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Labor Arbitration Decision, Simpson Strong-Tie, 2019 BL 512548, 2019 BNA LA 35

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Decision of Arbitrator

In the Matter of a Controversy Between **Simpson Strong -Tie**, Employer, and SMART Local 104, Union.

March 15, 2019

November 7, 2018

December 13, 2018

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BNA Headnotes

LABOR ARBITRATION

SUMMARY

[1] Working Conditions ►124.01 ►2.05 ►24.05 ►94.553 ►118.01 [Show Topic Path]
Simpson Strong Tie's initial decision to install surveillance cameras in its plant falls within the purview of the management rights clause and was not a subject that required negotiations with the SMART union, as it was based on a legitimate operational need to detect intruders and monitor outside contractors loading trucks within the plant, Arbitrator Paul D. **Roose** held. The employer violated the CBA and section 8(a)(5) of the NLRA when it unilaterally set up cameras so that they covered the work floor, employees engaged in work activities, and lockers, and it would not rule out their use for employee discipline, because this affects working conditions, a mandatory subject of bargaining. The employer is barred from using any video footage or still shots from its internal cameras for the purpose of employee discipline until effects bargaining is completed.

Mark S. Ross, Attorney, Sheppard Mullin Richter & Hampton, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109, for the Employer.

Zoe Palitz, Attorney, Altshuler Berzon, 177 Post St., Suite 300, San Francisco, CA 94108-4733, for the Union.

PAUL D. **ROOSE**, Arbitrator.

OPINION AND AWARD
IN ARBITRATION PROCEEDINGS PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT
PROCEDURAL BACKGROUND

The above-referenced matter was processed through the grievance procedure contained in the collective bargaining agreement (CBA) between the parties. Remaining unresolved, it was submitted to final and binding arbitration. The undersigned was mutually selected as the arbitrator from a list of arbitrators supplied by the Federal Mediation and Conciliation Service. The matter was heard on November 7 and December 13, 2018 in Stockton, California.

The parties stipulated that the matter was properly before the arbitrator. The parties also stipulated that the arbitrator retains jurisdiction over the implementation of the remedy if the arbitrator orders a remedy.

The Union also filed an unfair labor practice charge with the National Labor Relations Board (NLRB) on the issue that led to this grievance. The Acting Regional Director of Region 32 of the NLRB decided to exercise the Board's deferral policy, postponing its further processing of the charge until the grievance arbitration process was completed.

The Acting Regional Director's August 13, 2018 letter to this effect states, in relevant part:

> The issue of whether the Employer violated Section 8(a)(5) of the Act by unilaterally installing surveillance cameras is encompassed by the terms of the collective-bargaining agreement.
>
> Since the issues in the charge appear to be covered by provisions of the collective-bargaining agreement, it is likely that the issues may be resolved through the grievance/arbitration procedure.

Both parties indicated that they would like the arbitrator to address the alleged violation of the statute as well as the CBA in deciding this case. This opinion and award does so.

Both parties were afforded full opportunity to present documentary evidence and to examine and cross-examine witnesses. Both parties were ably represented by their respective representatives. The parties chose to conclude their presentations by written briefs. Briefs were received on February 27, 2019 and the matter was submitted for decision.

ISSUE

The parties were unable to agree on a statement of the issue in this matter. The Union proposed the issues as follows:

> Did the employer violate the collective bargaining agreement by installing surveillance cameras in the shop without bargaining with the union? If so, what is the appropriate remedy?
>
> Did the employer violate Section 8(a)(5) of the National Labor Relations Act by installing surveillance cameras in the shop without bargaining with the union? If so, what is the appropriate remedy?

The Employer formulated the issue as follows:

> Did **Simpson Strong -Tie** have a contractual right to install cameras in the plant? If not, what should the remedy be?

The parties ceded to the arbitrator the authority to formulate an issue statement. The arbitrator's formulation of the issue statement in this matter is as follows:

> Did the Employer **[*2]** violate the CBA when it installed cameras in the interior of the plant without bargaining with the Union? If so, what is the proper remedy?

RELEVANT CONTRACT PROVISIONS

Collective Bargaining Agreement Between Simpson Strong -Tie Co and SMART Local Union No. 104 - September 1, 2015 - September 1, 2019

Article I - Scope of Agreement

Section 1.

> The employer recognizes the Union as the exclusive collective bargaining agent for all employees in the Stockton plant of the Employer excluding …

Article VII - Management Rights

Section 1.

> Except to the extent expressly abridged by a specific provision of the Agreement, the Company reserves and retains, solely and exclusively, all of its common law rights to manage the business as such rights existed prior to the execution of this or any other previous agreement with the Union or any other union.
>
> The sole and exclusive rights of management shall include, but are not limited to, its rights to determine the existence or non-existence of facts which are the basis of a management decision … to establish or continue policies, practices and procedures for the conduct of the

business; from time to time re-determine … the methods, processes and materials to be employed … to assign work to such employees in accordance with the requirements determined by management … to make and enforce reasonable rules for the maintenance of discipline; to suspend, discharge or otherwise discipline employees for just cause; and otherwise to take such measures as management may determine to be necessary for the orderly, efficient, and profitable operation of the business.

Article XIX - Grievance Procedure
Section 1.

Any dispute arising among the employees in the shop or from management concerning the interpretation, application, or provisions of this Agreement shall be handled promptly in the following manner only …

RELEVANT STATUTORY PROVISIONS
National Labor Relations Act
UNFAIR LABOR PRACTICES

Sec. 8. [§ 158.] (a) [Unfair labor practices by employer] It shall be an unfair labor practice for an employer-

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [section 159(a) of this title].

REPRESENTATIVES AND ELECTIONS

Sec. 9 [§ 159.] (a) [Exclusive representatives; employees' adjustment of grievances directly with employer] Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

FACTS
The Employer and Union Have a Longstanding Collective Bargaining Relationship at the Stockton Plant:

The Company operates a manufacturing facility in Stockton, CA. On the 68-acre site, the Company fabricates metal connectors for building construction. **[*3]** The plant opened in 2003 when manufacturing was moved from the Company's San Leandro plant to Stockton.

Local Union 104 of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and its predecessor unions have represented employees at the Company for more than twenty years. Its representation carried over from the old facility to the new one. Another union, a CWA local, represents tool and die makers at the plant.

The Union represents shipping and receiving clerks, fabrication employees, welders, maintenance workers, janitorial workers, and forklift drivers, among other classifications. Leadpersons are employed and are members of the bargaining unit. The number of employees represented by the Union is around 280.

The current CBA expires on September 1, 2019. It is a four-year agreement. [1]

In April 2018, the Company Installed Security Cameras on the Interior Walls and Ceilings of the Plant Without Negotiating with the Union:

Dave Olney is the senior environmental health and safety coordinator for the Company. He goes by the nickname "Safety Dave" and is responsible for both health and safety and security at the plant. He has worked for the Company for four years.

Mr. Olney described a plan by the Company to gradually increase its security over the years he has been there. In prior years, the Company installed a single-entry gate with an intercom and gate fob system. The Company installed external cameras to monitor activity outside the plant gates. The Company also replaced chain link fencing with stronger wrought-iron fencing.

Several incidents led the Company to install security cameras within the plant. In one case, an intruder managed to get through the external security on his bicycle. He entered the plant

training area and stole a container of materials. The training area had no security cameras, so the company had no video recording of the theft.

Mr. Olney also stated that customers had reported that they had not received shipped products. He testified as follows:

> There was also discussion about shipments going out to customers and the customers were coming back indicating that they were not receiving the product. So a part of this is to be able to, in our shipping department, to see what is loaded on trucks …

Around September 2017, the Company contracted with Tyco Integrated Security to purchase and have installed a camera system inside the plant. The cameras would be wired to a closed-circuit TV already owned by the Company. The new equipment would be integrated with the external camera system already in use. The scope of the system was defined in a Tyco document as follows:

> Tyco technician to install the following video equipment as addition to their existing system:
>
> Server in server rack on rails
>
> Switches distributed along western wall of building (1,500")
>
> 5 fixed view cameras to record specific shipments from the department and will call with both side of truck loads in good detail.
>
> 1 fixed [sic] at end of shipping **[*4]** north wall areas.
>
> 3 × 4 imager cameras for situational awareness. 10 cameras viewing the south and west production side of the building, including employee entrances and maintenance door

The cameras were installed in the plant in April 2018. No notice, advance or otherwise, was provided to the Union. The cameras do not have audio capability. There are "between 20 and 40" camera views, according to Mr. Olney. They are directed at employee entrances and truck-loading bays. Camera screenshots, in evidence at the hearing, show substantial and detailed views of the plant floor. They include employees operating forklifts and engaging in other work activity.

The cameras are wired to a viewing monitor (CCTV) in a storage room. An operator can toggle between live camera views and see what is happening in the plant in real time. An operator can also review historical footage from each camera.

Mr. Olney testified that the Company does not staff the CCTV monitor on a continuous basis: "There isn't someone who sits at a desk and watches these."

Tony Cervantez is the plant superintendent for the Stockton facility. He has held that position for eighteen years. He accompanied the Union representatives, other Company representatives, and the arbitrator on a walk-through of the plant on the day of the arbitration.

Under cross-examination, Mr. Cervantez conceded that some of the cameras viewed employees at their lockers. The following exchange took place:

> Q: And we saw last time as we walked around and when we looked at the monitors themselves, that there are several cameras facing locker areas; correct?
>
> A: I did not go into the server room to look at the monitor. I did see you guys go in there …
>
> Q: Okay, but as we walked around, we saw that; correct?
>
> A: Yeah. And if you want, we could look at these, and there are, like you said, I could … relocate lockers. I could relocate time clocks, if that's what … you would like.

Mr. Olney stated that, since the installation of the cameras, camera footage was used to investigate an accident inside the plant. He testified as follows:

> We had … an incident where somebody crashed a forklift in the shipping department, so we wanted to review that footage to see what happened. That can be used in determining root causes in accident investigations.

When asked if he had observed on the footage an employee doing something unsafe, he responded "Yeah, that happened … with this forklift accident …"

Superintendent Cervantez confirmed that the Company would use the cameras in accident investigations. "If there's asset damage, yes we would," he testified. He would not rule out disciplining an employee as a result of such an investigation. He also stated that he would not

rule out using camera footage in the investigation of employee conflicts. He stated, however, that "… if we had wanted to do that, we would have put cameras in that had audio."

In May 2018, the Union Filed a Grievance Contesting the "Installation and Practice" of Cameras in the Work Place:

Thomas Rangel is a business representative **[*5]** for the Union. He has held that position since 2003. He has had two stints representing Union members at the Stockton plant, the most recent of which began in 2015. He testified that toward the end of April 2018, the Union's shop steward Jack Morris approached him on one of Mr. Rangel's visits to the plant.

Mr. Rangel learned from Mr. Morris that cameras were being installed in the workplace. Mr. Rangel recalls that Mr. Morris described the Union members as "a little irate" over the camera installation. [2]

On May 3 or May 4, 2018, Mr. Rangel filed a grievance concerning the cameras. Under "Statement of Grievance," the grievance form states: "The Company is currently in the process of installing cameras in the work place. Cameras in the work place are a subject of bargaining."

Under "Statement of Resolution," business representative Rangel wrote the following:

> The Company must discontinue with the placement of cameras in the work place until SMW 104 and **Simpson Strong Tie** negotiate the installation and practice of cameras in the work place.

Mr. Rangel testified that he met with superintendent Cervantez and handed him the grievance form. He also discussed a list of questions with Mr. Cervantez, as follows:

> … I had the placement of the cameras; the view of the cameras; the use of the cameras; will the cameras be used for discipline; who has access to those cameras; where is the data stored.

Mr. Cervantez recalled that Mr. Rangel met with him and provided him with a written list of concerns. He remembered that the list included a question about the use of audio in the cameras. He specifically recalled that the issue of the use of the cameras for employee discipline was on the list.

At the end of the meeting, Mr. Rangel handed his list of questions to Mr. Cervantez. The Company denied the grievance at all steps of the procedure. It is that grievance that is before the arbitrator.

In June 2018, the Union Filed an Unfair Labor Practice Charge with the NLRB Over the "Implementation of the Cameras":

On June 4, 2018, the Union filed a charge with Region 32 of the NLRB. The charge stated, in relevant part, the following:

> Within the past six months, the employer has violated the Act by unilaterally changing terms and conditions of employment that are mandatory subjects of collective bargaining without bargaining with the Union, and by refusing to furnish information necessary for the Union's performance of its duties as exclusive representative. The employer, without bargaining with the Union, implemented a system by which it monitors employees in the shop with cameras; and the employer continues to refuse to bargain over the implementation of the cameras. The employer refused to provide information about its camera systems in response to the Union's request.

The Union withdrew the portion of the charge related to the information request, and the Acting Regional Director approved that withdrawal. As noted above in the "Procedural **[*6]** Background" section of this Opinion and Award, the Board deferred the remainder of the charge under the Collyer and United Technologies doctrines.

UNION'S POSITION

The Union asserts that both the installation and the effects of surveillance cameras are mandatory subjects of bargaining. The parties have "incorporated the NLRA's bargaining obligation" into the CBA.

The Union cites the US Supreme Court in Ford Motor Co. v. NLRB (1979) and the NLRB in Fresno Bee, **339 NLRB 1214** .

The Union argues that the CBA recognition clause and the NLRA are the sources of the Company's duty to "refrain from making unilateral changes in working conditions without first bargaining with the Union …"

The Union cites several NLRB decisions to support its point of view that the installation of surveillance cameras in the workplace without bargaining is a per se unfair labor practice. Quoting from Colgate-Palmolive (1997), the Union contends that the decision to install cameras is "not among that class of managerial decision that lie at the core of entrepreneurial control … It is a change in the Respondent's methods used to reduce workplace theft or detect other suspected employee misconduct with serious implications for its employees job security …"

The Union also contends that the Company had an obligation to bargain over the effects of the installation of the cameras. The Union cites from the above-noted Fresno Bee case as follows: "… in most such situations 'there are alternatives that an employer and a union can explore to avoid or reduce the scope of the [change at issue] without calling into question the employer's underlying decision.'"

The Union notes that it is particularly important to the Union that the Company bargain over the use of the cameras for discipline. "Effects bargaining is the appropriate forum for the parties to consider how to balance the concerns that caused Simpson to want surveillance cameras in the first place, while also minimizing the effects of those cameras on employees' working conditions and privacy," the Union argues.

If the arbitrator agrees with the Union's claim that the decision to install the cameras was subject to a bargaining requirement, then the arbitrator need not reach a decision on the issue of effects bargaining, the Union asserts.

Because the Company did not notify the Union of its intention to install cameras, the Union had no obligation to demand bargaining to protect its rights, the Union claims. Nevertheless, the Union was clear from the outset that it was demanding to bargain over the decision as well as the effects.

The Union asserts that the management rights clause of the CBA does not constitute a "clear and unmistakable waiver" of the bargaining obligation, as required by the NLRB. Citing Johnson-Bateman Co. (1989), the Union posits that such waivers "will not be inferred from general contract provisions."

The management rights clause, the Union argues, enumerates certain subjects falling within management rights, **[*7]** omitting mention of surveillance cameras or similar subjects.

The Union contends that the Company's failure to bargain over the cameras violates established past practice between the parties.

The Union asks the arbitrator to sustain the grievance, order the Company to remove the cameras from the facility, erase all video footage recorded to date, and bargain with the Union before any cameras are reinstalled.

EMPLOYER'S POSITION

The Employer asks the arbitrator to adopt the Employer's version of the issue statement. "The arbitrator will exceed his authority if he bifurcates the contractual issue from the statutory issue and analyzes the statutory issue under the 'clear and unmistakable waiver' standard," the Employer argues. The arbitrator may only consider the statutory issue in the context of the parties' CBA.

The Employer notes that this case should be decided under the Dubo Manufacturing deferral standard, not the Collyer deferral standard.

The Employer, citing *Elkouri,* argues that "although an arbitrator 'may look to numerous sources for guidance, including the NLRA and the jurisprudence thereunder,' an arbitrator's decisional authority is 'limited to the contractual issues' and the arbitrator 'does not have the inherent authority to decide issues concerning compliance with the NLRA.'"

The Employer, citing the NLRB's Smurfit Stone-Container Corporation (2005) decision, argues that "the Board found that the arbitrator's adoption of the employer's argument that the management rights clause authorized the unilateral promulgation of the absentee policy was not 'clearly repugnant' to the Act because it was 'susceptible to an interpretation consistent with the Act.'"

The Employer contends that "the CBA does not specifically address whether SST has the right to install cameras in the workplace. It does however contain a contractual grievance resolution procedure in Article XIX which limits the Arbitrator's authority to the resolution of 'disputes … concerning the interpretation, application, or provisions of [the] Agreement.'"

The Employer asserts that the management rights clause "gives the Company an unfettered right to expand its existing security camera system and to install unconcealed security cameras inside its facility to address legitimate and substantial security concerns having nothing whatsoever to do with employee discipline."

The Company argues that the issue of potential employee discipline is not fairly presented in this grievance, noting that "should such camera usage ever occur, giving rise to a genuine dispute, that issue will the subject of a new grievance for another arbitrator to decide. For

present purposes, however, the sole dispute that the Arbitrator has been called to resolve is whether SST had a contractual right to install internal cameras."

The Employer contends that custom and past practice in the parties' history supports its position in this grievance.

Citing Colgate-Palmolive (1997) and other **[*8]** NLRB decisions, the Employer argues that only the installation of *hidden* surveillance cameras is considered a mandatory subject of bargaining by the NLRB. And in those cases, the Employer further contends, the cameras were installed for the specific purpose of investigating employee misconduct. That is not the case here.

The Employer posits that the arbitrator must "apply the 'contract coverage' standard" adopted by the Board in Raytheon (2017). That standard "can be construed as an exception to the duty to bargain over mandatory subjects." The Employer argues that, in this case, the management rights clause covers the installation of security cameras.

The Employer contends that the Board has never required an employer to remove cameras as a remedy in an 8(a)(5) violation case. The "Company is and has at all times remained willing to bargain with the Union over the effects of the interior camera installation on bargaining unit employees. Thus, should the Arbitrator find merit on either the Contractual or Statutory Issue before him, he should nonetheless deny the Union's Grievance for lack of an appropriate remedy," the Company concludes.

The Employer asks the arbitrator to deny the grievance.

DISCUSSION

Both the CBA and the Statute Require Negotiating Over Subjects Within the Scope of Bargaining:

The parties' contract, through its recognition clause (titled "Scope of Agreement"), creates an implied obligation on the part of the Company to bargain over wages, hours, and working conditions.

The management rights clause enumerates specific areas of decision-making within which the Employer is entitled to act unilaterally, with no bargaining requirement. That management rights clause also permits management generally to exercise "all of its common law rights to manage the business." The important caveat is that management may act unilaterally "except to the extent expressly abridged by a specific provision of the Agreement."

The CBA does not contain what is commonly referred to as a "zipper clause" or "whole agreement" clause. Such provisions reinforce the generally accepted notion in labor-management relations that the parties have completed negotiations for the period of the agreement, and any proposed modifications by either side must wait until the contract term expires. Even absent such a clause, the undersigned arbitrator infers that, in the instant case, contract negotiations have been completed through September 2019.

Accordingly, the Union has no right to demand to bargain over topics already covered by the CBA or demand additional rights and benefits not spelled out in the current CBA.

The critical exception to this "whole agreement" rule is activated by the Employer initiating substantive changes in the workplace that impact wages, hours, or working conditions. Such exception does not arise when the Union wants more than what it bargained for in the last round of negotiations. Rather, **[*9]** it is triggered by the Employer doing or proposing something new that the Union has good reason to believe it must respond to in order to protect the existing rights and benefits of its members.

In short, the general scope of the management rights clause does not absolve the Employer in this case of its bargaining duty implied by the recognition clause.

This arbitral reading of the CBA is entirely consistent with section 8(a)(5) of the NLRA. That statute requires employers to bargain with the 'exclusive representatives of all the employees in such unit" over, among other things, "other conditions of employment." The statute terms it an "unfair labor practice" for an employer to shirk this obligation.

The Initial Decision to Install Security Cameras Was Encompassed Within Management Rights and Was Therefore Not Subject to Required Negotiations with the Union:

The reason the Company installed security cameras on the walls and ceiling inside the plant was to detect outside intruders and to monitor the work of outside contractors loading trucks within the plant. Management witnesses testified credibly that this was the Company's motivation for incurring the expense for the technology. No evidence emerged that some ulterior motive, such as monitoring employees, was a factor in management's decision.

The decision to install cameras for those stated purposes falls squarely within the purview of management rights under the CBA. Management may "establish or continue policies, practices and procedures for the conduct of the business" without bargaining with the Union. Management may, from time to time, "re-determine … the methods, processes and materials to be employed" without negotiation.

The Union has cited several arbitration awards and NLRB decisions that found the mere installation of surveillance cameras without bargaining to be a contract violation or unfair labor practice. Those cases can be distinguished from the instant case. In those other cases, cameras were installed for the explicit purpose of monitoring employee activity in the workplace. In the cases cited by the Union, no purported purpose existed other than viewing employee conduct in such a manner as could result in discipline or discharge.

In the instant case, the initial decision to install cameras fell outside the area of mandatory bargaining subjects. This finding will be in a factor in the arbitrator's crafting of an appropriate remedy.

The Location, Directionality, and Use of the Camera Images Have Direct Implications for Working Conditions and are Thereby Mandatory Subjects of Bargaining:

In the design of the camera system, management made decisions that have serious and direct ramifications for unit members' working conditions. Conceivably, cameras could have been placed in such a way that employees inside the plant would not be in view. Cameras designed to observe potential outside intruders could **[*10]** have been placed on the outside, not the inside, of entrances. Cameras intended to monitor outside contractor drivers loading trucks might have been placed in a manner that avoided viewing Company employees.

Instead, cameras were set up so that many camera angles include the work floor and Company employees engaged in work activities. Screenshots in evidence at the arbitration hearing included employees driving forklifts and performing other duties. Camera angles take in employee lockers and timeclocks. Employees can be seen while they work, while they are on their breaks, and while they come and go from the plant. This was evident not only from the screenshots and testimony but also from the plant walk-through arranged for the arbitrator at the arbitrator's request.

When questioned about the potential use of video footage to support accident investigation and employee discipline, Company witnesses could not "rule it out." Safety coordinator Olney candidly admitted that video footage had already been used once in the investigation of a forklift accident. And, while management witnesses stated that the CCTV feed is not continuously monitored by management, nothing about the technology precludes the Company from doing so.

At some point before the cameras were installed, management should have realized that it was going to set up the cameras in such a way that impacted employee working conditions. At that point, the Company should have notified the Union and offered to meet and negotiate if requested by the Union. That did not happen. The Union learned of the cameras only when a shop steward saw them being installed.

The Union's grievance objected to the "installation and practice" of cameras in the workplace. While the word "practice" in this sentence is somewhat ambiguous, the undersigned arbitrator concludes that it means the use of the cameras and effects of such usage. This interpretation is reinforced by the list of concerns that union business agent Rangel handed to plant superintendent Cervantez at the time of filing the grievance. That list included "the view of the cameras" and "will the cameras be used for discipline." Mr. Rangel's list included subjects that were clearly within the scope of mandatory bargaining. [3]

The Company installed security cameras that produce and send to a digital storage device video of bargaining unit employees at work, on break, and arriving at and leaving work. It did so without notifying the Union and without acceding to the Union's request to bargain. This unilateral action violates the CBA and warrants an arbitral remedy.

The Ordered Remedy Requires the Company Not to Use the Cameras for Any Purpose Involving Employees Until a Bargaining Process Has Been Completed:

The Union has asked the arbitrator to order the removal of the cameras pending negotiations. This award does not include such an order. As noted above, the initial decision to install cameras was based **[*11]** on a bona fide management operational need. The installation of cameras did not, per se, violate the parties' agreement. Removal of those cameras, then, would not be an appropriate remedy.

The other reason for not ordering removal of the cameras is that such a requirement would cause unnecessary expense for the Company and preclude it from using the cameras in the interim period for their original permissible purposes.

An alternative remedy exists that addresses the Union's concerns about the use of cameras prior to this award and during the time period when the parties are bargaining over the use of the cameras. The alternative remedy will address the Union's concerns without the negative side effects of removing the cameras. That remedy is to bar the Company from using any video footage or still shots from the internal cameras for the purpose of supporting employee discipline until effects bargaining is completed.

In the ordered bargaining, the Union may bring forth its concerns about the uses of the cameras. Those concerns may include, but are not limited to:

Use of the camera images for accident and/or safety violation investigations

Use of the camera images as evidence to support employee discipline

Directionality and distance coverage of the cameras

Location of cameras in relation to employee lockers and timeclocks

An issue that did not come up in the hearing, but might surface in bargaining, is that of the Union's right to request and be provided video footage. It is easily within the realm of possibility that a disciplined employee and/or the Union might want to view images that it believes might be exculpatory. It would be wise for the parties to address this eventuality in the effects bargaining.

In the effects bargaining, the Union will propose solutions that it believes will address its working conditions concerns. Management will accept the proposals or make counter-proposals. The parties will endeavor to reach agreement. This arbitration award does not directly address the possibility that the parties may not reach agreement. The parties have asked the arbitrator to retain jurisdiction over the implementation of the remedy, and the undersigned has agreed. If agreement is not reached, the arbitrator could potentially be brought back into the dispute by the parties.

AWARD

1) The Employer violated the CBA when it installed cameras in the interior of the plant without bargaining with the Union.

2) The Employer is ordered to bargain with the Union over the use of the cameras for all purposes impacting working conditions.

3) The Employer is ordered not to utilize any images from the cameras of employee activity or employee conduct that may have been obtained prior to this arbitration award and prior to the completion of the ordered bargaining.

4) Pending completion of the bargaining, the Employer may continue to use the cameras for the purpose of detecting unauthorized intrusions into the plant by non-employees **[*12]** and apprehending theft of Company materials by non-employees.

5) The arbitrator retains jurisdiction over the implementation of the remedy.

Date: March 15, 2019.

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fn 1

Witnesses at the hearing testified to proposals made by the Company in the last bargaining round concerning past practice. The proposals were later withdrawn. The undersigned arbitrator finds no relevance to the instant dispute in this piece of bargaining history. It will not be further addressed in this award.

fn 2

Several witnesses testified to a prior installation of cameras at the plant. One camera was used for training purposes in one area of the manufacturing process. The other was a camera installed to monitor the "honor system" commissary in the employee break room. Since the installation and use of these cameras can be readily distinguished from the cameras at issue in the current dispute, no further discussion of these earlier camera installations is offered in this Opinion and Award.

fn 3

Both parties have provided evidence and testimony about earlier examples of the Company and Union interacting over workplace changes. Both sides have asserted that this history (of discussions over uniforms and timeclocks) establishes a past practice that should guide the arbitrator in the instant matter. Because of the clarity of the contract language and the statute on the need to bargain over subjects within the scope of bargaining, the undersigned finds it unnecessary to analyze these earlier interactions. The CBA and the facts of the instant case provide adequate information to reach a decision.