

Classification of a Bargaining Subject

The company and union have had a bargaining relationship for more than 20 years. On July 11, bargaining unit member Allan Engle was performing his assigned work duties of cleaning the bathroom on the second floor of the company's administrative building when he glanced up and observed a camera approximately 6 to 8 feet away located in an air vent and pointed directly at him. Engle reported his discovery to three other bargaining unit members, including union steward Luther Hall, who went to the second-floor bathroom in question and confirmed that the hidden camera was there. The following day the local union president was notified, but when she went to investigate, the hidden camera had been removed.

On July 15, local union president Wanda Jackson was asked to meet with the company's HR manager Susan Albright. Albright asked Jackson if she had heard about the camera that was discovered in the sanitation department's restroom. Albright went on to say that the camera had been installed by the company because of a reported theft problem in that area, and the company's legal counsel had advised her that it was lawful as long as the company had a legitimate business reason for doing so. Albright stated that once the camera had been discovered and union members appeared irate over the issue, the camera was immediately removed by management.

Local union president Jackson believed the company could have accomplished its theft investigation through less intrusive means, and the union did not approve of management's invasion of employees' privacy. The union sent a letter to the company, dated August 1, indicating that an internal investigation by union members had also uncovered hidden cameras being used in the employees' physical fitness room. On August 16, Jackson sent a hand-delivered letter to HR manager Albright demanding that the company bargain over the subject of video camera use in the workplace. The company refused to bargain over the subject, whereupon the union filed an unfair labor

practice charge, alleging that the company's action violated Section 8 (a)(5) and (1) of the LMRA, as amended.

Positions of the Parties

The union argues that the use of surveillance cameras in the workplace for providing evidence of work-rule violations by employees, for which they could be subject to discipline or discharge, is clearly an issue that is germane to the working environment and job security interests of union members. Therefore, the union believes management has a legal duty to bargain in good faith, upon request, over issues such as the number and location of video cameras within the workplace. Other issues over which bargaining unit members might have an interest in bargaining include whether employees will be given prior notice that their conduct may be subject to filming; who will have access to the video recordings made; for what purposes the video recordings may be used; and the circumstances under which the cameras can be required to be removed.

The company essentially makes two arguments. First, the company believes it has an absolute right to engage in actions (like using cameras) to protect the legitimate business-related interests of the ownership. The company noted that it had for many years used 17 video cameras located both inside and outside company buildings to observe activity for protecting company property from theft or damage and to discourage other work-rule violations (e.g., drug use, sleeping on the job). These 17 cameras were in plain sight, and their existence had been known to the union's membership for many years without any prior objection from the union. In recent years, 11 additional hidden video cameras had been installed inside the company to observe specific areas where employee misconduct was suspected. To require management to bargain in advance over the use or placement of such surveillance equipment would significantly reduce the effectiveness of this method of monitoring employee conduct on the employer's premises.

Second, management argues that even if the Board were to find that a duty to bargain existed, based on the circumstances in this case, the union waived its right to bargain over the subject of surveillance cameras. The company points to the length of time it has used video cameras without any objection by the union as evidence that the union has acquiesced in this practice and essentially acknowledged management's right to use surveillance cameras for legitimate business reasons. The company acknowledges that the union has a right to file a contractual grievance over any alleged misuse or abuse of surveillance methods leading to a lack of just cause for disciplinary or discharge action against a bargaining unit member. However, the right to grieve a management discipline or discharge decision is not equivalent to a

right to require management to bargain, in advance, over the right to use camera surveillance as a legitimate investigatory technique.

Questions

1. What is a mandatory subject of bargaining?
2. Can a union waive its right to bargain over a mandatory subject of bargaining?
3. Was management's refusal to bargain over the subject of surveillance camera usage in the workplace a violation of the duty to bargain in good faith under the LMRA, as amended? If so, what should be the appropriate remedy? Discuss the merits of the parties' respective positions in this case.