

We Can't Always Protect Your Privacy

But We'll Keep Trying

Canada Safeway introduced a new timekeeping system in 3 of its facilities in Edmonton. Many of you would be aware that prior to this a time clock system was used with time cards being punched. The new system was a “hand scanning” device. The device was essentially a box with a glass surface. To “scan in or out” one simply placed a hand on the glass in the proper position. A pin number was then punched into the machine and the machine would scan your hand and compare the image to the one pre-stored in the machine. Assuming the hand scan matched the stored one associated with the pin it became a valid “scan in” and the machine would record the time in the computer. A similar procedure would occur at the end of the shift when one would scan out.

After receiving a few complaints from our members the union investigated the new device. We were told that the device did not record fingerprints and wasn't capable of doing so. It merely recorded the shape of the hand and converted it into digital information. The initial image was then discarded by the machine and couldn't be recovered later. We were told that the data could not later be used to identify a person in the way that fingerprints could.

The union argued that the devices breached our members' privacy. We argued that they were unsanitary. We argued that the employer's efforts to safeguard the private information was seriously lacking and that inadequate steps were taken to destroy the information after a person left Safeway's employ. We also argued that the employer had not proven that the invasion of privacy was objectively necessary and that the old system was more than adequate. We also pointed to concerns that without a timecard to reference an employee could never be certain they were being paid properly.

The union was concerned because this was being used as a testing ground by Safeway. They intended to bring the technology into all of their stores in Alberta, potentially invading the privacy of more than 7000 union members. We were concerned about the lack of consultation with the Union.

We knew before we proceeded to arbitration that we had “a tough row to hoe” so to speak. Similar cases had been arbitrated in other jurisdictions with mixed results. We also knew that

Alberta arbitrators are notoriously employer friendly. (Unions win only one of three arbitrations in Alberta). Keeping all of this in mind we decided to go to arbitration anyway.

A very experienced arbitrator named Allen Ponak was appointed to hear the case. He heard evidence from eleven witnesses including several experts in the field of biometrics. The case took 3 days to arbitrate. Several months later the arbitrator wrote an award in favour of the employer. In other words, we lost.

Arbitrator Ponak quite correctly determined that in order to decide a case such as this he would have to balance the employer's business interests against the employee's right to privacy. Ponak determined that the "principle of proportionality" was applicable meaning that "the more intrusive the impact on employee privacy the greater the business rationale that must be demonstrated".

Ponak determined that the scanner did collect personal information but that it really was a very minimal intrusion on personal privacy. He felt that the employer had a legitimate business reason for the use of the scanners including fraud prevention and improved timekeeping through the use of the computer. Based on this he decided that the balance of interests favoured Safeway and he decided the case in their favour for that reason.

You should know that UFCW Local 401 takes privacy very seriously. We are convinced that these kinds of incursions into our members' privacy represent "the thin edge of the wedge" so to speak. We believe that employers will use these types of cases to support ever more serious invasions of our members' privacy. We are committed to taking the employers on where necessary to protect your privacy.