

Negotiating Electronic Surveillance in the Workplace: A Study of Collective Agreements in Canada

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Abstract: Innovations in information and communication technology have deepened the problem of workplace surveillance by expanding the capacity to measure and monitor worker activity. This article assesses the extent to which trade unions in Canada have made privacy a sufficiently serious concern to see that privacy protections are incorporated into collective agreements. It assesses the progress made since Bryant's 1995 study, published in this *Journal*, which found practically no reference to electronic privacy protection in Canadian agreements. Specifically, the article reports on a content analysis of existing Canadian collective agreements to determine the extent to which privacy has been recognized by trade unions; to examine which sectors, industries, or individual unions have incorporated surveillance protection into their collective agreements; and to identify specific models of surveillance protection clauses in collective agreements.

Résumé : Les innovations des technologies d'information et de communication ont élargi les moyens de mesurer et contrôler les activités des employés et, en conséquence, ont approfondi le problème de surveillance dans les milieux de travail. Cet article évalue jusqu'à quel degré les syndicats au Canada ont pris acte d'incorporer des protections de la vie privée contre la surveillance dans les contrats collectifs de travail. L'article examine aussi le progrès réalisé depuis l'étude de Bryant publié dans la présente revue en 1995 qui n'a trouvé que des mentions occasionnelles se référant à la protection électronique de la vie privée dans les contrats de travail au Canada. Notamment, les auteurs du présent article proposent une analyse de contenu des contrats de travail canadiens afin de déterminer l'importance de la protection de la vie privée pour les syndicats, d'énumérer les secteurs, les industries ou les syndicats individuels qui ont incorporé des alinéas de protection contre la surveillance dans leurs contrats de travail, et enfin, d'identifier, dans les mêmes contrats, des modèles spécifiques juridiques de protection.

Keywords: Management; Sociology; Management of information systems

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Introduction

On Christmas Eve in 2004, the *Edmonton Journal* reported that Les Lilley, a 34-year employee of CN, had been terminated from the company after finding a hidden surveillance camera tucked inside an air duct. In the middle of tense negotiations with two of its unions, the company reacted swiftly, terminating Lilley's employment. The surveillance cameras, it said, were there to prevent acts of sabotage against company property. The union grieved the situation, charging the employer with intimidation tactics.

The conflicts that can arise between management and workers when information technologies are installed in the workplace are revealed in this anecdote. Surveillance cameras and associated technologies can heighten tensions and contribute to mistrust.

Although surveillance is an integral part of labour processes (workers are always watched by someone), technological innovations create new and intrusive ways of monitoring workers' behaviour. Management now has a wide range of technologies to choose from. Video surveillance, radio frequency identification chips, global positioning systems, keystroke monitoring, and telephone surveillance are all examples of contemporary electronic surveillance in the workplace. While there is some research on the extent of this challenge to privacy in the workplace, there is little research on what workers and particularly their unions are doing about it. The purpose here is to track the ways in which Canadian trade unions resist and adapt to changing electronic surveillance methods by studying collective agreements. Two research projects provided support for this undertaking. The first, the Surveillance Project, is a broad analysis of the global problem of surveillance led by a team of scholars at Queen's University. The second is a project on Trade Unions and Convergence in the Communications Industry, based at Queen's and Carleton Universities.

The data set consists of Canadian collective agreements stored in the Nego-tech database, which is maintained by the federal department of Human Resources and Skills Development. This database contains a stratified random sample of French- and English-Canadian collective agreements under both provincial and federal labour law. The collective agreements were searched for clauses dealing with electronic surveillance. These searches revealed just 76 such collective agreements.

Literature review

Although there is some literature on resistance to surveillance practices (Marx, 2003), in much of the general literature on surveillance in the workplace, the role that unions can play is overlooked or neglected entirely. In *The Soft Cage*, Michael Parenti (2003) dedicates one chapter to surveillance practices in contemporary workplaces. He links surveillance practices in the workplace with the principles of Taylorism. Remedies, for Parenti, lie in "regulation, legal limitations and a properly enforced reverse surveillance in which corporations are subjected to the gaze of critics" (p. 150). These remedies again ignore the role that unions can play in restricting surveillance through collective agreements.

Wallace (2004) writes that companies monitor their workplaces through authentication processes, desktop monitoring, the use of location-aware devices, video technologies, and by using “smart” objects equipped to communicate with networks and transmit information. The justifications for surveillance practices range from concerns about legal liability to security fears to worries about productivity and “cyberslacking.” Wallace also emphasizes growing social acceptance of surveillance practices in the wake of the September 11 terrorist attacks. “The notion that it is better to let ten guilty people go free than to convict one innocent person has given way to a heightened desire for security and for greater protection against the horrible acts that any one of those ten people might do—even if they have done nothing illegal yet Now, most people would welcome a highly sophisticated video surveillance system that could spot terrorists in an airport or at the Super Bowl” (p. 245).

Bennett (2003) argues that the rise of mobile technologies—enabling the creation of mobile workforces—has challenged existing privacy policy instruments to ensure a level of privacy in the workplace. Bennett notes that there is a range of instruments with which issues of privacy and workplace monitoring can be addressed: policy, regulatory, self-regulatory, and technological. Beyond a general recognition of the role that they can play in bargaining for privacy rights, there is little attention paid to the role of unions and collective agreements.

A symposium on the issue of workplace surveillance reported results in a special issue of the *Journal of Labor Research*. Townsend and Bennett, (2003), outlined the excessive levels of intrusion into workplace privacy and emphasized the importance of unions in ensuring the protection of workers’ rights. They cited a survey conducted by the AFL–CIO in which employees expressed overwhelming support for privacy protection in the workplace. Nolan (2003) contrasts the public reasons (productivity, security, union avoidance) and private reasons (curiosity, morality, voyeurism) why employers engage in workplace surveillance. He notes that most cases of employee dismissal are due to infractions of a lascivious nature, rather than for simply wasting time or for personal use of electronic communications.

Corry and Nutz (2003), writing in the same issue, address the matter of surveillance from management’s perspective. They argue that employers might need to rely on surveillance practices because they may be held liable for criminal literature, such as hate literature or sexually harassing material, spread by employees at their workplace. The authors also address the effects of electronic communications on union activity in the workplace and employer interference in worker activities. One important point they emphasize is that in the absence of specific language, employers have greater rights. “Even where such rules as an Internet/E-mail policy do not form part of the [collective] agreement, it is now generally conceded and was held in the case *Crestbrook Forests Industries Ltd. (1993)* that in the absence of specific language to the contrary in the agreement, the making of such rules or policies lies within the prerogative of management, and arbitrators have held this to be so whether or not an express management’s rights clause exists

reserving the right of management to direct and 'manage' the work force" (p. 243). In general, there exists a significant gap in the literature on how Canadian unions are reacting to growing practices of surveillance.

One exception is the work of Susan Bryant (1995), who presented a study, published in this *Journal*, that specifically addressed the question of workplace resistance to surveillance methods. Bryant directly addressed studied electronic surveillance in Canadian workplaces, and she is among the few scholars who have emphasized the role that unions could play in protecting employee privacy rights. Her study made the welcome argument that electronic surveillance is an issue requiring greater attention, particularly the role that trade unions could play in that effort. She surveyed, for example, the responses to privacy and surveillance in the workplace contained within the Canadian constitution (the Charter of Rights and Freedoms), law (criminal and labour legislation), and at the level of the labour movement. In all cases, she found a timid and weak protection for workers from zealous surveillance practices. Moreover, she explicitly recognized the ways in which trade unions could attempt to fill that gap through collective agreements, but concluded that they were not doing very much and practically nothing at the level of collective bargaining.

Currently, the Personal Information Protection and Electronic Documents Act (PIPEDA) is the most important legislative framework governing surveillance practices and data protection in Canada. It was passed by Parliament in 2000 and came into full force in 2004. The act takes primacy over provincial privacy legislation except where the federal government has determined that provincial legislation has been passed that is substantially similar to the federal act. In the most recent annual report of the Privacy Commissioner of Canada to Parliament (2005), it was noted that Quebec, Alberta, and British Columbia are currently exempted from the federal legislation because the federal government ascertained that sufficient provincial legislation had been passed. These exceptions aside, the federal law applies not just to federal government agencies or federally regulated industries, but to all organizations and commercial activities in Canada.

While the federal privacy commissioner does have the capacity to address complaints about workplace surveillance, she lacks enforcement powers, relying instead on the persuasive powers of her good office and mediation. Collective agreements, however, are binding contracts deriving significant strength from provincial labour legislation and union support.

Unions represent an important, but often overlooked, element of workplace surveillance practices. They are often the only recourse workers have to protect their privacy from intrusion. However, a number of questions remain unanswered: How are unions currently addressing electronic surveillance practices in collective agreements? What is potential "best practices" language for unions to model? What patterns are identifiable in union responses to growing surveillance?

We began with the expectation that we would find collective agreements containing surveillance language in the information sector of the economy because it contains more highly educated "knowledge" workers who are more likely to be

performing communications and language-related tasks. Moreover, evidence from Europe suggests that where collective agreements contain language protecting workers from employer surveillance and permitting worker use of company computer systems for union business, these are invariably in the communication and information sectors (e.g., Telefonica in Spain, IBM in Italy, and France Telecom) (Aranda, 2002).

The comparative experience

It is often useful to place policy questions in a comparative context to understand the range of models available. Here, specific European privacy laws and practices that involve trade unions are presented. For example, the European Commission is consulting on a new law on the protection of workers' personal data that will cover data about employees, including e-mail, Internet use, and health records as well as issues of consent, drug and genetic testing, and monitoring and surveillance. A few jurisdictions have put in place workplace surveillance legislation. A notable example is the Australian state of New South Wales, which established a workplace surveillance law in 2005 making it illegal for employers to engage in covert surveillance of e-mails and websites, or the use of tracking devices without a court order. International bodies such as the International Labour Organization (1997) have issued guidelines on elements of surveillance in the workplace, particularly the use of worker data and records.

Partly because of inadequate government attention to this area and partly because governments themselves have used security concerns to overturn privacy protections, civil society organizations and movements have increasingly taken an active role to secure the right to privacy (Shane, 2004). These include established civil rights organizations like the American Civil Liberties Union (1998) and groups specifically organized around information technology issues such as the Electronic Privacy Information Center in the U.S. (2004) and Privacy International in the U.K. (Rotenberg and Laurant, 2004).

Some attention to privacy protection in collective bargaining agreements is recently discernible (Findlay & McKinlay, 2003). But developments in this area are slow. The shadow of 9/11 has darkened efforts to protect worker privacy in the United States (Bloom, Schachter, & Steelman, 2003; King, 2003). The situation is slightly better in Europe. According to a 2003 report on the European situation:

There is generally little reference in collective bargaining to the issue of protecting privacy at the workplace, either in general or in relation to the use of e-mail and the internet. This is especially true of bargaining at multi-employer level, and where joint regulation of this matter exists, it generally occurs at company level, either through agreements or through the exercise of the co-determination rights of works councils or other workplace employee representatives. (European Industrial Relations Observatory, 2003, p. 23)

There are, however, exceptions. Table 1 summarizes some of the major attempts by European trade unions, legislators, and employers to regulate privacy and surveillance in the workplace.

Table 1: Surveillance protection measures in selected European countries

Country	Surveillance Protection Measures
Belgium	<ul style="list-style-type: none"> National collective agreements protect personal privacy in electronic online communications, data, and video monitoring.
Norway	<ul style="list-style-type: none"> Central basic collective agreement between the national trade union central and business group contains a supplementary agreement detailing the conditions under which monitoring and control measures may be implemented. Measures focus on universality, proportionality, objectivity and require discussion and prior notification. Surveillance measures can be deemed unlawful by the Labour Court. This agreement does not apply where there are suspicions of criminal acts.
Denmark	<ul style="list-style-type: none"> The Danish central collective agreement requires that new surveillance arrangements must be made public. The Union of Commercial and Clerical Employees signed a collective agreement that serves as a model for companies developing a model for e-mail use.
Netherlands	<ul style="list-style-type: none"> The public transportation sector's collective agreement has an annex that contains a model privacy code. Several other collective agreements protect privacy concerns relating to medical absences. Works councils (which are mandated for firms with greater than 35 employees) must be notified before surveillance measures are put in place.
Austria	<ul style="list-style-type: none"> Several locals of the Austrian Union of Salaried Employees have local collective agreements with privacy issues.
France	<ul style="list-style-type: none"> Works councils and unions have established "Information Charters" for their workplaces. The charter for the Renault Group provides a model for the use of information resources in the workplace.
Spain	<ul style="list-style-type: none"> Pioneered agreements for trade unions to use company computer networks to communicate with members. Companies such as Ericsson and Barclays Bank SA have agreed to respect the confidentiality of these communications.
U.K.	<ul style="list-style-type: none"> The Trades Union Congress and the largest public sector union (Unison) have been promoting sensitivity to workplace privacy.

Methodology

The federal Department of Human Resources and Skills Development maintains the Negotech online database of current and historic collective agreements in Canada. The database is not collected based on a census method, but uses a statistical sampling method to obtain a stratified random sample of collective agreements (Roy, 2001). The initial sample was selected from the universe of bargaining units with more than 100 workers. All bargaining units of 2,000 or more workers under provincial jurisdiction and all bargaining units of 200 workers or more under federal jurisdiction are sampled. For bargaining units of smaller sizes, there are different proportions of sampling, ranging from one in three to one in ten. At the time the data for this study were collected the database included a total of 5,495 English- and French-language collective agreements, signed under both federal and provincial jurisdiction.

In order to find collective agreements dealing with electronic surveillance, we searched the English-language collective agreements using the following search string: “privacy or monitor or surveillance.” We followed this with a search for “observation systems,” a term we knew was used in some collective agreements. Within this initial subsample, we searched each individual collective agreement for clauses related specifically to electronic monitoring and surveillance. Of the several hundred collective agreements returned, 67 included collective agreement language directly related to electronic surveillance or monitoring in the workplace. The search was duplicated for the French-language collective agreements. The French-language database posed certain problems. For example, the verb “surveiller” and related nouns refer not only to issues of surveillance but also to supervision. Therefore, we modified the search to include the terms “surveillance électronique,” “surveillance vidéo,” “contrôl* électronique,” and “contrôl* vidéo.” (The asterisk serves as a “wildcard” character.) The French search yielded nine collective agreements with relevant language.

Because this study was most interested in electronic surveillance in the workplace, we rejected collective agreements that only included language on such issues as drug and alcohol testing or references to protection of privacy legislation or protection of individual records. The practices we were most interested in were the introduction of electronic surveillance technologies, not medical surveillance and testing practices. Two collective agreements that required personal surveillance of workers engaged in cargo loading were rejected because the contract did not specify electronic surveillance.

Findings

Out of the 5,495 collective agreements maintained in the Negotech database at the time of the content analysis in May 2004 (4,008 in English and 1,487 in French), 76 (67 English and 9 French) contain language dealing with electronic surveillance in the workplace.¹ Although this represents an undoubtedly small portion of collective agreements in Canada, it does indicate an improvement over the situation identified by Bryant in her 1995 study. In that study, she found virtually no response by unions to electronic surveillance practices in the workplace. Almost a decade later, some progress is being made.

A number of reasons could explain the limited response by Canadian unions. The relative decline of the industrial economy in which unions thrived has challenged the very survival of numerous unions in North America. The growth of a large temporary workforce and of companies such as Wal-Mart that are skilled in the use of new technologies to cut costs has posed serious problems for traditional unions. Like their American counterparts Canadian unions have had to focus on fundamental issues like job security, wages, and organizing. Important as privacy is, and most unions recognize the problem that surveillance poses, unions have chosen to place it lower on the list of policy priorities. Furthermore, although this is changing, electronic surveillance and privacy have historically been applied to women workers such as telephone operators and data entry workers, whose

limited power in unions has made it all the more difficult to give surveillance a more prominent place on the trade unions agenda.

Among the unions that have succeeded in putting the issue into collective bargaining agreements, in both language groups, public-sector unions predominated over private-sector unions (see Table 2). This is not a surprising finding. First, the Canadian public sector boasts a higher unionization rate than the private sector. Second, postsecondary education unions have particular concerns about privacy and anti-surveillance measures that contribute to the observed predominance of public-sector unions. This will be addressed later in the article.

Table 2: Contracts with surveillance-related clauses by private/public sector

	French	English
Private Sector	6	29
Public Sector	3	38

The two most represented national unions in the sample were the Canadian Auto Workers (CAW), which increasingly includes service workers among its members, and the Canadian Union of Public Employees (CUPE). This is not surprising given that these unions are two of the three largest unions in Canada. Additionally, the CAW has long fought against cruder, non-electronic surveillance practices on the factory floor, which may have contributed to a greater sensitivity to the subject within the union. University faculty unions made up the third largest group of unions with surveillance-related clauses. Table 3 shows a breakdown of the union numbers by economic sector.

Table 3: Contracts with surveillance-related clauses by industrial sector

	French	English
Primary		2
Secondary		14
Tertiary	9	51

The hypothesis that the collective agreements would be concentrated in the information sector of the economy is partially supported. Leaving aside the CAW union as a largely industrial union, a cluster of union groups in the information economy is apparent. Five of the 10 CUPE collective agreements were concentrated in the postsecondary education sector. Taking those five unions together with the seven independent faculty unions and two media unions, it is clear that information or language-oriented workplaces form a large part of the collective agreements with surveillance-related clauses. Similarly, five of the nine French-language collective agreements were in the university and media sectors. All told, 19 of the 76 collective agreements were located in workplaces that dealt primarily

with language, information, or the production of transmission of knowledge. It was expected that there would have been a greater representation from the call centre industry (Lankshear, et al., 2001). In fact, only two collective agreements covered call centre workplaces, one an electrical power utility and the other a telecommunications firm. (For a breakdown of contracts by union, see Table 4.)

Within this knowledge sector, there was also an apparent predominance of collective agreements in the postsecondary education sector. There are three plausible reasons for this. First, universities were among the first workplaces to adopt electronic communications in a widespread manner, so unions and management were likely forced to confront issues of surveillance in the workplace at an early stage. Second, unlike the call centre industry, Canadian universities are also largely unionized workplaces, meaning their collective agreements are more common in the original database. Third, the additional significant representation of media unions leads us to suspect that concerns about intellectual property and freedom of expression are significant factors contributing to the sensitivity of surveillance practices. Unions representing workers involved in the production of intellectual property and the freedom of expression are likely to be highly attuned to the concerns of surveillance and privacy to ensure both that workers are fairly compensated for the intellectual and information products they create and that these workers have a high degree of autonomy from employers to express themselves in a free fashion.

Table 4: Contracts containing surveillance-related clauses by union

	French	English
CAW		11
CUPE	3	10
Faculty Unions		7
CEP	2	7
Independent Unions	3	6
OPEIU		5
UFCW		4
Steelworkers		3
Transport Unions		3
IAM		3
PSAC		3
Media Unions		2
Hotel Workers		1
SEIU		1
Provincial Public-Sector Unions		1
Fédération Nationale des Communications	1	

Four different types of surveillance language clauses are discernible: low privacy protection, moderate privacy protection, high privacy protection, and worker-friendly surveillance (see Table 5). The low protection category included cases where the employer was explicitly empowered to engage in surveillance activities or where the only restriction on surveillance was a matter of informing employees. Cases where surveillance practices were accepted but limits were sought (such as a halt to further expansion of surveillance activities) were assigned to the second category. Cases where surveillance practices were extremely limited, most often only to the prosecution of criminal offences, were assigned to the third category. Finally, cases where surveillance language meant to be in the interest of worker safety and protection of their property were placed in the fourth category.

Table 5: Typology of surveillance protection clauses

Degree of Protection	Characteristics	Number of Agreements (English)	Number of Agreements (French)
Low	Management rights to monitor are explicitly noted; workers only granted notification of such practices	15	
Moderate	Surveillance practices are accepted but with limits (e.g., no expansion of surveillance practices is permitted)	25	7
High	Surveillance practices prohibited or restricted to the narrowest possible category, usually criminal investigations	22	2
Worker-Friendly	Unions request electronic surveillance primarily to protect employees' property at the workplace and to protect employees' safety on the job	5	

While these categorical distinctions are somewhat arbitrary, the distinctions are plausible. One interesting finding apparent from the data is the high number of the clauses that were deemed to be "high" protection against surveillance measures. It seems that while few trade unions adopt surveillance protection measures in negotiated collective agreements, those that do, push for protection that fits the "moderate" or "high" protection descriptions. Once alerted to the problem, perhaps unions push hard for protection in the workplace.

Fifteen agreements were found to have the weakest protection against surveillance practices. The most dramatic case of the first is found in the agreement between Economic Development Edmonton and the United Food and Commercial Workers, which represents the support and catering staff at the city's primary conference centre. In their first collective agreement, signed after a drawn-out strike, one finds the following clause:

3. Management Rights

3(1) EDE [Economic Development Edmonton] has the right to manage its business as it sees fit, including the right to utilize any surveillance methods without notice.

Similarly, the agreement reached between Loomis Courier Services and the Canadian Auto Workers contained a clause that required the company to post warning signs.

Letter of Agreement

Electronic Surveillance Equipment

The following notice will be posted in all work places covered by the Collective Agreement: "Due to the nature of our business and occasional requests from customers, electronic surveillance equipment may be installed from time to time in the workplace."

It is understood that such equipment will not be installed in areas where employees are entitled to expect privacy, such as washrooms and locker rooms.

The United Food and Commercial Workers agreed to the following clause in agreements with both Canada Safeway and Overwaitea Foods:

Within the confines of the law, the Employer may use video cameras in almost any part of the store. The vast majority of employees have no need to be concerned and may be assured that common sense and discretion will prevail in choosing who is allowed access to any monitoring equipment or video tapes.

The reliance on the law in this case is problematic, for most provincial privacy legislation deals with the protection of personal information and access to government information as opposed to the protection of any individual space. Similarly, labour legislation in Canada is generally silent on privacy issues.² In short, at the low end of protection for privacy, unions have explicitly agreed to management use of surveillance practices, with the only restrictions being the limits of the law or warnings to affected employees.

Twenty-five English-language and seven French-language collective agreements contained moderate protection against surveillance practices. For example, the United Steelworkers of America and an auto parts firm concluded an agreement with the following clause: "(d) No additional surveillance cameras will be installed in employee occupied areas." Presumably the union consented to the existing surveillance cameras in the workplace but won a halt to their spread. A second example is found in two collective agreements covering public libraries in Saskatoon and the Fraser Valley region. In those cases, the clause states: "The parties recognize that volume measurement may be necessary to obtain an objective evaluation of the level of production of a group, a section or an office. However, there shall be no electronic monitoring of an individual's work output for the purpose of evaluating performance." In this case, the union appears to be consenting to electronic monitoring in general, while attempting to prevent those practices from keeping track of the work pace and productivity of individual workers.

Twenty-two English-language and two French-language agreements featured high protection against surveillance, most often in a written guarantee that video or electronic surveillance practices would not be used, except in narrowly defined situations. For example, in a letter of intent explicitly dedicated to surveillance issues and supplementary to a collective agreement between a manufacturer and

the Communications, Energy and Paperworkers, the union won the following written assurance: "This will confirm that the Company shall not use video security equipment to monitor employee work performance." The Canadian Union of Postal Workers has particularly strong language as well, which is not surprising, given the strength of the union, its history of militancy, and the close proximity of its members to valuable merchandise. One can understand simultaneously the desire of the employer to exercise strict measures to protect property and also the union's desire to restrict employers.

41.02 Surveillance

The watch and observation systems cannot be used except for the purpose of protecting the mail and the property of the State against criminal acts such as theft, depredation and damage to property. At no time may such systems be used as a means to evaluate the performance of employees and to gather evidence in support of disciplinary measures unless such disciplinary measures result from the commission of a criminal act.

It was noted above how some of the strongest language stems from agreements between unions as employers and the unions that represent their own employees. For example, the two agreements between CUPE, the Canadian Staff Union, and the Office and Professional Employees International Union include the following:

25.09 Electronic Monitoring, Surveillance, Employee Confidentiality

1. Electronic monitoring and surveillance shall not be used for the purposes of individual work measurement of employees.
2. Surveillance cameras, any technology or systems capable of monitoring employees or their work and any other related equipment shall not be used in employee occupied areas without the knowledge of employees in the area. At no time shall video taping or any other form of electronic tracking or monitoring of employees, work output or attendance in or at a particular location be allowed for the purpose of random surveillance, audits or assessing discipline. At no time may such systems be used as a means to gather evidence in support of disciplinary measures. The Union shall be advised, in writing, of the location and purpose of all surveillance cameras and the reason for installation of such equipment.

Finally, there were five agreements (all English) that could be deemed to be "worker-friendly." This represents less than 10% of the total sample and thus reinforces the idea that most surveillance practices tend to be in the interests of employers for productivity, security, or disciplinary purposes. The protection of property and personal safety were the two major reasons behind worker-friendly surveillance. For example, agreements between the Canadian Union of Public Employees and a casino in Calgary and between the CAW and Lear Corp. specified that the company would provide for electronic surveillance of the parking lot to protect staff vehicles. Similarly, an agreement between Nortel and the telecommunications workers of the CEP included the following: "For reasons of safety, when an employee is assigned to perform work in an isolated area and where it may not be possible for him to request assistance, the Company agrees to set up

proper surveillance in order to provide help and/or assistance as may be necessary.” Although surveillance practices can be put in place to protect the interests of employees, the overwhelming majority of collective agreement clauses on the matter involved unions attempting to restrict employers’ use of electronic surveillance practices.

After studying all the collective agreements, it is apparent that there are several possible directions that collective agreements can take. For example:

- Unions can allow surveillance practices and defer to management.
- Unions can insist on signage in the workplace, informing employees and customers of the presence of surveillance technologies.
- Unions can require that the employer inform the union about the introduction of surveillance practices.
- Surveillance practices can be prohibited or prohibited save for criminal investigations.
- Unions can insist that surveillance technologies be put in place to protect workers’ health, safety, and property.
- Unions can prevent data gathered by electronic means from being used in productivity evaluation or criminal proceedings.
- Unions can require that information above and beyond what was gathered by electronic means be used in any disciplinary or criminal proceeding.
- Unions can require that employees be informed when they will be monitored electronically or unions can require the consent of individuals before surveillance can take place.

Conclusion

Bryant’s 1995 article sounded a decidedly pessimistic tone in evaluating the role that unions play in protecting worker privacy. Since that time, 76 collective agreements maintained in the federal government’s database of Canadian collective agreements have enshrined clauses related to electronic monitoring and surveillance practices in the workplace. Out of the total of 5,495 collective agreements maintained in the database, this number is very small. Explanations for why this is the case require specific research tailored to that question. Limited attention to surveillance may be a function of surveillance’s lower status in the hierarchy of trade union and worker bargaining priorities. It is not implausible to imagine trade unions conceding surveillance measures in return for job and wage protection. Alternatively, it may be that the pace of technological change is outstripping union ability to integrate these changes into bargaining processes. If this is the case, then there may be a need for information dissemination throughout the Canadian industrial relations community: to union locals, management, arbitrators, civil servants, and others.

However, it should also be acknowledged that the measures uncovered in this analysis represent only a first step. The information sectors, especially universities and the public sector, are most strongly represented. And since these sectors

are growing segments of Canadian trade unionism, there is reason to expect growth in the number of collective agreements covering electronic surveillance.

A second unknown that systematic research could investigate is the factors that contribute to the differing degrees of surveillance protection. Why, for example, does the Canadian Union of Postal Workers contract offer high protection against surveillance protection? Was this protection the combination of a strong union and a high salience for the union? By contrast, what factors impacted on the absence of surveillance protection in the “low” categories? Were the unions particularly weak in those cases? Or the employers particularly aggressive? Systematic, empirical research can help determine the factors that help or hinder surveillance protection.

There are also intricate legal questions at play. What, for example, is the relationship between a collective agreement, which is subject to provincial or federal labour law, and federal privacy legislation? And finally, this study revealed that in some instances, electronic surveillance may in fact be desired by workers for very good reasons. In some instances, where workers are placed in physically demanding workplaces, electronic forms of surveillance may mean the difference between a safe and an unsafe workplace. While most collective agreements contained clauses which regulated, permitted, or enshrined management rights to use electronic surveillance, these cases are important reminders of Lyon’s contention that surveillance in contemporary society carries a Janus-faced nature, enabling both control and security (1994, 2001).

Surveillance practices are found in a wide range of industries and workplaces, and labour legislation is generally silent on privacy and surveillance issues. But, as is shown here, collective bargaining offers unions a wide range of options to structure, limit, influence, and control such practices.

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Notes

1. Three of the nine French-language collective agreements were between one company, *Journal de Montréal*, and three bargaining units at the company. Each collective agreement contained the same surveillance clause. We felt it justified to count the three as separate instances in our data set as they were independent collective agreements. This would indicate a concern about surveillance practices across diverse workplaces at the same firm. In the English-language data set, there were

five instances of collective agreements registered with the same employer but with multiple collective agreements. All were counted as separate instances.

2. Québec's legislative framework offers a different opportunity. For example, the collective agreements between the *Journal de Montréal* and unions at the company required surveillance practices to be conducted in accordance with Articles 5 and 46 of the Québec Charter of Human Rights and Freedoms. The former is a guarantee to the right to privacy and the latter is a guarantee to the right to reasonable working conditions (*des conditions de travail raisonnables*).

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