

The Women of the NFL:
What Role do Cheerleaders Play in Professional Football?

I. INTRODUCTION

Being a professional cheerleader is a privilege denied to many.¹ From the earliest stages of childhood, girls dream of performing in a professional atmosphere.² The sense of accomplishment, the celebrity, and the prestige is derived from years of training that culminates at the highest level of the sport – the National Football League. But does this honor come at a price? An LA Times columnist recently highlighted “the idea that a woman is supposed to be so thrilled to get an NFL cheerleading job that she will ignore blatant violations of her employment rights.”³ At what point does reaching your dreams mean that you have to sacrifice your ability to make a living?⁴

It is no doubt that women face barriers in the world of athletics. There is a consistent inequality that is not correlative to the amount of hard work that is put into developing a craft. This disparity is present in all stages of athletics, but is most apparent at higher levels. In collegiate athletics, a mere 45% of scholarships, 38% of operating dollars, and 33% of recruitment allowances are allocated to women’s teams.⁵ In professional athletics, golf for example, the LPGA awards \$50 million in prize money to the victor, while their PGA counterparts top out at \$356 million.⁶ It is not a secret that men’s athletics generate more revenue, which translates to higher allowances, but when the discrepancies in treatment become egregious, steps need to be taken to ensure gender equality.

This comment will explore gender inequality in the context of the Oakland Raiders’ employment of the Raiderette cheerleaders. I will examine the recent class action brought by a Raiderette cheerleader alleging numerous California wage and hour violations. I will argue that the Raiderettes are employees under California law and, therefore, must be compensated at the legal standards for the time they are required to dedicate to the Oakland Raider organization.

II. STATEMENT OF FACTS

On January 22, 2014, Oakland Raiderette, Lacy T., filed a class action alleging a myriad of California labor law violations.⁷ Among them, failure to pay the minimum wage and overtime compensation, failure to reimburse business expenses or provide meal and rest breaks, failure to

¹ Robin Abcarian, *Oakland Raiders Break All Kinds of Labor Laws, Cheerleader Suit Says*, LA TIMES, (Jan. 24, 2014 3:53 PM)

² *See id.*

³ *See id.*

⁴ *See id.*

⁵ *Pay Inequity in Athletics*, WOMEN’S SPORT FOUNDATION, <http://www.womenssportsfoundation.org/en/home/research/articles-and-reports/equity-issues/pay-inequity> (last visited Feb. 20, 2014).

⁶ *See id.*

⁷ *See* Complaint for Damages and Demand for Jury Trial at 2.

pay timely, and unlawful deductions in violation of California law.⁸ As of March 1, 2014, the Oakland Raider organization has yet to provide a response to these allegations.

According to the Raiderette policy manual and employment agreement, the cheerleaders are paid a flat fee of \$125 per game, which typically amounts to nine hours of work.⁹ Raiderettes are not only required to attend all Raiders' preseason, regular, and post-season home games, but are also required to attend other events, engagements, or functions on behalf of the Raiders.¹⁰ These include: mandatory practice twice a week, rehearsals, preparations, fittings, meetings, workouts, photo sessions, and drills.¹¹ Collectively, the Raiderette women make 300+ appearances over the year at corporate, charity, and community events – many, if not all, without the promise of compensation.¹²

If a Raiderette does not perform during a game, regardless of the reason, she is not paid for that game.¹³ The Raider organization has the sole discretion to “bench” a cheerleader, which effectively still makes attendance and pre-game/half-time performances mandatory, minus the compensation that would have been received if she was performing during the game.¹⁴ Similarly, the Raiderettes are subject to a specific set of fines that are published before the start of each season. These monetary sanctions are deducted from any compensation that the Raiderette earns in one season.¹⁵ Among other things, fines include failing to bring a yoga mat to practice, turning in written biographies late, bringing the wrong pom-poms to practice, or wearing the wrong clothing.¹⁶

Lastly, Raiderettes are expected to incur expenses for which they are never reimbursed.¹⁷ These expenses include travel, cosmetics, hair stylists, and workout equipment, all of which are mandatory under Raiderette policy.¹⁸ All compensation that the Raiderette is entitled to for performance in home games – a mere \$1250 – is paid out at the end of the Raiders' home game season; a staggering eight months after Raiderettes begin working.¹⁹

III. EMPLOYEES OR INDEPENDENT CONTRACTORS

The outcome of the case is going to rely on the classification of the Raiderettes as employees or independent contractors. If the Oakland Raiders have the right to control the manner and means of accomplishing a desired result, then the Raiderettes are properly classified as employees.²⁰ This seems like a fairly straightforward question with an even more

⁸ *See id.*

⁹ *See id.* at 3.

¹⁰ *See id.* at 3.

¹¹ *See id.* at 3.

¹² *See id.* at 4.

¹³ *See id.* at 5.

¹⁴ *See id.* at 3.

¹⁵ *See id.* at 3.

¹⁶ *See id.* at 5.

¹⁷ *See id.* at 5.

¹⁸ *See id.* at 5.

¹⁹ *See id.* at 6.

²⁰ *See S.G. Borello & Sons v. Department of Indus. Relations* 48 C.3d 341, 359, 256 CR 543 (1989).

straightforward answer. The Raiderettes are required to be at every home game of the season, required to dress a certain way, wear their hair a certain way, perform a certain way, and even wear a certain brand of makeup. The Oakland Raider organization seems to have control over every aspect of the cheerleaders' Raiderette lives.

The employer's right of control is often considered the principal factor in the evaluation of employment relationships. Secondary factors are considered if the primary, superficial review of physical details does not confirm that the principal's control exists.²¹ These factors include: engagement in a distinct business, type of occupation, skill required, tools and place of work, length of time employed, method of payment, part of regular business, parties intention and belief, and whether the principal is in business. No single secondary factor is dispositive in assessing the employment relationship. Instead, courts generally consider the totality of the circumstances in making a final determination.

An analysis of California's recognized secondary factors supports a finding that the Raiderette women are employees under state law. First, the Raiderettes are not operating a distinct cheerleading business apart from their participation on the Raiderette squad.²² Second, the kind of work that the Raiderettes perform is done under the supervision of the Oakland Raiders organization – in fact, the girls are only allowed to perform, attend, and dress according to Raiderette policy.²³ Third, while cheerleading is technically a craft that needs to be developed over years, this position does not require a high level of educational training or certified expertise, thus supporting a status as an employee.²⁴ Fourth, even though the Raiderettes incur expenses for additional necessities, the bulk of the equipment is designed and doled out by the Raider organization.²⁵ Fifth, the cheerleaders' performances have become a staple of the Raiders' overall persona and, therefore, a regular part of their business.²⁶ Sixth, it is no doubt that the Raiderettes are subject to the policy and procedures that are dictated by the management of the organization, thus creating a master/servant relationship.²⁷ Finally, the Oakland Raider team is still an operating and functional business.²⁸

The only factors that may lean in the favor of the NFL organization are: the length of time that the person is employed and the method of payment.²⁹ The Raiderette cheerleaders are employed for less than a year and their contract is renewed at the start of each season.³⁰ Similarly, the Raiderettes are paid one lump sum at the end of the season as opposed to an hourly basis. While these characteristics are akin to that of an independent contractor, it is at the discretion of the court to decide if these facts are determinative. The amount of control that the organization has over every aspect of the women's involvement significantly outweighs the

²¹ See Borello, 48 C.3d at 359.

²² See Tieberg v. Unemployment Ins. Appeals Bd., 2 Cal. 3d 943 (1970).

²³ See *id.*

²⁴ See JKH Enters., Inc. v. Dept. of Indus. Relations, 142 Cal. 4th 1046 (2006).

²⁵ See Toyota Motor Sales U.S.A. v. Superior Court, 220 Cal. 3d 864 (1990).

²⁶ See JKH, 142 Cal. 4th at 1064.

²⁷ See Toyota, 220 Cal. 3d at 877.

²⁸ See Tieberg, 2 Cal. 3d at 943.

²⁹ See *id.*

³⁰ See Exhibit A, Complaint for Damages and Demand for Jury Trial at 1.

factors that may support an opposite finding. Based on previous decisions, it is more than likely that the totality of the circumstances will rest on the side of the cheerleaders.

IV. CONCLUSION

Professional cheerleaders are a staple of the National Football League. Cheerleaders add a dose of clean-cut femininity to a male-dominated sport. These women generate revenue and respectable publicity for their organization and deserve to be compensated for their benefit to the football organization. If this country is going to take a step in the direction of equality in women's sports, action needs to be taken at the highest levels.