

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Ideal Electric Company, Inc., Case 8-CA-23510

530-6050-0120

This Section 8(a)(5) case was submitted for advice as to whether the installation of surveillance equipment in working areas is a mandatory subject of bargaining.

The Region is authorized to issue complaint, absent settlement, because surveillance cameras constitute a significant and substantial change in employees' working conditions. ⁽¹⁾

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. ⁽⁴⁾ Unlike the situation in *Rust Craft*, supra; *Goren*, supra and *Adair Standish*, supra, the camera here did not replace a similar system; a camera concealed in a maintenance area is clearly different from the cameras that Employer agents openly used to film alleged picket line misconduct during a recent strike. ⁽⁵⁾ Consequently, the installation of the camera constitutes a change. It is a mandatory subject of bargaining if it affects employees' terms and conditions of employment.

Here, the installation of cameras affects employee working conditions because it subjects the employees to scrutiny or surveillance, which has the potential for discipline. 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 camera. 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 and refused to inform the Union as to whether it has installed any other cameras. Consequently, the Employer violated Section 8(a)(5) by refusing to engage in such mandatory bargaining. ⁽⁶⁾

R.E.A.

¹ [FOIA Exemption 5.]

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).

⁴ We note that the extent of the change is not known because the Employer has not disclosed whether it has installed any cameras other than the one that the local union president found in a maintenance area of the Employer's facility.

⁵ The Employer's reliance on Anaconda Ericsson, 261 NLRB 831 (1982), is misplaced. That case involved the use of undercover agents to investigate a specific problem, the disappearance of raw materials and supplies. The camera in the instant case was apparently intended to monitor routinely actions in a maintenance area.

⁶ See also Volvo GM Heavy Truck Corp., Case 9-CA-27205-2, Advice Memorandum dated August 7, 1990 (case adjusted and closed).