Abuse at the Workplace: Deutsche Telekom in the United States

For the last twenty-five years, income in the US has shifted to the wealthiest Americans. Workers' wages have stagnated while productivity (output per hour of work) has increased by 25 percent. Median weekly earnings between 2004 and 2013 were down 1 percent in real terms. This divergent trend between wages and productivity means that working people are not reaping the gains of economic growth in the United States.

In real terms, the national minimum wage is worth 23 percent less than in 1968. 46.5 million people live in poverty in the US, bringing the official poverty rate to 15 percent. The Economic Policy Institute found that the annual compensation of top CEOs has risen 835 percent since 1978 while private sector pay has risen 5 percent.

The absence on labour unions drives this inequality. The pervasive use of union avoidance consultants has discouraged workers from exercising their rights. The percentage of workers covered by a collective bargaining agreement has shrunk to under 7 percent in the private sector. The labour movement's political force is incapable of moderating the zeal of the Right.

The National Labor Relations Act of 1935 (‘NLRA’) – the foundation of American labour law – states that it is public policy to encourage ‘the exercise by workers of full freedom of association, self-organisation, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment’. Unfortunately, employers have learned to game the rules, and political leaders' reluctance to balance the playing field has gutted the legislation of its effectiveness. When employers threaten to close a facility during organising drives (which they do over half the time) or fire worker activists (which they do one-third of the time), sanctions hardly dissuade law-breakers. Violations of the NLRA only result in employer liability for lost wages of a fired worker – minus any income earned after the dismissal.

As foreign companies invest in the United States, they adopt the anti-union practices of US companies, encouraged by the ostensible cost advantages of low-road industrial relations, and unwilling to challenge the behaviour of US managers.

Deutsche Telekom (‘DT’) is that kind of company. Its track record of worker abuse shows the extent to which it conspires with other companies in undermining and disregarding US labour rights. As DT’s largest shareholder, the German Government has a responsibility to hold the company accountable for its violations of international labour rights.

The Choices under US Labour Law

US labour law establishes that a work unit can have only one employee representative. The law requires, however, that a majority of workers must choose their labour union and they must do so independently of influence from the employer. The law offers latitude in determining such a majority; the employer can accept individual statements of support from a majority of the workers, or the employer must accept a representation election supervised by the National Labour Relations Board (‘NLRB’). The company must not campaign for a union.

The company, though, may campaign against the union. This gives management an inherent advantage since US unions have no guaranteed access to work premises. Instead, union representatives must meet with workers off-site and outside work hours. Inside the facility, workers may marshal arguments for collective representation during non-work time. In contrast, the employer is free to use work time to argue that employees should reject the union.

US companies’ approach to workers’ freedom of association is varied. AT&T, the largest telecom company in the US, accepts union authorisation cards as a measure of support, using a third party (American Arbitration Association) to verify totals. When workers start signing up for representation, the company remains neutral and even trains lower level managers to refrain from comment about the organising effort. The Communications Workers of America (‘CWA’) represents 132,000 workers at AT&T of which 44,000 work for AT&T Mobility, the wireless provider.

T-Mobile US (‘TMUS’) represents the other extreme. Controlled by the German telecom giant Deutsche Telekom, TMUS takes the position that it can only recognise a majority of workers demanding a union if an election takes place. It is unabashed in communicating its anti-union message, taking full advantage of the law’s provisions in terms of employer speech. Employees are forced to listen to managers harangue the labour movement and the CWA. Elections are plagued with management’s consistent badgering of employees to vote against the union.

When pressed on worker rights, DT claims that it respects the law of countries in which it operates, but numerous complaints from the NLRB suggest otherwise. DT argues that it can only recognise a union representing a majority of workers in the US if there is an election. Managers retain ‘free speech’ rights to communicate actively and repeatedly to workers that the company opposes organising and union recognition.

Corporate speech – in contrast to severely restricted employee speech – is the wedge used
by DT to intervene lawfully in the decision of workers to organise. DT has suggested that companies have a responsibility to use their free speech rights to oppose workers attempting to organise. In its response to the 2010 Human Rights Watch report on the behaviour of multinational companies in the United States (including DT), the International Organisation of Employers wrote a paper asserting that a company has ‘an obligation not to stand by idly’. The report benefited from the technical guidance of DT’s US attorneys from the law firm of Littler Mendelson.

**Union Hostility at T-Mobile**

DT entered the US market in 2001 upon acquiring VoiceStream Communications. For years, the company (re-named T-Mobile USA in 2002) was a cash cow for German investors, returning a steady stream of dividends back to Germany. Under-investment in 3G technologies by DT, however, allowed competitors AT&T and Verizon to widen their lead over T-Mobile. AT&T attempted to purchase the company in 2011 but US regulators scuttled the acquisition. The uncertainty around the deal, though, brought lower margins and customer losses. The company lost branded contract customers for seven consecutive quarters until second quarter 2013. In May 2013, DT combined its T-Mobile USA assets with the small wireless carrier MetroPCS to create T-Mobile US, a public company listed on the New York Stock Exchange. DT owns 74 percent of the shares.

Immediately after the 2001 deal closed, technicians at VoiceStream in the State of Connecticut sought to organise a union. VoiceStream management brought in attorneys known for their union-avoidance work and ran an anti-union campaign to dissuade workers from organising. Among the tactics encouraged were threatening workers with loss of employment in the event of strike, interrogating workers about the union, and issuing dire warnings of the consequences of voting for the union. In the representation election, the workers chose not to be represented. DT’s ownership of VoiceStream did not change management’s anti-union practices.

In 2004, workers at T-Mobile discovered a 150-page training manual for managers that outlined how to push workers to reject organising local unions. The author of the manual wrote, ‘preserving the union free privilege is an honour’. Among the reasons the manual gives for ‘resisting the union’ are the extra costs of paying workers better wages and benefits, the suggestion that unions create an adversarial climate, and the possibility of a strike.

T-Mobile management later claimed they stopped using this particular manual, but they have developed other materials conveying the same message: trainers show new employees a slide show denigrating the union. The company recommends: ‘your supervisor or HR is available for any questions you have about the union’. The company also ensures that managers toe the line: a 2005 job advertisement for human resource managers included the requirement of ‘maintaining a productive and union-free environment’. This corporate attitude tactfully condones management’s attempts to spy on and intimidate would-be worker-organisers - videotaping their license plates, pushing for information about union contact, even using binoculars to spy on conversations outside of the workplace.

During a representation election in Connecticut in July 2011 (the same unit that sought election in 2001), T-Mobile USA flew top executives from corporate headquarters in Bellevue, Washington, to meet one-on-one with workers to encourage them to vote against the union. A strong majority when the election was
requested evaporated to a slim one-vote majority, and the unit was barely certified. Later that summer, technicians in upstate New York withdrew an election petition because management had threatened strong support down to a minority. In December 2011, top executives again met one-on-one with technicians on Long Island to encourage them to vote against the union, and pro-union workers lost the election.

In both the upstate New York and Long Island cases, various levels of management descended on the unit for mandatory meetings with workers in which supervisors disparaged the union, labelled it a ‘third party’, and made inaccurate claims about the cost of union dues. Managers claimed that the union was spreading falsehoods, and workers were encouraged to go to the company for the ‘facts’. Managers sent each worker a personalised email communication that tallied prospective dues. In the Long Island case, a union activist was single out for wanting to be a ‘union boss’, and the regional manager stated he was not trustworthy.

The captive audience meetings were the most brutal for a small group of retail workers at a New York MetroPCS store who filed for an election in August 2013. Seven of the nine workers at the store were subjected to a total of 30 meetings in the basement, even after the workers petitioned the company to end the meetings because of the effect on morale. One worker stated he was forced to attend five meetings lasting on average two hours over the course of two weeks. Local supervisors and regional managers were called in. The Vice President from Human Resources and even CEO John Legere flew in from the west coast headquarters to dissuade workers from joining the union. Nevertheless, the workers voted 7-1 for representation.

The company also uses selective terminations to cut down organising drives. A top performer at the Wichita call centre was disciplined and eventually fired for wearing a union t-shirt and for publicly supporting the union. Two union supporters were fired in Albuquerque for their pro-union stance. Other leaders have been formally disciplined for their union work. The message is clear to worker-organisers: if you build a union, you could lose your job.

The Global Response

The DT labour practices in the United States have not gone unnoticed around the world. The International Trade Union Confederation (ITUC) has pushed DT to alter its union hostility in its ‘We Expect Better’ campaign. ITUC General Secretary Sharan Burrow highlighted a panel of local, national, and international leaders who listened to worker stories in South Carolina in February 2013. UNI Global Union has been at the forefront of a (hitherto unsuccessful) effort to encourage DT to sign a global framework agreement that would include organising rights in the United States. UNI General Secretary Philip Jennings has met with executives in the US and verified the cards of a majority – that eventually evaporated into a minority – of workers before the Long Island election.

The core of the global response, however, has involved Ver.di, the large German services union, which represents over 100,000 DT workers in Germany. Since 2001, Ver.di has supported efforts to bring labour-management practices in the United States into conformity with both its practice in Germany and the company’s policies as expressed in its ‘Social Charter’. Likewise, it worked with CWA and UNI to achieve a global framework agreement.

In 2008, CWA and Ver.di formed TU, a joint organisation representing T-Mobile USA workers. Within TU, CWA organises workers and meets with community and political leaders in the US while Ver.di pushes DT’s German management and meets with German political leaders. Over 1,000 workers have signed TU membership cards.

To facilitate a close working relationship between CWA and Ver.di, the two unions coordinate actions, meet on a regular basis, and provide materials in both languages. Ver.di has arranged for TU activists to speak at DT shareholder meetings. In May 2013, TU activists testified before the Bundestag about working conditions and met with both national and local political leaders. CWA President Larry Cohen addressed the Ver.di congress in 2011 and spoke to strikers at DT in 2012, assuring them of CWA’s solidarity.

CWA and Ver.di seek to educate every German DT employee about working conditions and union hostility in America. They have developed worksite-to-worksites partnerships that involve regular contact through phone calls, e-mail communications, and site visits. DT worksite leaders, typically works councillors, use vacation time to visit the US, talk with T-Mobile workers, participate in organising activities, and meet with community and political leaders.

Partners then return to Germany and recount those conversations in a variety of ways – Ver.di national publications, worksite newsletters, and works council meetings. Works councillors and Ver.di national leaders have addressed worker assemblies – mandatory all-employee meetings under German Codetermination – to present the T-Mobile story. An active German social media presence keeps concerned observers abreast of current events.

Staying on top of T-Mobile’s abuses is key. When Berlin activist Nadine Jüngling conversed with CEO René Obermann about the situation in the US, she could say to him, “I have been to South Carolina, I have met those workers, I know what I am talking about. You are out of touch”.

Employees now own a different narrative when the company tries to explain away the US problem. Deutsche Telekom recognises that the US subsidiary is creating legitimacy issues in Germany. Tomas Lenk, head of the Berlin call centre’s works council, recounted the exchange at a worker assembly in Hannover in late 2013. After hearing that T-Mobile US workers frequently must clock out to use the bathroom, a worker complained that her first-line supervisor had given her only 10 minutes of bathroom time outside of statutory breaks. A manager popped up to say he personally would resolve the problem.

The partnership programme helps organising in Germany. Ver.di members recognise that the company’s practices in the US could easily be re-imported to Germany.

continued on page 12...
Deutsche Telekom, the German Government, and International Responsibility

The German Government has a direct responsibility for the continued assault on worker rights in the US. It owns 31.7 percent of DT, making it the largest single shareholder in the company. DT’s behaviour should be a matter of international concern for the German Government: through its unwillingness to end the union hostility of DT and other German companies, the German Government contributes to the growth of social inequality.

Furthermore, DT has twice in the last two years flouted US law. In 2012, T-Mobile announced the closure of 7 call centres and the displacement of 3,300 workers. Workers reported that much of the call volume was going to overseas vendors. CWA applied to the US Department of Labor for enhanced benefits for these workers. Trade Adjustment Assistance provides two years of unemployment compensation, training vouchers, and subsidised health care coverage. CWA provided evidence from workers at the vendors in the Philippines and Central America proving that some of the work had been offshored. Throughout the process, even when directly questioned by the Department of Labour, T-Mobile declared the work was not being sent overseas. The company not only sought to deprive its former employees of their rightful benefits, it openly deceived the US Government.

In 2013, the US State Department gave DT the opportunity to resolve its US labour conflict. CWA, Ver.di, and UNI Global Union filed a complaint in July 2011 under the OECD Guidelines for Multinational Enterprises, alleging that T-Mobile had ‘engaged in a pattern of conduct designed to undermine and frustrate employees’ efforts to choose union representation freely and to deny employees their rights to collective bargaining’. The US National Contact Point (housed in the State Department) found that there was a basis for mediation between the company and the unions. DT withdrew from the process after having expressed doubts about the impartiality of the Federal Mediation and Conciliation Service (FMCS), a US government agency that has existed since the 1940s.

According to the UN Guiding Principles on Business and Human Rights adopted in 2011, businesses have a responsibility to respect human rights ‘over and above legal compliance with national laws and regulations’. It is not enough for DT to excuse the behaviour of TMUS by saying it ‘obeys the law’ (a specious claim at best). Rather, the company must have a due diligence process to report possible abuses, and must remedy the reported violations.

DT does engage in Corporate Social Responsibility reporting. However, the only mention of US labour issues in recent CSR reports is a mention of a collective bargaining agreement with the Connecticut technicians, not the allegations of union busting. The absence of any reporting on Freedom of Association issues in the US suggests either a failure at due diligence or a lack of transparency. Companies have a responsibility to remedy problems they uncover. The withdrawal from the OECD process suggests the company is not interested in remediation.

Under the UN Guiding Principles, governments have a duty to respect human rights beyond their territorial borders, especially if they are key stakeholders in the company. Unlike Corporate Social Responsibility guidelines, the UN Guiding Principles are not voluntary: governments have a mandate to respect and enforce the rule of human rights law.

The German Government has the responsibility under the UN Guiding Principles to ‘investigate, punish and redress private actors’ abuse’. In late 2012, members of the Bundestag called on the Government to account for the behaviour of T-Mobile in the US. In its March 2013 response, the Government tepidly urged the companies in which it owned shares to participate in the UN Global Compact and the OECD Guidelines, both voluntary processes. It claimed that it did not enjoy any ‘direct right of intervention’ in the affairs of German companies. DT’s withdrawal from the OECD case made a mockery of German voluntarism.

Deutsche Telekom’s abuse of workers in the US and its disrespect for international law tarnishes Germany’s reputation as a country of strong social partnership. It is time for the Merkel Government to shed its reluctance to intervene in the affairs of German companies and exercise its responsibilities under international law.

...continued from page 5