JD–21–08
Chicago, IL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 15

and Case 13–CB–18622

COMMONWEALTH EDISON COMPANY

Vivian Perez Robles, Esq., for the Regional Director.
John J. Toomey, Esq. (Arnold and Kadjan), of Chicago, Illinois, for the Respondent.
Brian M. Montgomery, Esq. (Exelon Business Services Company), of Chicago, Illinois, for the Charging Party.

DECISION

Statement of the Case

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Chicago, Illinois, on January 28–29, 2008. On March 14, 2007,[1] Commonwealth Edison Company (the Company) filed an 8(b)(1)(A) charge against the International Brotherhood of Electrical Workers, Local 15 (the Union, Respondent, or Local 15), alleging that the Union unlawfully fined an employee for engaging in Section 7 activity and that the Union's conduct chills other employees from engaging in such activity.[2] On May 4, Region 13's Acting Regional Director dismissed the charge on the ground that "the evidence is insufficient to show that the employee engaged in any Section 7 activity and therefore the Union's conduct is not violative of Section 8(b)(1)(A) of the Act."[3] The Company appealed the Regional Director's decision. On October 19, 2007, the General Counsel's Office of Appeals sustained the Company's appeal, concluding that the "Union's imposition of a fine against an employee for reporting misconduct of his co-workers pursuant to a workplace rule raised issues warranting Board determination based on record testimony developed at a hearing before an administrative law judge" and remanding the case to the Regional Director with instructions to issue an appropriate 8(b)(1)(A) complaint.

The complaint issued October 31, 2007. It alleges that the Union violated Section 8(b)(1)(A) of the Act by fining Michael Mack, a union members and an employee of the Commonwealth Edison Company (the Company), for reporting the misconduct of his coworkers and fellow union members pursuant to a workplace rule maintained by the Employer. The Union denied the allegations. It contends that it did not have notice of such a rule and, in any event, reversed the fine and refunded monies paid by Mack.

---

[1] All dates are from December 2006 to June 2007, unless otherwise indicated.
[2] Abbreviated designations for the exhibits are as follows: General Counsel——"GC"; Respondent or Union——"R."; Company or Charging Party——"CP"; and Joint Exhibits——"Jt."
[3] R. Exh. 2.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and the Company, I make the following

Findings of Fact

I. Jurisdiction

The Company, a corporation with offices and places of business in northern Illinois, is engaged in the business of distributing and transmitting electrical power to residential and commercial customers in the State of Illinois. The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act, and the Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Alleged Unfair Labor Practices

A. The Parties

The Company distributes electric power to approximately 3 million customers in the northern one-third of Illinois. In 2000, the Company's parent company, Unicom Corporation, merged with PEC Energy Company to form Exelon Corporation (Exelon). The Union is chartered by the International Brotherhood of Electrical Workers (IBEW or the International). For many decades, the Union or its predecessors have represented employees of the Company and its predecessors. It currently represents approximately 8000 Exelon employees, including 6500 bargaining unit members employed by the Company. Those employees, upon submission of a signed and completed application for union membership, agree to the terms of the IBEW Constitution.[4]

The Company and the Union are signatories to a written collective-bargaining agreement (CBA). The CBA's initial term—April 1, 2001, to September 30, 2007—has been extended by several Memorandums of Agreement. The CBA consists of nine Articles dealing with the major terms and conditions of bargaining unit members employed by the Company. They include provisions relating to seniority, promotions, and related listings and classifications, transfers, hours of work, overtime, holiday, working conditions, vacations, leaves of absence, wages and related schedules, stewards, grievances, and arbitration. In addition, 21 attached memoranda and letters, most agreed to long before, deal with work by nonshift employees, travel and moving expenses, medical leave, vacation plans, contracting of work, work assignments and other work, safety and health rules, replacement of tools, annuity plans, nondiscrimination policy, rest periods and call backs, management's exclusion from performing bargaining unit work, radiation protection standards, commitments to resolve grievances, part-time agreements, seniority, building services, nuclear generation group's operating agreement, drug and alcohol testing, and fleet services realignment.[5] Of particular relevance to this case, however, the CBA does not refer to codes of conduct, work rules, or requirements that employees report misconduct by other employees.[6]

---

[4] R. Exh. 1.
[5] R. Exh. 5.
[6] GC Exh. 1; Jt. Exhs. 5–6.

B. The Company's Code of Business Conduct

Since at least 1994, Exelon's subsidiaries, including the Company, have utilized some form of a code of business conduct for its employees.[7] A union newsletter issued that year explained the Company's promulgation of a Code of Conduct. There was no reference in the article, however, as to whether employee reporting of unethical conduct was mandatory and, if so, whether the failure to report misconduct would result in discipline:

> The Officers and Staff met with Cordell Reed on June 3rd and we were presented with the Company's program to ensure proper Ethics and Conduct is exhibited by the [Company] employee . . . The Company intends to create a special phone number that any employee may call to report on another employee, management or bargaining unit, that they are acting in an unethical manner . . . The Company intends to explain this program to its employees in the next several weeks. Local 15 strongly objects to the approach taken by the Company in dealing with the Code of Conduct—Business Ethics issue . . . The Company insisted they are only following what the law reads and agreed to supply the Union with the copy of the law. A copy we have not yet received."[8]

By 2004, the Company implemented a code of conduct addressing the ethical responsibilities of employees. It included a provision as to the reporting of misconduct of other employees, including any relating to fraudulent timesheets. That code was mentioned during a December 2004 arbitration proceeding between the Company and the Union, when the former placed in evidence copies of a "Business Code of Conduct" and an "Employee Standards of Conduct." The Company official testified, however, that both had been discussed, but not negotiated, with the Union. In any event, the issues in that proceeding did not involve the failure of an employee to report the misconduct of another employee.[9] It is also unknown whether either code included a provision actually requiring employees to report misconduct by other employees and subjecting them to discipline for failing to do so.[10]

---

[7] Kristopher Keys, the Company's assistant general counsel for ethics and compliance, credibly testified that the Company has had, for some time, a Code dealing with employee conduct. However, such documents were not produced and there is no indication as to their content. (Tr. 43–44.)

[8] The newsletter is undated, but one of the articles related to an employee who began his employment with the Company's predecessor in 1954 and was being honored for completing 40 years of service (CP Exh. 1.)

[9] It is not known whether the Union disputed this assertion at the arbitration proceeding, since the Company provided only an excerpted portion of the record. (CP Exh. 3.)

[10] The Union did not refute the testimony of Linn Lasater, Exelon's director of labor relations, as to the existence of a requirement in the 2004 version of the Code that employees report any violations regarding fraudulent timesheets. (Tr. 192.) However, when construed in conjunction with the 1994 union newsletter, which refers to the Company's prior policy dealing with reporting employee misconduct—"any employ *may call* to report on another employee"—it is far from certain that there was a requirement. (CP Exh. 1.) Moreover, given the Company's reliance on that union newsletter, which made no reference to discipline, Lasater's uncertainty as to the change in the Code between 1994 and 2006 (Tr. 185) and his recollection that it was revised in 2006 (Tr. 187), there is insufficient credible evidence to support a finding that pre-2006 Codes actually required employees to report misconduct by others and subjected them to discipline for refusing to do so.

The current version of the code was approved by Exelon board of directors on June 27, 2006 (the 2006 Code). It is and has been available to all employees on the Company's intranet site. In addition, it has been publicly accessible on the internet. However, an actual copy of the 2006 Code has not been sent by the Company to the Union.[11] Included in its recitation of employees standards of conduct and obligations is a prohibition at page 23 against "falsifying data, information or records with respect to . . . timekeeping." In a section on "Reporting and Investigating Violations" at page 33, the Code requires employees to report information regarding such misconduct and states the consequences of failing to do so:

> Employees must report potential violations of the law or the Code by using one of the resources in this section. Employees may be disciplined up to and including discharge for the failure to include a Code violation where they have reasonable basis to know that a violation is occurring or has occurred.

The consequences of failing to report misconduct is repeated at the concluding section of the Code at page 37, which states that "[d]iscipline may be taken against any employee who . . . [f]ails to report a Code violation where there is a reasonable basis to know that violation is occurring or has occurred."

C. Employee Training on the Code of Business Conduct

On January 9, 2006 John Spenard, Exelon's labor relations manager, emailed the agenda for the "Company/Local 15 Emergent Issues Meeting" on January 11 to Nick Citta, the Union's senior assistant business manager. Brian Loomis, the Union's assistant business manager, was copied on the email. Under a listing of "Miscellaneous" issues, Spenard listed "Ethics training—prior notice."[12] The January 11 meeting was postponed, but Spenard followed up that day with a letter in which he "outlined the Company's issues for Local 15's review and information. Please contact me with any questions, or if you would like to schedule a meeting to discuss the issues in greater detail." Issue 7 was "Ethics Training. As previously communicated to Local 15, the Company has embarked upon a training program for all employees regarding its Ethics program."[13] In a February 1 email to Citta, Spenard submitted an agenda for the "Emergent Issues Meeting" scheduled for February 8. Again, the issues to be discussed included "Ethics training—prior notice."

The Company and the Union met on February 8 and the ethics training agenda item was discussed. There was no discussion, however, as to any of the provisions of the 2006 Code. Nor did the Company tell the Union that employees would be responsible to report the misconduct of other employees. Moreover, neither a copy of the 2006 Code, nor related modules to be used in training, was provided to the Union at that meeting.[14]

---

[11] It was not disputed that the Union, like any other nonemployee, had access to the 2006 version of the Code through the Company's public website on the internet. However, there was neither proof nor testimony that the Company actually submitted a copy of that Code to the Union. Keys, the Company's ethics specialist, was unaware as to whether that had been done and the other Company supervisors called as witnesses did not have such information either. (Tr. 26–27, 43, 48; GC Exh. 1.)

[12] CP Exh. 5.

[13] CP Exh. 4.

[14] Spenard's testimony regarding the discussion and scheduling of the ethics training issue was not refuted. (CP Exhs. 8–9; Tr. 197–204.) However, his response to Company counsel's questions revealed that the Company simply briefed the Union as to the ethics training that

Continued

From July through October 2006, Exelon provided ethics training to all of the Company's employees, including those who served as union stewards. The training materials consisted of a training module containing the contents and requirements of the 2006 Code. The training was conducted via computer for those employees who had computer access. Employees without computer access were trained at sessions where printed copies of a training module were distributed.[15] The training module included at Section 4 a statement on "Compliance and Reporting" and provided examples of applicable scenarios. In pertinent part, that section required employees to report any violations of the 2006 Code:

> Failing to report a violation is itself a violation of the Code. You could face discipline for this alone, up to and including termination of your employment. This is how important your reporting responsibility is. You are the eyes and ears of the Company. Without your good faith reports of ethics and compliance violations, Exelon cannot fulfill its commitment to complying with the principles of ethics and the law.

Exelon maintained records reflecting that all employees received training and were notified regarding the 2006 Code reporting requirements. Exelon generated a sign-in sheet containing the signatures of those employees who were provided a hard copy version of the training module or received the training online. Of particular relevance to this controversy, the attendance sheet indicates that Mack, Frank Dominick, and Alexander Bonneville received ethics training on September 13. In addition, Christine Watkins, a customer service representative who also serves as the Union's recording secretary, received such training online on September 15.[16]

D. The Union's Knowledge of the Company's Rules and Codes of Conduct

The Company has extensive rules in place with respect to employee conduct and has notified the Union about them. In a letter, dated November 26, 2003, Bob Blyth, Exelon's labor relations manager, submitted a draft copy of Exelon's Standards of Conduct (work rules) for bargaining unit members to Robert Joyce, the Union's president and business manager:

> Attached is a draft copy of the Standards of Conduct that will cover [the Company's] bargaining unit members. These Standards of Conduct address the generally accepted rules of employee conduct that have been in place for years in the Company. The Company believes that all employees should clearly understand what is expected of them and understand the consequences that may be applied for unacceptable conduct. In this condensed format, the Standards of Conduct will help minimize the opportunity for any misunderstandings. Both the Company and the Union have a vested interest in applying rules and penalties in a consistent and equitable manner.

---

would be taking place and did not discuss the "particulars" of the Code, did not tell the Union that employees would be responsible to report the misconduct of other employees, and did not provide the Union with copies of the Code or anything else. (Tr. 205–208.)

[15] It is clear that bargaining unit members, including stewards, received such training. (GC Exh. 2; Tr. 30–38, 41, 138.)

[16] The Union contends there is no proof the Code was physically delivered to employees. However, the weight of the credible evidence strongly suggests otherwise. (GC Exhs. 2–3; CP Exh. 6; Tr. 38–42, 60–61, 69–71, 139–143.)

> Our plan is to publish and distribute the Standards of Conduct on February 16, 2004. This draft copy is being provided to you because we are very interested in your ideas and input. I would ask that you provide any ideas or suggestions you may have to me by January 16, 2004 in order for us to consider them for inclusion in the Standards of Conduct.
>
> I would be happy to meet with you or members of your staff to discuss this issue. If you have any questions or need additional information at this time, please let me know.

The document listed 33 specific work rules that would result in discipline. A requirement that employees report misconduct by co-employees was not one of them. Nor was there a reference to a code of business conduct.[17]

On March 18, 2004, Joyce formally responded to Smyth's letter:

> The Standards of Conduct policy for [the Company] is not a result of negotiations with [the Union], nor does the Union agree or disagree with any provisions or contents of the Policy contained therein. [The Union] reserves the right to grieve and take to arbitration any action against a [union] member that may be taken by the Company in its application of the Standards of Conduct policy. Please contact me if you have any concerns in regard to this matter.[18]

By November 2004, employees were required to sign a human resources office form acknowledging receipt of the Standards of Conduct. The final version of the Standards of Conduct listed 35 specific work rules that would result in discipline. Again, there was no reference to a code of business conduct or a requirement that employees report misconduct by other employees.[19]

A code of business conduct was referred to during the June 2006 arbitration proceeding involving the January 2005 discharge of David Batinich, a company employee. The record closed September 8, 2006 and an arbitration award decision issued June 23, 2007. The code of business conduct provisions invoked in that proceeding related to a requirement that employees behave ethically, honestly, and forthrightly, and treat customers with honesty, fairness, and respect. There was no mention of a provision requiring employees to report the misconduct of other employees.[20]

---

[17] The Union contends that it never agreed to, nor bargained over, the standards of conduct. However, Loomis acknowledged that the Union did receive them from the Company. (R. Exh. 6; Tr. 83–85, 97.)

[18] R. Exh. 7.

[19] R. Exhs. 9–10; Tr. 9.

[20] The Company provided the decision, but not the code of conduct referenced in the decision. As the grieved incident occurred in January 2005, it can be reasonably assumed that the arbitrator did not rely on the 2006 Code, but rather, an earlier version of a code of business conduct. (CP Exh. 7, p. 20; Tr. 175–179, 188–189.) As previously discussed at footnote 10, I refuse to bootstrap a finding that there was an employee misconduct reporting requirement in codes of conduct prior to 2006 simply based on Lasater's assertion that there was one. The 1994 union newsletter is the only written evidence produced by the General Counsel or Company of a pre-2006 code of conduct that actually refers to this issue and it only said that employees "may" report such misconduct.

The Company has never provided a copy of the 2006 Code to the Union. Even though bargaining unit employees, including union stewards, received training on the 2006 Code, full-time union employees, like Brian Loomis, did not.[21] Moreover, no union member has ever been disciplined for failing to report a violation of the 2006 Code or any previous version of a code of conduct. Nor has the Union ever filed a grievance with the Company or charge with the Board over the Company's implementation of a code of conduct or related training.[22]

E. The Union's Punishment of Mack

Michael Mack, a cable splicer, is a "regular employee" of the Company and member of the bargaining unit covered by the CBA. On December 20, Mack reported to supervisors that he observed Frank Dominic, Terry Schultz, and Alexander Bonneville falsify records by leaving 2 hours earlier than stated on their timesheets. Mack was not a supervisor or group leader with responsibility over other employees. As a result, Dominick, Shultz, and Bonneville were suspended for 5 days and issued a final warning by the Company.[23]

On January 9, Dominick, a union member, filed charges with the Union alleging that Mack's actions violated Article 25, Section 1, Subsections A and G of the IBEW Constitution. Subsection A contains a general reference to violations of any Constitutional provisions, while Subsection G provides: "Wronging a member of the IBEW by any act or acts (other than the expression of views or opinions) causing him physical or economic harm. "[24]Dominick's charge alleged:

> The violation occurred approximately December 20, 2006 at approximately 10:30 p.m. at Chicago South District Office. The violation occurred as follows: Mr. Mack turned Mr. Dominick in to Mr. Michael Medina (Superintendent Chicago South), and Mr. Marvel Nelson (Construction Supervisor, Chicago South) for paying himself and his crew until 6:30 a.m. on December 19 but leaving the premises at 4:30 a.m. Mr. Mack also stated to Mr. Nelson that if he didn't pursue his accusations he would take his allegations downtown for further action. As a result, Mr. Dominick and crew all received discipline of 5 unpaid days off and a last chance letter in their file. The other injured parties are Brothers Terry Schultz and Alexander Bonivel.

On February 1, Christine Watkins, the Union's recording secretary, sent a letter to Mack notifying him to appear before the Union's trial board on February 19 to answer the charges. Mack was advised he would be able to present witnesses and evidence on his behalf, cross-examine witnesses, and have an IBEW member act as counsel.[25]

---

[21] Loomis, the Union's assistant business manager, has been on a leave of absence from the Company since 1995 and, since that time, has been a full-time Union employee (Tr. 76–77.)

[22] The Company endeavored to provide a comprehensive history of its requirements that employees report misconduct, but Keys, the Company's top ethics officer, was unaware as to whether any employee was ever disciplined for failing to report misconduct. If anyone should know of the existence of such information, he would. (Tr. 49–50, 108.)

[23] Mack did not testify, but there was no dispute as to his union membership and the underlying details. (GC Exh. 4, p.1; R. Exhs. 6, 10; Tr. 59, 77, 126.)

[24] Jt. Exh. 1, Art. 25 (Misconduct, Offenses and Penalties).

[25] An actual copy of Mack's union membership application was not submitted, but Loomis' testimony that one would have been filled out and signed by Mack, was not refuted and is corroborated by Mack's submission to the jurisdiction of the trial board and his participation in that proceeding. (Jt. Exhs. 1–2; R. Exh. 1 Tr. 77.)

A trial board proceeding was held on February 19.[26] Dominic, Schultz, and Bonneville each testified that he was suspended by the Company for 5 days and issued a last chance letter as a result of Mack's actions. Mack denied accusing his coworkers of misconduct and made no reference to any Company rules requiring him to report misconduct. He presented neither witnesses nor evidence, including proof of a Company rule requiring him to report misconduct by other employees to the Company.[27]

On March 2, Watkins notified Mack of the trial board's decision. The letter informed Mack that the Union's trial board, of which she was a member, determined he violated Article 25, Section 1, paragraphs A and G of the IBEW Constitution. The letter also stated that "[f]or violating Article 25, Section 1, paragraph A & G and Article 25, Section 7, the fine will be $2,000 and must be paid on or before April 2, 2007." Mack filed a timely appeal to the International on March 11. He did not pay the $2,000 fine prior to April, but instead, proceeded to make four installment payments of $40 over the next several months.[28]

By letter dated June 20, the International ruled in Mack's favor and ordered the Union to refund any monies paid toward the trial board fine and clear Mack's record. The ruling was based on "procedural errors in the handling of your charges by the Local Union" and further stated: "While I certainly do not condone your actions as an IBEW member, I have to uphold the integrity of the IBEW Constitution. Therefore, I am upholding your appeal. By copy of this letter, Local Union 15 is ordered to refund any monies you have paid toward the fine levied by the trial board and your record should be cleared accordingly."[29] On July 2, the Union refunded to Mack the $160 he paid toward the fine.[30]

III. Analysis

The General Counsel and the Company contend that the Union violated Section 8(b)(1)(A) of the Act when it fined Mack for reporting misconduct by other employees pursuant to the 2006 Code's rule compelling him to take such action. They further contend that the Union knew about the 2006 Code, did not challenge it, and, thus, waived its right to bargain over its provisions. As such, the Union's action presented employees with a *Hobson's Choice* —report the misconduct and face discipline by the Union, or fail or refuse to report the misconduct and face discipline by the Company.[31] The Union concedes that union employees who were company employees received training on the 2006 Code, but denies that it, as a labor organization, ever received such notice. It also contends that the CBA and work rules neither refer to the 2006 Code nor contain any requirement that employees report wrongdoing of coworker/union member employees.[32]

---

[26] Jt. Exhs. 2, 3, and 6, par. 12.

[27] Mack did not testify at this proceeding, but it is unclear what he would have contributed to the development of the record. His rambling explanation at the trial board hearing seemed to denote a sense of remorse over his action and a weak attempt to deny that he reported the misconduct. As such, the transcript from that proceeding strongly suggests that Mack did, in fact, report the actions of the three employees to Company supervisors. (G.C. Exh. 4.)

[28] Jt. Exh. 6.

[29] Jt. Exh. 4.

[30] R. Exh. 8.

[31] GC Brief, pp. 6–7; CP Brief, pp. 10–19.

[32] R. Brief, pp. 13–15.

Section 8(b)(1)(A) of the Act recognizes the right of a labor organization to "prescribe its own rules with respect to the acquisition or retention of membership therein." In that regard, the Board has consistently held that a union has a legitimate interest in promoting harmony within its ranks and may lawfully seek to protect this interest by imposing internal union discipline pursuant to a properly adopted rule prohibiting members from reporting misconduct by fellow members to their employer. *Communications Workers Local 5795 (Western Electric Co.),* 192 NLRB 556 (1971); *National Association of Letter Carriers, Local 3825*, 333 NLRB 343, 345, fn. 4 (2001); *Letter Carriers (Postal Service)*, 316 NLRB 1294, 1303–1304 (1995); *Electrical Workers IBEW Local 1547 (Redi Electric)*, 300 NLRB 604, 607 (1990). However, the Supreme Court has barred enforcement of internal union regulations that have an external effect and, thus, tend to restrain or coerce employees in the exercise of their Section 7 rights, which include the right to refrain from concerted activities.

Circumstances of union discipline that have an unlawful external effect fall into two areas. The first includes instances where union members make statements pursuant to the grievance process. *Cement Workers D-357 (Southwestern Portland Cement)*, 288 NLRB 1156 (1988). The other instance, alleged here, is where an employee is required by his employer to report certain information that contravenes the interests of the union or its members. *Oil Workers Local 7-103 (DAP, Inc.)*, 269 NLRB 129, 130–131 (1984). The reason that union discipline would unlawfully coerce or restrain in the latter instance is because it would affect the union member's employment status. See *Scofield v. NLRB*, 394 U.S. 423, 428 (1969); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967). Accordingly, the Board has held that a union commits an unfair labor practice if it disciplines a member who reports a work rule infraction by a co-employee to his employer when that member is required to do so by his employer. See, *Industrial Union of Marine and Shipbuilding Workers of Am., Local No. 9*, 279 NLRB 617 (1986); *San Diego County Dist. Council of Carpenters*, 272 NLRB 584 (1984); *Local 604, Int'l Chem. Workers*, 233 NLRB 1239 (1977), enfd. 588 F.2d 838 (7th Cir. 1978).

The credible testimony and the Company's attendance records establish that all union members employed by the Company were trained as to the 2006 Code requirement that employees report known misconduct of other employees or face discipline. This training included Watkins, an employee who also served as the Union's recording secretary and was a member of the Union's trial board, and the stewards that heard, considered, and decided the charges against Mack. It is also undisputed, however, that the 2006 Code is neither referred to in the CBA nor the 2003 work rules provided to the Union. While the evidence revealed that stewards and Watkins received training on the 2006 Code, it appears the Company deliberately decided not to provide a copy of that document to the Union. Moreover, the fact that the 2006 Code and/or related employee training was placed on the labor-management meeting agenda and discussed, did not constitute a waiver to any objection the Union may have had as to its implementation. Given that a waiver of statutory rights must be clear and unmistakable, it would certainly be inappropriate to charge the Union with knowledge of the contents of a document that it was not provided with. *See Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983); *Owens-Brockway Plastic Products*, 311 NLRB 519 (1993).

In addition to the 2006 Code, the General Counsel and the Company rely on earlier versions of codes of conduct to support the notion that the Union had notice of a Company requirement that employees report the misconduct of other employees or face discipline. An earlier, but undetermined, version was referenced in two arbitration proceedings—one in December 2004 and another in June 2006. That version, however, was not offered as evidence in this proceeding, the charges in those cases did not involve reporting of employee misconduct and Lasater was uncertain as to the changes in the Company's codes of conduct between 1994 and 2006. Therefore, there is no credible evidence that the Union, as of the date that it charged

Mack (February 1), was on notice of a Company rule requiring employee reporting of misconduct and the disciplinary consequences that would flow from a violation of that rule.

In essence, this controversy boils down to one issue—whether an employer's notice of a rule to employees, who also include union stewards and officers, also serves to put their respective labor organization on notice of the rule. Longstanding Board case law indicates that it does not. Notification to bargaining unit employees is not the equivalent of notice to their collective-bargaining representative. There is a legal distinction between them. *Bridon Cordage Inc.*, 329 NLRB 258, 259 (1999). Moreover, the fact that some of the employees so notified include union officers does not establish notice to the Union itself. *Ciba-Geigy Pharmaceuticals Div.*, 264 NLRB 1013, 1016 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983).

The Board has consistently recognized a distinction between notice to bargaining unit members and notice to their chosen labor organization in a broad range of claims: unilateral changes of terms and conditions of employment; failure to bargain with employees' chosen labor representative, and direct dealing with bargaining unit employees instead of with their Union. In such instances, notice to employees has not been an adequate substitute for notice to the union. See *NLRB v. Walker Construction Co.*, 928 F.2d 695 (5th Cir. 1991); *NLRB v. Rapid Bindery, Inc.*, 293 F.2d 170 (2d Cir. 1961); *United Steel Service, Inc.*, 351 NLRB No. 86, slip op. at 15 (2007); *Ad-Art, Inc.*, 290 NLRB 590 (1988); *Master Plastering Co.*, 314 NLRB 349 (1994).

In essence, the Company failed to provide the Union with a copy of the 2006 Code and Mack failed to raise it as a defense during the trial board hearing that resulted in his punishment. Under the circumstances, it has not been established by the preponderance of the evidence that the Union had notice of the Company's 2006 Code rule requiring Mack to report the misconduct of another employee. Accordingly, the Union was unaware that it disciplinary proceeding against Mack affected his employment status with the Company and, thus, there was no violation of Section 8(a)(5).

Conclusions of Law

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union is a labor organization within the meaning of Section 2(5) of the Act.

2. The Union punished a union member because he reported the misconduct of another union member to the Company, thereby causing the latter economic injury in violation of the IBEW Constitution, but was not on notice of a Company rule requiring employees to report misconduct or face discipline and, thus, its actions did not violate Section 8(a)(5) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[33]

[33] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. April 28, 2008

Michael A. Rosas
Administrative Law Judge