

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 34

T-MOBILE USA, INC.

and

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1298, AFL-CIO

Cases 01-CA-123183, et al

**BRIEF ON BEHALF OF COUNSEL FOR THE GENERAL
COUNSEL TO THE ADMINISTRATIVE LAW JUDGE**

Before: Raymond P. Green, Administrative Law Judge

Respectfully submitted,

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I. SUMMARY OF THE CASE

This is a case where the Respondent employer has failed to meet its bargaining obligations in three distinct ways. First, Respondent unilaterally published a handbook with provisions explicitly informing employees that they are ALL subject to “at-will” employment despite the fact that Respondent currently employs unionized employees in Connecticut, ALL of whom can *only* be disciplined or discharged subject to a “just cause” determination, as clearly stated in the collective bargaining agreement in effect at the time the handbook was published. As noted by the Board in similar circumstances, “Respondent’s conduct in this regard disparages the collective-bargaining process and improperly undermines the status of the Union as the designated and recognized collective bargaining representative of the . . . employees.” *Heck’s Inc.*, 293 NLRB 1111 (1989). Consequently, Respondent violated Section 8(a)(5) of the Act by unilaterally changing the “just cause” standard by virtue of publishing a handbook informing Unit employees that the “at-will” employment standard applied to them, as well as to unrepresented employees. Through the same handbook’s unilateral changes, Respondent also violated Section 8(a)(1) by informing Unit employees that their selection of the Union as their collective-bargaining representative, and what the Union can accomplish on behalf of those employees, is futile.

Second, Respondent again violated Section 8(a)(5) by making a change to Unit employees’ paid time-off benefit without notifying the Union, as required by that same collective bargaining agreement. At trial, Respondent’s seemingly lone defense on the matter was its claim that it did not actually change paid time-off benefits, a claim that lacks all merit since it is abundantly clear that Respondent placed additional restrictions on the use of such benefits. Such restrictions obviously *change the value* of the benefit.

Third, in the midst of negotiations for a successor contract, Respondent violated Section 8(a)(5) again when it suddenly suspended such negotiations because of a decertification petition that had been pending for about six months, but did not withdraw recognition. Instead, despite Respondent's decision to "suspend" contract negotiations, it nevertheless continued to recognize the Union and bargain with it on all other matters. As aptly described by the administrative law judge, Respondent's "suspension" under these circumstances was just plain "weird." More importantly, the suspension is unlawful since it denies the Union the opportunity to bargain a successor contract, even as Respondent continues to recognize the Union as its employees' collective-bargaining representative and bargain with it on all other matters.

II. FACTS

A. Procedural History

The charges in this case were filed by the Commercial Workers of America, AFL-CIO ("National Union") and its Affiliated Local 1298 (Local Union) against T-Mobile USA, Inc. (herein "Respondent") alleging various violations of Section 8(a)(1) and (5) based on Respondent's: 1) issuance and maintenance of an "At-Will" employment policy, which informs Unit employees that their selection of the Union as their collective-bargaining representative was futile; 2) issuance and maintenance of the same "At-Will" employment policy, which modifies the collective bargaining agreement between Respondent and the Union; 3) failure to notify the Union about a change to the amount of notice Unit employees must provide for use of paid time off; and, 4) on-going failure and refusal since October 8, 2014 to meet with the Union to negotiate a successor

collective-bargaining agreement. (GCX 1(a), (c), (e), (g), (i), (o))¹ Collectively, the charges culminated in the issuance of an Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing dated April 8, 2015 (“Complaint”) alleging that Respondent violated Section 8(a)(1) and (5) of the Act by engaging in the activities described above (GCX 1(u)).

On April 22, 2015, Respondent filed an Answer to the Complaint in which it generally denied the commission of any unfair labor practice, but admitted that: 1) during the relevant 12-month period ending March 31, 2015, Respondent had derived gross revenues in excess of \$500,000, and performed services valued in excess of \$50,000 in States other than the State of Connecticut; and, 2) it was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act at all relevant times (GCX 1(w)).

On May 8, 2015, a hearing was held in Hartford, Connecticut before Administrative Law Judge Raymond P. Green. This is Counsel for the General Counsel's brief in support of the Complaint allegations.

B. Respondent's Operations

Respondent is engaged in the telecommunications industry as a national wireless telecommunications carrier (GCX 1 (u),(w)). In this regard, Respondent maintains offices and places of business located throughout the United States, including one in Bloomfield, Connecticut (GCX 1(u), (w)).

¹ References to the exhibits of Counsel for the General Counsel and Respondent will be cited herein as “GCX__” and “RX__”, respectively, followed by the appropriate exhibit number or numbers, and where appropriate, the page number(s). Joint exhibits will be cited herein as “JTX__,” followed by the appropriate exhibit number. References to the official transcript of the instant hearing are cited as “Tr. __”, followed by the appropriate page numbers or number(s).

1. Respondent's Unionized Connecticut Operation

In 2011, the Union won a Board-conducted election held at Respondent's Bloomfield, CT facility. As a result, on or about August 2, 2011, the Union became certified as the collective-bargaining representative of all full-time and regular part-time field technicians, switch technicians, and a material handler employed by Respondent in the State of Connecticut (herein "Unit employees")(Tr. 32; GCX 1(u)). At the time of certification in 2011, there were about 13 Unit employees. Currently, there are about 20 Unit employees (JTX 1, paragraph 7).

In about July 2012, the parties entered into an initial collective bargaining agreement with effective dates of July 31, 2012 through May 31, 2014 (herein "Agreement")(GCX 2; Tr. 33; JTX 1, paragraph 10). The following Agreement provisions are of significance in the instant proceeding:

Article III, Section 2 (Management Rights) allows Respondent to "suspend, discipline, discharge, demote or take any other disciplinary action" against employees, *but*, importantly, the same provision specifically provides that Respondent *may only* take these actions if it has "just cause" to do so (Tr. 33; GCX 2, pg. 4)(emphasis added).

Article IX, Section 5 provides that Unit employees can *only* lose seniority if they: 1) voluntarily leave employment; 2) are terminated for cause; 3) fail to notify the employer of an intent to return to work within two (2) weeks following notification of recall; and 4) are laid off for one year due to lack of work (Tr. 33-34; GCX 2, pps. 7-8)(emphasis added).

Article XII provides for a formal grievance and final and binding arbitration process regarding any “events or incidents arising only at the Company” (Tr. 34; GCX 2, pp. 8-12).

Finally, Article XVIII (“Benefits”) identifies various benefits, including paid time off, which Unit employees are eligible to receive or participate in (Tr. 34; GCX 2, page 15). The same provision maintains that Respondent “shall have the right, in its sole discretion to alter or eliminate these benefits currently offered.” Significantly, however, the provision further states: “The Company will give notice to the Union of any such changes” (GCX 2, page 15).²

The parties executed the Agreement in October 2012 through the following individuals: for the Union, Local Union President William Henderson and National Union Representative Paul Bouchard; and, for Respondent, Area Director Mark Appel, who is neither the company President, a chief executive officer, nor a member of the chief executive office (JTX 1, paragraph 11). It is undisputed, as stipulated by the parties, that neither Respondent’s President nor its Chief Executive Officer signed the Agreement (Tr. 35).

² An additional provision at issue, Article III, Section 3 (Management Rights), states:

It is the intent of the parties hereto that there is no conflict between the terms of this Agreement and any state or federal government rule, regulation or other law, policy, procedure, rules or regulations affecting conditions of employment. If such conflict is found to exist, this collective bargaining agreement shall take precedence, to the extent permitted by law.

This extremely poorly-worded provision will be addressed in the Argument section below.

2. Respondent Issues a Revised Handbook in January 2014 Emphasizing the “At-Will” Status of All its Employees

On or about January 16, 2014³, Respondent posted on its website a revised employee handbook to all its facilities nationwide, including to Unit employees at the Bloomfield facility (Tr. 35, 39; GCX 3, JTX 1, paragraph 14). It is undisputed that Respondent issued this handbook without notifying or negotiating with the Union about its contents. Indeed, in the introductory section of the handbook entitled “Handbook Purpose,” Respondent unambiguously informs all employees:

Just so we are clear, this Handbook supersedes any previous versions of the T-Mobile Employee Handbook as well as those handbooks and policies in use by predecessor companies or those companies acquired by or merged into TMUS. The Company reserves the right to update or change this Employee Handbook at its sole discretion.

(GCX 3, page 6). The issuance of the new handbook was accompanied by an article created by Respondent’s Human Resources department entitled, “Employee Handbook Gets an Update for 2014” that was electronically distributed to all employees (Tr. 38, 40; GCX 4). According to this article, the handbook has “revised content **which applies to all employees**, regardless of their customer-facing unit” (Emphasis added). The same article explains that the handbook has integrated “state-specific content” for its California-based employees, and that Puerto Rico-based employees “will continue to have a separate handbook supplement” (Tr. 38; GCX 4). There is no mention of separate handbook sections or supplements for unionized employees (Tr. 38-39). Indeed, unlike for its California and Puerto Rico-based employees, Respondent does not maintain a separate section in its handbook dealing with its unionized employees (Tr. 38; GCX 3).

³ All subsequent dates are in 2014 unless otherwise specified.

On January 20, following the issuance of the above article, Respondent electronically issued another article to all its employees entitled “New Employee Handbook Now Available” (GCX 5). Just as the first article had described, the second article stressed that the new handbook “***applies to all employees of TMUS***” (GCX 5)(emphasis added). As was the case with the first article, the second article also explained that the handbook integrated “state-specific content” for its California-based employees, and Puerto Rico-based employees would “continue to have a separate handbook supplement,” but there was no mention of separate handbook sections or supplements for unionized employees (GCX 5). Finally, the second article reminded employees that “part of every employee’s new-hire paperwork is an acknowledgement of the Employee Handbook and a commitment to staying up-to-date with changes” (GCX 5). In this regard, Respondent requires new employees, including Unit employees at the Bloomfield facility, to execute an “Employee Acknowledgement” form that provides for the following:

*My employment is at will to the fullest extent allowed by law, is entered into voluntarily, and may be terminated by the Company or me at any time, with or without reason, cause or notice.

*The foregoing agreement concerning my employment at will status and the Company’s right to determine and modify the terms and conditions of employment is the sole and entire agreement between me and T-Mobile concerning the duration of my employment and the circumstances under which the terms and conditions of my employment may change or my employment may be terminated.

*I acknowledge that I have read or will promptly read the Handbook, Code of Conduct and the policies and procedures that are available to me via One Voice. I accept full responsibility for familiarizing myself with the contents of the Handbook, Code of Conduct and the other policies and procedures posted on OneVoice.

**I acknowledge that if I choose not to read the Handbook, Code of Conduct and the policies and procedures posted on One Voice, and any revisions to them, my failure could negatively impact my performance reviews, could result in the forfeiture of my good standing, and/or could result in additional performance improvement action up to and including my dismissal, and that I will still be responsible for complying with their terms. I agree to be bound by the provisions in the Handbook, the Code of Conduct, and the policies and procedures posted on One Voice.*

(Tr. 92; GCX 28)⁴(Emphasis added). The form further states that it is “TO BE SIGNED AND PLACED IN EMPLOYEE PERSONNEL FILE” (Emphasis in original).

Although the 2014 handbook provisions are generally consistent with the Agreement’s provisions, some discrepancies exist. Of note, the handbook includes an employment “at-will” policy that does not make any exception for unionized employees, such as the Bloomfield-based Unit employees, who are otherwise subject to the “just cause” standard provided for in the Agreement (Tr. 35). More specifically, the relevant “at-will” employment section of the handbook provides, as follows:

Employment at Will

Employment at TMUS is “at will”, which means that it is not for any specific duration, and that an employee of the Company may terminate the employment relationship at any time, for any reason, with or without notice. No one except the President of Chief Executive Office of TMUS has the authority to change any employee’s at will employment status, to make any agreement that an employee will be employed by TMUS for any set period of time, or to make any other promises or commitments that are contrary to this

⁴ Respondent stipulated that it requires new hires, including Unit employees, to sign a form containing “at-will” language (Tr. 92). At the conclusion of the hearing, the administrative law judge informed the parties that Counsel for the General Counsel could obtain from Respondent, and introduce, a copy of Respondent’s “Employee Acknowledgement” form, attach it to the brief, and offer it into evidence (Tr. 92). Accordingly, Counsel for the General Counsel moves for the admission of the attached GCX 28, Respondent’s “Employee Acknowledgement” form executed by new hires, which it received from Respondent following the close of the hearing

policy of at will employment. For any such agreement, promise or commitment to be binding on the Company, and to be valid and enforceable against it, that agreement, promise or commitment must be part of a written contract signed by an employee and the President or Chief Executive Officer of TMUS and, if applicable, have the approval of the Compensation Committee.

(GCX 3, page 6). As can be clearly discerned from the above handbook provision and accompanying articles, Respondent makes clear that its employment at-will policy is applicable to *all* employees and can only be modified by a separate document signed by Respondent's President and its Chief Executive Officer, neither of who are signatory to the Agreement. It is undisputed that at the time the January 2014 handbook issued, Respondent failed to inform Unit employees, either electronically or by any other means, that the "at-will" provision did not apply to them (Tr. 38-39, 41).

The January 2014 handbook also contains an "Attendance" provision that is at odds with the "Seniority" provision of the Agreement, as described above (Tr. 35-37). In this regard, whereas the Agreement specifies only four ways a Unit employee can lose their seniority (as previously described), the handbook provides a fifth way. More specifically, the handbook provides that "if an employee is absent from work for 3 or more days without giving notice, the employee may be deemed to have abandoned TMUS employment" (GCX 3, page 10-11). According to the Union's primary witness, International Representative Patrick O'Neil, the "Attendance" provision in the handbook is inconsistent with the Agreement's provision regarding seniority, insofar as Unit employees can only lose seniority due to "just cause," and not to the other range of possibilities described in the handbook (Tr. 36-37).

3. Respondent Modifies Unit Employees' Paid Time-Off Benefits, but Fails to Timely Notify the Union as Required by the Agreement

As described above, the Agreement provides that Unit employees are eligible for certain benefits, such as paid time-off (GCX 2, page 15). Under existing policy, whenever Unit employees request paid time off, they must first provide varying levels of notice, depending upon the length of the request. In this regard, by email dated September 4, 2012, Respondent's Market Manager at the Bloomfield facility, David Karpinski⁵, notified Unit employees requesting paid time off that they were required to provide notice as follows: one (1) day of paid time off request required one (1) day advance notice; two (2) days required 72 hour advance notice; and three (3) or more days required five (5) business days' notice (Tr. 42; GCX 7; JTX 1, paragraph 18). This policy continued in effect for over 18 months. However, in May, Respondent modified this policy. More specifically, by email dated May 29, Manager Karpinski informed Unit employees that it was modifying the existing paid time off policy by requiring that Unit employees now provide more than two weeks' notice if employees sought four (4) or more days of paid time off (Tr. 42, 45-46; GCX 6; JTX 1, paragraph 16). As previously described, although Respondent had the right under the Agreement to modify paid time off benefits, it also had a corresponding contractual obligation to provide notice to the Union any time there were changes made to those benefits (GCX 2, page 15). As detailed by Mr. O'Neil in his testimony, it is undisputed that Respondent never notified the Union about the above change regarding notice (Tr. 43-44). Rather, according to O'Neil, the Union learned about the modification to the paid time off benefit on the

⁵ The parties stipulated that Karpinski is a supervisor within the meaning of Section 2(11) of the Act, and Respondent's agent within the meaning of Section 2(13) of the Act (JTX 1, paragraph 9).

following day, May 30, directly from Unit employee Chris Cozza⁶, who forwarded Karpinski's email to the Local Union, which in turn, forwarded it to O'Neil (Tr. 43-44; GCX 8). According to O'Neil's undisputed testimony, since at least April, he has been the Union's point person for all bargaining between the parties and Respondent has routinely notified him-- and not either of the two stewards at the Bloomfield facility-- whenever it has sought to modify one of its policies affecting Unit employees (Tr. 46, 48-49). According to O'Neil, he subsequently spoke with Respondent's counsel, Mark Theodore, during successor contract negotiations regarding Respondent's modification to the paid time off benefit and its corresponding lack of notice to the Union, whereupon Theodore acknowledged the matter "should have been handled a little bit differently" (Tr. 44-45). Theodore, who represented Respondent at the instant hearing, did not dispute O'Neil's testimony in this regard.⁷

4. Respondent Continues to Recognize and Bargain with the Union Following the Filing of a Decertification Petition

On or about March 28, a Unit employee filed a petition with the Region to hold a decertification election (Tr. 49; JTX 1, paragraph 15). This petition is still pending, but is blocked by various unfair labor practice charges (JTX 1, paragraph 15). It is undisputed that Respondent did not withdraw recognition at that time, or any time thereafter.

Indeed, for the five-month period following the filing of the decertification petition, from

⁶ The parties stipulated that Cozza was one of two stewards who have been designated contact persons for Unit employees at the Bloomfield facility (JTX 1, para. 8). Respondent notified all Unit employees, including Cozza, about the change to the paid time off benefit. However, Respondent's notification about this change to Cozza, in his capacity as an employee, is not the same as notifying the Union about the change since there is no evidence that the parties agreed Cozza would serve as the Union's designated representative regarding notification of any changes to the Agreement. On the contrary, as the rest of the bargaining history between the parties reveals, Respondent exclusively contacted Union representative O'Neil whenever it proposed or made a change to benefits or other employment conditions.

⁷ Although Respondent insinuated at the hearing that Karpinski's email did not change the paid time off benefit because it did not affect the accrual of that benefit, O'Neil convincingly countered that insinuation by explaining that Karpinski's directive placed constraints on when and how much paid time off a Unit employee can take, which clearly affects the value of this benefit (Tr. 90-91).

about May through October, Respondent: 1) continued recognizing the Union as the collective-bargaining representative of Unit employees; and, 2) met and bargained with the Union to negotiate a successor agreement.

For example, by letter dated April 23 (post-decertification petition), the Union requested information from Respondent related to ongoing successor contract bargaining (GCX 9). In response, Respondent did not refuse to provide the requested information because of the pending decertification petition. Rather, by email dated May 27, Respondent provided the information requested by the Union (Tr. 50; GCX 10). Similarly, by email dated May 28, the Union, through O'Neil, requested further information (Tr. 51; GCX 11) and by email dated May 30, Respondent, through Attorney Theodore, furnished it (Tr. 51; GCX 12). In June, the Union requested information regarding Respondent's compensation and bonus program (Tr. 52-53; GCX 13). By email dated June 2, Respondent, through Attorney Theodore, supplied the requested information, but first asked the Union to enter into a confidentiality agreement, which the Union did (Tr. 52-53; GCX 13).

Additionally, in July, Respondent terminated the employment of Unit employee Joseph Papa for cause (Tr. 58). In response, the Local Union filed a grievance regarding Papa's discharge (JTX 1, paragraph 23). By letter dated August 4, Respondent denied the grievance, relying on its claim that the Papa grievance was procedurally defective, but not on a defense that it did not have a bargaining obligation with the Union (GCX 16, page 3). Nevertheless, even following the denial of the grievance, Respondent thereafter continued to bargain with the Union about the Papa grievance and furnished information to the Union regarding that grievance (Tr. 83-84).

The Union ultimately chose not to pursue the grievance and did not seek arbitration (JTX 1, paragraph 23).

With regard to successor contract bargaining, by letter dated April 2, the Union notified Respondent about its request to bargain a successorship agreement (JTX 1, paragraph 20). O'Neil testified without contradiction that both parties attempted to set up bargaining dates during the time he was involved (Tr. 53-54). The parties eventually agreed to meet on three days in June (June 17, 18 and 19) and another three days in August (August 19, 20 and 21) to continue successor bargaining (Tr. 54-55, JTX 1, paragraph 24). Due to a scheduling conflict, the Union later cancelled the three dates in June (Tr. 57; GCX 15, JTX 1, paragraph 24), but the parties kept the August dates, meeting and bargaining for two days on August 19 and 20 (Tr. 54-56). On August 21, the parties entered into an interim agreement allowing Unit employees to receive wage adjustments in the Fall consistent with Respondent's nationwide operations (JTX 1, paragraph 26). The parties did not schedule new dates for negotiations from August 21 through October 7 (JTX 1, paragraph 27). However, during these latter two months, Respondent did not refuse to bargain, nor did it withdraw recognition. Instead, according to O'Neil, Respondent "expressed that they wanted to reach a successor agreement" (Tr. 54-56).

5. Respondent Suddenly "Suspends" Bargaining for a Successor Contract

Regardless of the foregoing interactions between Respondent and the Union, by letter dated October 8, Respondent suddenly notified the Union that it would suspend bargaining for a successor agreement because of the pending decertification petition. Incongruously, Respondent simultaneously informed the Union in the same letter that it

(Respondent) would continue to recognize the Union as the bargaining representative for Unit employees (GCX 17). More specifically, in relevant part, Respondent's October 8 letter, authored by Attorney Theodore and addressed to O'Neil, read:

This letter is to inform you that T-Mobile has received from the employees in the Connecticut Area Market objective evidence of a loss of majority support of bargaining unit employees, a majority of whom no longer wish to be represented by the Communications Workers of America. Under NLRB case law the Company would be privileged to withdraw recognition at any time after the expiration of the parties' agreement. See Levitz Furniture Company of the Pacific, 333 NLRB 717 (2001). The collective bargaining agreement expired on May 31, 2014.

The Company always has maintained that an election is the best course of action when it comes to deciding questions concerning representation, and twice has been willing to proceed to such an election in this bargaining unit. As you are aware, employees in the bargaining unit filed a timely decertification petition several months ago. Unfortunately, their efforts to seek a simple election have been blocked by the CWA's unfair labor practice charges.

Given the CWA's lack of majority status, the Company is going to suspend bargaining while the question concerning representation is sorted out.

If the election on the employee petition is held, and should the Union prevail, bargaining will resume. In this period of suspension, the Company will abide by the terms of the expired collective bargaining agreement, as well as any other interim bargaining obligations that may arise.

(GCX 17). By letter dated October 15, the Union, through O'Neil, replied as follows:

This letter is in response to your letter of October 8, in which you announce that you intend to "suspend" bargaining. You rely upon Levitz Furniture, which involved withdrawal of recognition in a context free of unfair labor practices. Obviously, that case has nothing to do with our current situation. Here, T-Mobile committed serious unfair labor practices shortly before the decertification was filed. Therefore, T-Mobile continues to be obligated to bargain with the Union, as your letter seems to recognize. It follows that, by

suspending bargaining, you are committing an additional unfair labor practice.

In your letter, you state that the decertification petition has been blocked by our unfair labor practice charges. In fact, it is the Company's actions, in committing unfair labor practices and attempting to undermine the Union, that have resulted in delay of the election. If the Company would only admit wrongdoing and negotiate a fair and decent contract, the employees could exercise a free and meaningful choice.

I have one question about your letter. You state that the Company will abide by the terms of the expired collective bargaining agreement. Does this include the just cause provision of the contract? Is the Company prepared to arbitrate any disputes that arise concerning discipline, despite the suspension of negotiations?

The Union does not agree to suspension of negotiations. The Union committee is available to meet on multiple dates in October and November. Please respond with available dates no later than October 24.

(Tr. 60; GCX 18). By letter dated October 27, Respondent, through, Attorney Theodore, replied to the Union's October 15, in relevant part, as follows:

In your letter, you asked about what suspension of bargaining for a successor contract means. It is simple: T-Mobile will abide by the law just as it always has done. This means that certain provisions of the parties' expired contract will remain unchanged by force of law; other provisions do not survive contract expiration. These principles are well settled.

(Tr. 61; GCX 19). As can be discerned from the above passage, Respondent did not directly answer O'Neil's question regarding whether it would continue to honor the just cause provisions of the Agreement.⁸

⁸ Between the issuance of the handbook in January and Respondent's October 15 letter, there were no pending arbitrations related to discharge or discipline (Tr. 61-62).

6. Despite Suspending Bargaining, Respondent Nonetheless Continued to Recognize and Bargain with the Union about All Other Matters

As promised by Attorney Theodore in his October 8 letter to the Union, following Respondent's decision to suspend bargaining, it nevertheless continued to recognize the Union as the collective bargaining representative of the Bloomfield unit, continued to abide by the terms of the expired Agreement, and continued to engage in interim bargaining with the Union concerning a variety of matters (Tr. 59). In this regard, the parties have negotiated over stock grants, changes to the fleet policy and mileage calculation and for use of company vehicles for personal reasons (JTX 1, paragraph 29). Moreover, since the exchange of the above letters, whenever the Union has requested information, Respondent has provided it (JTX 1, paragraph 29).

For example, by email dated October 27 (GCX 21) – the same date as Attorney Theodore's above reply to the Union- Marcine Hull, Respondent's Vice President of Inclusion and HR Communication, submitted to O'Neil: 1) proposed changes to the "fleet policy"; 2) a letter to employees from Human Resources Vice President Larry Myers regarding employee stock grants; and, 3) a copy of a proposed stock agreement (GCX 21). According to O'Neil, he received a call from Vice President Hull shortly before the issuance of this email because Respondent wanted to modify its vehicle fleet policy and felt it needed to speak with the Union before making such changes (Tr. 62-63). Hull also explained that Respondent would be announcing a stock grant program for employees, and it wanted to speak with the Union about including Unit employees in that program (Tr. 62-63). According to O'Neil, Respondent first made contact, and ultimately reached agreement, with the Union, exclusively through O'Neil, about these

issues before addressing it with Unit employees (Tr. 63-64, 70). By email dated October 29, O'Neil informed Vice President Hull that the Union did not object to the implementation of the proposed stock grant program, but wanted to discuss the proposed fleet policy with Unit employees "to determine their position," asking Respondent to hold off implementing any changes until that time (GCX 22). By email dated October 29, Hull replied to O'Neil, as follows:

Thanks for getting back to me with the union's position on these proposed changes. To be clear, the changes are being offered as a package, the stock grant and the fleet policy changes. So we will wait to hear what, if any, input the union has on the proposed GPS changes, which as we explained, are what is going into place nationwide and then we can see if further discussion is necessary.

(Tr. 64-65; GCX 22). Between November 13 and 21, Respondent and the Union negotiated over changes to the mileage reporting and tax implications for use of company vehicles (JTX 1, paragraph 31). In this regard, by email dated November 14, Hull emailed to O'Neil various documents related to the proposed changes to the fleet policy (Tr. 65-66; GCX 23, page 2; GCX 24; GCX 25). The parties later had a telephone discussion about the proposed changes (Tr. 66). By emails exchanged on November 21, the Union agreed to Respondent's proposed changes regarding the fleet policy (Tr. 67; GCX 26). During cross-examination of O'Neil, Attorney Theodore made it clear in his questioning that Respondent had engaged in "bargaining" with the Union regarding the proposed fleet policy changes (Tr. 78-79). An agreement was reached between the parties over these changes (JTX 1, paragraph 31).

Turning to a different matter, by email dated January 5, 2015, Hull sent O'Neil compensation data regarding nationwide pay increases that the parties had agreed would also be applied to Unit employees (Tr. 68-69; GCX 27).

As recently as the Friday immediately preceding the instant hearing, Respondent called the Union to alert it to the fact that a Unit employee had been terminated (Tr. 84-85). Thus, as stipulated by the parties, Respondent still recognizes the Union as the collective bargaining representative and routinely talks to O'Neil regarding matters affecting Unit employees (JTX 1, paragraphs 32 and 33).

III. ARGUMENT

A. **Respondent Violated Section 8(a)(5) of the Act by Issuing and Maintaining its "At-Will" Policy that Unilaterally Changed the Just Cause Standard of the Collective-Bargaining Agreement**

The Board has recognized that employers violate Section 8(a)(5) of the Act when they unilaterally issue handbooks to union and non-union employees, which contain provisions that are inconsistent with the terms of the collective-bargaining agreement in effect at the time. In so doing, the Board has acknowledged the bedrock principle that employers must conform their conduct to the Act's requirement of maintaining the terms and conditions of employment that have been agreed upon for union-represented employees.

For example, in *Heck's Inc.*, 293 NLRB 1111 (1989), an employer with unionized and non-unionized facilities unilaterally issued a company-wide handbook, which contained various provisions that were inconsistent with the terms of the unionized employees' collective-bargaining agreement. The inconsistent provisions at issue included grievances (i.e., the handbook encouraged employees to report grievances directly to managers in contrast to the formal grievance procedure provided for in the collective-bargaining agreement) and probationary periods, among others. Employees were required to sign a form, which was to be retained in their personnel file, acknowledging their receipt of the handbook, and agreeing to be bound by the current

and future policies contained therein. Because there was no clarification to union employees that they were not subject to all the terms of this handbook, the Board found that the employer violated Section 8(a)(5) of the Act by unilaterally changing terms and conditions of employment that were otherwise subjects of mandatory bargaining, such as the grievance process and probationary period. *Id.* at 1118-1119. In so doing, the Board stated: “Respondent’s conduct in this regard disparages the collective-bargaining process and improperly undermines the status of the Union as the designated and recognized collective bargaining representative of the . . . employees.” *Id.* at 1118. With regard to the handbook’s bypass of the contractual grievance procedure, the Board noted: “[R]espondent’s conduct in this regard circumvents the express provisions of the collective-bargaining agreement and undermines the role of the Union as the designated and recognized collective-bargaining representative of [its unionized] employees in violation of Section 8(a)(5) of the Act.” *Id.* at 1119.

Similarly, in *United Cerebral Palsy of New York City, 347 NLRB 603 (2006)*, the Board found that the employer violated Section 8(a)(5) of the Act by distributing a handbook to both unit and non-unit employees, without notifying or bargaining with the Union. That handbook set forth a set of work rules that departed from those in the collective-bargaining agreement, including provisions concerning the standards to apply for discipline and discharge (“just cause” vs. “at-will”) and the grievance and arbitration procedure. Other conflicting provisions included vacations, holiday leave, hours of work, posting vacancies, work transfers, personnel files, separation from employment, and absences. Similar to the facts in *Hecks*, the handbook at issue in *United Cerebral Palsy* also: 1) required all employees to sign a receipt certifying that they were familiar, and agreed to comply, with the handbook provisions; and, 2) reserved the employer’s

right to unilaterally change future employment terms. Based solely on the above facts, the Board found the employer violated Section 8(a)(5) of the Act by distributing the handbook that, inter *alia*, changed its disciplinary policy from a “just cause” standard (as existed in the collective-bargaining agreement) to a policy that gave the employer the right to discipline for “conduct deemed inappropriate” and did not require “just cause.” Id. at 607

Here, as in *Hecks* and *United Cerebral Palsy*, in January, Respondent newly distributed a handbook to both Unit and non-Unit employees, without notifying or bargaining with the Union, superseding all prior handbook policies, which contained provisions that were inconsistent with the provisions of the Agreement in effect. The issuance of this handbook was simultaneously accompanied by two articles from Respondent electronically issued to all employees, both of which specifically instruct that the handbook has “revised content **which applies to all employees**, regardless of their customer-facing unit” (emphasis added). The second article expressly reminded employees that “part of every employee’s new-hire paperwork is an acknowledgement of the Employee Handbook and a commitment to staying up-to-date with changes.” Thus, as in *Hecks* and *United Cerebral Palsy*, Respondent’s employees, including Unit employees, are required to sign an “Employee Acknowledgement” form, which is to be retained in their personnel file, acknowledging their receipt of the handbook, and agreeing to be bound by the current and future policies contained therein.

Worse, unlike the employers in *Hecks* and *United Cerebral Palsy*, here, Respondent went out of its way in both the handbook and the two accompanying articles to inform certain non-unit employees that the handbook provisions may not apply to them, but failed to similarly inform Unit employees. More specifically,

Respondent informed its California and Puerto Rico-based employees that the handbook has integrated “state-specific content” for its California-based employees, and Puerto Rico-based employees “will continue to have a separate handbook supplement.” Thus, even though Respondent understood that Unit employees maintained terms and conditions of employment that were different in some regard from non-union employees, it did not see fit to extend the same courtesy to Unit employees and inform them in the handbook and/or articles that they, too, had different employment conditions, as it did for its California and Puerto Rico-based employees.

With regard to the specific allegations contained herein, as previously described, the handbook includes an employment “at-will” policy that does not make any exception for unionized employees, such as the Bloomfield-based Unit employees, who are otherwise subject to the “just cause” standard provided for in the Agreement. Additionally, the handbook also contains an “Attendance” provision that is at odds with the “Seniority” provision of the Agreement.

With regard to the “at-will” policy in Respondent’s handbook, the handbook: 1) expressly informs employees that their employment with Respondent is “at will”; 2) carefully defines the meaning and contours of “at-will” employment, which are wildly inconsistent with a “just cause” standard; and, importantly, 3) informs employees that “no one” except Respondent’s President or Chief Executive Officer, **neither of who is signatory to the Agreement**, has the authority to change **any** employee’s at-will employment status, to make any agreement that an employee will be employed by Respondent for any set period of time, or to make any other promises or commitments that are contrary to the at-will employment policy.

Moreover, the emphatic language in the handbook regarding “at-will” employment is buttressed by Respondent’s “Employee Acknowledgment” form that re-emphasizes to all employees, including Unit employees, that their “employment is at will to the fullest extent allowed by law, is entered into voluntarily, and may be terminated by the Company. .at any time, with or without reason, cause or notice.” This form goes on to inform all new hires that “The foregoing agreement concerning my employment at will status and the Company’s right to determine and modify the terms and conditions of employment is the sole and entire agreement between me and T-Mobile concerning the duration of my employment and the circumstances under which the terms and conditions of my employment may change or my employment may be terminated.” (GCX 28). It further requires new hires to acknowledge and accept “full responsibility” for familiarizing themselves with the Handbook policies, and agree to be bound by the provisions in the Handbook, the Code of Conduct, and the policies and procedures posted on One Voice, or face punitive measures, up to and including dismissal.

Thus, Respondent, here, followed the same illicit playbook as the employers in *Hecks* and *United Cerebral Palsy* by: 1) unilaterally creating and distributing the handbook, which unilaterally changed terms found in the collective-bargaining agreements in effect at the time; 2) requiring all employees, including Unit employees, to sign a receipt certifying that they were familiar, and agreeing to comply, with the handbook provisions; and, 3) reserving the employer’s right to unilaterally change future employment terms. In so doing, Respondent has circumvented the express provisions of the collective-bargaining agreement and undermined the role of the Union as the designated and recognized collective-bargaining representative of Unit employees. This is particularly evident in the instant case since Respondent’s handbook effectively

nullified the Agreement's "just cause" standard by trumpeting that only a side agreement signed by Respondent's President or Chief Executive Officer activates a standard different than the "at-will" employment standard. Consequently, by unilaterally modifying the Agreement's "just cause" provisions, Respondent violated Section 8(a)(5).

Additionally, because of Respondent's willingness to alert some of its employees (i.e., California and Puerto Rico-based employees), but not Unit employees, about different employment conditions in its handbook, one is left to conclude that the omission was purposeful and an attempt to mislead Unit employees into believing that the Union-secured benefits were no longer in effect. Accordingly, Respondent violated Section 8(a)(1) of the Act by communicating to Unit employees that they are still "at-will" employees despite the fact that they are represented, and by effectively informing them that their selection of the Union as their collective-bargaining representative was futile.

The same logic applies to the different "seniority" standards contained within the handbook from those found in the Agreement. In this regard, whereas the Agreement specifies only four ways a Unit employee can lose their seniority (as previously described), the handbook provides a fifth way -"if an employee is absent from work for 3 or more days without giving notice, the employee may be deemed to have abandoned TMUS employment." Accordingly, by issuing its "Attendance Policy" in the handbook, Respondent unilaterally changed working conditions in violation of Section 8(a)(5) and unilaterally modified the seniority provision of the Agreement in violation of Section 8(d).

It is anticipated that Respondent will defend the instant allegations here, as it did during the investigation, by pointing to Article III, Section 3 (Management Rights) of the Agreement, which states:

It is the intent of the parties hereto that there is no conflict between the terms of this Agreement and any state or federal government rule, regulation or other law, policy, procedure, rules or regulations affecting conditions of employment. If such conflict is found to exist, this collective bargaining agreement shall take precedence, to the extent permitted by law.

The problem with Respondent's anticipated argument is two-fold: 1) The simple, unambiguous and emphatic language in the handbook regarding "at-will" employment status clearly outweighs the convoluted, terse, entirely unclear, and difficult to assess language of the above management rights provision; and, 2) as described above, Respondent effectively nullified the above contractual catch-all provision in any event through its handbook's declaration that no other agreement regarding at-will employment status survived unless it was signed by Respondent's President *and* its Chief Executive Officer, neither of who signed the Agreement.

Regarding the language in the management right's provision, it is difficult, even after several reads, to understand precisely what it means. The initial emphasis seems to be aimed at governmental "regulations" and even when the word "policy" is used, it again refers to "regulation," further clouding its exact meaning. Thus, it is not entirely apparent that the Agreement provisions triumph over competing Handbook provisions -- since the Agreement makes no mention of the Handbook, and the Handbook makes no mention of the Agreement. Whatever the outcome in arbitration, collective-bargaining agreements are aimed at and read by rank-and-file Unit employees, who are neither lawyers nor judges, and who certainly do not remain abreast of each judicial refinement of contract interpretation involving management rights clauses or just cause provisions. See e.g., *Ingram Book*, 315 NLRB 515, 516, note 2 (1994). What is certain is that following the issuance of the Handbook, the unsophisticated Unit employee, who is

unfamiliar with the niceties of the law, but who is “required” to follow the letter of the handbook unambiguously describing “at-will” employment status, will certainly have serious concerns as to the continued viability of the Agreement’s “just cause” standard. This is particularly true after discovering that neither Respondent’s President nor its Chief Executive Officer signed the Agreement, seemingly rendering “the “just cause” provisions neutered. Consequently, the above ambiguous language in the management rights clause does not serve as an effective defense in the present circumstances.

B. Respondent Violated Section 8(a)(5) of the Act by Failing to Continue in Effect All Terms and Conditions of the Agreement by Failing to Provide the Union with Notice of the Change to Paid Time off Benefits

As described above in Section II.B.3., Article XVIII (“Benefits”) of the Agreement identifies various benefits, including paid time off, which Unit employees are eligible to receive or participate in (Tr. 34; GCX 2, page 15). The same provision maintains that Respondent “shall have the right, in its sole discretion to alter or eliminate these benefits currently offered.” Significantly, however, the provision further states: “The Company will give notice to the Union of any such changes” (GCX 2, page 15).

It is undisputed that by email dated May 29, Manager Karpinski informed Unit employees that Respondent was modifying the existing paid time-off benefit policy by requiring that they now provide more than two weeks’ notice when seeking four (4) or more days of paid time off (Tr. 42, 45-46; GCX 7; JTX 1, paragraph 16). Prior to the issuance of this email, Unit employees seeking three (3) or more days of paid time off only needed to provide five (5) business days’ notice (Tr. 42; GCX 7; JTX 1, paragraph 18). That policy was in effect for over 18 months. Consequently, the change in benefit

policy meant that Unit employees now seeking, for example, four days of paid time off had to provide over two weeks' notice instead of five days notice, placing a significant restriction on the use of this benefit.

As explained by Mr. O'Neil in his testimony, it is undisputed that Respondent never notified him or the Local Union directly about the above change to the paid time-off benefit (Tr. 43-44). Rather, the Union only learned about the modification after a Unit employee (Chris Cozza) forwarded Karpinski's email to it (Tr. 43-44; GCX 8). Because Respondent failed to notify the Union about the change to the paid time-off policy, Respondent failed to continue in effect all the terms and conditions of the Agreement by modifying Article XVIII, thus failing and refusing to bargain collectively with the Unit employees' exclusive collective-bargaining representative within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) of the Act. See, generally, *NLRB v. Katz*, 369 U.S. 736 (1962).

In its defense, it is anticipated that Respondent will claim that it did not violate the Act because it: 1) provided notice of the benefit change to the Union by virtue of including both stewards on Karpinski's email; and 2) did not alter the paid time-off benefit since the accrual of that benefit was unaffected. Since neither claim has merit, both should be rejected.

First, with regard to notice, there is no evidence that the parties designated either steward as the appropriate representative to whom Respondent should exclusively provide notice whenever it made changes to the Agreement. To the contrary, the record clearly reflects that whenever Respondent felt it needed to discuss changes to Unit employees' employment conditions, it exclusively notified O'Neil, the Union's International representative. There is no evidence prior to O'Neil's appearance in 2014

establishing that Respondent ever relied on either steward to serve as the official Union recipient of contemplated or effectuated changes to Unit employees' terms and conditions of employment. Indeed, the stipulation reached by the parties merely limits the functions of stewards Chris Cozza and Chris Cocola to serving as the designated contact persons *for Unit employees only* (JTX 1, paragraph 8)(emphasis added). Moreover, Karpinski emailed Cozza and Cocola exclusively as affected employees, along with all other affected Unit employees, and did not provide separate, distinct, or more to the point, advance notice to them about the change. Thus, it's clear that even Karpinski did not view either Cozza or Cocola as the official individuals to whom a notification regarding a change to a benefit should be provided. Under the above circumstances, including the parties' clearly demonstrated practice, it is apparent that Respondent simply failed to provide the requisite notice required by the Agreement when it modified the paid time-off benefits.

Second, to the extent Respondent makes a claim that benefits were not changed, such a claim would be preposterous. Obviously, whenever an employer places greater restrictions on when a benefit can be used, it changes the value of that benefit. If an employer, say, changed its vacation policy from allowing employees to take vacation with one week notice to a policy requiring six-months notice, it would significantly affect how and when employees requested vacation. The same holds true here with paid time-off benefits. Simply because the accrual time is unaffected, as claimed by the Respondent, does not mean that the benefit has not been altered in a meaningful way. Consequently, this argument must be rejected because it is nonsensical.

C. Respondent Violated Section 8(a)(5) of the Act By Failing and Refusing to Meet with the Union to Negotiate a Successor Collective Bargaining Agreement

As described above in Section II.B.4. above, on or about March 28, a Unit employee filed a petition with the Region to hold a decertification election (Tr. 49; JTX 1, paragraph 15). This petition is still pending, but is blocked by various unfair labor practice charges (JTX 1, paragraph 15). Notwithstanding the filing of that petition, it is undisputed that Respondent did not withdraw recognition at that time, or any time thereafter. In the six month period immediately following the filing of that petition (April-September), Respondent continued to recognize and deal with the Union as the collective-bargaining representative of Unit employees in a number of ways, including responding to the Union's requests for information; participating in the grievance process; and most significantly, by engaging in successor contract negotiations.

For example, as described above, in April, the Union requested certain information related to ongoing successor contract bargaining, and in May, Respondent provided the requested information (Tr. 50; GCX 10). By email dated May 28, the Union requested further information, and by email dated May 30, Respondent furnished it (Tr. 51; GCX 11, GCX 12). In June, the Union requested information regarding Respondent's compensation and bonus program, and by email dated June 2, Respondent supplied the requested information, requesting the Union to enter into a confidentiality agreement in the process (Tr. 52-53; GCX 13).

With regard to the grievance and arbitration process, in July, Respondent terminated the employment of a Unit employee (Joseph Papa) for cause, leading the Local Union to file a grievance in response (JTX 1, paragraph 23). By letter dated August 4, Respondent denied the grievance (GCX 16, page 3), but thereafter continued

to bargain with the Union about the Papa grievance and furnished information to the Union regarding that grievance (Tr. 83-84).

With regard to successor contract bargaining, by letter dated April 2, the Union notified Respondent about its request to bargain a successorship agreement, and Respondent thereafter agreed to meet on three days in June and another three days in August to negotiate a successor agreement. As a result, on August 21, the parties entered into an interim agreement allowing Unit employees to receive wage adjustments in the Fall consistent with Respondent's nationwide operations (JTX 1, paragraph 26). The parties did not schedule new dates for negotiations from August 21 through October (JTX 1, paragraph 27). However, Respondent did not refuse to bargain at this stage due to the pending decertification petition, did not withdraw recognition, and according to O'Neil, "expressed that they [Respondent] wanted to reach a successor agreement" (Tr. 54-56).

It is also undisputed that by letter dated October 8, Respondent notified the Union that it would "suspend" bargaining for a successor agreement because of the pending decertification petition, but simultaneously (and incongruously) informed the Union that Respondent would continue to recognize it as the bargaining representative for Unit employees (See Attorney Theodore's letter to O'Neil, GCX 17). The Union promptly responded to the October 8 letter and informed Respondent that it (the Union) did not agree with Respondent's suspension of negotiations and requested meeting for that purpose "on multiple dates" in October and November (GCX 18). Respondent's follow-up letter dated October 27 threw cold water on the Union's request to continue meeting for purposes of negotiating a successor agreement. Respondent also failed to

directly answer the Union's pending question regarding whether Respondent would continue to honor the just cause provisions of the Agreement.

Finally, it is equally undisputed that following Respondent's October 8 letter announcing it would suspend successor contract bargaining, it nevertheless continued to recognize the Union as the collective bargaining representative of the Bloomfield unit, continued to abide by the terms of the expired Agreement, and continued to engage in interim bargaining with the Union concerning a variety of matters (Tr. 59). In this regard, from October 8 to present, Respondent has:

- 1) negotiated with the Union over stock grants, changes to the fleet policy and mileage calculation and for use of company vehicles for personal reasons (JTX 1, paragraph 29);
- 2) furnished information to the Union upon the latter's request (GCX 27, JTX 1, paragraph 29), and;
- 3) most significantly, stipulated at the hearing that it still recognizes the Union as the collective bargaining representative and routinely talks to the Union regarding matters affecting Unit employees (JTX 1, paragraphs 32 and 33).

Based on the foregoing undisputed facts, it is clear that Respondent violated Section 8(a)(5) of the Act. In this regard, Respondent was not privileged to unilaterally suspend bargaining for a successor contract, as it concedes that despite so-called objective evidence of loss of support, it has not withdrawn recognition and continues to recognize and bargain with the Union, but only with respect to matters that it selectively decides to bargain over. Because Respondent admittedly continues to recognize the Union as its Unit employees' representative, it cannot abrogate to itself those terms and conditions it will and will not bargain over. Such action is plainly inconsistent with the dictates of Section 8(d) of the Act requiring parties to meet and bargain at reasonable times and confer in good faith. See, *Levitz Furniture Co. of the Pacific*, 333 NLRB 717

(2001)(An employer is required to continue bargaining with an incumbent union unless it withdraws recognition due to objective evidence that the union actually lost majority support).

As it did during the investigation of the instant charge, it is anticipated that Respondent will rely on *Lexus of Concord, Inc.*, 343 NLRB 851 (2004) to claim that the Board did not find unlawful an employer's suspension of negotiations after receiving objective evidence of a loss of majority status. However, as was true during the investigation, Respondent's reliance on this case is sorely misplaced because it does not stand for the proposition claimed by Respondent, namely, that an employer can suspend negotiations after receiving such a petition. While that conduct did occur in *Lexus*, that conduct was not before the Board. More specifically, in *Lexus*, the employer put bargaining on hold after receiving a petition signed by employees on March 26. The Union thereafter filed a refusal to bargain charge, which was later dismissed by the Regional Director, but only because on April 19, the Employer had rescinded its suspension of negotiations and re-affirmed its recognition of the Union. Later, on June 1, the employer withdrew recognition relying on a decertification petition dated April 17 filed by employees. Thus, the issue for the Board was whether the employer's June 1 withdrawal of recognition violated the Act, not the employer's earlier suspension of negotiations. Consequently, the Board's ruling in *Lexus* does not sanction Respondent's suspension of bargaining in the instant case.

IV. CONCLUSION

Counsel for the General Counsel respectfully submits that the record evidence supports the Complaint allegations and that Respondent violated Section 8(a)(1) and (5), as alleged. The Administrative Law Judge is, therefore, urged to make appropriate

findings of fact and conclusions of law and to issue the requisite remedial order. As part of the remedy, Respondent should be ordered to cease and desist from and to take certain affirmative action designed to effectuate the purposes of the Act, including, but not limited to, posting appropriate notices in their respective offices.

Dated at Hartford, Connecticut this 19th day of June, 2015.

Respectfully submitted,

A handwritten signature in black ink, reading "Rick Concepcion". The signature is written in a cursive style with a large initial "R". A horizontal line is drawn across the signature.

Rick Concepcion
Counsel for the General Counsel
National Labor Relations Board
Subregion 34
Hartford, Connecticut

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EMPLOYEE ACKNOWLEDGEMENT (for Non-California or Puerto Rico Employees)

12920 SE 38th St
Bellevue, WA 98006



Personnel # (if available):	
Last Name:	
First Name:	MI:

I understand and acknowledge that the T-Mobile USA, Inc. ("T-Mobile") Code of Conduct is available for review on OneVoice at: **Policies>Code of Conduct**.

I further understand and acknowledge that T-Mobile's Employee Handbook ("Handbook") is available for review on OneVoice at: **Policies>Employee Handbook**.

I further understand and acknowledge the following:

- Nothing in the Handbook, Code of Conduct, or other communications, whether written or oral, made at any time, is a promise of specific treatment under any particular set of circumstances, or is intended to or does create an employment contract or other contract of any kind, express or implied, including a contract of continued employment.
- My employment is at will to the fullest extent allowed by law, is entered into voluntarily, and may be terminated by the Company or me at any time, with or without reason, cause or notice.
- The foregoing agreement concerning my employment at will status and the Company's right to determine and modify the terms and conditions of employment is the sole and entire agreement between me and T-Mobile concerning the duration of my employment and the circumstances under which the terms and conditions of my employment may change or my employment may be terminated.

I further understand and acknowledge that T-Mobile is committed to an environment that does not allow conduct that may violate laws and/or T-Mobile's policies (which are often more strict than the law) prohibiting certain forms of discrimination, harassment and retaliation, and that I am responsible for helping to maintain such an environment. I understand and acknowledge that this responsibility includes the following:

- I will not engage in conduct that violates the law and/or T-Mobile's policies, including those set forth in the Code of Conduct.
- It is not always possible for the Company to be aware of all of the conduct of concern to its employees. I must report any conduct that I believe is improper under T-Mobile's Wage-and-Hour/Timekeeping, Equal Employment Opportunity, non-discrimination, non-harassment, non-retaliation and other policies to my management team, another appropriate supervisor or manager and/or a Human Resources representative.
- I must cooperate and participate in any investigation conducted by the Company or its designees related to these issues.

I acknowledge that I have read or will promptly read (or have read to me) the Handbook, Code of Conduct and the policies and procedures that are available to me via OneVoice. I will periodically review the Handbook, the Code of Conduct and the policies and procedures available on OneVoice and ask a Human Resources representative if I have any questions regarding Company policies. I accept full responsibility for familiarizing myself with the contents of the Handbook, Code of Conduct and the other policies and procedures posted on OneVoice.

I acknowledge that if I choose not to read the Handbook, the Code of Conduct and the policies and procedures posted on OneVoice, and any revisions to them, my failure could negatively impact my performance reviews, could result in the forfeiture of my good standing, and/or could result in additional performance improvement action up to and including my dismissal, and that I will still be responsible for complying with their terms. I agree to be bound by the provisions in the Handbook, the Code of Conduct, and the policies and procedures posted on OneVoice.

By my signature, I acknowledge that I have read this receipt (or had it read to me), and that I have received a copy of this receipt.

Signature

Date

Note: If you fail to sign but begin work or continue working for T-Mobile, your continued employment constitutes your implied consent to the terms in this acknowledgement. Your continued work for T-Mobile following any changes to the Employee Handbook, Code of Conduct, and other policies and procedures constitutes your implied consent to such changes.

TO BE SIGNED AND PLACED IN EMPLOYEE PERSONNEL FILE