

ANALYSIS OF T-MOBILE USA, INC. NLRA COMPLIANCE PROGRAMS

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PURPOSE

In light of claims alleging improper conduct by T-Mobile USA, Inc. in its approach to labor relations, I have been asked to review T-Mobile training and policies which fall within the scope of the National Labor Relations Act to determine whether they are compliant with Act.

EXPERTISE

I served as the 16th Director of the Federal Mediation and Conciliation Service from January, 2006 until January 20, 2009. The FMCS is an independent agency of the Federal government that seeks to prevent or settle disputes between labor unions and management. As the FMCS web site indicates, its mission "is to preserve and promote labor-management peace and cooperation." The position requires confirmation by the U.S. Senate.

Immediately proceeding my position at FMCS, I was General Counsel of the National Labor Relations Board, having been confirmed for that position by the U.S. Senate. The General Counsel is independent from the Board, and is responsible for the investigation and prosecution of unfair labor practice cases and for the supervision of the NLRB field offices in the processing of cases.

Prior to my 2001 confirmation as General Counsel for the NLRB, I was Senior Labor Counsel of the Senate Committee on Health, Education, Labor and Pensions. I worked at the U.S. Department of Labor from 1986 to 1997 in a number of capacities, including Special Assistant to the Solicitor of Labor, and Associate Deputy Secretary of Labor.

I received a J.D. from Villanova University School of Law (1979), an M.B.A. in labor relations from Lehigh University (1974), and a B.A. from Muhlenberg College (1970). I was admitted to the District of Columbia Bar in 1979, and am a member of the Bars of the U.S. Supreme Court and several U.S. Courts of Appeals. I have been elected a Fellow of The College of Labor and Employment Lawyers

BACKGROUND

T-Mobile USA, Inc. is a subsidiary of Deutsche Telekom AG, and is a national provider of wireless voice, messaging, and data services. T-Mobile USA, Inc. employs approximately 40,000 employees, the majority of whom work in Customer Care Centers, and T-Mobile Retail Stores.

T-Mobile USA, Inc. has experienced union organizing activity, predominantly at its call centers and retail facilities. This activity generally has been in the form of leafleting outside the call centers, as well as in retail stores.

T-Mobile's Human Resources organization provides advice, information and support to supervisors and managers concerning union-related matters. The HR organization is assigned by department and region. There is a Senior HR Director for Customer Care, who oversees HR representatives for that division in call centers throughout the U.S. There is also a Senior HR Director for Retail Sales who oversees HR representatives who are responsible for regions of Retail Stores throughout the country.

TRAINING

The Company has developed two training programs for its managers and supervisors pertaining to union organizing activity. This training provides direction to supervisors and managers about how to follow the law related to the NLRA, including rules concerning communications during union organizing campaigns and about unions. The training fairly sets forth examples concerning what an employer can and cannot do, and can and cannot say, about unions and during union campaigns, and tests participants' comprehension of training materials so as to ensure that managers have a thorough understanding. The first, an on-line training course entitled "Third Party Awareness-Creating a Best Place to Work," was launched in January, 2008. I have been informed that at least 90 % of T-Mobile's managers and supervisors in Customer Care and Retail--more than 1,800 Customer Care and Retail supervisors and managers in 2008, and more than 1,300 supervisors and managers in 2009-- have taken this course, in some cases, a number of times. I understand that, given a variety of factors, including turnover and other responsibilities, this means that except for new supervisors and managers, the vast majority of those who are responsible for managing front line employees have completed that training.

The second training program, "Advanced Third Party Awareness Training," is a live on-line interactive training course that builds upon, and enhances, the information provided in the initial program. This course includes practical guidance concerning what the law allows and prohibits under a number of scenarios that arise in the context of union organizing. The Company currently is in process of rolling out the "Advanced" program to its managers and supervisors, focusing on its Call Centers and Retail stores. It is my understanding that to date approximately 1,322 managers, about 85% of active managers and supervisors in the Call Centers have taken this training. The training is scheduled to be rolled out to the Retail Stores in the first half of 2010.

POLICIES

In addition, T-Mobile USA, Inc. has asked me to review and assess its current policies and directives that potentially implicate its approach to union organizing activity. The purpose of this review is to determine if, and where, T-Mobile's policies, directives, and training programs violate provisions of the National Labor Relations Act, as amended. In order to complete this assignment, the Company provided, and I reviewed, in addition to the aforementioned Third Party awareness training programs, the following:

- * T-Mobile USA, Inc. "Employee Handbook"
- * T-Mobile "Code of Conduct"

- * Dress Standards--- T-Mobile-Retail
- * Policies and standards pertaining to, *inter alia*, the use of Company computers, internet and intranet, email and other electronic messaging systems, and telephone and voice mail systems; and
- * Third Party Activity--Security Personnel Response Policy.

I have been advised that these are all of the written policies T-Mobile USA, Inc. maintains that address or touch upon issues governed by the NLRA.

MANAGER INTERVIEWS

In addition to assessment of contents of the policy statements, directives, code of conduct, employee handbook, and training programs, I conducted individual confidential phone interviews with a number of HR managers, and Call Center managers, from locations around the country. The intent of these interviews was to ascertain, informally, the level of acceptance, and utilization, of the third party awareness programs by T-Mobile USA, Inc. managers and to ensure, to the extent possible, that T-Mobile NLRA compliance policies are practiced.

The interviews consisted of a series of questions designed to determine whether the managers were aware of their obligations under the law, and whether their actions were consistent with the policies I reviewed. I am comfortable that these interviews are representative of the views of a majority of T-Mobile's managers and supervisors and the feedback was indicative of that I would have received had I carried out more interviews. Given the small sample size, and informality of the phone interviews, these interviews were not intended to reveal statistically significant data. However, the interviewees shared some common thoughts regarding the training programs:

- Third party awareness training (and, if available, advanced third party awareness training) is reviewed at least annually by the managers, and supervisors reporting to those managers;
- The training courses are designed to empower leadership on the floor;
- The training programs are not perceived as anti-union, but rather pro-employee. Every interviewee stressed that T-Mobiles' overarching policy is to treat employees in a manner so that they would not need, nor seek, the involvement of outside third parties. This policy is accomplished, in large part, by providing employees with open door, direct access to all levels of supervision. Employees are encouraged to utilize this access, which helps prevent the festering of employee problems and concerns. Managers work diligently to maintain this open relationship with all employees;
- Managers are familiar with the policies embodied in the third party awareness courses, act in a manner consistent with these policies, and encourage line supervisors to do the same; and

- The objective of T-Mobile's policies is to build and maintain excellent relationships between managers and front line representatives.

UNFAIR LABOR PRACTICE CHARGES

The filing of unfair labor practice charges against T-Mobile USA, Inc. does not constitute evidence that it has violated the law. A charge is simply an allegation that there may have been a violation of the Act. A charge is not evidence of a violation.

The fact that T-Mobile USA, Inc. has settled certain unfair labor practice charges does not indicate that it has violated the law. The National Labor Relations Board has long encouraged voluntary settlements of unfair labor practice charges prior to the completion of a full investigation and issuance of its findings as an appropriate way to resolve charges irrespective of the merits of the claim. Voluntary settlements are not findings of fact, nor evidence that a violation occurred.

NLRB records indicate that only 11 unfair labor practice charges have been filed against T-Mobile USA, Inc. (two were also filed against a related company, VoiceStream Wireless Corporation). Based on my experience, given the number of T-Mobile employees, and the fact that union organizing activity has been on-going during this period, this is a very small number of charges.

I also understand that since 2002 T-Mobile USA, Inc. maintains and promotes the use of something called the Integrity Line (a toll free number) where employees anonymously can call to complain about inappropriate or unlawful conduct, or seek direction with respect to compliance with legal issues. I have been informed that, to date, there have been no calls to that line in which employees have alleged violations of the National Labor Relations Act, or any misconduct related to union activity, despite the fact that in 2009 alone 1,000 calls were made.

EMPLOYEE AWARENESS OF NLRA RIGHTS.

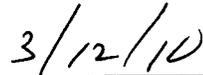
In addition to reviewing T-Mobile's NLRA compliance programs I was asked to comment regarding T-Mobile's lack of training programs designed to advise employees of their rights under the NLRA. There is no requirement under U.S. law that employers educate rank and file employees about the National Labor Relations Act or its rules. In fact, communications between an employer and its employees regarding Union organizing may form the basis for unfair labor practice charges. Therefore, most U.S. employers – including T-Mobile, USA, Inc. – do not provide formal training or notification to employees. The NLRB, however, conducts a broad outreach program including maintaining a website advising employees of their rights under the NLRA. In addition, unions actively communicate this right using a variety of media, as well as personal contact with employees. U.S. workers are made aware of the right to be represented by a union if a majority of employees want one. Moreover, union activities and communications directed at the T-Mobile USA, Inc. workforce over many years removes any doubt that the company's employees are well aware of these rights.

CONCLUSIONS

Based upon my review of the above listed documents, bolstered by interviews with its managers, I conclude the T-MOBILE USA, Inc. is serious about compliance with the NLRA. I further conclude that its approach to third party activity, set forth in its written policies, and the third party awareness training programs, comports with both the letter and the spirit of the National Labor Relations Act.



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