



American Federation of
Government Employees

Memorandum

Step 3 Grievance on behalf of bargaining unit employees at VA Central Office

Dated: February 27, 2025

To: Denise Biaggi-Ayer, Executive Director, Office of Labor Management Relations, Department of Veterans Affairs (“Department,” “Agency,” or “VA”)

Re: OPM Email – “What did you do last week?”

From: Douglas E. Massey, Esq., President, American Federation of Government Employees (AFGE), Local 17, AFL-CIO.

I. Statement of Grievance

The Grievance is filed under the provisions of Article 43, Section 7 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2023) (“Master Agreement”).¹ The grievance concerns an email sent to employees by the Office of Personnel Management (OPM), which threatened to remove any employee from federal service for failing to respond to an inquiry about their work activities from the previous week. This action – along with the Department’s response and failure to provide appropriate leadership – constitutes multiple violations of the Master Agreement, Federal Service Labor-Management Relations Statute (“Statute”), VA own core values, and other provisions of law.

The confusion began on Saturday, February 22, 2025, when employees across the federal government, including bargaining unit employees at VA Central Office, received an

¹ The Grievance is being initiated at Step 3 because the requested relief and corrective action are beyond the authority of any step 1 or step 2 deciding official. *See* Master Agreement, Article 43, Note 5.

email from hr@opm.gov. Prior to January 20, 2025, no such email address existed within the federal government or as an official contact for the Office of Personnel Management (OPM). The email, marked with "High Importance," was sent under the purported authority of OPM.

The cryptic title of the email was: "What did you do last week?" The body of the email stated:

Please reply to this email with approx. 5 bullets of what you accomplished last week and cc your manager. Please do not send any classified information, links, or attachments. Deadline is this Monday at 11:59 EST.

On the same day, a social media account on X belonging to the platform's owner, Elon Musk (@elonmusk), posted the following message:

Consistent with President @realDonaldTrump's instructions, all federal employees will shortly receive an email requesting to understand what they got done last week.

Failure to respond will be taken as a resignation.

The President has publicly identified Mr. Musk as a "special government employee," though his exact authority and duties remain unclear. However, he appears to wield significant influence in the current administration, likely due to his billionaire status and ownership of X, a powerful social media platform that has played a substantial role in shaping political discourse.² Notably, X has been instrumental in amplifying messages that have supported political figures, including President Trump. Despite this influence, Musk was neither elected by the public nor confirmed by the Senate, yet he appears to dictate policies with profound consequences for federal employees.

Beyond his influence in the administration, Mr. Musk's actions have had direct and immediate consequences for federal employees. Many Local 17 bargaining unit employees were on approved leave or not on duty under their approved compressed work schedules on Monday, February 24. Despite this, numerous employees felt compelled to work outside of their duty hours in response to the OPM directive, given Mr. Musk's threat that failing to respond to the OPM email by 11:59 p.m. that day would result in their involuntary separation from federal service. As a result, these employees were effectively forced to work without compensation and under duress.

Prior to February 22, 2025, no notice was published in the Federal Register or elsewhere regarding any OPM program, rule, policy, or regulation requiring all federal employees to submit a report of their work directly to OPM. Likewise, there was no indication of any policy under which an employee's failure to respond to such an email would be interpreted as a "resignation" from federal employment.

Moreover, OPM has not adhered to the procedural requirements outlined in the Administrative Procedure Act (APA), 5 U.S.C. § 553, for implementing a new federal

² The White House said Musk had no authority. Then came the emails., <https://www.washingtonpost.com/politics/2025/02/24/elon-musk-email-authority/>

employment policy of this nature. In fact, in response to the OPM email, at least some federal agencies – including the Federal Bureau of Investigation (FBI) – explicitly instructed their employees not to respond to the request. Beyond these procedural violations, OPM has also failed to comply with the Privacy Act, 5 C.F.R. § 552a, by disregarding system of records requirements.

Additionally, under 5 C.F.R. Part 715, any resignation from federal employment must be voluntary. The failure to respond to an unsolicited and unprecedented email from OPM – especially under an arbitrary deadline – does not constitute a voluntary resignation under federal law.

Despite these legal and procedural concerns, the VA failed to provide clear guidance to its employees regarding the OPM email or the social media threats issued by Mr. Musk. Instead, in a department-wide email sent on February 23, 2025, VA Chief of Staff Chris Syrek issued the following statement:

On behalf of the Department of Veterans Affairs, I am informing you that the email is valid.

In responding to the email, please do not send any classified, Health Insurance Portability and Accountability Act (HIPAA), or personally identifiable information, links, or attachments.

At no point did the VA Chief of Staff inform employees that responding to the OPM email was voluntary. Additionally, the Department failed to consult or even notify AFGE, the exclusive representative of more than 300,000 VA employees, before issuing its guidance. This email – along with the subsequent guidance from the VA Chief of Staff – directly contradicts OPM’s own February 5, 2025, Privacy Impact Assessment for the Government-Wide Email System, which explicitly requires that any email sent through GWES “explicitly state that the response is voluntary.”

The OPM email and the subsequent VA Chief of Staff guidance violate multiple provisions of the Master Agreement, including Article 2, which requires compliance with federal law and regulations; Article 3, which governs labor-management relations; Article 47, which outlines negotiation procedures; and Article 49, which defines the rights and responsibilities of both parties. Additionally, these actions violate the Master Agreement’s Duration of Agreement clause.

Beyond these contractual violations, OPM and the Department’s actions also violate the Federal Service Labor-Management Relations Statute and constitute an unfair labor practice (ULP). By dealing directly with bargaining unit employees on conditions of employment and bypassing the Union, OPM and the Department violated 5 U.S.C. § 7114(a)(1) and 5 U.S.C. § 7116(a)(1), (a)(5), and (a)(8). Furthermore, by unilaterally implementing changes to conditions of employment without fulfilling their duty to bargain in good faith with the Union, they violated Articles 47 and 49 of the Master Agreement, as well as their statutory obligation to negotiate in good faith.

Engaging directly with bargaining unit employees on conditions of employment – without notifying or bargaining with the Union – constitutes an unlawful bypass, violating both the Federal Service Labor-Management Relations Statute and the Master Agreement. This includes the OPM email and the follow-up email from the VA Chief of Staff affirming its validity. Such actions unlawfully undermine the Union’s role as the exclusive representative of bargaining unit employees. *See* 5 U.S.C. § 7114(a)(1).

By unilaterally implementing these changes, OPM and the Department bypassed their obligation to bargain in good faith and imposed new conditions of employment without Union input. They also disregarded protections requiring that surveys on conditions of employment be voluntary, anonymous, and confidential, with no indication that these safeguards would apply to bargaining unit employees responding to the OPM directive. Their continued failure to comply with contractual and statutory obligations constitutes additional violations. *See* Articles 2, 3, 47, and 49; *see also*, 5 U.S.C. § 7116(a).

In addition to breaching the Master Agreement and the Statute, the Department has also disregarded its own core values of Integrity, Commitment, Advocacy, Respect, and Excellence (I-CARE), as codified in 38 CFR § 0.601. During his Senate confirmation hearing, Secretary Doug Collins stated, "*I'm looking forward to being a secretary who motivates and unleashes the power of this wonderful workforce.*" That message resonated deeply with employees because we share that commitment – to ensuring VA employees have the support they need to succeed. The OPM email did not live up to the Secretary’s promise. Sadly, unlike several other Agency heads, Secretary Collins did not disavow the OPM directive.

II. Statement of Violation

By failing to advise bargaining unit employees that responding to the OPM email was voluntary and by not providing notice and an opportunity to bargain with the Union, the Department violated the following:

- By refusing to negotiate in good faith with the Union prior to implementing the new training requirement, and by instituting a program without Union notification or an opportunity to bargain, the Department committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5).
- Additionally, Article 2 of the Master Agreement requires that the Department comply with applicable federal statutes and regulations in the administration of matters covered by the Master Agreement. Therefore, in violating 5 U.S.C. § 7116, as set forth above, the Department also failed to comply with Article 2.
- Further, Article 3 encourages the parties to maintain a cooperative labor-management relationship that is based on mutual respect, open communication, consideration of each other’s views, and minimizing collective bargaining disputes. By failing to negotiate with the Union prior to implementing a mandatory training course, and with full knowledge of an arbitrator’s decision over the same topic that required the Department to first meet its bargaining 3 obligations, the Department renounced its commitments under Article 3 of the Master Agreement and necessitated further collective bargaining disputes.
- Finally, the Department violated Articles 47, 49 regarding its bargaining obligations and the rights of bargaining unit employees and Local 17 regarding

changes in conditions of employment and conducting a survey of bargaining unit employees without notification to the Union or advising employees that any survey is voluntary, anonymous and confidential.

- OPM's mass emails failure to comply with U.S.C. § 552a, 5 U.S.C. §553 or internal Privacy Impact Assessment for Government-Wide Email System (GWES) guidance.
- 38 CFR § 0.601: VA's Core Values are Integrity, Commitment, Advocacy, Respect, and Excellence ("I CARE")
- Any other relevant articles, laws, regulations, customs, and past practices not herein specified.

III. Statement of Remedy

The Union asks that, to remedy the above situation, the Department agree to the following:

- Advise the Local 17 bargaining unit employees that responding to the OPM email is/was voluntary;
- Cease and desist implementing any further surveys from OPM until providing notice to the Union;
- Send a letter of apology to all bargaining unit employees for Mr. Musk's campaign of intimidation and intentional infliction of emotional distress;
- Rescind any discipline proposed against Local 17 bargaining unit employees related to the OPM email;
- Return to the *status quo ante* until bargaining obligations are met;
- Fully comply with its contractual obligations under Articles 2, 3, 47, 49, and the Duration of Agreement clause of the Master Agreement and its statutory obligations under 5 U.S.C. §7116(a);
- Distribute an electronic notice posting to all bargaining unit employees concerning the Department's failure to provide notice to the Union and an opportunity to bargain regarding the OPM bullet points email in violation of the MCBA and federal law;
- Make-whole any bargaining unit employee adversely effected by the OPM, to include providing 2 hours of proration for any Local 17 bargaining unit employees on production standards and 2 hours of overtime for any Local 17 bargaining unit employees on leave or otherwise not on duty status on Monday February 24 (employees may submit for additional time if they spent more than two hours complying with the OPM email);
- Pay reasonable attorney's fees and,
- To agree to any and all other remedies appropriate in this matter.

The time frame for resolution of this matter is not waived until the matter is resolved or settled.

Douglas Massey