

## Circuit Court Permits Union to Discipline One of Its Members for Reporting a Safety Violation

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The Court of Appeals for the District of Columbia recently overturned a strict liability rule in cases involving the reporting of safety violations that the Board had followed for over thirty years.

In *International Union of Operating Engineers, Local 513, AFL-CIO v. NLRB*, two construction companies formed a joint venture to rebuild a hydroelectric facility in Missouri. Finding that its operating engineers, members of the local International Union of Operating Engineers (IUOE), lacked expertise required for the project, the joint venture hired a member of the Albuquerque local IUOE who had the required expertise. While working on the project, the Albuquerque member noticed a safety violation and, as was required under the national agreement, reported the violation to his supervisor. As a result of a subsequent investigation, a local member was suspended, prompting the union to discipline the Albuquerque member. The Albuquerque member, in turn, filed an unfair labor practice charge against the union.

The National Labor Relations Board found, as it had for over thirty years, that disciplining the Albuquerque member for reporting a safety violation was a *per se* violation of the National Labor Relations Act. The Board explicitly refused to find that the Albuquerque member was engaged in protected concerted activity, stating only that the union's discipline constituted a *per se* violation.

The Union appealed to the Court of Appeals for the District of Columbia, arguing that it could not have violated the Albuquerque member's rights because there was no finding of concerted activity. The Court of Appeals agreed and overturned the decision. The Court clarified that to hold a union liable for committing an unfair labor practice against its members, the Board must first find that the member was engaged in protected concerted activity.

### What Does This Mean For Employers?

Despite the decision of the D.C. Court of Appeals, employers should require employees to report safety violations. If an employer currently does not have its safety rules and obligations explicitly stated in its collective bargaining agreement, it should give serious consideration to doing so. Having safety rules and obligations clearly defined in the collective bargaining agreement should help (1) reassure employees that they would be engaged in protected concerted activity when fulfilling reporting obligations; (2) protect employees from union retaliation; and (3) assure employers that safety violations will be reported.

For additional information, contact Miller Canfield's Employment + Labor Group.