

Background

A webcam was installed at the Greenville MS Crossroads Station. On October 11, 2011, Leon Spencer, Steward filed the following Grievance:

Problem:

The placement of a CCTV system at the Crossroads station violates the National Agreement and the ASM Section 273.172. Management uses the system to view work area and evaluate the performance of employees. Management has no negotiated agreement with union to use system for surveillance of employees or is (Sic.) any employee suspected to be committing any crimes.

Background:

The placement and utilization of the camera behind the lobby counter line for monitoring the lobby are in an intrusive manner and not sued for security surveillance (CCTV) instances. The camera at the Crossroads Station do (sic.) not fall into this category of security surveillance thereby indicating a violation of the National Agreement.

Corrective Action:

Management discontinue the use of the camera and remove it immediately. The right to place web cameras in either the main office or the Crossroads Station be negotiated with the union before any future utilization to monitor customer service only.

The Grievance was denied and the Union appealed the Grievance.

On November 7, 2011, Mr. James A. Higginbotham, Labor Relations Specialist, provided Management's position which was:

The burden of proof is with the Union to show by a preponderance of the evidence that management violated the CBA by having a webcam and using it to help with WTIL issues.

Regional Arbitration case #G06C-4G-C 10425140 states in part,

Union grievance contended that unilateral installation and use of webcam in lobby of GMF violated ASM guideline and National Agreement. Arbitrator found that Management had wrongfully used camera to assess employee's performance and ordered that Management cease and desist from such use. Article 3 found to be authority to install camera to determine need for customer assistance in lobby.

And also,

The grievance is granted to the extent that the Postal Service is directed to cease and desist from using the webcam in the lobby to assess the performance of employees. The Service is further directed to utilize the camera solely for the purpose of assessing the need for customer assistance in the lobby.

This case is Res Judicata at best based on the similar circumstances from an office in the same region.

The Union's allegation that Management violated the ASM Section 273.172 has not been proven, due to the fact that the policy of 273.172 is not germane to the issue of a webcam or its installation. This section refers to a CCTV which is not the case at the Crossroads Station.

Management uses this webcam, as any other post office, and that's to monitor the flow of customers in the Retail line, to possibly assist with Wait Time in Line issues, which is part of good customer service.

The remedy requested by the Union is inappropriate due to Management's position that there was no violation of the CBA or Handbooks or Manuals.

Decision:

The Union has failed to show, with a preponderance of the evidence that management violated any part of the Collective Bargaining Agreement, specifically, Article 5 and 19. Therefore this grievance is denied. If you

should decide to appeal this decision to the next step in the Grievance-Arbitration process, please send me a copy of your appeal.

The Union appealed to Step 3 and wrote:

The Postal Service installation of a Webcam, an audiovisual system, at the Greenville Crossroads station behind the customer service lobby counter violates the national agreement and the Administrative Support Manual. The union also contests management's position that it can masquerade a contractual violation with the language of Article 3.

In case A00C-1A-C 06063279 Arbitrator Butler states in part that the installation of cameras which affect employees working conditions, management has an obligation to meet with the union to discuss the need prior to unilaterally taking action.

Management violated Article 5 when it unilaterally installed the Webcam behind the customer service lobby counter without first attempting to negotiate this matter with the union. This web camera was placed behind the customer service counter is intrusive because it has the capability of picking up normal conversation in the immediate vicinity and includes employees in the performance of their job in the viewing area.

The Postal Service or OIG are the only offices that can place cameras without permission. The authors of the National Agreement did not provide any intent of allowing management to place cameras behind the lobby counter line for monitoring the lobby area except in security surveillance instances. The Webcam at the Crossroads Station do not fall into this category thereby indicating a violation of the National Agreement.

Management has demonstrated that the Webcam is used to monitor employees and for the assessment of their performance without their knowledge. Additional security is provided by motion detection devices and alarm which operates during hours when the office is closed.

Section 668.291 of the Employee and Labor Relations Manual forbids the use of any "device" to "record", "monitor", or "otherwise intercept the oral or wire communication of any other person" and again this Webcam is used by management to do all of the above with its employees in a manner

inconsistent with its obligation under law which is a contractual violation under Article 5.

The Webcam is also being used for the purpose of harassment of employees. The customers would be better served without the use of the Webcam and the utilization of one of the employee awarded SSDA position at the Crossroads Station perform lobby sweeps and monitor the customer service lines occasionally.

Therefore, the union asks for one of two remedies is upheld: (1) Management discontinues the use of the Webcam and removes it immediately. (2) Management discontinue the use of the Webcam and remove it immediately and the right to monitor the customer service only are be (sic.) negotiated with the union.

The Agency's response was provided by Roberta H. Albright, Labor Relations Specialist, in her letter to Billy Woods, National Business Agent:

. . . was recently discussed with you. After considering all of the available evidence of record and that presented by the Union at the Step 3 hearing, it is my decisions to deny the grievance.

The issue in the subject grievance is whether management violated the National Agreement when a webcam was installed at the Crossroads Post Office.

The union contends that a violation occurred because management used the system to view the work area and to evaluate the performance of employees.

The position articulated by management at Step 2 is carried forth to this step. The union improperly cites the language in the ASM, Part 273.172, which applies the use of closed circuit TVs by the Postal Inspection Service or OIG only. This matter in the case at hand involves a webcam that was primarily installed to improve customer experience by allowing managers and supervisors to provide assistance after determining that the lines were long when lengthy transactions were being conducted. The union has not put into evidence any regulation which specifically addresses or precludes the use of the webcam. There is absolutely no evidence produced by the union that the webcam was used by management

in the Crossroads Post Office to evaluate the performance of employees or that any employee had been issued discipline solely based on what was observed on the webcam. The burden of substantiation rests solely on what was observed on the webcam. The burden of substantiation rests solely with the union who has failed to meet its burden. Accordingly, the grievance is denied.

The time limits for processing at Step 3 were extended by mutual consent.

In our judgment, the grievance does not involve any interpretive issue(s) pertaining to the National Agreement, or any supplement hereto which may be of general application. Unless the Union believes otherwise, the case may be appealed directly to arbitration at the Grievance/Processing Center in accordance with the provision of Article 15 of the National Agreement.

The Grievance was appealed to arbitration wherein both parties were afforded full opportunity to present evidence and examine witnesses who testified under oath. The Agency submitted a post-hearing brief which was received on May 26, 2012.

On the same day, a letter from Mr. Woods was received. Mr. Woods protested the excerpt from a National Arbitration Award by Arbitrator Vaughn and a quote from MI AS-882-2011-6 which were contained in the Agency's brief.

Issue

The Union proposed as the issue:

Did the Postal Service violate the Collective Bargaining Agreement by placing a camera in the lobby of the Greenville, Mississippi Post Office?
If so, what shall be the remedy?

The Agency proposed:

Did the Postal Service violate Articles 5 and 19 of the 2010-2015 National Agreement and ASM 273.172 by having a webcam at the Greenville Crossroads Post Office?

The issue is:

Did the Postal Service violate the Collective Bargaining Agreement (2010-2015) by the placement and use of a webcam at the Greenville Crossroads Post Office?

If so, what is the remedy?

Positions of the Parties

The Union:

The Union stated that the Grievance involves Management unilaterally placing a camera within the lobby of the Greenville, MS Post Office sometime in 2011. Management's position is that it is allowed to do that under the disguise of Article 3 of the Collective Bargaining Agreement (CBA). The Administrative Support Manual (ASM) states differently and this is the only reference to any kind, make, shape, or form of a camera mentioned within the CBA or any of the countless handbooks or manuals that are incorporated into the CBA through Article 19. The Service stated in its Step 2 decision that the camera in question does not fall under the guidelines of ASM 273.17; therefore, there is no language within the four corners of the contract which authorizes this camera if that is the case.

The Union stated that language in the Joint Contract Interpretation Manual concerning Article 3 which states:

The Postal Service's "exclusive rights" under this article are essentially the same as its statutory rights under the Postal Reorganization Act 39 U.S.C. § 1001(e). While management has the basic power to "manage" the Postal Service, it must do so in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of intent and memorandum of understanding. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions.

The Union's position is that "where there is no provision for Management actions then it must be negotiated." The installation and utilization of cameras in a union shop has been conditional upon good faith collective bargaining.

In Ford Motor Co. v. N.L.R.B., the Supreme Court described mandatory subjects of bargaining as such matters that are "plainly germane to the working environment" and "not among those managerial decisions, which lie at the core of entrepreneurial control."

In Colgate-Palmolive Company and Local 15, International Chemical Workers Union, AFL-CIO, Administrative Law Judge Richard H. Beddow Jr. found that the installation of surveillance cameras is both germane to the working environment and outside the scope of managerial decisions lying at the core of entrepreneurial control.

In NLRB Case 9-CA-32158, Colgate-Palmolive Company and Local 15, International Chemical Workers Union, AFL-CIO, the Board of the NLRB found the installation of surveillance cameras is analogous to physical examinations, drug/alcohol testing requirements,

and polygraph testing all of which the Board found to be mandatory subjects of bargaining. They are all investigatory tools or methods used by an employer to ascertain whether any of its employees has engaged in misconduct. The Board found that the decision to utilize cameras is not a managerial decision that lies at the core of entrepreneurial control.

In discussing the issue in Ford Motor Co., the Court relied on Justice Stewart's concurring opinion in Fibreboard Corp., n9 in which he states that "the enterprise are not in themselves primarily about conditions of employment, those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from the area." In conclusion, the Board found that "the installation and use of surveillance cameras in the workplace are not among that class of managerial decisions that lie at the core of entrepreneurial control. The use of surveillance cameras is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and impinge directly upon employment security. It is a change in the Respondent's methods with serious implications for its employees' job security which in no way touches on the discretionary "core of entrepreneurial control." . . . Thus, the placing of cameras, and the extent of which they will be secret or hidden, if at all, is proper subject of negotiations between the Respondent and the Union."

The U.S. Court of Appeals for the Seventh Circuit in National Steel Corp. v. NLRB, Nos. 01-3798, 01-4149 upheld the determination of the NLRB that the Employer violated Section 8 (a) (5) of the Act by refusing to bargain on installation and use of hidden surveillance cameras with several unions with which it had collective bargaining agreements.

In Anheuser-Busch, Inc. and Brewers and Maltsters, Local Union No. 6., affiliated with the International Brotherhood of Teamsters, Case 14-CA-25299, the Board concluded the Respondent violated Section 8(a) (5) and (I) by failing to notify and bargain with the Union prior to the installation and use of surveillance cameras in the workplace. The Board stated:

We conclude, contrary to our dissenting colleague, that the cameras were trained on a work and break area where employees regularly performed their assigned duties and were permitted to take breaks, and therefore the unilateral installation and use of the cameras violated Section 8{a} (5) of the Act,

The Postal Service has relied on its right to manage within the provisions of Article 3 of the Agreement. Article 3 grants management the exclusive right to maintain the efficiency of operations entrusted to it and the right to determine the methods, means and personnel by which such operations are to be conducted. This exclusive right is subject to provisions of the Agreement and must be consistent with applicable laws and regulations. Therefore, the installation and utilization of cameras in the workplace must meet the provisions of Section 273.17 of the ASM and must be within the terms and conditions of Section 8(a) (5) and (1) of the National Labor Relations Act. Management's decision to install and use cameras at the Greenville facility does not meet either of these requirements.

Section 273.17 of the ASM is the only contract language in the APWU-USPS Agreement which allows the installation and utilization of cameras in the workplace. This provision of the APWU-USPS Agreement only authorizes the use of CCTV systems at the determination of the Postal Inspection Service for security measures. Management has attempted to create the illusion that Section 273.17 does not prohibit it from installing and utilizing cameras as a matter of administrative discretion. Nothing could be further from the truth. The literal reading of Section 273.171 clearly puts this issue to rest. It states:

This section clarifies the use of closed circuit television (CCTV) in administrative and security applications. . .

Management's assertion at Step 2 that Section 273.17 only applies to CCTVs and not to their "web cam" is seriously flawed. Section 273.17 applies to both administrative and security applications. Therefore, Section 273.17 limits the determination for the need for, quantity, type and location of cameras in administrative applications to the Postal Inspection Service.

At Step 2, Management argued that this "web cam" is used to "monitor the flow of customers in the Retail line." This is a clear confession that Management has unilaterally expanded its rights granted under Article 3 and exceeded its authority which is subject to the provisions of Article 19 of the National Agreement. This is an admission that the cameras are being utilized in an administrative manner as a device for managers, postmasters, supervisors and other management officials to monitor the customer lines in the lobbies to ensure that the counter lines are sufficiently staffed to ensure proper customer service. This action is prohibited under Section 273.172 which provides that these systems will be used for the protection of its employees, mail and postal assets, and to monitor automated mail flow operations. Section 273.17(b) excludes the use of cameras to evaluate employee performance as an administrative matter.

National Arbitrator William Dolson addressed Article 3 rights versus Article 19. He stated:

The language in Part (K) would seem to allow substitute carriers (now designated part-time flexible carriers) to perform clerk duties. This language, however, is inconsistent with Article 7.2 of the Agreement. A position description is part of a handbook or manual, and as such, is subject to the mandates of Article 19 that "all handbooks, manuals and

published regulations of the Postal Service shall contain nothing that conflicts with this Agreement. . .

Arbitrator Steven Briggs in a National Award stated:

Section D of Article 3 also applies to the present dispute, for it confirms management's contractual right to determine "the methods, means, and personnel" by which Postal Service operations are conducted. So long as it does not violate other provisions of the National Agreement in doing so, management has a general right to make those determinations.

National Arbitrator Carlton Snow summed it up best in his award:

One standard of contract interpretation enjoying wide acceptance among arbitrators is the notion that "the expression of one thing is the exclusion of another." As one scholar observed, "Arbitrators follow an interpretive assumption that if parties specifically enumerated a list of items from a class to which a contractual provision is applicable, they meant to cover only the specific items listed and to exclude other items of that class from coverage." (See St. Antoine, The Common Law of the Workplace, 71 (1998).) Courts use the same standard. Almost four decades ago, the eminent contract scholar, Professor Edwin Patterson, stated that, "If one or more specific items are listed, without any general or inclusive terms, other items although similar in kind are excluded." (See 64 Columbia Law Review, 833, 853 (1964); see also Central Hous. Inv. Corp., 248 P.2d 866 (1952).)

Management argued at Step 2 that "this case is Res Judicata at best based on the similar circumstances from an office in the same region." Arbitrator Odom's award is a Regional Award and is not precedent setting and does not carry the weight of the previous court, NLRB, and National cases cited here. The Union has provided at least two Regional Awards that say the exact opposite of the one Management relies on.

The Union would respectfully ask that the Grievance be sustained in its entirety and the Postal Service be instructed to remove the camera that was placed into the Greenville Mississippi facility improperly, and the Union and/or the Clerk craft be made whole for any adverse action caused by this violation of the Collective Bargaining Agreement.

The Agency:

The Agency first stated that the burden of proof lies with the Union. This has been firmly established in the substantial past history of labor relations between the Postal Service and American Postal Workers Union (APWU). This has been institutionalized in National Arbitration Awards.

The Union has relied on numerous pieces of case law and NLRB decisions which have a common theme: “hidden surveillance cameras.” As such, I would have to agree with my learned opponent that such a hidden surveillance camera in the workplace is a mandatory subject of bargaining. This type of camera in Union Exhibit No. 1, page 2, states:

The installation of surveillance cameras is analogous to physical examinations, drug/alcohol testing. . .and polygraph testing. . .They are all investigatory tools or methods used by an employer to ascertain whether any of its employees has engaged in misconduct.

Union Exhibit No. 2, page 5, states:

Analogous to physical examinations, drug/alcohol testing. . .and polygraph testing. . .hidden cameras are focused primarily on the “working environment”. . .that the use of such devices “is not entrepreneurial in character [and] is not fundamental to the basic direction of the enterprise.”

The Union has not shown where the installation of a visible Webcam, not a surveillance camera, is likened to investigatory tools or methods to ascertain if an employee has engaged in misconduct. The Webcam's use is fundamental for the basic direction of the Postal Service with regard to our customer's experience in entering our lobby and attaining our goal of a Wait Time in Line of five (5) minutes or less.

In the National Arbitration case, Union Exhibit No. 5, page 23, this is precisely what Management used as its basis for having the Webcam installed. The Union has not shown any evidence that prohibits Management from making unilateral decisions on such a permissive subject. The Doctrine of Reserved Rights does give Management through Article 3 the right to install a Webcam which is a permissive subject without negotiating its location or use.

The Agency reviewed the testimony of the two witnesses. Local Branch 54 APWU President and Steward Leon Spencer testified that he did not know about the Webcam until he was shown the pictures. When he was questioned about an incident concerning his wife, Gloria Spencer, where she was short on the window at the Crossroads Station in years past, he acknowledged asking Management about the camera. How then could he now testify that he was not aware of the camera until shown these pictures? He acknowledged that no one has been issued discipline due to the Webcam.

Postmaster Michael Williams testified that showed Rachelle Johnson and Leon Spencer the picture from the Webcam. He testified that he explained to them how it is used to help with

controlling the flow of customers in the window operation. He testified that the camera cannot record sound and that no discipline has been taken because of its use.

The Agency stated that the Union contended that the Webcam is intrusive and capable of picking up conversation. The Webcam is no more intrusive than a hermit; it takes snapshots at the moment it is logged into. The snapshots cannot change unless the viewer gets out of the program and returns, at which time there is a new snapshot. The Union claims that there was no negotiated agreement for the placement of the Webcam. There is no provision that mandates a requirement for Management to negotiate with the Union on the placement of such a device.

The Union Advocate stated that he does not care whether the Webcam picks up sound or not, but that the Webcam should not be there.

National Arbitration case, Union Exhibit No. 6, page 20, was read to defend the Union's position that "the expression of one thing is the exclusion of another." If that holds true as documented evidence, then Joint Exhibit No. 3, which identifies that Management Instructions (MI) are accepted forms of documentation that has been accepted between the Union's and the USPS, and therefore becomes part of Joint Exhibit No. 1.

MI, AS-882-2011-6, allows for Management to use such cameras to monitor the Retail operations. Under this policy, the following activities are permitted:

The Postal Service may use network-based cameras in retail lobbies to monitor customer service and allocate Postal Service resources.

Regional Arbitration case, Union's Exhibit No. 7, is the reason for this arbitration. The Union stated this award is not precedent setting. The Union has stated this award does not carry the weight of the previous court, NLRB and National cases that were cited. However, this case does provide very persuasive arguments that should be repeated in this case.

The Union was shocked at the decision of the Arbitration case in Union Exhibit No. 7, so much so that knowing there was a similar case in the same District, the Union wanted another bite of the apple because they did not prevail in the previous one. Therefore, this case is Stare Decisis and Res Adjudicata (sic.).

The Agency stated that the issue surrounds the installation of the Webcam without first negotiating with the Local Union on its placement. The Union submitted numerous pieces of “case law” to show that Management violated Article 5, Prohibition From Unilateral Action, by installing the Webcam at the Greenville Crossroads Station. Article 5 states:

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

The Union's argument that the installation of the Webcam was considered a unilateral action that is subject for bargaining has not been shown. The NLRA in Section 8(d) states below:

(d) Obligation to bargain collectively. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable

times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require collective-bargaining contract covering employees is an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification.

The Agency argued that the language of the NLRA 8(d) is clear on the subjects to be negotiated. The Union had not shown that the installation of the Webcam affected any employee's wages, hours or other terms and conditions of employment. Black's Law Dictionary, 8th Edition states a condition to be, "a future and uncertain event on which the existence of extent of an obligation or liability depends; an uncertain act or event that triggers or negates a duty to render a promised performance." As Honorable Thomas F. Levak eloquently phrased "conditions of employment" are those which constitute "mandatory subjects for bargaining" within the meaning of the National Labor Relations Act (NLRA). Under the NLRA, an employer is only obligated to bargain in the first instance over mandatory subjects of bargaining; an employer is not obligated to bargain over "permissive subjects". Those subjects which generally relate to Management's right to control methods of operation and direct the working forces.

Because the Webcam is used to monitor the flow of customer traffic in the Retail Lobby and to help reduce a customer's Wait Time In Line (WTIL) which would provide a positive customer experience, this is considered a permissive subject by its very nature, to control methods of operation and direct the working forces. Therefore, the employer is not obligated to bargain over it. It is not Management's intention to utilize Webcam in any way outside of its

initial intent. To monitor the Retail Lobby operation so resources can be provided to enhance the customer experience and WTIL is the sole purpose of this tool.

The Agency argued that the removal of a Webcam from the Greenville Post office and to make the Union and or the Clerk craft whole for any adverse action caused is improper. No employee was issued any discipline as a result of the Webcam's usage. The Union has not shown where any employee was adversely affected. The 2010 APWU – USPS CBA allows “All decisions of an arbitrator will be final and binding. All decisions of an arbitrator shall be limited to the terms and provisions of this agreement, and in no event may the terms and provisions of this agreement be altered, amended, or modified by an arbitrator.”

The Agency claimed that the only decision that can be made in the Grievance is that the Union failed to carry its burden of proof. The Union has failed to show by a preponderance of the evidence that Management violated Article 5, when it unilaterally installed a Webcam to be used in the lobby without negotiating with the Union.

The Union has the burden of proof. The Union alleged that Management should have negotiated the installation of the Webcam. The Union has alleged that Management violated ASM 273.171, which involves CCTV's and surveillance cameras. The only evidence presented was about “hidden surveillance cameras”. This Webcam is not hidden and is not capable of closely watching over someone. There can be no recordings of sound or movement. Given the lack of evidence to show a violation has occurred, the Agency respectfully requested that this Grievance be denied in its entirety.

Analysis and Discussion

This matter of arbitration involves contract interpretation and application, testimony and evidence, the possible existence of res judicata, stare decisis, or laches, and arbitral principles.

First to be addressed is the Union's challenge to the Agency's inclusion in post-hearing brief of Management Instruction AS-882-2011-6 and a quote from a National Award from Arbitrator Vaughn. The inclusion of the Management Instruction AS-882-2011-6 must be considered new evidence because the advocates agreed at the end of the hearing that only arguments (Tape of the Hearing) would be included in the Agency's post-hearing brief. Therefore, it would not be proper for this Arbitrator to consider this submission in this analysis. The quote from Arbitrator Vaughn is proper as an argument or principle; however, the inclusion of the full award at the hearing would have increased its value in this deliberation.

The Agency included the doctrines of stare decisis, res judicata, and laches in its presentation and submissions.

Stare decisis means to stand by that which is decided.

Res judicata means that a final judgment within the same jurisdiction is conclusive between the parties.

Laches means that failure to assert a claim for an unreasonable and unjustified period of time prejudices an adverse party.

In reference to doctrines of stare decisis and res judicata, both parties submitted similar arbitrator's decisions and the Union submitted NLRB and court decisions. To this date, the

Union has not filed an unfair labor practice under the NLRA of failure to bargain, the parties have had no arbitration decisions at the national level over the use of web cams, and there was no evidence presented that any negotiations over the use of web cams had occurred.

In reference to the doctrine of laches, the Agency stated that the Web Cams were installed at the Greenville MS Crossroads Branch Post Office over 4 years ago. Postmaster Mike Williams testified that the installation of the Webcam may have been as many as 10 years ago. The question for this Arbitrator is not how long the Webcam has been installed, but when did the Union know how the Webcam was being used. Leon Spencer, Steward, testified that he found out about how the Webcam was being used only recently. Therefore, the doctrine of laches does not apply to this specific matter at the Greenville MS Crossroads Branch Post Office.

Four regional arbitration decisions were submitted. In 1990, Arbitrator Ernest E. Marlatt in Case No. S7C-3T-C 23439 ruled:

But this grievance fails to allege that any of these possible abuses of the system have actually occurred. The evidence establishes that the sound on the monitor is turned off so that conversations are not being recorded in violation of Section 668.291 of the Employee & Labor Relations Manual. The cameras are not aimed at specific individuals' work places, but cover corridors, lobbies, and entry ways. No employee has been disciplined or even counseled or even counseled about any lack of zeal for his work which may have shown up on the screen. If the Union hereafter has reason to believe that the equipment is actually being used for purposes of harassment of employees, it would have every right to file a new grievance complaining of the specific abuse.

Inasmuch as the Postal Service and legitimate business reasons for installing the equipment, and has used it only for such legitimate reasons since its installation, and inasmuch as there is nothing in the National

Agreement or applicable handbooks or manuals which prohibits surveillance systems on Postal premises, I find no violation of the contract.

In 2008, Arbitrator Fred Butler in USPS Case: A00C-1A-C 06063279, ruled:

Because it is determined that the installation of cameras in the employee swing room affect their working condition, Management had an obligation to meet with the Union to discuss the need prior to unilaterally taking this action.

According to the testimony of Mr. McCarthy, Supervisor Customer Services, Management had in the past met with the Union to discuss proposals that would affect the employees working conditions. However in this case, it did not do so.

Management violated Article 5 when unilaterally installed the surveillance camera in the employee swing room without first attempting to negotiate this matter with the Union.

In 2009, Arbitrator Glenda M. August in USPS H06C-4H-C 08233700, ruled:

This Arbitrator agrees with the rationale of Arbitrator Butler on the issue of camera installation. Management cannot unilaterally place the cameras in the lobby in an intrusive manner and then attempt to justify its actions under Article 3.

The authors of the National Agreement did not provide any intent of allowing Management to place cameras behind the lobby counter line for monitoring the lobby area except in security surveillance (CCTV) instances. The cameras at the Gadsden facility do not fall in this category thereby indicating a violation of the National Agreement.

Management is instructed to discontinue the use of the cameras by removing them immediately. In an attempt to reach an Agreement with the Union, Management can negotiate the possible placement of the cameras to monitor customer service only.

In 2011, Arbitrator James J. Odom in G06C-4G-C 10425140 ruled:

Management acknowledges that ASM 273.17 deals principally with closed circuit television systems used for security surveillance, and not with webcams, which take only still photos used to monitor customer lines. However, at the same time, Management contends that the use of the webcam falls within the guidelines of ASM 273.17. Here, Management is referring to 273.172 b:

CCTV systems are not installed to view work areas to evaluate the performance of employees.

For the authority to install the webcam for the purpose of monitoring customer lines, the Service cited Article 3, Management Rights, specifically, Section C., the right “To maintain the efficiency of the operations entrusted to it.” The Union countered that Article 3 management rights are outstanding only to the extent that the parties have not modified them elsewhere, and that in this instance, the rights have been modified, by the restrictions imposed by ASM guidelines, which, Management has conceded, apply to the use of webcams. See guidelines 273.172 b, which specifies that cameras will not be installed to evaluate the performance of employees. . . .

It is patently evident that Management at the Hattiesburg GMF misused the webcam by using it to evaluate Ms. Myer’s performance. However, one instance of abuse is not proof that Management installed the webcam for anything other than a legitimate business reason, such as to “provide a snapshot of the retail area and the customers waiting to be assisted.” . . .

I can agree that installation of cameras in the swing room without the knowledge of the Union can be seen as “intrusive,” as they were in Arbitrator Butler’s situation. However, I do not equate these cameras in a swing room with those openly set up in the lobby to accomplish an announced legitimate purpose. Therefore I do not automatically interpret the latter to be “masquerading a contractual violation,” as the Union argued to Arbitrator August. Providing prompt and efficient lobby services to the public is a difficult task, and this arbitrator sees no basis to put a potentially effective tool to accomplish that purpose beyond the reach of Management.

However, after the one admitted instance of misuse of webcam, allowing its continued presence and use comes with the strong caveat that it be utilized solely to assess the need for customer assistance in the lobby area.

From these four regional decisions with different conclusions, it is clear that the doctrines of stare decisis and res judicata do not apply.

The Union submitted two NLRB decisions and one Supreme Court decision to bolster its position. These decisions involved the refusal to bargain over the installation and use of hidden surveillance cameras at the workplace. These decisions would have precedential value if the Union had filed charges with the NLRB. However, this matter here involves the interpretation and application of the Collective Bargaining Agreement and ASM 13.

The evidence leads to an analysis of the use of the Webcams and the direction of the cameras. In Arbitrator Odom's decision, there was "one instance of abuse" and "one admitted instance of misuse." In this matter, there were more than one recent instances, both within a short time frame. Arbitrator Odom quotes ASM Guidelines 273.172b which "specifies that cameras will not be installed to evaluate the performance of employees. . . .". Mr. Spencer testified that the use of Webcam led to a discussion about his performance with Postmaster Williams. Ms. Rachelle Johnson wrote the following statement on 10/8/11:

I was present on October 6, 2011 when it was pointed out by Management that Leon Spencer was on camera. The camera (computer screen) showed pictures of Leon Spencer as well as customers.

On October 7, 2011, I was informed by Management that I was being monitored by the camera as well.

The Grievance was filed on October 11, 2011. Therefore, there were at least two instances of misuse of the Webcams, e.g., evaluation of employee performance, within two days.

The Agency stated it used the Webcams to monitor the flow of the line at this office, Joint Exhibit No. 2, p. 17, to provide prompt and efficient service, and to assess the need for customer assistance in the lobby area (Odom decision). However, at the Greenville MS Crossroads Branch Post Office, the picture shows that the camera is located behind the clerks work station, whereas the Agency could have achieved its stated purposes without positioning the Webcam to take pictures of the clerks at their work stations and, then later, use these pictures to evaluate two employees' performance.

The evidence is clear that Management has misused the Webcams at the Greenville MS Crossroads Branch Post Office and have used the Webcams to evaluate employee performance. Therefore, the Post Service is directed to remove the Webcams at the Greenville MS Crossroads Branch Post Office from its present location.

Decision

Based on the Agreement and the evidence, the Grievance is sustained. The Postal Service is directed to remove the Webcam from its present location at the Greenville MS Crossroads Branch Post Office. There was no evidence of any adverse action caused by this violation.