



May 18, 2014

Thomas Perez, Secretary
United States Department of Labor
200 Constitution Avenue,
Washington, D.C. 20210

Dear Secretary Perez,

As you have expressed interest in the current low state of morale among employees in the Department of Labor, I am forwarding this letter both as insight into that low morale and as a report on the culture of corruption that has developed with OSHA Region IX, where I am employed as an investigator with the Whistleblower Protection Program. When I first was appointed in July 2010, I joined the Program with high expectations that it was work worthy of my interests and professional training and experience. I am a licensed and experience attorney, hold a Ph.D. in politics and public policy which I have taught at the university level, and brought considerable experience in public program management to the position. I was inspired by the words of Dr. Michaels and the description of the program to believe that this was a job well worth doing. After four years of exposure to the actual management of the program, it is apparent that these were empty words and that the program is not only failing to meet its public purpose, but is actually contributing to the wide-spread belief among American workers that they will be severely punished if they report health and safety concerns.

Presently, at least in Region IX, the program is in crisis produced by an embedded culture of cronyism, senior managers who are largely ignorant of the program but insist on running it according to their ignorance, senior managers and particularly the Regional Supervising Investigator who believe that they are beyond accountability for abuse of employees and violations of law and policy. I recently obtained internal documents from a discovery motion that make for rather ugly reading as they indicate that internal management problems within Region IX are undermining, and in some cases compromising, the protection of whistleblowers. These documents also suggest that Region IX OSHA is collaborating with the local office of the Solicitor of Labor in denying whistleblowers the basic protection to which they are entitled by law. As I have learned recently, this culture of corruption in Region IX OSHA was well established before I joined the program, but has become steadily more corrupt during my four years of service. Employees with qualified disabilities have been attacked by management who regard them as problems rather than assets. Supervisors with little or no training or experience in the Whistleblower program have injected themselves into the investigatory process with

sometimes catastrophic results that Complainants have been denied not only a qualified investigation, but also their basic right to know and participate in the process. During the last three years, there have been union grievances filed by employees involving serious allegations of management abuse, but no meaningful effort has been made to correct the outrageous behavior of managers that led to these grievances. For the second time in three years, the entire staff of whistleblower investigators is filing a group grievance concerning the Regional Supervising Investigator and his systematic abuse of authority and employees. Sadly, we have no expectation that corrective action will be taken by local management.

To put a finer point on this situation, I am providing a detailed list below of the acts and omissions of Region IX management that constitute corrupt practices. Many of these acts and omissions are egregious and have wide ranging implications for the ability of the Program to carry out its mission. In each case cited, there is documentary evidence and witness testimony available to support the allegations. Documentary evidence also exists that when these acts and omissions were reported to national Office of Whistleblower Protection, the national OSHA office, and the Assistant Secretary of Labor's office, no acknowledgement was given and no corrective action was taken, and these offices merely returned the issues to local management and accepted whatever they did and said without further investigation. For that reason, I am asking that a credible and independent audit/investigation be conducted from outside of OSHA, and possibly outside the Department of Labor to determine the validity and extent of the corruption in OSHA Region IX.

CORRUPT PRACTICES IN OSHA REGION IX

1. The Systematic Denial of Complainants' Rights to Remedies under Law.

The systematic denial of Complainant's rights to remedies under law appear in three forms: a) the adoption of an aggressive dispute resolution process that excludes notice to Complainants of their rights to remedies; b) the active intervention of the RSI in conducting settlement discussions without regard to Complainant's right to participate; and c) the implementation of procedures that disable Complainant's ability to meaningfully participate in the resolution of their complaints.

a) It is the established practice of the RSI and other local OSHA management to withhold information from complainants as a means to secure a settlement that rarely if ever reflects the "make whole" remedy required by law and the Whistleblower Investigation Manual. Such settlements undermine not only Complainant's rights, but place the Agency in the position of facilitating retaliation by Respondents. The motive for adopting this practice appears to be to enhance Region IX reports of settlements and avoid engaging the local SOL in taking action in support of Complainants.

b) It is common practice for the RSI to order investigators not to share information about damages and the process of case resolution with complainants. As a consequence, complainant and even Complainant attorneys are kept in the dark as to their rights and are unable to meaningfully participate in the resolution of their complaints. The motive for adopting this practice also appears to be to enhance Region IX reports of settlements and avoid engaging the local SOL in taking action in support of Complainants.

c) Region IX, and possibly other OSHA Regions, have adopted a “Due Process” letter as a substitute for the “Secretary’s Findings” that are mandated by law and by the Whistleblower Investigations Manual. The difference between the two is substantial. By law and according to the Whistleblower Investigations Manual, “Secretary’s Findings” in preliminary reinstatement cases, which include cases under AIR-21, STAA, FRSA, SOX and all of the recent legislative additions to the Whistleblower Protection Program, must include an Order of reinstatement that is immediately effective on receipt by the Company. The provision for preliminary reinstatement has been included in these statutes as added emphasis for the importance of protecting whistleblowers in these cases. Making the Order mandatory and effective on receipt encourages companies to proactively move to settle the complaint while ensuring that the whistleblower is not disadvantaged by the often lengthy process of resolving the underlying complaint. On the other hand, the “Due Process” letter, which has not been vetted or even mentioned in the Manual or legislation, does not include an Order but only notifies employers that the whistleblower is entitled to such an Order. This disables protections for the whistleblower and makes whistleblowers hostage to the regional SOL, who may or may not eventually issue the Order depending on their mood. “Due Process” letters appear to have been developed 5-6 years ago as a means to avoid direct action against companies and to shift responsibilities from OSHA to the SOL. For reasons identified below, that simply acts to subject whistleblowers to further abuse.

2. Retaliation against Complainants.

Instances have occurred when local OSHA Region IX management has retaliated against Complainants who complain about the management of their complaints. Because of understaffing and poor local management, many complaints languish at the investigative stage for many months and sometimes years. Understandably, complainants become impatient and complain about the delay, or in other cases complainants complain about local practices to deny them meaningful participation in the investigation and resolution of their cases. If the complainant complain too loudly or for too long, or raise ethical issues with local management or the SOL, they may suffer retaliation in the form of further delays or in outright dismissal of their cases. I have seen several examples of this, including the SOL refusing to process a case because OSHA Region IX RSI and the SOL had disclosed complainant’s location to a company where there was evidence that such a disclosure would represent a significant threat to the complainant’s safety.

In a number of cases of complex investigations, the RSI has attempted to dismiss complaints before the investigation was substantially underway, or where the process of review and approval would require considerable time. In other cases, the RSI has dismissed cases in the face of active opposition from major companies to the investigation. In doing so, the RSI has adopted a two-tier approach, trying to negotiate an early resolution without actually knowing the elements of the complaint, or dragging the investigation out with unnecessary and often irrelevant questions designed to delay the completion of the investigation to pressure the complainant into a settlement.

3. Covering up Failures of Management.

There have been a number of cover ups by local management designed to protect incompetent or abusive managers. These cover ups follow a pattern of receiving employee or complainant complaints, delaying a response for weeks or months, sometimes retaliating against those who

make reports by either subjecting them to a hostile workplace (employees), or obfuscating and eventually denying the complaint (complainants). When necessary, local management will conduct a superficial “investigation” conducted by a self-interested manager, and then summarily dismiss the complaint. Responses and reports may be filed, but rarely reflect the substance of the complaint.

4. Falsifying Government Documents.

Covering up errors, omissions, and misdeeds by local OSHA management sometimes involves falsifying government documents, such as reports and statistics. This is more likely to happen with the problem involves the SOL, who commonly rejects taking action even when it involves an egregious case that has already been publicly noticed as “significant”. Sometimes this falsification involves changing data reported on national data records to “correct” entries to obscure case management. In other case, there has been the outright falsification of investigative reports, redrafting them as dismissals when they reflect merit cases, to conceal that the SOL does not want to act on them.

5. Conducting surveillance of employees.

As part of senior management’s efforts to cover up wrongdoing done by managers, it has developed a program of surveillance of employees, including conducting wide-ranging collection of information about employees outside activities, for the purpose of generating pretexts for taking disciplinary and adverse action against employees who are deemed disloyal to management. It has generated a wide-spread perception among employees that they are always being watched and are always on the edge of being subject to disciplinary hearings for what are minor and often inadvertent acts. This information is collected, shared among managers and “banked” for future use, in violation of employees’ rights to privacy and due process.

6. The Appointment and Use of Unqualified Personnel.

It has been common practice for local senior OSHA management to appoint managers to perform critical roles in the Whistleblower Protection Program who have little or no training in the program. This includes appointing an Assistant Regional Administrator to closely supervisor and participate in essential roles in investigations. This allowed the ARA, who has no experience in whistleblower investigations and no training in whistleblower law, to regularly act as the senior reviewing official for investigations and intervene in essential actions involving settlement and case management. As a consequence, investigations into merit cases have been complicated and delayed by inappropriate analyses, complainants have been given false and misleading information, and merit cases have been dismissed. Further, this ARA has been actively involved in covering up misdeeds by the SOL and the RSI and facilitating the falsification of documents and records.

The appointment and use of unqualified personnel also extends to allowing non-employee summer interns to play inappropriate roles in the Program, such as screening callings attempting to file complaints and reviewing case files. As a consequence, valid complaints have been denied filing and information covered by the Privacy Act has been exposed to inappropriate view.

7. Systematic Violations of EEO Employee Protection.

The Regional Administrator has openly encouraged disregard for employee Equal Employment Opportunity rights. In spite of a well-documented and thoroughly litigated EEO complaint filed by an investigator in 2009, the Region IX RSI consistently denies reasonable accommodation for employees with recognized disabilities, discriminates and retaliates against these employees. In spite of numerous, ongoing complaints, the RA has refused to take any corrective action or even acknowledge the importance of EEO in federal employment practice. Rather, the RA has ratified the RSI actions and embraced them as aimed at improving efficiency.

8. Failure of National Offices to Take Corrective Action with Regard to Potential Violations of Law and Policy.

Despite receiving notice of potential violations of law and policy from both whistleblowers and Region IX employees regarding Region IX management, the national Office of Whistleblower Protection Program, the national OSHA office, and the office of the Assistant Secretary of Labor have failed to respond effectively. When such reports are received, these offices commonly refer them back to Region IX management and accept whatever explanation they provide. That might be understandable for relatively minor reports, but in several cases these reports have reflected corrupt practices. Further, these national offices rarely, if ever, take steps to initiate an impartial outside investigation, leaving corrupt practices in Region IX OSHA to fester and multiply.

As a consequence of the culture of corruption reflected in the practices outlined above, employees and the public in Region IX, which covers California, Nevada, Arizona, Hawaii and the Western Pacific, have been put at considerable risk. The breadth of responsibility embodied in the Whistleblower Protection Program now reaches into almost every workplace known, and includes potentially dangerous activities, such as nuclear power, the transportation of explosives by truck, the operation of railroads transporting dangerous chemical and fuels, the industrial testing industry that is responsible for ensuring the validity of testing for asbestos and other toxic materials, airlines and aircraft operations, pipelines, container cargo, passenger buses, hospitals and other medical providers, food processing, consumer product safety, and corporate fraud. These are activities that touch the lives of almost everyone and almost on a daily basis. The Program has been underfunded and undermanned for years, and with the Program broadly managed by OSHA there is a noticeable lack of will and expertise to make the Program at all effective. However, operating with corrupt practices is unacceptable, and no public agency should be allowed to function without effective oversight. Prove me wrong. Conduct a credible audit/investigation of Region IX OSHA.

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