Case In Point

Employer’s Use of Video Surveillance in Fire Station Reasonable When Addressing a Serious Safety Concern

Date: March 13, 2013

Arbitrator Sheehan has affirmed that an employer may install and operate video surveillance in a workplace where it has legitimate and serious concerns about safety issues.

In this arbitration, a firefighters’ Association grieved the installation of cameras at two fire stations. It argued, among other things, that the requirement that the employees be subject to some surveillance was not reasonable and that the installation of the cameras contravened the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”).

At issue were cameras installed in apparatus bays where bunker gear was stored. Hicks Morley’s Michael Kennedy argued on behalf of the employer that the surveillance was necessary because of prior tampering with the bunker gear which included clipping together of firefighter helmets and water found in boots, acts which gave rise to serious safety concerns. The employer believed that the tampering was a result of tensions between the full-time and volunteer firefighters.

The employer asserted that the installation of the cameras in question was a specific, measured, and appropriate response to deal with an ongoing issue of the tampering of the bunker gear of firefighters. The surveillance at issue was not a constant surveillance of the firefighters, it was on a fixed area and it was not directed at where the employees ate, slept or were trained.

Arbitrator Sheehan weighed the employer’s interests in addressing operational and security concerns against the association’s privacy interests in not having its members subjected to ongoing camera surveillance. Following previous jurisprudence, he considered two questions: whether it was “reasonable, in all of the circumstances, for the employer to rely on video surveillance” and whether that surveillance was conducted in a reasonable manner.

On the question of whether it was reasonable for the employer to rely on video surveillance, Arbitrator Sheehan concluded that the employer was attempting to address a legitimate workplace issue: any interference with firefighter gear was a serious matter, warranting employer action. Given the significant safety issue involved, it was not necessary that there be a recent incident to establish the reasonableness of the surveillance.

On the question of whether the conduct of the surveillance was reasonable, Arbitrator Sheehan noted that the surveillance here did not involve constant and ongoing monitoring of the firefighters’ activities. The purpose of the cameras was to deter tampering with the bunker gear and to provide an “investigative tool” should it be needed. The cameras were aimed not at the employees, but towards specific pieces of equipment. Arbitrator Sheehan concluded that the “privacy interests of the members of the bargaining unit are not being unduly impinged upon, given the very brief periods of time their images are being recorded by the cameras in dispute.”

As a result, Arbitrator Sheehan concluded that the two surveillance cameras fixed on the bunker gear were reasonable. However, the other cameras that were not fixed on bunker gear were ordered removed.

Arbitrator Sheehan also confirmed that no violation of the MFIPPA was established: “the very limited nature of the intrusion on the privacy rights of the employees involved, due to the narrow scope of the surveillance is, in my view, proportionate to the benefit gained.”

This case is important as it confirms the analysis that will likely be utilized when considering whether video surveillance is reasonable in a workplace. It also illustrates the kind of safety concerns that can justify the reasonableness of such surveillance being conducted and the fact that a recent safety incident does not need to be shown. Here, Arbitrator Sheehan considered the workplace as a whole and whether the problem the employer was trying to address was serious enough to warrant the implementation of video surveillance. Although the tension between the full-time and volunteer firefighters had subsided at the time of the hearing, it was still recognized that any tampering of any equipment, *albeit* infrequently, was a serious safety matter justifying the actions that the employer had taken.

The Corporation of the Municipality of Clarington and The Clarington Fire Fighters' Association (6 March 2013, Sheehan)