AGENDA

NIU Board of Trustees
COMPLIANCE, AUDIT, RISK MANAGEMENT AND LEGAL AFFAIRS COMMITTEE
10:00 a.m. – Thursday – May 29, 2014
Board of Trustees Room
315 Altgeld Hall

1. Call to Order and Roll Call
2. Verification of Appropriate Notification of Public Meeting
3. Meeting Agenda Approval ................................................................. Action .......... i
4. Review and Approval of Minutes of February 27, 2014 .................................. Action .......... 1
5. Chair’s Comments/Announcements
6. Public Comment*
7. University Recommendations
   a. Student Athletes and Collective Bargaining: The Legal and Compliance
      Implications .......................................................................................... Information .......... 3
8. Other Matters
9. Next Meeting Date
10. Adjournment

*The Board and its committees comply with P.A. 91-0715 through its Bylaws, Article II, Section 5.B:

1. Consistent with Public Act 91-0715 and reasonable constraints determined by these Bylaws and the Chair, at each regular or special meeting of the Board or its committees that is open to the public, members of the public may request a brief time on the approved agenda of the meeting to address the Board on relevant matters within its jurisdiction.

2. Committees of the Board review University proposals for action and make adjustments and endorsements as appropriate for further consideration by the full Board. Public comments are generally most useful at meetings of Board committees, where proposals are first considered and the time for interaction most feasible.

3. To facilitate an orderly process, appearance requests must be registered on a Board-provided form and submitted to the Board’s Parliamentarian at least 45 minutes before the meeting is scheduled to be called to order. To be recognized, the appearance request will include the name, address and position of the individual wishing to speak, the name of the organization or group represented, a concise summary of the presentation, and whether the requestor has appeared earlier on the topic before any other meeting of the Board. The Parliamentarian may confer with registered speakers to cooperatively assist the Chair of the meeting in assuring coordinated issue presentation and an efficient use of allocated time. The Parliamentarian will acquaint requestors with the generally acceptable rules of decorum for their presentations. In lieu of oral presentations, individuals may present brief written materials not to exceed five (5) pages to the Parliamentarian for distribution and consideration by the Board in advance of the meeting.

4. The Chair of the meeting will recognize duly registered individuals at the appropriate point during the meeting. Unduly repetitive comments may be discouraged and restricted by the Chair. To assure an orderly and timely meeting the Chair may limit time allotments to five minutes or less, may delay or defer appearances when appropriate, and defer or refer questions received from presenters for answers if available.

Anyone needing special accommodations to participate in the NIU Board of Trustees meetings should contact Ellen Andersen, Director of Special Events, at (815)753-1999, as soon as possible, normally at least a week before the scheduled Board meeting.
CALL TO ORDER AND ROLL CALL

The meeting was called to order by Chair Robert Boey at 12:10 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 Wheeler Coleman, Anthony Iosco, Robert Marshall, Cherilyn Murer, Marc Strauss, Student Trustee Elliot Echols and Committee Chair Boey and BOT Chair John Butler. Also present were Committee Liaison Nancy Suttenfield, General Counsel Jerry Blakemore and President Douglas Baker. With a quorum present, the meeting proceeded.

VERIFICATION OF APPROPRIATE NOTICE OF PUBLIC MEETING

Confirmation of Open Meetings Act public notice compliance was provided by General Counsel Jerry Blakemore.

MEETING AGENDA APPROVAL

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

REVIEW AND APPROVAL OF MINUTES

It was moved by Trustee Strauss and seconded by Trustee Marshall to approve the minutes of the November 7, 2013 meeting. The motion was approved.

CHAIR’S COMMENTS/ANNOUNCEMENTS

Chair Boey recognized the representatives of the University Advisory Committee, Dr. Alan Rosenbaum and Ms. Deborah Haliczer.

As a reminder, the Chair said, this committee covers four functional areas: Compliance and Ethics, Audit, Risk Management, and Legal Affairs. In order to provide sufficient opportunity to cover each of these functional areas, it is my intention to highlight one area for discussion and to rotate the discussion for each meeting. I am hopeful that we will be able to provide an opportunity to discuss the other functional areas as needed or requested by any of the committee members. The focus of this meeting will be an annual report on the findings and recommendations that we received from the external auditors, McGladrey LLC, concerning the audit of the university’s 2013 financial statements.

PUBLIC COMMENT I

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.
UNIVERSITY REPORT

Agenda Item 6.a. – Fiscal Year 2013 External Audit Report

Ms. Nancy Suttenfield, our Interim Chief Financial Officer, will give a summary of the FY13 External Audit Report. Nancy has been serving as our Interim CFO since November. She has served as the CFO of the University of North Carolina at Chapel Hill, the Case Western Reserve University in Ohio and Wake Forest University in North Carolina. Early in her career, she worked with Virginia’s public universities and teaching hospitals, serving as a budget manager for the executive branch, later serving as a director of planning and budget, and then CFO at the Smithsonian Institution in Washington, D.C. At NIU, she currently oversees Budget and Financial Planning, Controller’s Office, Accounting, Grants Fiscal Administration, Institutional Research and Treasury Operations.

The university recently received the audit of our annual financial statements for Fiscal year 2013, which was completed by McGladrey LLP in December, with copies provided to the Illinois Auditor General, Ms. Suttenfield reported. The audit was conducted according to Governmental Accounting Standards Board (GASB) that apply to all public universities and other public entities. That set of standards requires the auditors obtain reasonable assurance that the statements are free from material misstatement. Based upon the audit McGladrey completed, they expressed an unqualified opinion on the university’s financial statements. However, I would like to note the discovery of a misstatement that was corrected in the course of the 2013 audit. It involved incorrect calculations of interest recorded in previous years on a cash basis, which should have been calculated on the basis of accrual accounting and adjusted for timing. This related to interest payments on a capital lease. The adjustments were made according to GASB and the amount of adjustment represented $4.2 million, representing the correction of the 2011, 2012 and 2013 misstatements, as required by GASB. So, instead of using a cash basis of accounting for interest, we should have been following an accrual basis of accounting. So the correction has been made and will be correctly recorded in future financial statements.

NEXT MEETING DATE

The next meeting of the Compliance, Audit, Risk Management and Legal Affairs Committee is scheduled for Thursday, May 29, in DeKalb.

ADJOURNMENT

Trustee Strauss moved to adjourn, seconded by Student Trustee Echols. Chair Boey adjourned the meeting at approximately 12:21 p.m.

Respectfully submitted,

Sharon Banks-Wilkins
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.
STUDENT ATHLETES AND COLLECTIVE BARGAINING:
THE LEGAL AND COMPLIANCE IMPLICATIONS

Associate Vice President for Intercollegiate Athletics Sean Frazier and Vice President and General Counsel Jerry Blakemore will give a presentation on "Student Athletes and Collective Bargaining: The Legal and Compliance Implications," a brief example of which follows.
NIU BOARD OF TRUSTEES
CARL COMMITTEE

Student Athletes and Collective Bargaining:
The Legal and Compliance Implications

- Sean Frazier, Vice President and Director of Intercollegiate Athletics
- Jerry D. Blakemore, Vice President and General Counsel

May 29, 2014
Labor Management Relations Act, 29 U.S.C § 141 Et. Seq.

- The National Labor Relations Board is as an agency of the United States created by the Labor Management Relations Act, 29 U.S.C. § 153 (a)

- The NLRB governs "Employers" defined as: any person acting as an agent of an employer, directly or indirectly...

- ...but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof...

29 U.S.C. § 152
Timeline of Events

- **January 28**, NU Players petition NLRB Region 13 to be represented by the College Athletes Players Association (CAPA).

- **March 26**, Region 13 held players receiving football grant-in-aid scholarships are employees and entitled to unionize.

- **April 9**, NU filed a Request to Review to NLRB’s Full Board.

- **April 24**, NLRB grants NU Request for Review.

- **April 25**, NU players voted on whether to have CAPA represent them, but votes are impounded until NLRB Full Board decision.
The D.C. Briefing Schedule is Set

- Until the D.C. Review is completed the Players’ election results are impounded.

- The Briefing Schedule for the Full Board Hearing set, *but both parties asked for extension to:*
  
  - June 26, 2014 – Amicus Curiae Briefs due
  
  - July 3, 2014 – Parties’ Opening Briefs due
  
  - July 31 – Parties’ Responsive Briefs due
Legal Issue Raised #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 Raised #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 Raised Review #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 Raised Review #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 Raised #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 Raised #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?
Appeal of Full Board’s Decision

- Northwestern will have the ability to appeal, the D.C. Office’s Decision, to the United States Court of Appeals’ 7th Circuit...

- “Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of Appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside.”

29 U.S.C.A. § 160 (f)
ATHLETICS PERSPECTIVE

Sean Frazier,
Associate Vice President and Director, Intercollegiate Athletics