

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25**

AT&T MOBILITY SERVICES, LLC

Respondent

and

COMMUNICATIONS WORKERS OF
AMERICA LOCAL 4202, AFL-CIO

Charging Party

CASE NO. 25-CA-249079

**POST-HEARING BRIEF OF RESPONDENT
AT&T MOBILITY SERVICES, LLC**

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I. INTRODUCTION

Respondent, AT&T Mobility Services, LLC (“Company”) did not violate Section 8(a)(1) or (5) of the Act by failing to provide Charging Party, Communications Workers of America, Local 4202 (“Local” or “Local 4202”) with a physical copy of the Integrity Matrix. The Integrity Matrix is a procedural guide for managers in the Company’s call centers to use when they learn of certain customer-facing incidents. The Integrity Matrix applies only to management level employees and does not inform, suggest, or imply when to issue discipline, or what level of discipline should be issued to bargaining unit members. Rather, the Integrity Matrix instructs managers to evaluate incidents on a case-by-case basis and, if a violation is found, indicates that appropriate action may be taken up to and including termination. Prior to issuing discipline for misconduct, managers make a recommendation to their supervisors and discuss with an Employee Relations Manager.

Although Local 4202 Executive Vice President, Dea Polchow, contends that a former manager previously told her the Integrity Matrix prescribes levels of discipline, Company representatives have since repeatedly informed her that it does not, and they have shown her the Integrity Matrix three separate times to demonstrate that it does not prescribe discipline.

Simply put, the Integrity Matrix has no impact on bargaining unit employees’ discipline or on any other terms or conditions of employment. It is not relevant to Local 4202’s duties because bargaining unit employees are not expected to review or follow the Integrity Matrix. If a first-level manager issues discipline to a Customer Service Representative (CSR) without following the Integrity Matrix, the manager may be subject to discipline, but it will have no impact on the CSR’s discipline.

Even if the Integrity Matrix were relevant to Local 4202’s duties (it is not), the Company satisfied its obligations under the Act by showing the Integrity Matrix to Dea Polchow and Peggy Vermillion. Polchow requested the Integrity Matrix because she contended that two employees

were issued different levels of discipline when each violated the Company's Clean Desk Policy. Lead Labor Relations Manager Trent Schott showed Polchow and Vermillion the Integrity Matrix to demonstrate that it does not prescribe the level of discipline to be issued for violating the Clean Desk Policy. In fact, it does not prescribe discipline at all.

For these reasons, the Complaint should be dismissed in its entirety.

II. FACTS

A. Background of the Parties

The Company provides mobile voice and data products and services to business and residential customers. The Company operates call centers throughout the United States including a call center in Rantoul, Illinois ("Rantoul Call Center"). Customer Service Representatives ("CSRs") working in the Rantoul Call Center take incoming customer calls to address sales, service, and billing issues. (JX 12, ¶ 3).¹ The Rantoul Call Center employs approximately 180 managers and non-supervisory employees, and it is overseen by Area Manager Roberta Chisolm. (Chisolm 167). CSRs report to first-level managers, known as Sales Coaches, who report to the Area Manager. (Salman 146).

At all material times, the CWA has been the designated exclusive-bargaining representative of the bargaining unit, and since then the CWA has been recognized as the bargaining unit's members' bargaining representative by the Company. This recognition has been embodied in successive Collective Bargaining Agreements commonly known as the Orange CBA ("CBAs"), the most recent of which is effective from February 12, 2017 through February 12, 2021. (JX 1; JX 12, ¶ 5).

¹ As used herein, the references to "JX _" and "GC _" refer to the Joint Exhibits and General Counsel Exhibits, respectively. The references to "[Witness Name] _" refer to the witness and the transcript pages of the witness's testimony from the official Transcript of Proceedings of the hearing in this matter held before Administrative Law Judge Gollin, via teleconference, on June 24, 2020.

Local 4202 is one of many CWA locals who represent employees in the bargaining unit.² Local 4202 is headquartered in Rantoul, Illinois, and represents the Company's employees throughout Illinois. (Polchow 68). The Rantoul Call Center is the Company's only call center within Local 4202's jurisdiction. (Polchow 69). Dea Polchow is the Executive Vice President of Local 4202. (JX 12, ¶ 8). Polchow's responsibilities with Local 4202 are limited to the Rantoul Call Center. (Polchow 69-70).

B. Relevant Company Policies

1. Code of Business Conduct

The Company maintains various work rules and policies, including the Code of Business Conduct ("COBC"). (JX 12, ¶ 10). All employees, including those working in the Rantoul Call Center, are expected to follow the COBC. (JX 12, ¶ 10). COBC violations may result in discipline up to and including termination, which is assessed on a case-by-case basis. (JX 12, ¶ 10). Relevant here, the COBC requires employees to act with integrity and follow the laws and regulations that relate to the telecommunications industry. (JX 3). Specifically, the COBC provides:

We do the right thing, no compromise. Ethics and integrity are foundational to who we are at AT&T. For more than 140 years, these principles have guided our interactions with our customers, our shareowners, and each other.

We are diligent about following the laws and regulations that relate to our business. There are no shortcuts. We do not expose the business to fines or loss of reputation by failing to follow any rules that may apply to us. The Company's policies and procedures support and clarify these laws and regulations and facilitate our compliance. We adjust our practices as appropriate to comply with

² Although not material for the present case, Local 4202's representational capacity for the employees in Illinois differs from CWA's representation of the bargaining unit. CWA is the exclusive bargaining representative of the bargaining unit, which represents employees from many parts of the country. (See JX 1). The Company does not dispute that Local 4202 is authorized by CWA to process grievances and request information relevant to those grievances in the Rantoul Call Center.

the laws and requirements of our global markets and our diverse operations.

(JX 3, p. 6-7).

The COBC makes clear that “violations may result in discipline, up to and including termination of employment. “ (JX 3, p. 3).

2. Progressive Discipline Policy

The Company’s Progressive Discipline Policy describes the Company’s disciplinary processes as applied to work performance, misconduct, and absenteeism. (JX 2; JX 12, ¶ 12). With respect to COBC violations, the Progressive Discipline Policy explains that depending on the severity of the violation, suspension or dismissal may be appropriate for a first offense and progressive discipline may not apply. Specifically, the Progressive Discipline Policy states:

Acts of misconduct, failure to follow AT&T Mobility policies and AT&T Code of Business Conduct violations by any employee regardless of status are subject to immediate discipline, up to and including Termination. When an offense by an employee is of a serious nature, suspension or dismissal may be exercised at the first offense without prior discipline steps.

(JX 2, p. 2)

The Progressive Discipline Policy also explains that employees can find more information about conduct standards through a section of the Company’s intranet site called “OneStop,” and provides links to resources regarding conduct standards:

Conduct standards are addressed in the AT&T Code of Business Conduct and the Policy & Compliance for AT&T Employees section of OneStop. They involve basic expectations of integrity and ethical behavior. Code of Business Conduct violations include, but are not limited to, incidents of dishonesty, improper use of company computer systems, improper use of company credit cards, falsification of records, theft, fraud, performing personal work on company time, conflict of interest, workplace violence or misconduct, accessing your account or the account of friends and family without supervisor approval, and divulging proprietary information. These are examples of failure to meet conduct

standards. Acts of misconduct, such as these, are subject to immediate discipline, up to and including Termination.

(JX 2, p. 2) (emphasis in original, denoting external links).

The Progressive Discipline Policy goes through each step of progressive discipline, from counseling through termination, and explains when each applies and how long the discipline remains active. (JX 2, p. 3-8). The policy also identifies the approval process for each step of progressive discipline. Although approvals vary for attendance and performance issues, COBC violations always require approval from a second level manager (such as an Area Manager), and from an Employee Relations Manager (“ERM”). (JX 2, p. 7).

3. Clean Desk Policy

The Clean Desk Policy relates to the Company’s obligations to protect sensitive customer information under the federal Telecommunications Act and supporting regulations. (JX 4; 47 U.S.C. 222 et. al.). The Clean Desk Policy informs employees about protecting various types of sensitive information, including Sensitive Personal Information (“SPI”), Customer Proprietary Network Information (“CPNI”), Sensitive Customer Data (“SCD”), and Personally Identifying Information (“PII”).³ (JX 4). Relevant here, SCD includes payment card information, and the Clean Desk Policy expressly provides that SCD must never be “[e]ntered into Notepad or other note features on [an employee’s] computer.” (JX 4, p. 2-3).

³ SPI, SCD, CPNI, and PII are defined by the Telecommunications Act and supporting regulations, which require the Company to implement processes to protect from the unauthorized access, use, and disclosure of a wide range of customer information. 47 U.S.C. 222. Details regarding the Company’s specific obligations are beyond the scope of this case.

C. The Integrity Matrix

In July 2015, AT&T⁴ acquired DirecTV, which was in the midst of litigation with the Federal Communications Commission (FCC) over call center employees failing to disclose certain fees or contractual obligations to customers when they placed new orders or made changes to their accounts. (Salman 114). As a result of this litigation, the Company investigated the root cause of the allegation and learned that first-level managers at DirecTV were not consistently responding to customer complaints, which inhibited the Company's ability to fulfill its legal obligations to provide required disclosures. (Salman 115).

The Company recognized that it needed a step-by-step process for managers to follow when they receive a customer complaint or are otherwise notified of issues with a customer's account. (Salman 116). In March 2016, the Company assembled a team to create a guide for managers to follow to address customer issues consistently. Lead Human Resources Specialist Tammy Salman worked with Integrity Operations, Labor, Legal, and Compliance teams to create what is now known as the Integrity Matrix. (Salman 117). They developed the Integrity Matrix from the fall of 2016 through early summer of 2017. (Salman 117). The goal was to make the procedural guide simple and concise so it would be easy for managers to understand. (Salman 117). The Integrity Matrix was designed to serve as a procedural guide for managers to collect information when they become aware of customer issues so they can adequately address those issues and resolve customer problems. (Salman 119).

The Integrity Matrix is an interactive decision tree for managers to use when they discover certain potential COBC violations. The first step in the decision tree is to identify how the manager came to learn of the potential issue, which can be from (1) Integrity Operations, (2) customer

⁴ Throughout this Brief, "AT&T" refers to the AT&T family of companies and does not refer to any specific entity. Respondent is one of companies within the AT&T family of companies.

complaint or survey, (3) a report from another employee, or (4) a manager's observation. (Salman 128-29, 143-44).

After selecting the manner in which a potential violation was discovered, the manager can choose one of three types of potential violations covered by the Integrity Matrix: (1) customer mistreat, (2) integrity, or (3) legal and regulatory. (Salman 130). Notably, there are many other potential violations of the COBC that are not covered by the Integrity Matrix, which was developed to cover high-volume customer-facing issues. (Salman 127).

After a manager identifies the type of potential COBC violation, the Integrity Matrix provides the following procedural steps for the manager to take for resolution:

1. research and review what occurred;
2. resolve the issue with the customer;
3. develop investigation questions and the sequence of questions;
4. conduct the investigation by interviewing the employee;
5. review the employee's past discipline and training;
6. consult the Area Manager, and if the manager recommends discipline and the Area Manager agrees, they must consult an Employee Relations Manager before taking appropriate action; and
7. document all steps taken, regardless of whether discipline is issued.

(Salman 140-41, 145-46).

At the end of the Integrity Matrix, if a COBC violation is found, managers are instructed to review the situation on a case-by-case basis and issue disciplinary action up to and including Counseling, Written Warning, Final Written Warning, and Termination. (Salman 150-51; Schott 187). The Integrity Matrix does not specify when it is appropriate to issue discipline or what level of discipline is appropriate. (Salman 151; Schott 187). If a manager finds discipline is appropriate

and seeks guidance on what level of discipline to issue, the manager can consult the Progressive Disciplinary Policy (JX 2; Salman 151).

Critically, at least in the Rantoul Call Center, if a first-level manager investigates a possible COBC violation and does not complete the steps set forth in the Integrity Matrix, it has no impact on whether the employee receives discipline or what level of discipline the employee receives. (Chisolm 168). Disciplinary decisions are based on the underlying misconduct, not whether the manager complied with the Integrity Matrix. (Chisolm 168).

D. Local 4202 Inquires about the Integrity Matrix

Company representatives routinely meet with Local 4202 representatives Dea Polchow and Peggy Vermillion in the Rantoul Call Center for Step 1 and Step 2 grievance meetings. Since early 2019, Area Manager Roberta Chisolm and Field Attendance Administrator Jaime Majko have represented the Company for Step 1 meetings. Grievances that are not resolved at Step 1 may be escalated to Step 2, where Polchow and Vermillion meet with Labor Relations Manager Trent Schott and Majko. Typically, the parties discuss approximately six different grievances in each grievance meeting. (Chisolm 167).

There are two grievances relevant to this case.⁵ The first grievance related to a Final Written Warning issued to CSR Patricia May on January 24, 2019, because she recorded a customer's credit card information in an electronic notepad, in violation of the Clean Desk Policy and the COBC. (JX 6). The other grievance arose from a Counseling issued to Alice Harris on March 18, 2019, for a purportedly similar infraction. (JX 7).

⁵ Another grievance relates the "SOARs" group, which monitors certain customer calls remotely and will notify local managers if they find or witness types of misconduct. Not material to the present case, Local 4202 has taken issue with review of CSR calls by the SOARs group. (See JX 6). Sales Coaches are required to follow the Integrity Matrix regardless of whether potential misconduct is identified by SOARs or by some other means, such as a customer complaint or manager observation. None of the requests for information leading to the allegations in this case were issued in connection with the SOARs grievance.

On April 26, 2019, the parties met for a Step 1 grievance meeting over the discipline issued to May. (JX 6, p. 2). Local 4202 contended that the discipline issued to May was unfair because it was more severe than the discipline issued to Harris for a similar infraction. Chisolm offered to reduce the Final Written Warning to a Written Warning, but Polchow and Vermillion had to call Local President Holly Sorey to make the decision. (Chisolm 170). Local 4202 asked about the Integrity Matrix, incorrectly asserting that the Integrity Matrix prescribed the level of discipline to be issued for violating the COBC. (Polchow 62-63; Chisolm 170).⁶

In response, during the grievance meeting, Majko turned her computer screen around to show Polchow and Vermillion the Integrity Matrix to demonstrate that the Integrity Matrix does not prescribe discipline. (Chisolm 170). With the Integrity Matrix open in front of them, Polchow and Vermillion walked out of the door to make a phone call. (Chisolm 170). When they returned, the Integrity Matrix was still on the screen of the open laptop, but Polchow and Vermillion disregarded it. (Chisolm 170). At no point did Polchow or Vermillion suggest that they wanted more time to review the Integrity Matrix or that they were having difficulty seeing the Integrity Matrix. (Polchow 90-91; Chisolm 171).

On August 8, 2019, in a Step 2 Meeting, Polchow made a verbal request for the Integrity Matrix and, in response, Schott again showed the Integrity Matrix to Polchow and Vermillion. (Polchow 40-41, 91, 103). Again, Polchow claimed that she wanted the Integrity Matrix because

⁶ Polchow claimed that Chisolm showed her and Vermillion the Integrity Matrix in the reconvened SOARs grievance meeting on May 17, 2019. (Polchow 37). It is immaterial whether the Company showed Local 4202 the Integrity Matrix in the Patricia May grievance meeting on April 26, 2019, or in the SOARs grievance on May 17, 2019, because Local 4202 had an opportunity to review the Integrity Matrix after both the Harris and May grievances were filed.

of the disparity in the level of discipline issued to Harris and May.⁷ (Polchow 40). Schott explained that he could not turn over the document, but turned his computer around and showed Polchow and Vermillion the Integrity Matrix. (Polchow 41). Although Polchow claimed in hearing that she was unable to see the document because Schott's computer screen was on the other side of the conference table, Polchow never asked if she could see it closer up or if she could take more time reviewing it. (Polchow 91). Indeed, Schott showed Polchow and Vermillion the Integrity Matrix long enough to go through several examples to demonstrate that the Integrity Matrix did not prescribe discipline, much less prescribe specific levels of discipline. (Schott 190). While Schott demonstrated how the Integrity Matrix works and disclosed its contents, Polchow and Vermillion paid attention and followed along. (Schott 191).

On September 18, 2019, Polchow sent an email to Jaime Majko requesting information purported to be related to the Alice Harris grievance. (JX 8). By the time the Local 4202 issued the information request, the parties already met for a Step 2 grievance meeting, and CWA had not requested to arbitrate the matter (and Local 4202 does not have the authority to request arbitration). (Polchow 30). Specifically, Polchow requested a copy of the Clean Desk Policy, Harris' IEX Reports,⁸ and a copy of the Integrity Matrix. (JX 8, p. 2). The same day, Majko responded to the information request and provided the Clean Desk Policy and Harris' IEX Reports. (JX 8, p. 3-25). On September 20, 2019, Majko directed Polchow to ask Schott for the Integrity Matrix. (JX 9). Although Polchow and Schott had discussed the Integrity Matrix at length in the past, and Schott had even shown Polchow the Integrity Matrix, Polchow asked Schott for a copy of the document

⁷ Polchow claimed that in the August 8, 2019 meeting, Schott said the Integrity Matrix helps determine the level of discipline issued for COBC violations. (Polchow 40). Even if this were true (it is not) and Schott made this error, he immediately corrected himself by showing the Integrity Matrix to Polchow and Vermillion, and thereby curing any potential misstatement. (Polchow 37, 41).

⁸ IEX Reports are used in the Rantoul Call Center to show whether CSRs are working in adherence to their work schedules. They show whether CSRs are taking calls, performing other tasks, or are on breaks.

on September 20, 2019. (JX 10). On September 27, 2019, Schott informed Polchow that the Integrity Matrix is a “manager document” and Local 4202 “is not privy to this item.” (JX 11). Indeed, the Integrity Matrix applies to managers, not to bargaining unit employees, and does not affect the terms or conditions of employment for bargaining unit employees.

Two days later, on September 20, 2019, without additional discussion with the Company about the information request, Polchow filed the Charge. Shortly thereafter, in October 2019, Schott showed Polchow and Vermillion the Integrity Matrix for a third time. (Polchow 95). Again, neither Polchow nor Vermillion complained that they could not see the document or that they wanted to review it later. (Polchow 95-96).

III. DISCUSSION

A. The Integrity Matrix is Not Relevant to Local 4202’s Representational Duties

The Integrity Matrix is a procedural guideline for first-level managers to remind them of the step-by-step process they are required to follow when they learn of customer-facing potential COBC violation. The purpose of the Integrity Matrix is to ensure the Company complies with federal law and to avoid potential liabilities, like the lawsuit facing DirecTV when it was acquired by AT&T. (Salman 114). The Integrity Matrix is not designed to help managers build a case for discipline but, rather, to ensure customer-facing issues are properly documented and resolved, and that any problems are addressed going forward. (Salman 145). Although the underlying misconduct may or may not lead to discipline, the Integrity Matrix does not prescribe, or even suggest, when discipline should be issued or what level of discipline should be issued. Bargaining unit employees are not required to review or follow the Integrity Matrix. If a manager fails to follow the Integrity Matrix, the manager may be subject to discipline, but it does not affect whether the bargaining unit employee receives discipline. In other words, the Integrity Matrix is in no way relevant to the Local 4202’s duties.

“The duty to bargain in good faith requires an employer to furnish information requested and needed by the employees’ bargaining representative for the proper performance of its duties to represent unit employees of that employer.” *Coca-Cola Bottling Co. of Chicago*, 311 NLRB 424, 425 (1993) (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967)). However, “an employer’s statutory obligation to provide information presupposes that the information is relevant and necessary to a union’s bargaining obligation vis-a-vis its representation of unit employees of that employer.” *Id.* Whether an employer is required to supply information is “determined on a case-by-case basis,” and “depends on a determination of whether the requested information is relevant and, if so, sufficiently important or needed to invoke a statutory obligation on the part of the other party to produce it.” *Id.*

While information pertaining to mandatory subjects of bargaining is presumptively relevant, information not on its face directly related to mandatory subjects must be produced only if the union can show its relevance to the collective bargaining process. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979) (Board improperly required the employer to provide test scores where union was unable to provide a justification requiring the tests). Information pertaining to mandatory subjects of bargaining includes “information pertaining to wages, hours and working conditions of unit employees.” *Interstate Brands Corp.*, 2008 NLRB LEXIS 359, 113-114 (2008) (citing *San Diego Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977)).

Here, the Integrity Matrix is not presumptively relevant. Bargaining unit employees are not expected to follow the Integrity Matrix, which provides no guidance to such employees. (Schott 205). Even if a manager discovers a possible COBC violation and fails to follow the Integrity Matrix, it has no impact on whether the bargaining unit employee receives discipline. (Chisolm 168). Moreover, the Integrity Matrix does not inform managers what level of discipline

to recommend or issue; it simply instructs managers to evaluate each incident on a case-by-case basis, and provides no instruction or suggestion on how to evaluate the severity of the violation. (Salman 118-19; Schott 187).

Where, as here, the requested information is not “presumptively relevant,” a union has the burden of establishing the relevance of the requested information. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Pfizer, Inc.*, 268 NLRB 916 (1984), *enfd.* 736 F.2d 887 (7th Cir. 1985). To do so, a union must demonstrate a reasonable belief, supported by objective evidence, that the requested information is relevant. *Knappton Maritime Corp.*, 292 NLRB 236, 238-239 (1988). When the union’s request is related to a possible contractual violation, the union must show the information sought is relevant to possible violations that the union has a reasonable basis to suspect occurred. *NLRB v. Associated General Contractors of California, Inc.*, 633 F. 2d 766, 771 (9th Cir. 1980); *Corson and Gruman*, 278 NLRB 329 (1986)(The union must “establish a reasonable basis to suspect that contract violations have occurred.”)

Local 4202 has failed to establish a reasonable basis that the Integrity Matrix is relevant to the bargaining unit’s terms and conditions of employment. Polchow asserts that the Integrity Matrix is relevant to the Local’s duties because she believes it prescribes levels of discipline to be issued in different situations.⁹ This is inaccurate and Polchow’s purported belief that it may be true is unreasonable. Polchow claims that her belief is based on a statement by former Area Manager

⁹ Ironically, Polchow also claims that she wants the Integrity Matrix because employees receive different levels of discipline for similar or the same infractions. (Polchow 65). This contention undermines Polchow’s claim that the Integrity Matrix prescribes discipline.

John Williams in a grievance meeting on November 9, 2018,¹⁰ and on a statement by Schott on August 8, 2019. (Polchow 35). Even if that were true (and it is not), Schott cured any such purported misstatement because he told Polchow on many occasions after August 8, 2019, that the Integrity Matrix did not indicate whether discipline should be issued or what level of discipline should be issued. (Schott 196). More importantly, Polchow was shown the Integrity Matrix three times since the first alleged statements was made. *Audio Visual Services Group*, 367 NLRB No. 103 (2019)(reversing ALJ, the Board found employer did not violate the Act by refusing to provide general financial information after retracting its earlier statement that it was unable to pay cost of union's proposals). If the Integrity Matrix prescribed levels of discipline, Polchow would have first-hand knowledge of that fact because she reviewed the document three times and she would not have relied on alleged hearsay statements from managers. Polchow has been told repeatedly that the Integrity Matrix does not prescribe discipline or levels of discipline, and she has reviewed the document herself. Thus, Polchow cannot reasonably contend otherwise. Even if Schott or John Williams had previously misstated the contents of the Integrity Matrix, any misstatement was subsequently cured and, therefore, Local 4202 has failed to demonstrate how the Integrity Matrix is relevant to its duties.

¹⁰ Polchow's testimony about this meeting cannot be credited, as her account conflicts with her own meeting notes. Specifically, Polchow described his statement as follows:

John Williams had talked about, and had said that this Integrity Matrix was used across the nation to -- more or less to check and balances, as his wording is, to make sure that disciplines were across the nation in all, you know, AT&T Mobility, that it was used to determine what infraction or what discipline was going to be issued to the members for whatever the -- the mistake was or a human error they did. (Polchow 35).

However, the meeting notes say nothing about using the Integrity Matrix across the nation to determine what discipline would be issued for certain infractions. (See GC 2).

B. The Company Did Not Violate Section 8(a)(5) because it Gave Local 4202 Access to the Integrity Matrix Every Time Local 4202 Asked

Local 4202 has contended that the Integrity Matrix is relevant because Polchow believes it prescribes levels of discipline. Even though that is not the case, the Company fulfilled any duty it may have had to provide the Integrity Matrix to Local 4202 when it showed the Integrity Matrix to Polchow and Vermillion, demonstrating that it informs managers to consider each case on a case-by-case basis. However, Polchow and Vermillion have continued to insist, without explanation, that they require a paper copy of the Integrity Matrix.

Board precedent does not require an employer to provide information in the specific form requested by the union. *Cincinnati Steel Castings Co.*, 86 NLRB 592 (1949) (employer's provision of oral rather than documentary information sufficient to meet its production obligation); *Howe K. Sipes, Co.*, 319 NLRB 30, *39 (1995) (dismissing 8(a)(5) allegation where employer verbally responded to certain information requests, noting “there is no requirement that an employer respond to every request for information in writing.”). Local 4202 has not even attempted to establish why it continues to seek a paper copy of the Integrity Matrix when the Company has repeatedly demonstrated that the Integrity Matrix does not prescribe discipline.

Polchow’s contention that she was unable to see the Integrity Matrix because it was across the table when Chisolm and Schott showed it to her is absurd. Polchow has been an Officer of Local 4202 for seven years. (Polchow 27). Despite her experience as a longtime advocate for Local 4202, she contends that on three separate occasions she failed to speak up when she allegedly could not see the document. She did not ask if she could get closer to the document and did not ask if she could spend more time reviewing the document. Polchow even contends that she could not see the Integrity Matrix when Schott showed it to her after she filed the Charge. It is difficult

to believe that Polchow would elect to go through the Board's processes rather than simply ask Schott to grant her a closer look at the Integrity Matrix.

Further, Local 4202 filed this Charge within five business days of Polchow's written request to Schott for the Integrity Matrix. Schott had informed Local 4202 that the Integrity Matrix was a "manager document" and, therefore, not relevant. Local 4202 never attempted to seek clarification – it simply filed the Charge. After Local 4202 filed the Charge, Schott continued to work with Local 4202 to seek a resolution – and literally gave Polchow and Vermillion access to the Integrity Matrix on his computer. If Polchow wanted to further evaluate the Integrity Matrix, she could have asked; Schott previously demonstrated that he had no qualms about showing the Integrity Matrix to Polchow. The Complaint should be dismissed because the Local could have simply worked with the Company to evaluate the Integrity Matrix as needed, yet it never bothered to ask. *See LTD Ceramics*, 341 NLRB 86, 87-88 (2004) (finding that the employer did not refuse to provide information in violation of the Act because the employer provided some information in response to the union's request, and any misunderstanding about what additional information the union still wanted could have been resolved by further communication between the parties).

C. The Integrity Matrix is Confidential and Proprietary

The Integrity Matrix was developed over the course of nearly a year by a team of upper level managers in response to a lawsuit by the FCC against DirecTV. (Salman 111-12). The document provides a concise guide for first-level managers to follow in the event of customer-facing issues that expose the Company to potential liability, similar to those that led to the DirecTV lawsuit. The telecommunications industry is highly competitive and heavily regulated by the Telecommunications Act. See 47 USC 222 et. al. The Integrity Matrix is part of the Company's effort to comply with these regulations. The Integrity Matrix is confidential and proprietary as it intended to give the Company a competitive advantage over its many competitors by efficiently

and effectively complying with applicable regulations, including those under the Telecommunications Act.

Polchow admitted that Company managers told her that the Integrity Matrix was proprietary. (Polchow 36, 88). When she orally requested the Integrity Matrix on August 8, 2019, she contended that she wanted it because Patricia May received a Final Written Warning and Alice Harris received a Counseling for similar violations. (Polchow 40). Polchow's request was based on the erroneous belief that the Integrity Matrix prescribes levels of discipline. *Id.* Schott accommodated Polchow's request by showing her the Integrity Matrix and demonstrating that it does not prescribe levels of discipline. Schott fully addressed all of Polchow's articulated concerns by showing her the document. If Local 4202 had any other concerns about the Integrity Matrix, or any other reasons it wanted the Integrity Matrix, it failed to raise them. Therefore, the Company did not violate the Act because it fully accommodated Local 4202's request for a confidential and proprietary document.

IV. CONCLUSION

For all of the above reasons, the Complaint allegations are without merit and must be dismissed in their entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2020, a copy of the foregoing was served upon:

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