Whistleblower Protection Applies in the NLRA Setting

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While not necessarily breaking news, a recent administrative law judge decision in *Trump Marina Associates*, serves as a reminder that formal or informal employer rules proscribing employee discussions with the press, violate the National Labor Relations Act. The employee handbook at issue prohibited employees from releasing statements to the news media without prior authorization. Despite the rule, an employee, at the union's urging, issued a press release commenting on a legal action against the Company. When the Company learned of the press release, it asked the employee whether they had volunteered the statement, advised the employee that the communication violated its handbook policy and implied that the employee would be disciplined for future violations. The employee was not disciplined at that time.

An unfair labor practice charge was filed and the administrative law judge determined that the comments to the press constituted protected concerted activity under the National Labor Relations Act and ruled that the Company's policy—whether enforced or not—violated the Act. The Judge also found that employer questioning of the employee constituted unlawful interrogation. The remedy ordered included rescinding the rule, and affirmatively advising employees that any such rule barring media contact absent Company permission was no longer in effect.

Employers should therefore review their formal and informal policies which restrict employees from self-help conduct related to the terms and conditions of work. These include proscriptions on discussing wages with other employees, contacting OSHA or WSHA regarding safety issues, or, as in this case, talking to the press.