

American Federation of Government Employees
Local 12, AFL-CIO



October 8, 2010

David Michaels, PhD, MPH
Assistant Secretary
Occupational Safety and Health Administration
United States Department of Labor
200 Constitution Avenue, NW, Room S2315
Washington, DC 20210

RE: Reorganization of OSHA's Office of the Whistleblower Protection Program

Dear Dr. Michaels:

You have been stating publicly, most recently in your September 30, 2010 response to the Department's Office of Inspector General's (OIG) audit report, "*Complainants Did Not Always Receive Appropriate Investigations Under the Whistleblower Protection Program*" (September 30, 2010)¹, that OSHA is currently "assessing whether to restructure the Office of the Whistleblower Protection Program (OWPP)" – an office within OSHA's Directorate of Enforcement Programs (DEP). Although the American Federation of Government Employees (AFGE), Local 12 has not received any "formal" information from the Agency or OSHA's Office of Human Resources (HR) about plans for a major reorganization, it has been brought to our attention that for months, the Department has, in fact, been planning to remove OWPP from OSHA and merge it into the Office of Labor-Management Standards (OLMS).

Local 12 is also aware that OSHA management has communicated and shared vast information regarding this major reorganization with various stakeholders, including OSHA's Regions, OSHA's HR office, and other agencies affected within the Department; however, the Bargaining Unit employees within OWPP – **those who will be most impacted by this change** – have not received any formal notice or information whatsoever. This directly violates multiple Articles of the Collective Bargaining Agreement (CBA) between AFGE, Local 12, AFL-CIO and the Department. On September 10, 2010, I contacted OSHA's HR office for more information regarding this reorganization – almost two months have passed but they have not had the courtesy to provide a response.

¹ <http://www.oig.dol.gov/public/reports/oa/2010/02-10-202-10-105.pdf>

I understand that OSHA's management has specifically stated that any discussion regarding this reorganization or change in employees' working conditions is "embargoed;" however, a PowerPoint presentation on this reorganization was widely circulated throughout the Department back in July 2010 which proposed in no uncertain terms, "[t]ransferring whistleblower responsibilities from OSHA to OLMS" and "[i]ncrease[d] OLMS training to handle new whistleblower responsibilities." In fact, OLMS management had the courtesy to inform its own Union, the National Union of Labor Investigators (NULI), of plans involving this reorganization months ago when initial discussions began. Local 12 is also aware that you have recently been discussing plans for this reorganization directly with some of our brothers and sisters in the Labor Movement – other Unions affiliated with the AFL-CIO – but incredibly, not with Local 12 or the directly affected Bargaining Unit employees we represent.

Due to your own public pronouncements, and the fact that DOL employees around the country obviously communicate with each other about matters of mutual concern, plans for the OWPP reorganization are now widely known and have been spread throughout the Department. OSHA management's continued reliance on some mysterious "embargo" as an excuse for stonewalling Local 12 on this matter defies common sense and is an insult to the Union and our membership. If there were indeed such an "embargo," you would not have been able to discuss the proposed transfer with non-DOL Unions and OLMS similarly would not have been able to inform NULI.

Sadly, OSHA's callous disregard of the rights, interests, and concerns of OWPP's dedicated career Bargaining Unit employees aligns well with the way OSHA has mistreated its own Whistleblower Protection Program for years. It is no accident that the recent Government Accountability Office (GAO) audit of OSHA's Whistleblower Protection Program was titled, "*Whistleblower Protection: Sustained **Management Attention** Needed to Address Long-standing Program Weaknesses*" (emphasis added).² This audit report noted pointedly that "for over 20 years" OSHA management has focused little attention on the program. The GAO report, which was highly critical of OSHA management's neglect of the Whistleblower Protection Program, serves as a chilling indictment of the unreasonable and under-resourced conditions in which OWPP Bargaining Unit employees have continued to work under your leadership. Following the report's release, whistleblower advocate Tom Devine of the Government Accountability Project tipped his hat to the dedicated career staff of OWPP, noting in a September 21, 2010 *Washington Post* article, "We hope the [GAO report] will be a healthy wind at the back of those toiling inside the agency."³

Surely you are aware of the many recent press articles detailing OSHA management's neglect of its Whistleblower Protection Program and mistreatment of its own employees. A recent press release from government watchdog group Public Employees for Environmental Responsibility (PEER), which represents whistleblowers who have suffered retaliation at the

² <http://www.gao.gov/new.items/d10722.pdf>

³ <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/21/AR2010092105775.html>

hands of OSHA management, aptly observed that "...Until OSHA starts treating its own workers with respect; it cannot be expected to protect Americans on the job."⁴

For the record, please confirm that plans for this reorganization (transferring OWPP to OLMS) are currently active and underway; if this is in fact true, please explain why OSHA's management had such little regard for the OWPP Bargaining Unit employees – employees dedicated to meeting the mission of the Agency every day – by providing absolutely no information about this reorganization to Local 12 or the affected employees themselves, resulting in multiple violations of the CBA. Article 39 specifically states, "In the spirit of labor-management cooperation, Union and management mutually recognize and endorse the involvement of affected employees and their representatives as early as possible." Article 40 specifically states, "The success of a labor-management relationship is further assisted through regular communication with each other on matters of mutual concern or interest in the area of conditions of employment." Article 41, Section 2 specifically states, "...there is an obligation to bargain over contemplated changes in conditions of employment...advance notice to the Union of intended changes [shall be provided]," as Bargaining Unit employees are entitled with the opportunity to provide input and be heard on issues and conditions *that directly affect them*.

Clearly, OSHA management did not provide any opportunity whatsoever for OWPP Bargaining Unit employees to "have a voice" regarding this reorganization – which clearly defies specific goals you spelled out in your own "*OSHA at Forty: New Challenges and New Direction*" (July 19, 2010) speech, including "ensuring workers have a voice" and "conducting OSHA's work with transparency, openness, and integrity..." This also is in direct opposition of Secretary Solis' vision of, and commitment to, "giving workers a voice," as well as President Obama's pledge to provide its citizens with a "government that is open, transparent, and responsive."

I cannot stress how essential communication by OSHA's leadership and management is to developing positive labor-management relationships within the Agency, meeting the mission of the Agency, and serving the American public.

I look forward to receiving your response to the issues raised in this letter.

Sincerely,



Danielle Gibbs
Agency Vice President for OSHA
AFGE Local 12

⁴ <http://www.commondreams.org/newswire/2010/10/04>