Board Sets Aside Union Fine of Whistleblower

By Judd H. Lees

Employers are well aware of the explosion of statutes and case law providing protection to whistleblowers. Typically, the alleged bad actor is the employer who disciplines or terminates an employee for engaging in protected activity. In the recent case of *Ozark Constructors, LLC,* the National Labor Relations Board addressed the issue of whether a union violated the National Labor Relations Act by disciplining a union member for blowing the whistle on a fellow union member. In the *Ozark Constructors* case, a union member reported another member's safety violation to management pursuant to the Company's safety rules which were expressly incorporated into the collective bargaining agreement. The safety scofflaw filed a complaint with Local 513 of the Operating Engineers, and claimed that the reporting union member should be fined for squealing on him. Remarkably, the Union agreed and assessed a fine of $2,500 against the whistleblower.

The whistleblower filed an unfair labor practice charge with the Board and the Board determined that the union had, indeed, violated the National Labor Relations Act, and ordered the union to rescind the fine and not fine other members for reporting safety violations as required by the contract. Arguably, absent the contractual obligation to report safety violations, the Board may have determined that this was in internal union matter not subject to outside interference. This case and others are prime fodder for employers faced with union campaigns since they illustrate the unions' view of the nature of the "contract" between the union and its members. In the unions' eyes, their constitution and bylaws may allow discipline of a whistleblower.