

COURT SAYS GPS-ENABLED PHONES FOR WORKERS NOT A VIOLATION OF PRIVACY



Many companies today will issue its workers technological devices, be it cell phones or laptops. But if cell phones with GPS are distributed among employees, has a right to privacy been violated? Employees of Verizon New England, Inc. (VNE) would say yes. VNE often sends technicians to remote sites to install telephone equipment in Rhode Island and Massachusetts. To keep in contact with workers, who work on projects for sometimes weeks and even months, the company had been using pagers and decided to upgrade to cell phones. The phones included GPS, which allows VNE to track and monitor employees' locations. Employees belonging to the union, the International Brotherhood of Electrical Workers, Local 2324, filed a charge of unfair labor practice with the National Labor Relations Board (NLRB), alleging that such a change in working conditions required VNE to bargain. As the issue was related to a "collective bargaining agreement" between the company and employees, the NLRB deferred the charge to arbitration, and a lawsuit was filed the subsequent day. The union members claimed a violation of privacy rights and a violation of their contract with the company, as VNE was required to obtain consent before instituting the new policy on phones. The lawsuit had been filed with the Massachusetts state court, but VNE removed it to a federal district court, asserting that the employees' claims were "preempted" by Section 301 of the Labor Management Relations Act (or the Taft-Hartley Act of 1947). Section 301 essentially concedes a federal jurisdiction with regard to company/employee contract disputes. The U.S. District Court for the District of Massachusetts denied the workers' motion to remand the case to the state court and allowed VNE's motion for summary judgment. The employees filed an appeal. Concerning the privacy claims, the appeals court cited a ruling on a previous case, which stated that, "for a plaintiff to succeed on an invasion of privacy claim, he must prove not only that the defendant unreasonably, substantially and seriously interfered with his privacy by disclosing facts of highly personal or intimate nature, but also that it had no legitimate reason for doing so." VNE had argued that the GPS application has numerous functions, including the option of sending driving instructions and mass text messages. The company also stated that it had utilized additional means of monitoring employees, such as security cameras and hidden cameras at its facilities. While the workers disputed some of the methods of monitoring claimed by VNE in court, neither party disputed the fact that a consent agreement for the cell phones had been signed by the employees. The notion of the case being preempted was "bypassed" by the appeals court, which agreed with the district court that the employees, whose argument related to a private contract with the company, had failed to provide a state-law case. The U.S. Court of Appeals for the First Circuit affirmed the district court's decision.