

Neutrality of Employers and Union Organizing
**- The legal framework and the factual context of T Mobile USA`s conduct towards the
organizational efforts of CWA -**

Memorandum

at the request of

Deutschen Telekom AG

by

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2010

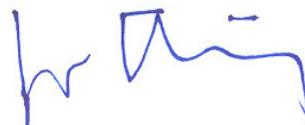
Summary

1. The fact that T-Mobile USA is not unionized and does not enter into collective agreements is not an exception, it is the rule in the USA: Less than 8% of employees in the private sector are members of trade unions; in the field of wireless telecommunications amongst the five biggest market providers (together constituting 90% market share) only AT&T's employees are generally covered by collective agreements.
2. From the employee's perspective there is good reason why T-Mobile USA is not unionized: under US law, collective agreements not only lay down minimum work conditions but as a rule also maximum work conditions. The collective agreement can obligate employees, even if they are not members of the union, to pay dues to the union. Such clauses are frequently found in the collective agreements of the CWA.
3. In order to conclude collective agreements with T-Mobile USA, the CWA is not dependent on T-Mobile USA's good will, but the support of the workforce. If more than half of the employees of an appropriate bargaining unit vote for bargaining with CWA, then T-Mobile USA is obligated by law to collectively bargain with the sincere wish to reach an agreement. It is, however, precisely this which has not yet occurred.
4. The allegations made by the UNI Global Union that there have been violations of the NLRA provisions in the past have been raised with almost equal severity against other companies in the telecommunications industry. They are manifestations of general unionization endeavours being made in the cell phone service providers sector. In addition to this, in the recent past US-Unions have emphasized their organizational campaigns especially concerning US-companies in foreign groups. However, the accusations of systematically illegal practices made against T-Mobile USA have not been confirmed by the NLRB. In fact, all the proceedings ended with the dismissal of the charges or a settlement. The agreement to a settlement is no admission of guilt. The NLRB promotes the reaching of settlements; this avoids expensive lawsuits. The fact that proceedings were initiated at all is equally no indication that the allegations are justified.
5. In fact, the substance of the settlement agreements, which were restricted to individual sites, or a small number of stores in one case, suggests that the NLRB was not acting on the assumption that this was a regular pattern of behaviour of T-Mobile USA. Otherwise it would likely have considered cross-company measures. In light of the

range of possible measures the NLRB could have sought in the settlement agreements, the substance of the prescribed measures is modest. In the cases against T-Mobile USA the NLRB merely made use of its standard repertoire of possible settlement terms. More far-reaching possibilities – which were precisely not utilized – than the order to put up a notice within a location or small number of locations would have been, e.g., a duty to inform all employees individually, or the duty to bear the costs of the NLRB and the opposing party.

6. The number of proceedings regarding possible unfair labour practices – 12 within ten years – demonstrates that T-Mobile USA performs exceptionally well as an employer compared to other employers. Statistically, there should be at least 6 proceedings a year raised against T-Mobile USA (approx. 43 000 employees at T-Mobile USA, over 16.000 proceedings due to unfair labour practices of employers in the year 2008 before the NLRB at approx. 105.5 million employees at the most falling within the scope of the NLRA or similar state legislation, even a careful estimate means one proceeding for every 6.500 employees).
7. Training the managers to comply with the restrictions of the NLRA and excluding external union members from the company premises is not only in accordance with US law but also with the obligation under the Social Charta of Deutsche Telekom. The freedom of association as guaranteed by the Social Charta is not violated by T-Mobile USA's behaviour. The ILO Conventions, too, which can be drawn upon for interpretation of the Social Charta, are not in conflict with the training manuals. Above all, the same can be concluded from the Food Lion case of the Collective Freedom Committee cited in UNI Global Union's letter to the shareholders. The same is true for the much more indistinct duties outlined by Global Impact and the OECD Guidelines.
8. An IFA acknowledging CWA or any other union as a negotiating party would not only internationally highly unusual but also contrary to NLRA provisions, as there is no evidence of union support by the majority of the workforce. In order to avoid legal conflicts, I would strongly advise against this.

Bonn, April 12th 2010



(Thüsing)

Prof. Dr. *Gregor Thüsing* is a professor at the University of Bonn and director of the university's institute for labor law and the law of social security. He is admitted to practice in the state of New York and studied labor law at Harvard Law School (LL.M. 1998). He has published on NLRB-subjects both in US- and in German law reviews, partly together with *David Westfall*, the late labor law-professor at Harvard Law School. For the *Neue Zeitschrift für Arbeitsrecht* he writes the biannual overview of recent developments in US labor and employment law since more than ten years.