

## **D.C. Circuit: Union Allowed to Fine Member for Complying with Duty to Report Safety Violations**

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By Darin R. Leong

Unions may impose monetary fines on a member who complies with an employer's requirement to report safety violations by other members as long as the member is not engaged in or refraining from protected concerted activities, according to the U.S. Circuit Court of Appeals for the District of Columbia.

Ozark Constructors employed a unionized workforce to rebuild a hydroelectric facility in Missouri. International Union of Operating Engineers, Local 513, represented Ozark's operating engineers. Ozark hired Mark Overton, a member of another union, because of Overton's experience with specialized equipment. Local 513 authorized Overton to work on the project under a "traveler permit."

One morning, Overton noticed a piece of machinery not properly deployed, which was a safety violation. Ozark's safety rules required employees to report safety violations or be subject to discipline. Overton reported the violation and sought to identify who was responsible. After an investigation, the company suspended a Local 513 member.

Local 513 fined Overton \$2,500 for "gross disloyalty and conduct unbecoming of a union member." Ozark then filed an unfair labor practice charge against Local 513.

The National Labor Relations Board (NLRB) ruled that Local 513 had violated Section 8(b)(1)(A) of the National Labor Relations Act (NLRA), relying on its 30-year long-standing rule that a union may not discipline an employee for complying with an employer's safety rules, regardless of whether the employee acted in concert with other employees or in opposition to other employees acting in concert.

On petition for enforcement, the NLRB, relying on U.S. Supreme Court case law, argued that a union violates Section 8(b)(1)(A) by enforcing its internal rules, if the effect is to alter a member's employment status (i.e., lead an employer to discipline or discharge an employee).

The D.C. Circuit disagreed with the NLRB, stating that in order for a union to violate Section 8(b)(1)(A) of the NLRA, the union must restrain or coerce a union member from engaging in or refraining from concerted activity. Because Overton's act of reporting the safety violation of another union member was not found to constitute engaging in or refraining from concerted activity, the court found that Local 513 did not violate Section 8(b)(1)(A) of the NLRA.

The court reached this result "reluctantly" and noted that the NLRB had rejected the administrative law judge's effort to tease a finding of concerted activity out of the facts of this case.

*International Union of Operating Engineers, Local 513, AFL-CIO v. National Labor*

*Relations Board*, D.C. Cir, No. 10-1121 (April 5, 2011).

**Professional Pointer:** The court's decision poses a difficult choice for union members: face discipline from the employer for failing to report a safety violation, or be slapped with a large monetary penalty from the union for reporting the safety violation. One possible resolution is that where an employee elects to report the safety violation, he or she does so in concert with one or more other employees, and/or confirms that the safety violation (which the employee is refraining from supporting) is itself the result of other employees' concerted activity. In an organizational campaign with unions that impose similar penalties, employers may point to such severe union rules as a reason why employees should choose not to unionize.

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***Editor's Note: This article should not be construed as legal advice.***

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