticket sales, apparel sales, media contracts, sponsorships, donations, etc. All the information they need to determine exactly how much money is being made and available for an award.

One of those interviews might go like this:

Economist: Hello, Mr. James, we are here today to interview you for the “play for pay” system.

Mr. James: Thank you for having me.

E: What are the universities interests in creating this system?

J: Well we want to tackle the issue of paying our student athletes because we believe it is the right thing to do. They help us to generate profit for the school and we feel they should be rewarded. We want to be at the front of this fight. It will also help avoid any future legal issues that may come up.

E: I see. How much would you say is a fair amount per player then? All of it disbursed amongst them?

J: Well I think that’s for the statisticians to say. But if I had to guess I would say a small percentage of the profits. Companies who make lots of money do not pay their employees all of the money; they pay them a fraction of that. So maybe like 2% if I had to guess off the top of my head.

E: Mr. James, are you aware of how much money your school made off the football program alone last year?

J: I am.

E: Then you should know that 2% would be under \$1,000 per player for the year. That seems like nominal amount considering these kids are going hungry.

J: Well we provide them with as much food as possible. As much as the NCAA allows, maybe you should take that up with them. We want to work with the players and get them what they need, and what they deserve.

After that initial information gathering process the tribunal will hold a large group meeting or hearing in one of the auditoriums so that any unheard or new interests or concerns may be voiced. It will work like the question and answer session of a seminar, where the attendees may get up in front of a microphone and speak for a minute or two to voice their concerns. Continuously voiced opinions will be noted but cut off from speaking for sake of time. There will be security there, and any unruliness may affect the final decision. This will incentivize all parties to be on their best behavior. With all the necessary information gathered, the tribunal and their staff will turn to the review process. This process will include a lot of help from some statisticians/economists who will process the numbers.

I have already provided the framework for the monetary compensation because I am the one being asked to design the system. It is the job of the tribunal, with the aid of their staff, to determine what a fair base dollar amount will be by looking at all the data and information. This will be paid to all of the football players for being on the team. Because some players contribute more than others to the profits, the base number will be relatively low. Then based on certain criteria, the players can receive additional funds. What the criteria are is up to the tribunal and should be determined by what contributes to profitability and how a player generates that profit. These increases in money allotted will be based off of merits and other incentives. How much that increase will be depends on what the tribunal decides.

The amount increase depends on which of the criteria the players meet. If a player is named a starter on the team, he gets X amount of dollars for having put in the work to get to that position. Every game they are a starter, they get X amount. This allows players who did not start the season as starters to also reap the benefit of working hard and playing. Players who are not starters but who do play, will receive a certain amount, this includes special teams players.¹⁵ Other criteria that will allow the players to receive more money will include individual accomplishments as well as team ones.¹⁶ The list of team accomplishments that may garner additional money are: number of games won, winning the conference, getting to a bowl game, winning the bowl game, getting to the national championship, and, winning the national championship. Being ranked in the top twenty-five, ten, five, or number one will also carry different amounts. Individual accomplishments such as winning weekly or annual awards will provide the player with X amount. Jersey sales are another marker of a player's profitability. People buy certain numbered jerseys depending on the player at the time.

With that frame, the tribunal will determine what a fair dollar amount is. It is my belief that a fair amount would be in the range of three to ten thousand dollars per player as a base level, and then boosted by all the subsequent criteria. The best players and superstars can make around twenty to twenty five thousand dollars a year. When viewed in the grand scheme, this is not a large amount. The University of Miami football team spent \$24,672,810 and brought in \$29,986,463, for a profit of \$5,313,653.¹⁷ If the athletes who are generating that profit are paid a portion of it, say one-fifth, there is plenty of money left over for the school.

Within the tribunal, negotiations and discussions will be had as to what is the proper amount. By having all the stakeholders represented in the decision process I believe a fair amount will be

¹⁵ Special teams are units that play on the field during kicking plays in football. A player can be a starter on a special teams unit but might not be one on offense or defense.

¹⁶ The following lists are not meant to be comprehensive because there are many different milestones that can be used to gauge success and profitability.

¹⁷ <http://ope.ed.gov/athletics/index.aspx> - University of Miami

awarded. They have every incentive to come to a unanimous decision because failure to do so has great costs to both sides. The players want to be paid for their work, and the university and NCAA wants to avoid legal troubles that could prove more costly than paying the players upfront. In the case of the University of Miami, the administration is already willing to pay; it is just a matter of finding out a fair number that is based on the facts. Having the NCAA involved allows for changes to be made. The play for pay system alleviates nominal recruiting violations, like meals being paid for, and money being paid under the table to players for their play because the NCAA can institute harsher penalties for such violations with such a payment system in place. This will incentivize all parties to play within the rules because they have a lot more to lose. The players will lose their stream of income and schools will lose scholarships, players, and face suspensions. The increased penalties will be part of the agreement to partake in this process.

When the tribunal makes their final decision, the players will begin receiving the amount awarded over the duration of the school year. Then the feedback process will start. The athletic administration will administer a survey to the players to help continue track their spending habits and see whether the amount has proven to be successful in alleviating the players of their struggles and reward them for their work. The players will be asked to be aware of their spending habits so that this information can be as accurate as possible. It will be in their best interest to do so because future adjustments may be made based off this information. Lying will not be prevented but the statisticians will be able to help counter act some of that, and the interviews with the coaches, players, and administration will attest to the accuracy of their reports. The interviews will be done to gauge the happiness of the players, and create and keep an open ongoing dialogue to best provide for the interests of each side. The system will be able to continuously grow and adapt to the new circumstances it may face. The tribunal may rotate representatives if the parties can agree on it, or I can be the one to rotate them. This creates an ethical problem because my selection of the candidates might be influenced by my personal biases. To account for that, perhaps names can be left out of that selection process and only resumes will be used to choose.

Some other ethical challenges I will face as a designer will be trying to control how much power I give to either side in the design of my system. I think that by taking a lot of the control out of my own hands I have removed a lot of my bias, and have placed equal and objective parties in the decision-making process. Another potential conflict is designing a good system that is fair, versus meeting the needs of my employer. My employer wished to be proactive and on the forefront. Balancing those two interests should not be a problem because any forerunner should also aim to be successful.

APPENDIX A Exit Survey

- On a scale from 1-5, how helpful was Mr. Diblasi throughout this process?
- Was he able to answer your questions?
- Did you ever feel intimidated by anyone within this process?

APPENDIX B

The University of Miami and its employees' involvement in this paper are purely fictional. They were used to show what a university trying to effectuate change might look like and so that the readers have an example to reference.