

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

## Advice Memorandum

DATE: August 15, 2008

TO : Martin M. Arlook, Regional Director  
Region 10

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Muscle Shoals Minerals, Inc.  
Case 10-CA-37423

This case was submitted for advice as to whether the Employer violated Section 8(a)(5) by failing to bargain with the Union before installing unconcealed surveillance cameras in its facility. We conclude that the Region should issue a complaint absent settlement.

### FACTS

The Employer and Union are parties to a collective bargaining agreement that is in effect from June 22, 2007 through May 22, 2010. In early June, 2008, steward Jeffries saw Maintenance Supervisor David Wells walking through the plant with a contractor who had recently installed cameras in the company parking lot. Jeffries asked what they were doing, and Wells responded that the Employer was going to install cameras throughout the plant. When Jeffries later questioned Operations Manager Donna Mansell about the cameras, she responded that they were for "safety reasons" and that her "boss said the cameras are going up, so they're going up."

Within a week or so, Jeffries raised the camera issue at an unrelated grievance meeting. Chief Operations Officer Tim Newton responded: "I don't understand what the problem is. I have a camera on me in my office in Tennessee. If you're not doing anything wrong, you don't need to worry about it." When Jeffries responded that "We're uncomfortable with it because we get the feeling we're working in a prison," Newton reiterated that the cameras were necessary for safety. Union President Ernest Kilpatrick then said "If you put up the cameras, you're going to have to negotiate with the Union." The Employer's representatives did not respond. The International's representative at the meeting, Claude Carr, repeated Kilpatrick's statement that the Employer would have to talk to the Union regarding installing the cameras. The Employer's representatives did not respond and the discussion moved on to other topics.

Shortly thereafter, the Employer installed security cameras inside the production break room, outside the maintenance department break room door, in the synthetic minerals area overlooking the work floor, and on the loading dock.

The Union filed a grievance that has been denied at the first step. There is no provision in the collective-bargaining agreement regarding employee safety monitoring, use of surveillance cameras, or any other subject specifically relevant to the Employer's actions. There is a management rights provision in the agreement which reserves to the Employer "all inherent and common law management functions and prerogatives" except as otherwise specifically restricted. The Union's grievance does not refer to any contractual provision that was violated, but merely states that the installation of the cameras is "a violation of our rights" and "we request that the cameras be removed."

#### ACTION

We conclude that the installation of surveillance cameras to monitor employee conduct is a mandatory subject of bargaining, and that the Employer violated Section 8(a)(5) by installing such cameras without bargaining with the Union after it made a bargaining demand.<sup>1</sup>

In Colgate-Palmolive,<sup>2</sup> the Board held that the installation and use of hidden surveillance cameras was a mandatory subject of bargaining and that the Employer's refusal to bargain with the Union over this issue after the Union made a bargaining demand violated Section 8(a)(5). The Board reasoned that: (1) the installation of surveillance cameras was analogous to physical examinations, drug/alcohol testing requirements, and polygraph testing - i.e., investigatory tools used by employers to ascertain employee misconduct -- all of which had been found by the Board to be mandatory subjects of

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<sup>1</sup> The Employer's decision to install the cameras may also have been a *fait accompli* by the time the Union learned of the project. Since there is corroborated evidence that the Union made a bargaining demand, however, it is unnecessary to rely on an argument that the Employer had already implemented its decision, or that it had no intention of changing its mind, and therefore that the Union was excused from the usual requirement that it make a bargaining demand.

<sup>2</sup> 323 NLRB 515 (1997).

bargaining; (2) the Employer had acknowledged that employees caught by the cameras engaging in misconduct would be subject to discipline, and therefore the cameras had the potential to affect the continued employment of the employees being monitored; (3) the placement of the cameras, in the employee restroom and fitness center, raised privacy concerns which added to the effect on employees' working conditions, and (4) the installation and use of surveillance cameras was not among the class of managerial decisions that are entrepreneurial in character or fundamental to the basic direction of the enterprise, but rather involved issues directly concerned with the employment relationship. Although the instant case involves installation of openly mounted surveillance cameras, not concealed cameras as in Colgate- Palmolive, the same rationale and policy underpinnings discussed in that case are applicable to openly mounted surveillance cameras.<sup>3</sup>

The Employer asserts that there has been no real change in employees' working conditions because it has always had supervisors monitoring employee performance and the cameras are merely "electronic supervisors." We reject that argument. Prior to the installation of the cameras, the Employer did not have supervisors stationed in these areas around the clock to monitor employee activities,<sup>4</sup> and therefore this was a substantial change in employee working conditions.<sup>5</sup> Moreover, since these cameras were installed to monitor employee performance and conduct, and potentially might affect employees' continued employment,

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<sup>3</sup> See also Nortech, 336 NLRB 554 (2001) (upholding ALJ's decision that the unilateral installation of surveillance cameras violated Section 8(a)(5); ALJ's decision did not specify whether the surveillance cameras, which employees had been able to detect without being informed of their installation by the employer, were "open" or "concealed").

<sup>4</sup> Indeed, it would appear that supervisors never monitored employee conduct in the employee break rooms.

<sup>5</sup> Compare PPG, Inc., 6-CA-33492, Advice Memorandum dated November 3, 2003 (although employer's use of videocameras to investigate workers compensation fraud away from the workplace was a mandatory subject of bargaining, employer did not violate Section 8(a)(5) by unilaterally beginning a practice of using videocameras where employer had previously conducted the same kinds of investigations through personal observation and, therefore, there was no substantial change in employment conditions, citing Westinghouse Electric, 150 NLRB 1574 (1965)).

the decision to install them impinged directly on the employment relationship and was not the kind of decision that lies at the "core of entrepreneurial control."

Accordingly, the Region should issue a Section 8(a)(5) complaint absent settlement.<sup>6</sup>

B.J.K.

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<sup>6</sup> [*FOIA Exemption 5*