National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

August 7, 1990

TO: Thomas M. Sheeran, Acting Regional Director, Region 9

FROM: Harold J. Datz, Associate General Counsel, Division of Advice

SUBJECT: Volvo GM Heavy Truck Corp., Case 9-CA-27205-2

530-6050-0120, 530-6067-4055-4700

This case was submitted for advice as to whether the Employer's unilateral installation of a security camera violated Section 8 (a)(5) and (1) of the Act.

FACTS

The Employer operates truck manufacturing facilities throughout the United States. The facility involved herein is the National Parts Distribution Center. The Employer and the Union are parties to a collective-bargaining agreement which expires on November 30, 1991.

In 1988, when the Employer's current facility was constructed, the Employer requested funds from its corporate office for a security system. The Employer wanted to install three outside cameras, one inside camera and related equipment. The request was denied, but the Employer resubmitted it in its 1989 budget proposal. This request was approved in December 1988 and a four camera security system was ordered. It appears that the Employer subsequently decided to install all four cameras outside the building.

In May 1989, several incidents of theft and vandalism of employee vehicles occurred in the employee parking lot. As a result, the Union suggested that the Employer "take some security measures" and proposed that, at a minimum, no-trespassing signs be posted in the unfenced parking lot. On August 8, 1989, during a regular union-management meeting, the Employer stated that it was, in fact, considering the security problem, but did not specify what action it might take. The security problem was apparently discussed during various union-management meetings thereafter, and in September or October 1989, the Employer notified the Union that security cameras would be installed outside the building to monitor the parking lot. The parties discussed the installation of the cameras in several subsequent meetings. The Union expressed specific concern over the possible installation of any camera inside the facility; the Employer gave assurances that all four cameras would be installed outside. In addition, the Union requested that it be given a demonstration of the system once it was installed.

On October 13, 1989, the Employer asked its parent company for funds necessary to weatherproof the previously ordered inside camera so that it could be installed outside. Corporate headquarters denied this request for additional funds and instructed the Employer's local management to install the three outside cameras on the outside of the building to monitor the parking lot and to mount the inside camera inside the employee entrance to the facility. Without further notification to the Union, in December 1989, all four cameras were installed as instructed.

The inside camera is mounted in a fixed position at the entrance and monitors the pedestrian door and an adjacent overhead door. The three outside cameras can be remotely controlled from the monitor in a room in the facility. However, the inside camera cannot be remotely controlled and does not scan or have zoom capability. It specifically monitors the ingress and egress of the building via the two doors. The field of vision of the inside camera covers the entrance and an aisle-type area beyond the entrance between storage racks. No employees officially work in the area monitored by the camera. However, employees presumably place and remove items on the storage racks.

On December 13, 1989, during a regular union-management meeting, the Union objected to the installation of the inside

camera and noted the parties' previous agreement that no camera would be installed inside the building.[(1)] The Union claimed that the security system had the potential for abuse. The Employer stated that corporate headquarters had purchased the system and that the camera would not be removed. The Union asked why a camera was needed inside the facility and was told that it was intended to monitor the entrance and to prevent theft. The only evidence of theft as a problem at the facility were the incidents which had occurred in the employee parking lot.

No employees have been disciplined because of information gained from the cameras.

ACTION

We concluded that a Section 8(a)(5) and (1) complaint should issue, absent settlement, because the unilateral installation of the inside security camera made a significant and substantial change in employees' working conditions.

It is well established that not every unilateral change in working conditions violates Section 8(a)(5). Therefore, an employer may change working conditions unilaterally so long as the changes are not material, substantial and significant. Thus, in Rust Craft Broadcasting of New York, Inc., [(2)] the Board dismissed a complaint attacking as a violation of Section 8(a)(5) an employer's installation of a time clock to replace cards on which employees had previously noted the hours that they had worked. The Board found that the use of the time clock "marked a departure from the previous practice" but that "the rule itself remained intact." [(3)]

In this case, the Employer has instituted a measure which is entirely new. Unlike the situation in Rust Craft, supra; Goren, supra and Adair Standish, supra, the inside camera here does not replace a similar system. Thus, there was no previous surveillance or monitoring of the entrance and storage rack area which the camera will now monitor. Consequently, the installation of the inside camera constitutes a change. It is a mandatory subject of bargaining if it affects employees' terms and conditions of employment.

Here, the installation of the inside camera affects employee working conditions because it subjects the employees to scrutiny or surveillance, which has the potential for discipline. Thus, the inside camera monitors the entrance area and an aisle-type area between storage racks. The camera could detect theft of items from those storage racks.

This case is thus analogous to those cases in which employees had been required to undergo physical examinations during which they provided urine samples that were then tested for various medical problems. We have concluded that an employer who wants those urine samples to be tested for the presence of illegal drugs must bargain with the union as to these drug tests. See General Counsel Memorandum 87-5, "Guideline Memorandum Concerning Drug or Alcohol Testing of Employees," September 8, 1987, p. 6. The mandatory nature of the drug test flows from the potential effect on the employees' terms and condition, i.e., that they could be disciplined or required to go to a rehabilitation program in order to continue their employment.

Consequently, even though the employees here are not being required to engage in any new conduct, their employment terms and conditions are affected by the installation of the inside camera because it subjects them to scrutiny. Presumably, if suspicious activity is observed in the entrance or around the storage shelves -- for example, unauthorized removal of items from those shelves -- the Employer will investigate that activity and/or discipline employees therefor. In fact, the Employer told the Union that the inside camera was intended to prevent theft. Consequently, like a drug test, the inside camera affects employee terms and conditions. The fact that no one has yet been disciplined because of Employer use of the camera is irrelevant. The Union has a right to bargain over this mandatory subject, e.g., in order to set up guidelines for use of data obtained from the camera, before occasion for discipline arises.

In the instant case, the Employer refused to bargain about the installation of the camera, refused to demonstrate the camera's operation, and otherwise made clear that it would not bargain about the use of information gained from the camera. Consequently, the Employer violated Section 8(a)(5) by refusing to engage in such mandatory bargaining.

Accordingly, a Section 8(a)(5) and (1) complaint should issue, absent settlement.

H.J.D.

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[1] The Union has not objected to the installation of the outside cameras.

[2] 225 NLRB 327 (1976).

[3] Id. See also Goren Printing Co., Inc., 280 NLRB 1120 (1986) (same conclusion as to employer's requirement that employees who had previously given oral notice of intent to leave work early, start giving written notice); Adair Standish Corp., 292 NLRB No. 101 (1989) (same conclusion about formalization of previously informal break system).