

BRITISH COLUMBIA LABOUR RELATIONS BOARD

GATEWAY CASINOS AND ENTERTAINMENT LIMITED,
DBA LAKE CITY CASINOS

(the "Employer" or "Gateway")

-and-

CANADIAN OFFICE AND PROFESSIONAL EMPLOYEES
UNION, LOCAL 378

(the "Union")

PANEL:	Ritu Mahil, Vice-Chair
APPEARANCES:	Eric J. Harris, Q.C. and A. Ryan Anderson, for the Employer Allan E. Black, Q.C. and Jitesh Mistry, for the Union
CASE NO.:	59681
DATES OF HEARING:	November 29-30, December 1-3, 2010
DATE OF DECISION:	May 19, 2011

DECISION OF THE BOARD

I. NATURE OF THE APPLICATION

1 The Union applies under Section 18 of the *Labour Relations Code* (the "Code") to be certified for a unit of Surveillance Operators employed by the Employer at the Lake City Casino in Penticton, B.C. (the "Casino").

2 The Employer opposes the certification application on the basis that Surveillance Operators do not meet the definition of "employee" under the Code and therefore cannot be included in any bargaining unit. The Employer submits that Surveillance Operators must be excluded from the definition of "employee" under the Code because they are employed in a confidential capacity in matters related to personnel.

3 In *Gateway Casinos & Entertainment Inc. carrying on business as Lake City Casinos*, BCLRB No. B210/2009, 172 C.L.R.B.R. (2d) 218 ("*B210/2009*"), the Employer's objection was dismissed. The Employer sought leave and reconsideration of that decision and in *Gateway Casinos & Entertainment Inc. carrying on business as Lake City Casinos*, BCLRB No. B81/2010 (Leave for Reconsideration of BCLRB No. B210/2009), 179 C.L.R.B.R. (2d) 134 (the "*Reconsideration Decision*"), leave was granted and *B210/2009* set aside. The matter was remitted to a new original panel for fresh consideration in light of the guidance and direction given in the *Reconsideration Decision*.

II. AGREED STATEMENT OF FACTS

4 The parties submitted the following Agreed Statement of Facts:

Agreed Statement of Facts

Organizational Structure

1. Gateway operates three casinos in the Lower Mainland, four in the Interior of British Columbia (under the umbrella of Lake City Casinos), and two in Alberta. Some of these locations are certified by a trade union while others are not.
2. Gateway operates four "Lake City Casinos" located in Kamloops, Kelowna, Penticton and Vernon, B.C. The Union's certification application relates solely to the Lake City Casinos location located in Penticton (the "Penticton Casino" or the "Casino").
3. Gateway employs approximately 140 people at the Penticton Casino. This presently includes ten Surveillance Operators (eight full-time and two part-time), who represent the proposed bargaining unit applied for by the Union.
4. The Penticton Casino has staff working on the premises 24 hours per day, but is only open to the public from 10:00 until 02:00.

5. Those working at the Penticton Casino fall into the following groups: casino management; food and beverage, including Supervisors, Bartenders, Servers and Cashiers; security, including Security Officers and Security Supervisors; surveillance, including Surveillance Operators and Surveillance Supervisors; and the largest group, which includes Cash Cage and Drop Team employees, Gaming Cashiers, Slot Supervisors and Attendants, Dealers and Dealer Supervisors, and Customer Service Representatives.
6. The B.C. Government and Service Employees' Union (the "BCGEU") currently holds a certification for a bargaining unit of "front line" employees at each of the Lake City Casinos, including the Penticton Casino, which are covered by a single collective agreement. This bargaining unit includes all employees at the Penticton Casino, including Cash Cage and Drop Team employees, Gaming Cashiers, Slot Attendants, Dealers and Relief Dealer Supervisors (otherwise employed as Dealers), Customer Service Representatives, Bartenders, Servers, all other Cashiers, Security Officers, except all other Supervisors and those employed in the Surveillance Department.
7. Gateway's management structure at the Penticton Casino includes the following excluded managers:

General Manager

Casino Shift Managers (x4)

Floor Manager Dealer Supervisors (reporting Floor Manager)	Slot Supervisor	Cage Supervisor	Drop Team Supervisor	Food and Beverage Supervisor (reporting to the Food and Beverage Manager)	Guest Services Manager	Security Shift Manager
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Director of Security and Surveillance

Surveillance Manager

Surveillance Shift Managers (x4)

8. The General Manager oversees all of the Penticton Casino staff, except those working in the Surveillance Department. The General Manager reports to Gateway's Regional Vice President, who is located in Kelowna, B.C.

9. The Surveillance Manager is responsible for the Surveillance Department, and reports to Gateway's Director of Security and Surveillance, who is responsible for all of Gateway's security and surveillance operations in British Columbia.
10. The four Surveillance Shift Managers, who report to the Surveillance Manager, are paid a salary.
11. Surveillance Operators are paid on an hourly basis, and are paid overtime if they work more than eight hours per day or 40 hours per week.
12. The system of regulation and control of Gateway's operations includes:
 - a. The B.C. Lottery Corporation ("BCLC") as the designated authority under the B.C. *Gaming Control Act*, [SBC 2002] Chapter 14, which conducts and manages commercial bingo, lottery and casino gaming in the Province. BCLC strictly controls casino operations in order to ensure the integrity of gaming and gaming-related financial transactions.
 - b. The Gaming Policy and Enforcement Branch ("GPEB"), which is responsible for gaming policies, standards, regulation, licensing and enforcement under the *Gaming Control Act*. Both BCLC and GPEB report to the Minister of Housing and Social Development.

Casino Surveillance

13. Surveillance in Gateway's casinos is pervasive. Virtually all areas of the Penticton Casino, both within the gaming areas and otherwise, are subject to constant video surveillance. Numerous cameras feed live images to monitors in the Surveillance Room.
14. While the locations of the surveillance cameras are fairly obvious to anyone familiar with such surveillance technology, the surveillance cameras' pre-set home position and particular field of view at any given time is concealed and known only to those in the Surveillance Department.
15. No gaming floor employees have any knowledge of the number of cameras in operation at any given time, nor are they informed of any "blind spots" in the Casino or made aware of the manner in which surveillance is conducted.
16. A record is created for each camera, which can be reviewed if there is reason to investigate any activity which has or may have occurred.
17. The video cameras record activities in and outside the Casino 24 hours a day. While some cameras have fixed

positions only, most have pan, tilt and zoom ("PTZ") capability. PTZ cameras have a pre-set home position, but a surveillance operator may, by remote control, move them from the home position. Surveillance Operators are expected to return a PTZ camera to its pre-set position once they have finished observing the activity that caused them to move the camera. The pre-set positions provide coverage of sensitive areas where monetary transactions occur such as gaming tables, the cash cage or the snack bar.

18. Surveillance Operators work in the Surveillance Room located off the Casino floor. Access to the Surveillance Room is limited to BCLC and GPEB personnel, surveillance personnel and senior Casino management personnel, as well as the police.
19. The Surveillance Room is staffed in shifts. The Surveillance Operators work the following shifts: day shift (08:00-16:00); evening shift (16:00-24:00); and graveyard shift (24:00-8:00). The Surveillance Shift Managers work in the Surveillance Room in shifts from 06:00-18:00 and 18:00-06:00. The Surveillance Manager is usually present for day shift and works in an office outside of the Surveillance Room.
20. The Casino cameras feed live images to monitors in the Surveillance Room. There are two Surveillance Operators watching the monitors during the day shift and the evening shift. During the graveyard shift, there is usually one Surveillance Operator and one Surveillance Shift Manager conducting surveillance.
21. Recently, Gateway has started a practice of staffing some surveillance shifts with Surveillance Shift Managers when there is not a sufficient number of Surveillance Operators available. Surveillance Operators and Surveillance Shift Managers have always worked interchangeably, as required by scheduling needs (e.g., vacation back-fill, etc.).
22. After the Penticton Casino closes at 02:00 and until it reopens at 10:00, there is at least one Security staff working on site who is employed by Gateway, in addition to contract cleaning staff.

Confidentiality and Regulatory Structure

23. Confidentiality within the Surveillance Department is of the utmost importance to the integrity of the Casino's gaming operations.
24. BCLC is a Crown Corporation established under the *Gaming Control Act*. All gaming in this Province is operated through BCLC to meet the requirements of the *Criminal Code of Canada* and to carefully balance the objectives of

revenue generation with the objectives of social responsibility, gaming security and integrity.

25. Section 7(1) of the *Gaming Control Act* provides as follows:

Lottery corporation's mandate

7(1) The lottery corporation is responsible for the conduct and management of gaming on behalf of the government and, without limiting the generality of the foregoing,

(a) may develop, undertake, organize, conduct, manage and operate provincial gaming on behalf of the government, either alone or in conjunction with the government of another province,

...

(h) may monitor the operation of provincial gaming or horse racing and the premises and facilities in which provincial gaming or horse racing is carried on,

(i) must monitor compliance by gaming services providers with this Act, the regulations and the rules of the lottery corporation, ...

26. Under the *Gaming Control Act*, BCLC is given broad discretion for making rules to regulate the conduct of gaming within the province. In particular, section 8(1)(g) of the *Gaming Control Act* provides:

Rules of the lottery corporation

8(1) The lottery corporation may make rules for the purposes of this Part, including but not limited to rules

...

(g) respecting security and surveillance at gaming facilities or classes of gaming facilities.

27. BCLC employs the equivalent of over 600 full-time employees in two main offices and in various field locations throughout the province.

28. BCLC's Surveillance Standards, Policies and Procedures establish the requirement for confidentiality of all information pertaining to security and surveillance at gaming facilities, and the need to segregate the Surveillance Operators and surveillance operations. These confidential policies require that all surveillance personnel refrain from discussing "with any non-surveillance personnel" or otherwise disseminating any confidential

information, which includes information about the nature of the surveillance, the Casino's systems, and who and what the surveillance is focussing on. The only exceptions to these confidentiality requirements are in respect of disclosure to:

- i. authorized BCLC personnel;
- ii. police officers conducting an investigation; and
- iii. GPEB personnel conducting an investigation.

29. Surveillance Operators are prohibited from discussing or disclosing the details of their work, their methods of surveillance, or any other systems related to their work. It is not only the nature of the information that is gathered through surveillance that is confidential, but also the method and manner in which the Surveillance Operators perform their duties and the surveillance policies of the Casino and BCLC, that are confidential.
30. If any non-surveillance Casino employee or other individual solicits confidential information of any nature from a Surveillance Operator, the Surveillance Operator in question is required to immediately notify a Surveillance Manager, complete an incident report and notify BCLC.
31. Gateway is bound by BCLC's Surveillance Standards, Policies and Procedures to keep its surveillance operations strictly confidential and to isolate its surveillance staff, including Surveillance Operators, from all other facets of its organization.
32. Surveillance Operators report directly to the Surveillance Manager and/or the Surveillance Shift Manager, and are not under the control or direction of any other Casino employee or manager at any time. Surveillance Operators are prohibited from having any other duties related to the operation of the Casino. Although they must cooperate with other Casino managers and employees, Surveillance Operators are not controlled or directed by any other personnel outside the Surveillance Department. Surveillance Managers are responsible for controlling all aspects of the surveillance operation and acting independently, without interference from other areas of the Casino.
33. The separation of the Surveillance Department chain of command from the rest of Casino operations management is designed to isolate the Surveillance Department from the rest of Casino operations in order to maintain the confidentiality of surveillance activities.
34. Surveillance Operators are prohibited from fraternizing with individuals known to them to be patrons or employees of

the Casino where they are employed. Surveillance Operators must work independently of other Casino staff and are required to take all breaks separate and apart from other Casino staff. However, the Surveillance Operators share the main lunch room and a designated smoking area with other employees.

Surveillance Operators' Duties and Responsibilities

35. The Surveillance Operators occupy a highly sensitive position and play a critical role in protecting the integrity of gaming operations and financial transactions in the Casino. They must be on alert for any signs of collusion, theft or unusual activity.
36. BCLC requires Surveillance Operators to be trained, certified and knowledgeable in all facets of casino operations, including the job requirements of every position in the Casino. Surveillance Operators also have access to confidential information pertaining to how the Casino operates and all financial transactions related to gaming operations.
37. Surveillance Operators continuously "live monitor" all activity, inside and outside the Casino from the Surveillance Room via electronic monitoring equipment to ensure strict compliance with BCLC standards, policies and procedures, as well as the *Gaming Control Act*. They scrutinize all gaming and money handling functions and observe all activities on the gaming floor, including the conduct of patrons and employees, as well as management personnel. They are responsible for identifying, investigating and reporting any criminal, suspicious or unusual conduct, undesirable play or any other deviations from internal control systems.
38. There are many more cameras in the Penticton Casino than monitors in the Surveillance Room. There are approximately 200 cameras in the Casino and 16 monitors in the Surveillance Room. Surveillance Operators exercise considerable discretion, subject to BCLC policies, concerning who or what they monitor at any given time.
39. BCLC surveillance standards, policies and procedures set out certain requirements for monitoring. Surveillance Operators are required to observe certain activities in real time, including: jackpot and other hand payouts; opening and closing of table games, including chip counts, card inspections and shuffling procedures; movement of drop teams as they transport casino assets; opening of slot machines when cash or ticket cassettes are being changed, or when service is required; handling of chips, coins and currency; detention of persons and security of their property; and evictions from or arrests in the Casino.

40. The Surveillance Operators maintain a Daily Log, which is a series of entries relating to occurrences observed and reported by the Surveillance Operators. An Incident Report is an additional report supplemental to the Daily Log, which is created when the Daily Log entry is of sufficient seriousness to warrant it or where required by the relevant BCLC policies and procedures. When an Incident Report is created, it is entered electronically by the Surveillance Operator into a computerized reporting system maintained by BCLC that is used in all casinos in B.C. called the I-Trak Reporting System ["I-Trak"]. These reports are also filed and forwarded to the Surveillance Shift Manager and Surveillance Manager.
41. The I-Trak Reporting System provides a comprehensive, secure and searchable platform for Daily Log reporting, incident management and subject profiling.
42. In conducting confidential investigation of players and employees, including supervisors and managers, who may be suspected of engaging in misconduct, Surveillance Operators are required to create these written reports (*i.e.*, the Daily Logs and Incident Reports), using the I-Trak Reporting System.
43. Surveillance Operators have unlimited access to all of the information contained in the I-Trak Reporting System. Dealer Supervisors and Security personnel also have access to the I-Trak Reporting System, however, they cannot access entries that are document controlled for Surveillance Operators' access only.
44. Surveillance Operators access previously recorded reports at the beginning of their shifts, when they log into I-Trak and review most recent entries, in order to acquaint themselves with the activities observed and investigations initiated during the previous shift.

Security Officers and Dealer Supervisors

45. Security Officers and Relief Dealer Supervisors (otherwise employed as Dealers) are in the BCGEU bargaining unit. All full-time Dealer Supervisors are non-unionized employees.
46. Security Officers and Dealer Supervisors have limited access to the I-Trak Reporting System. They cannot access entries that are document controlled for Surveillance Operators' access only.
47. Dealer Supervisors' responsibilities include ensuring that proper gaming policies and procedures are adhered to, and a high level of performance and customer service is maintained, at all times. These responsibilities include

supervising, mentoring, instructing and, where necessary, disciplining personnel.

III. ADDITIONAL BACKGROUND FACTS

5 Chris Sotvedt is the Manager of Surveillance for the Casino. Claude Dusseault is a Surveillance Operator at the Casino. Both provided evidence at the hearing and presented as credible witnesses with pride in their work and dedication to their department. There was no material discrepancy in their evidence.

6 Sotvedt commenced his career with the Employer in April 2000 as a Surveillance Operator. He remained in that position until 2003 when he became a Surveillance Shift Supervisor. He was promoted to his current position of Surveillance Manager in 2008.

7 Prior to commencing employment with the Employer, Dusseault worked approximately 20 years as an RCMP officer. He worked both in uniform and on significant projects such as the organized crime unit.

8 Both Sotvedt and Dusseault have taken the BCLC mandated course Casino Surveillance Operator Training Program which is administered through the B.C. Justice Institute. It is a three-module program that all Surveillance Operators are required to complete and pass as a condition of employment.

9 There are ten Surveillance Operator positions (at the time of the hearing one was vacant) and four Surveillance Shift Supervisors that report directly to Sotvedt.

10 The surveillance room is an approximately 12 x 16 office with two desks seated in front of sixteen monitors. Behind these two desks is a higher desk for the Shift Supervisor. BCLC requires two Surveillance Operators and one Shift Supervisor on shift at all times. One of the Surveillance Operators will focus their monitors on the gaming tables, patrons and Dealers while the other, known as the "driver", will observe the rest of the floor including all the slot machines, entrances and areas of the parking garage.

11 As noted in points 38 and 39 in the Agreed Statement of Facts, there are a number of matters that the Surveillance Operators are required to watch every day – for example, there is a cash count every morning of the previous night's proceeds that must be monitored as well as the opening of tables and stocking of chips. Additionally, there are certain incidents that must be monitored by Surveillance Operators if they arise. For example, Surveillance Operators are required by the policies and procedures to follow patrons that win jackpots over a certain amount, technicians working on slot machines, and supervisors working on slot machines. There is a monitor in the surveillance office that informs the Surveillance Operators of the jackpot totals.

12 Otherwise, the Surveillance Operators are free to watch whoever or whatever they want unless they get a call on the radio from a Security Officer or are directed by their Shift Supervisor or Manager to focus on a particular individual. The Surveillance Operators watch for any type of unusual activity. If something catches their attention,

they have the ability to take a closer look, change the angle of the camera or rewind footage to confirm whether or not something in fact took place.

13 Surveillance Shift Supervisors are responsible for all matters occurring during their shift. They ensure that the correct areas are covered by the Surveillance Operators and that the Surveillance Operators are making the appropriate daily log entries. When Surveillance Operators note anything that may warrant an incident report during live monitoring, the decision as to whether an incident report is warranted is made by the Shift Supervisors. Any matters requiring interpretation are also left to the Shift Supervisor or the Manager.

14 Sotvedt and the Shift Supervisors have all had experience as Surveillance Operators. If a Surveillance Operator steps out of the surveillance room for a bathroom or smoke break, Shift Supervisors can and do step into assist with the live monitoring of the Casino if necessary. Surveillance Operators do not step into the role of Shift Supervisors or the Manager in their absence.

15 Creating a log entry, incident report and a supplementary report takes no more than a moment or two of time. In a typical work day, very little time is spent by Surveillance Operators creating these reports. Sotvedt stated in cross-examination that more often than not, supplementary reports are created by employees other than those in the surveillance department. The primary focus of the Surveillance Operators' job is the live monitoring of the Casino.

16 There is a precise chain of command that is followed in the Casino for communication. If a Manager in another department has reason to request that a particular situation or employee be monitored, that Manager will contact the Surveillance Manager to make the request. The chain of command is very clear and communication and requests from other areas of the Casino are only made to Sotvedt. The Surveillance Manager then directs the Surveillance Operators to live monitor or review footage to visually capture the incident or circumstances at issue. The Surveillance Operators' duty is to collect the visual evidence and pass the information along to their Manager who will then communicate the results to the floor Manager who made the request. As an example, Surveillance Operators were directed to and carried out monitoring of two Food Services Supervisors to determine whether they were handling cash, which is against the policies and procedures.

17 Similarly, if the Surveillance Operators notice something on the monitor that is not in compliance with a policy or procedure of the Casino, they notify their Manager or Shift Supervisor who then contacts the Manager responsible on the Casino floor. The Surveillance Operators do not have direct contact or interaction with Managers outside of the surveillance department.

18 In his evidence, Sotvedt described the role of Surveillance Operators in Casino investigations as follows:

A good example would be an event where a possible theft or assault or where an individual claims that a threat took place. Our role would be that we would review the footage. We can tick off 'x' number of facts. We can allow security shift manager to determine how they want to handle it. We don't give them direction as to how they want to handle it. We can verify that patron 'a' and 'b' spoke to each other and appeared to be in a heated exchange. But then we can invite security personnel to view it and determine how it should be handled from there.

19 The two Surveillance Operators on shift at a given time sit at desks with computers with access to I-Trak. The Shift Supervisor is seated behind the Surveillance Operators on an elevated desk. The Shift Supervisor also has a monitor as well as a computer and a photocopier on his desk. The Surveillance Manager's office is located outside the surveillance room but Sotvedt is regularly in and out of the room throughout the day. There is a white board on the wall on which the Shift Supervisor or the Manager will post information, for example if an outside contractor is expected on site on a particular day.

20 The casino industry is highly regulated and controlled through BCLC, GPEB, and the *Gaming Control Act*. Every facet of the Employer's operations is subject to tight controls and regulations. As noted in Agreed Facts 29-34, BCLC requires the surveillance department to be separate and apart from the rest of the Casino. As Surveillance Manager, Sotvedt does not report to the General Manager of the Casino. Instead, he reports directly to the Employer's Director of Security and Surveillance. Further, the surveillance department has its own break room and washroom. Apart from the smokers' area, there is no interaction between the surveillance department employees and the rest of the employees in the Casino. Casino employees not employed in the surveillance department are strictly forbidden from making inquiries about what that department is working on. Any such inquiry by an employee would have to be immediately reported according to BCLC policies and procedures.

21 The surveillance department is comprised of a dedicated staff. Several of the surveillance staff, such as Dusseault, have an RCMP background. In addition to the Justice Institute course, it takes two to three years of on the job training to become a competent Surveillance Operator.

22 Surveillance Operators learn the habits and routines of patrons and employees so they can readily identify any discrepancies. Surveillance Operators also learn to recognize subtle indicators, "tells", that they use to detect suspicious behaviour in the Casino environment. The ability to detect problems is an essential part of the Surveillance Operator job. They know what an average person coming into the Casino for a gaming experience looks and acts like, and they recognize the behaviours of problem gamblers as well. They watch for someone or something that does not look "quite right". As there is a risk of money laundering through the Casino using chips or slot machine vouchers, the Surveillance Operators may decide to watch a person behaving unusually for some time. This applies equally to patrons and the floor employees who are in the BCGEU bargaining unit as well as all members of the

management team – Pit Bosses, Dealer Supervisors, Slot Supervisors, and the General Manager.

23 Surveillance Operators are required to know the proper procedures and the chain of command for every position. They are also required to know how every game in the Casino is played as well as the job descriptions of, and policies and procedures that apply to, every Casino employee – including bargaining unit members, Supervisors, Pit Bosses and Managers. Without such knowledge they would not be able to identify any discrepancies or breaches that may occur.

24 For example, a Dealer is required to "dust off" when handling cash before touching their body, which means to open their hands and show their palms to demonstrate that they are not hiding money away. When Surveillance Operators see a Dealer who does not dust off, they first confirm the incident (which they can do by reviewing the recorded footage), and then they report it to their Shift Supervisor or Manager. It is then up to the Shift Supervisor or Surveillance Manager to decide whether the matter should be entered as an incident report in I-Trak or handled in a less formal way.

25 Every incident report that an employee is associated with, even if the report was written about another employee or a patron, forms part of the employee's profile that is searchable on I-Trak. Both Surveillance Operators and Security Officers have access to the personnel tab on I-Trak. This tab shows each employee's picture and position title. If the employee was involved with an incident, that incident report is attached to the employee's profile (unless that report is restricted for some reason).

26 Sotvedt, in his direct evidence, could not recall an incident where a player was observed to be acting suspiciously and there was reason to believe that an employee was involved and not following proper procedure. Sotvedt was asked how in the event of such an observation the matter might be escalated. He replied that "[i]t would be escalated from Operator to Supervisor. The Supervisor would make that decision. Security would be called. They are in charge of safety of patrons."

27 There is a divergence of opinions amongst surveillance department employees as to how violations of policies and procedures should be handled. Some Surveillance Operators, such as Dusseault, believe that all infractions should be entered as an incident report in I-Trak. Sotvedt, on the other hand, believes that there is a range of actions that can be taken and whether the matter is escalated depends on the severity and/or frequency of the infraction. For example, if a Dealer forgot to "dust off" just once or twice, Sotvedt may choose to do nothing and direct the Surveillance Operator not to file an incident report. If Sotvedt determined that the matter was more serious, he may choose to call that Dealer's Supervisor so that he/she may provide a reminder or corrective coaching. Sotvedt may or may not find such an incident to warrant an incident report. Regardless of the divergence of opinions, it is only Sotvedt's discretion and judgement that matter in this respect.

28 Individual Surveillance Operators may hold a personal opinion about how a policy violation should be dealt with, but it is not their role nor responsibility to make that call and that is clearly understood amongst all surveillance department employees. Except for the most blatant infractions which automatically warrant an incident report, Surveillance Operators do not create such reports without direction from the Shift Supervisor or the Surveillance Manager. An example of an infraction that would automatically require an incident report would be if a Dealer used a public restroom. That is strictly forbidden and is without question a reportable infraction.

29 Evaluative discussions are ongoing amongst surveillance staff about whether what is being seen on the monitors is noteworthy or not. If an infraction is noted while the Shift Supervisor or Manager is out of the room, the Surveillance Operator waits for them to return before proceeding to do anything including entering a report. It is clearly understood in the surveillance room that the ultimate "call" on whether or not to take any action for an employee infraction is the Manager's. Surveillance Operators do not have independent discretion on how to proceed once an infraction has been identified. Dusseault is one of the more vocal Surveillance Operators and has strong opinions which he voices and argues from time to time, but once Sotvedt has determined how to proceed on the matter, the Surveillance Operators follow that determination.

30 From time to time, supervisors or Managers from other areas of the Casino may come into the surveillance room in order to view previously recorded footage. Those supervisors or Managers would enter only upon invitation from Sotvedt. Surveillance Operators would be informed by Sotvedt or the Shift Supervisors that such a meeting would be occurring. The monitor with the relevant footage would be set up and ready for the outside Manager to view. A Surveillance Operator may indicate the relevant incident on the screen to the outside Manager. This would be a five to ten second conversation. Surveillance Operators do not offer an assessment or opinion about the competence or trustworthiness of an employee that may be on the monitor at the time. The outside Managers promptly leave the surveillance room after viewing the footage.

31 Surveillance Operators are not part of the management team. They do not attend the regular meetings between Sotvedt and the Shift Supervisors. Such meetings used to occur off site from the Casino but since the Surveillance Operators moved to a 12-hour shift schedule, the meetings take place on site. Surveillance Operators cannot hear Sotvedt and the Shift Supervisors talking during these meetings. Surveillance Operators do not have any input into the agenda items for those meetings nor are they provided with minutes of the meetings. Discussion items at these meetings include issues specific to the surveillance department, such as scheduling, as well as matters arising in other parts of the Casino that the surveillance department would have an interest in, such as concerns that may have been brought forward about gaming floor personnel.

32 Surveillance Operators also do not meet with Managers from other areas of the Casino. When there is an issue that Sotvedt thinks that the Surveillance Operators should know about, he informs them either directly or by placing a notice in the department binder, or by writing a notice on the white board in the office. His particular

managerial style is to be as open with his team members as possible. He has fostered and encouraged a team atmosphere and practices a different managerial style than his predecessor who was less communicative with the Surveillance Operators.

33 Surveillance Operators do not have any input into the budget of the surveillance department, other than the ability to make requests to their Manager. They do not receive a copy of the Casino budget or the surveillance department budget. Unless the fact was part of an incident report logged in I-Trak, Surveillance Operators do not have access to employees' wage rates, work history, performance reviews or health records. If an employee was injured or became ill at work and required first aid, that would be noted in I-Trak and the Surveillance Operators would be able to view that as part of the employee's I-Trak file.

34 Surveillance Operators do not have any input into the discipline that is meted out to employees or Managers of the Casino. When an employee is disciplined as a result of the surveillance department's investigation, and that information is made known to Sotvedt, he tries to pass that along to the Surveillance Operators. However, Sotvedt does not always pass along such information to the Surveillance Operators and stated in his evidence that they are not entitled to it. He thinks that it is important for them to know the end result, particularly where they may have been involved in obtaining the evidence, and to feel pride in their work. He further stated there is no relationship between the Surveillance Operators' knowledge of such discipline and their future work.

35 Other than what they observe on the monitors or read in the reports on I-Trak, Surveillance Operators are not privy to any confidential personnel information. For example, they would not know the decision-making process into promotions or if an employee applied for a promotion. They do not know if grievances are filed and are not informed of the outcome of grievances. They have no involvement in employee performance reviews. Aside from an injury that may be observed on a monitor or recorded on I-Trak, they do not know of the health status of any employee. Surveillance Operators have no input into first aid issues.

36 Three-hundred incident reports were disclosed as part of the evidence in this case for randomly chosen dates in a four-month period prior to the Union's certification application (approximately a total of 7.5 weeks of incident reports). Of the 300 incidents, 36 (12%) strictly involved employee infractions or misconduct. Five of these employee misconduct incidents required Surveillance Operators to prepare supplemental reports, and three such incidents required a Surveillance Operator to conduct a video review or follow-up surveillance. None of the incidents from the random sampling resulted in any formal discipline. The remainder of the 300 incidents were primarily equipment or patron-related, although employees may have been involved, or they were self-reported routine employee or medical matters.

37 In his evidence, Sotvedt recalled work done by the surveillance department over the years that resulted in discipline of employees. Sotvedt recalled approximately ten employees that have been disciplined since May 2002 as a result of an observation recorded by the surveillance department. No documents or I-Trak reports could be

found for five of the disciplined employees so it is unclear whether Surveillance Operators played a role in any observations or investigations. The vast majority of the supplementary reports that were produced with respect to the other employee disciplines were filed by Surveillance Shift Supervisors or the Surveillance Manager at the time. One report was recorded by a Surveillance Operator where he observed an employee handling a rifle in the parking lot. The review of the supplemental reports also showed that Surveillance Operators were involved in observing beverage supervisors handling cash, which is contrary to BCLC policies, and recorded that a Guest Services Manager removed an item from the staff concession area without paying for it.

38 From January to March 2009, the Surveillance Operators conducted an audit of all employees, including Managers and supervisors, at the Casino. They were directed to conduct this audit by Sotvedt whereby the Surveillance Operators were to randomly pick employees and monitor them for 45 minutes. They then entered their observations into a "Game Audit Detailed List Report" on I-Trak. Comments made in the reports by Surveillance Operators include:

- "All boxes were placed at the appropriate tables; all boxes were switched out and replaced with the empty boxes."
- "Both drop team members work at an efficient and steady pace."
- "Was pleasant making eye contact with patrons entering casino."
- "Didn't acknowledge patrons coming or leaving the casino."
- "She maintains a professional posture...she performs a jackpot verification and escort correctly."
- "He did not exceed his break period and promptly returned to the floor at the end of his break...[He] is a dedicated employee...and is excellent at customer service."

39 Comments made by Dusseault on the audit include:

- "He barely noticed or acknowledged patrons coming in and out...[He] walked around the casino with his main objective appearing to be to talk to as many staff as he could, disrupting their work."
- "[He] does not have good radio procedures, he only transmits small portions of what he says (he talks before pushing his buttons). [He] has been told about this many times before and has made no effort to correct this problem."

40 At the conclusion of the audit, Sotvedt presented a report to the Casino's General Manager identifying trends that were not being adhered to (i.e., dusting off).

41 Security Officers that are in the BCGEU bargaining unit are visible to all floor employees and patrons. Security Officers also have to go through a training and certification program through the Justice Institute in order to work in a casino. There is one Security Officer at each entrance and at least one on the Casino floor. Typically there are four Security Officers on shift at a time. While stationed at the Casino entrances Security Officers greet patrons, answer questions and ensure that minors are not left outside the Casino entrance. Security Officers interact with patrons and require customer service skills. Security Officers that are not stationed on entrances maintain a presence on the Casino floor. They are responsible for accessing keys, filling tables with chips, dealing with disturbances, and if a patron hits a jackpot over \$2,000, a Security Officer provides an escort to the cashier. Security Officers also escort employees when they are handling cash more than \$2,000. They also check the washrooms occasionally for any sign of theft or vandalism and if anyone needs some medical attention.

42 Security Officers are responsible for crowd control and removing anyone from the premises that should not be there. They are required to circulate the Casino floor once an hour and perform a head count of patrons using a handheld counter. At the end of the day, a Security Officer inspects the garbage to ensure that Casino assets are not leaving through the garbage. They must verify the inspection on a log sheet. Security Officers must radio a Surveillance Operator and inform him/her when they are performing their duties and also prior to approaching a patron.

43 Security Officers also provide Level 1 First Aid to patrons and employees. They treat minor injuries and provide the best assessment and advice they can based on their training. They must then fill out a form and transcribe it into an electronic supplementary report to be logged in I-Trak. Security Officers have less access to I-Trak files than do Surveillance Operators. Security Officers would be able to access reports relating to security events or equipment malfunctions. They would not have access to a file that was created by the surveillance department when they did not want anyone to know they were monitoring a particular individual. A Security Officer would have to use the computer in the security office to access an I-Trak document.

44 When Security Officers observe something suspicious on the Casino floor, the expectation is that they continue their observation as covertly as possible and report it to their Manager. This can be difficult to do due to their visibility and presence on the Casino floor. They must exercise discretion to observe the matter discretely and report it as quickly as possible.

45 Dave McPherson is the Senior Organizer and Representative for the Union. He provided evidence at the hearing. The Union is certified to represent employees at ICBC and Translink Police. Both of those bargaining units are privy to confidential information. McPherson testified that unionization has not had an impact on the employees maintaining their confidentiality requirements in those units. As well, the Union has not sought confidential information from those employers and is not interested in the confidential information that the Surveillance Operators are privy to. The type of information the Union has sought from employers and would be the subject

of collective bargaining would be wage rates, work schedules, vacations and hours of work.

IV. POSITIONS OF THE PARTIES

THE EMPLOYER

46 The Employer opposes the Union's certification application on the basis that Surveillance Operators do not meet the definition of "employee" under the Code because they are employed in a confidential capacity in matters related to personnel. Accordingly, they cannot be included in any bargaining unit.

47 The Employer states that Surveillance Operators access confidential information in monitoring the activities of employees and exercise judgement when determining that an infraction has occurred that must be reported to the Shift Supervisor or Manager to determine the appropriate response. The Employer argues that while the Surveillance Operators would be just as trustworthy if they were in a union, unionization would adversely affect their relationship with the Employer. It submits that it is entitled to the undivided loyalty and commitment of persons who are routinely privy to confidential information that is of such a nature that its disclosure would adversely affect the Employer.

48 The Employer relies on the Board's decision in *Burnaby General Hospital*, BCLRB No. 50/78, [1978] 2 Canadian LRBR 550 ("*Burnaby General Hospital*"), where it stated that:

...it is in the adverse interest of employees, indeed of the public at large, to allow persons engaged in a confidential capacity in personnel matters to be treated as employees together with those with whom they have a significant confidential involvement.

We now consider the kinds of persons who may be said to be employed in a confidential capacity in matters relating to personnel. As a general rule those so employed will be persons regularly and materially involved in personnel matters such that they are entrusted with confidential information about employees and must act upon it discreetly. (p. 522)

49 The Employer submits as an example that if an employee were to learn that he or she were under surveillance then it would adversely impact on the employee/employer relationship. The Employer also referred to cases such as *The Greater Victoria Hospital Society*, IRC No. C283/88 (Reconsideration of BCLRB No. 75/87) which confirm that the exclusion from the definition of "employee" in the Code is not restricted to persons employed in personnel departments. The exclusion is based on a potential for conflict of interest and a requirement for an arm's length relationship between certain people and the rest of the employees. The Employer submits that it is entitled to the undivided loyalty of certain people and Surveillance Operators fall into that category.

50 The Employer notes that the Chair, in his concurring reasons in the *Reconsideration Decision* stated that he found "that the duties of the Surveillance Operators, and the confidential information they allegedly have knowledge of, produce the potential conflict of interest concern regarding the arm's length relationship needed between management and the union and employees in the bargaining unit, which is the correct policy basis and rationale in respect to exclusion." (para. 127).

51 The Employer submits that the potential for a conflict of interest for Surveillance Operators cannot be resolved by creating a separate bargaining unit for them from the other employees. The separate bargaining unit would not address the requirement for undivided loyalty or commitment.

52 The Employer submits that Surveillance Operators occupy a critical role in the Casino management structure. In this unique workplace setting, there exists a relationship between the Surveillance Operators and the Employer which is of a character that bears a very special quality of confidentiality. The Employer says it is simply impossible to separate the work of the Surveillance Operators from management's control of its enterprise, employees and patrons in the Casino.

THE UNION

53 The Union submits that the Surveillance Operators do not exercise meaningful judgement with respect to confidential information regarding personnel. At most, they scan, observe and report information about personnel represented by a different bargaining agent as a minority of their job duties. The Union submits that there is no potential for conflict of interest between the duties owed to the Employer and the Union. The Union submits that the Board ought to dismiss the Employer's objection and order that the Surveillance Operators' free and democratic choice to unionize be respected by re-issuing the certification granted to the Union.

54 The Union argues that it does not have an interest in the type of confidential information that Surveillance Operators typically have access to. The Union states that such information – camera angles, times of cash counts, blind spots in the Casino – is not something that the Union would negotiate over in collective bargaining.

55 The Union argues that the Surveillance Operators would not be in any conflict when conducting audits or surveillance of Casino floor employees because they would be in a separate bargaining unit. The Union further submits that because Surveillance Operators are required to observe and monitor supervisors and Managers as part of their duties, these are precisely the type of employees that require union representation.

V. ANALYSIS AND DECISION

56 Both parties submit, and I agree, that I am to decide this matter in light of the guidance and direction given in the *Reconsideration Decision*.

57 The *Reconsideration Decision* notes at paragraph 60 that the parties agree the confidential personnel exception is narrow but not limited to those employed in

personnel departments. The *Reconsideration Decision* also notes at paragraph 60 that the following passage from *Burnaby General Hospital* "constitutes a useful statement of the Board's law and policy regarding the exception":

We now consider the kinds of persons who may be said to be employed in a confidential capacity in matters relating to personnel. As a general rule those so employed will be persons regularly and materially involved in personnel matters such that they are entrusted with confidential information about employees and must act upon it discreetly. The information will include facts of a character which if divulged or misinterpreted could impact upon the relationship between the employee and employer, or for that matter between the employee and his fellow employees. Finally, the person receiving the information will be responsible for making judgments about it, as opposed to recording it or processing it in a routine way. (p. 552)

58 The *Burnaby General Hospital* decision is also discussed and relied on in the *Reconsideration Decision* in the concurring reasons of the Chair.

59 Both parties also referred me to paragraphs 64 and 65 of the *Reconsideration Decision* which I agree contain an accurate summary of the law with respect to the confidential personnel exclusion. There the panel stated:

The Board's interpretation of the confidential personnel exclusion as illustrated in these decisions can be summarized as follows:

- The purpose of the 1977 addition of the words "or personnel" to the confidential labour relations exclusion was to enlarge somewhat the scope of persons excluded from the definition of employee.
- Those captured by the confidential personnel exclusion are persons whose work requires them to be regularly and substantially involved in confidential personnel matters. They are entrusted with confidential information about employees and must act on it discreetly. They will be responsible for making judgments about the information, as opposed to merely recording it or processing it in a routine way.
- While such persons will mostly be found in personnel departments or positions, they may occasionally appear elsewhere in an employer's organization. In personnel departments, those excluded on this ground will be generally be relatively senior in status. A person will not be excluded where it is possible for an employer to rearrange its affairs so as to avoid the person having merely occasional access to, or involvement with, confidential personnel information. However, a clerical staff member

may be excluded notwithstanding they do not make judgments about confidential personnel information, if their exclusion is necessary in order for the employer to have an excluded staff person to record and process confidential personnel information.

- The same underlying rationale for the confidential labour relations exclusion applies with respect to the confidential personnel exclusion: namely, the avoidance of a potential conflict of interest that arises where a person's work duties require them to have regular and substantial access to, and make judgments about, confidential labour relations or personnel information. It is not sufficient for an employee merely to have access to information the employer wishes to keep confidential from the rest of the world, as membership in a union does not render an employee less trustworthy. In order to require exclusion, the confidential information must pertain to labour relations or personnel matters.

While most Board decisions concerning the confidential personnel exclusion have addressed persons employed in clerical or administrative positions, the Board has considered the application of the exclusion to persons who have access to and make judgments about confidential personnel information and matters as a result of performing not clerical or administrative duties but security duties for an employer, most notably in *Greater Victoria Hospital Society*.

60 The *Reconsideration Decision* guides me to consider whether the Surveillance Operators, as a regular and substantial aspect of their job duties, have access to confidential personnel information, and if so, whether they also make judgements with respect to those matters in such a way that their interests are aligned with management:

Apart from any other errors alleged, the Employer alleges the Original Decision errs in failing to recognize that the surveillance operators do not merely observe and report with respect to confidential personnel matters, but that they exercise judgment with respect to those matters in such a way that their interests are aligned with management. Accordingly, the Employer submits, the Board's established test for confidential personnel exclusion is met in this case.

The Union does not appear to disagree that that is the relevant legal test. It disagrees that the test is met, submitting that the judgments the surveillance operators make are not of such a nature that they could be said to align their interests with management.

We agree with the parties this is the essential issue in the circumstances of this case: do the surveillance operators, as a regular and substantial aspect of their job duties, not merely have

access to confidential personnel information and matters, but also make judgments with respect to those matters in such a way that their interests are aligned with management? (paras. 74-76)

61 I will begin with the question of whether the Surveillance Operators, as a regular and substantial aspect of their job duties, have access to confidential personnel information.

62 The surveillance department plays a key role in upholding the integrity and honesty of the Casino. If certain policies and procedures are compromised, the public perception of casino gaming and its legality could be threatened. The Casino may run the risk of being found in violation of its mandate and its licence could be under review. BCLC has the authority to suspend Casino operations or table games. There is no doubt the Surveillance Operators have access to highly confidential information concerning Casino operations, financial transactions and security. However, the jurisprudence makes clear it is not access to any confidential information that is relevant, but access to confidential *personnel* information that may warrant an exclusion. In that regard, the Surveillance Operators have unlimited access to all of the information contained in I-Trak (Agreed Statement of Facts, para. 43).

63 Both Surveillance Operators and Security Officers have access to the personnel tab on I-Trak, which shows each employee's picture and position title. If the employee was involved in an incident at the Casino, the incident report is attached to the employee's profile, unless the report is restricted for some reason. Though Surveillance Operators have access to more information on I-Trak than Security Officers, the *personnel* tab is just as accessible by the Security Officers who are in the BCGEU bargaining unit as Surveillance Operators.

64 Surveillance Operators' primary duty is to constantly observe all activities occurring in the Casino through video monitors, including the activities of all personnel. Other than what they observe on the monitors in the surveillance room and what they read in the reports under the personnel tab on the I-Trak system, the Surveillance Operators do not have regular and substantial access to any confidential personnel information. They do not, for example, have access to information regarding employee promotional applications, grievances, performance reviews, vacation requests or medical information.

65 Surveillance Operators have had some access to information about discipline investigations. Sotvedt reviewed supplemental I-Trak reports and recalled investigations since 2002 resulting in employee discipline. This documents in evidence established that there were approximately three investigations in which Surveillance Operators were involved. One was an incident where a Surveillance Operator noted that an employee produced a rifle from a vehicle in the parking lot. The other two were investigations into policy breaches by Managers or supervisors where the Surveillance Operators had been directed by their Manager to note each time a beverage supervisor handled cash, or the Guest Services Manager removed a concession item without paying for it. The evidence established that the Surveillance Operators had a limited

role in the investigations. Moreover, I find that the involvement in three investigations over an eight-year period is not persuasive evidence of "regular and substantial" access to confidential personnel information.

66 With respect to the "audit" the Surveillance Operators conducted at the direction of Sotvedt in 2009, I find this did not give them access to any qualitatively different information than they would have gleaned from the regular monitoring activities. While the audit required them to focus exclusively on the activities of one individual for a 45-minute period, it was not different from the surveillance that they would otherwise conduct of all activities in the Casino.

67 I am not persuaded that the monitoring of activities of employees in the Casino (along with the activities of all others including Managers, patrons and equipment) can be classified as "accessing confidential personnel information". However, it is the only duty before me that is a "regular and substantial" aspect of the Surveillance Operators' job. Thus, out of an abundance of caution I will proceed to the next question which is whether the Surveillance Operators not only have access to confidential personnel information, but whether they also make judgements with respect to it in such a way that their interests are aligned with management.

68 Except for the most blatant infractions, Surveillance Operators wait for instructions from either Sotvedt or a Shift Supervisor before doing anything other than live monitoring, including entering a report on I-Trak. Dusseault and Sotvedt confirmed in their evidence that when Dusseault observes an employee infraction on the monitor he defers to Sotvedt's judgement as to whether or not it should be entered on I-Trak. Dusseault has questioned how many times Sotvedt will allow the employee to "get away with" a particular breach, but he always seeks instructions and always follows Sotvedt's directions. The evidence established that it is not the Surveillance Operator's decision to make. Further, if an infraction is not readily identifiable on the monitor or an incident requires any interpretation, the review and determination is made by Sotvedt or a Shift Supervisor. This evidence, I find, militates against the argument that Surveillance Operators exercise judgement in personnel matters.

69 Considering the unique context of the casino industry, I note that it is highly regulated. There are countless policies, procedures and regulations that require absolute compliance. Sotvedt stated in his direct evidence that the surveillance department is the most highly regulated department in the Casino. The Surveillance Operators exercise of judgement is limited to determining who and what to watch at certain points of the day when they are not watching the regulated items. They identify and confirm infractions of BCLC policies and procedures and potential threats to Casino security and they report these to their Shift Supervisor or Manager.

70 I am not persuaded by the Employer's argument that the Surveillance Operators exercise judgement with respect to confidential personnel matters when they identify that an infraction has taken place. In the tightly controlled environment of the Casino there is little room for independent judgement on any employee's part. As far as the work of the Surveillance Operators is concerned, either something is an infraction of the

governing policies and procedures or it is not. If something is not immediately clear on a monitor and the footage must be reviewed beyond a few seconds in order to determine whether an infraction has indeed occurred, that review and determination is made by a Shift Supervisor or the Manager so that Surveillance Operators are not distracted from the live monitoring of the Casino.

71 Surveillance Operators do not have input into whether the act or omission is or should be an infraction. They also do not have input into the decision-making process that occurs after that infraction or threat has been identified. Much of what the Surveillance Operators observe during the day is required under the policies and procedures. They exercise discretion as to what they observe for the rest of the day but those observations involve patrons, equipment, parking lots, minors, members of the public, and employees – both management and BCGEU bargaining unit members. If the Surveillance Operators observe an employee infraction then it is the judgement of the Surveillance Manager or in his absence, that of the Shift Supervisor, that comes into play. As Sotvedt stated in his direct evidence, Surveillance Operators "tick off a number of facts" by reviewing footage. They can confirm that "'a' spoke to 'b'" or appeared to have a heated exchange, but they do not provide any direction with respect to what should be done with those facts or how the matter should be handled.

72 At least one of the Surveillance Operators, Dusseault, offers his opinion and is quite vocal about what action the Surveillance Manager should take if an employee is observed to be in violation of a Casino policy. However, as discussed above, the decision on whether or not to escalate such information, either to the relevant supervisor for corrective coaching or to an incident report level in I-Trak which may result in discipline, is entirely the Surveillance Manager's discretion. Surveillance Operators may go so far as to offer their personal opinion from time to time, but the evidence is that they do not participate in nor are they privy to the discussions between Managers or Supervisors about which approach to take once an infraction has been identified.

73 I turn now to specifically consider whether the duties of Surveillance Operators are such that they would be aligned with management. The impact of unionization on the trustworthiness of the Surveillance Operators is not the issue before me. The Employer concedes that unionization will not affect the trustworthiness of the Surveillance Operators. The issue is whether the Surveillance Operators should be at an arm's length from bargaining unit employees because they have regular access to confidential matters related to personnel and make judgements on those matters such that the Surveillance Operators' interests are aligned with management.

74 The 300 incident reports disclosed for this hearing involved both BCGEU bargaining unit members and management personnel. A review of these reports reveals that a vast majority of reportable matters are equipment malfunctions or patron-related incidents. Many incidents regarding equipment and patrons will also have some level of employee involvement. Surveillance Operators note infractions or procedural irregularities of unionized and management personnel alike. I do not find the fact that some of the employee infractions involve unionized personnel to be persuasive

evidence that Surveillance Operators are aligned with management. Further, when the Surveillance Operators conducted the random audit of all Casino employees, they observed both bargaining unit and excluded Managers alike and did so at the direction of the Surveillance Manager. Similarly with respect to the disciplinary investigations referred to by Sotvedt in his evidence – the two clearest examples of reports that had notations made by Surveillance Operators were investigations into the beverage supervisors and the Guest Services Manager. Under both the written policies and procedures, and through the evidence of how they carry out their duties, it is clear that the Surveillance Operators' loyalty is certainly first and foremost to the Casino. However, that is distinct from the immediate management team which are also subject to their monitoring and reporting activities.

75 It is Sotvedt's practice to keep the members of his department, including Surveillance Operators, informed and updated as to any discipline that may result as a consequence of their work. This was a practice that was not followed by his predecessor. Sotvedt does not consider the Surveillance Operators to be entitled to such information nor does he consider information about an employee's discipline to be a relevant factor into Surveillance Operators' work in the future. He stated that it was the role of Surveillance Operators to note the specific facts and details of each individual incident.

76 There is no evidence that Surveillance Operators even overhear conversations between Managers regarding judgements or decisions on personnel matters. The evidence is that, if an outside Manager enters the surveillance room it is only by invitation by the Surveillance Manager. The footage that the outside Manager is invited to view is already set up and ready to go when that Manager arrives, and he or she leaves the surveillance room immediately upon viewing the footage. Surveillance Operators do not attend management meetings nor are they privy to what is discussed in such meetings.

77 I find that there is no potential for conflict between the Surveillance Operators' duties and their inclusion in the bargaining unit applied for by the Union on the basis that they are more aligned with management. Further, I accept that the confidential information that the Surveillance Operators have access to (camera angles, blind spots, timing and location of cash counts, financial transactions, etc.) is not something the Union is interested in or would be the subject of negotiations. I further find that the segregation of the surveillance department from the rest of the Casino and from all other Casino employees, which is required by the BCLC policies and procedures, is something that also protects against potential conflict. The segregation of the surveillance department from the rest of the Casino, the tight regulation and control through the policies and procedures which absolutely restrict other employees to even inquire about surveillance practices, and the high level of dedication and fierce loyalty of the surveillance department employees all protect against confidential information being leaked. Even an inquiry from an employee outside of the department is a reportable infraction. This is something that is well known amongst all Casino employees.

78 In summary, the evidence in this case disclosed that Surveillance Operators do not have regular and substantial access to confidential personnel information, other than what is gleaned through their daily monitoring of Casino activities and access to the personnel tab on I-Trak. The evidence established that Surveillance Operators are not responsible for making judgements with respect to that information. They record facts and forward information on to Supervisors and their Manager for any related decision-making. I find that the Surveillance Operators record and process information in a routine way and I accept the Union's characterization that the Surveillance Operators' duties are to scan, observe and report. Moreover, there is no evidence that Surveillance Operators' duties are such that they would be aligned with Casino management. Considering the guidance and direction set out in the *Reconsideration Decision*, the evidence is not persuasive so as to bring the Surveillance Operators within the exclusion of "employee" in the Code.

79 I turn now to the Employer's reference to the Chair's comments in the *Reconsideration Decision*. At paragraph 127 of the *Reconsideration Decision*, the Chair stated:

Within that context, I find that the duties of the Surveillance Operators, and the confidential information they allegedly have knowledge of, produce the potential conflict of interest concern regarding the arm's length relationship needed between management and the union and employees in the bargaining unit, which is the correct policy basis and rationale in respect to the exclusion.

80 I find that the evidence does not establish the confidential knowledge or exercise of judgement to support the concern necessary to warrant exclusion from a bargaining unit. This, combined with the fact that the Employer and Casino operate under such strict guidelines and regulations that leave very little room for independent judgement on the part of Surveillance Operators, effectively eliminates any such concerns.

VI. CONCLUSION

81 For the reasons given, I find the Surveillance Operators are employees within the meaning of the Code. Accordingly, the Employer's objection to the Union's certification application is dismissed.

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