

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 06-029

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the Washington State Executive Ethics Board (Board) through Susan Harris, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On January 9, 2006, the Board received a Report of Whistleblower Investigation from the State Auditor's Office (SAO) which contained the Auditor's finding of reasonable cause to believe Withheld a Transportation Engineer III with the Washington State Department of Transportation (WSDOT), used state resources for non-work-related purposes.

1.2. A preliminary review of the Whistleblower Investigation was conducted by Board staff, and on March 10, 2006, the Board initiated a complaint based on the facts contained in the Whistleblower report.

1.3. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.4. [Withheld] understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.5. [Withheld] recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. [Withheld] violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.6. [Withheld] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this stipulation, the Board will release and discharge [Withheld] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Ms. [Withheld] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this Stipulation and Agreed Order.

1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [Withheld] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.9. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.10. If the Board rejects this Stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, Ms. [Withheld] waives any objection to participation at any subsequent hearing by any Board member to whom this Stipulation was presented for approval under WAC 292-100-090(2). Further, Ms. [Withheld] understands and agrees that, if this proposed Stipulation is rejected by Ms. [Withheld] with any applicable modification by the Board, this Stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, WSDOT employed [Withheld] as a Transportation Engineer III, with a working title of Northwest Region Traffic Design Team Leader.

2.2. On March 21, 2005, the State Auditor's Office (SAO) received a Whistleblower Complaint regarding [Withheld] use of state resources for personal benefit. During the ensuing investigation, the Auditor's Investigator found 665 emails sent from [Withheld] state computer to friends/partners outside of WSDOT during the period March 2002 to January 2005. Of the approximately 299 sample personal emails included in the SAO working papers, 273 were sent during the seven-month period between June 3, 2004 and January 31, 2005. Most of the emails were lengthy, ranging from a few paragraphs to several pages.

2.3. In addition to the emails, the SAO also found that Barnes accessed many non-work-related websites, including banking, retail and entertainment websites while at work; accessed her personal Yahoo! email account on numerous occasions during February-March 2005 from her state computer; and stored documents regarding home budgets, family projects, divorce, financial issues and personal letters, and 270 images, including pictures of family, friends, flowers, homes, and a variety of cartoons and one media file unrelated to WSDOT business, on her state computer.

2.4. Withheld completed an ethics self-study course on March 8, 2002, and again on March 26, 2005.

2.5. WSDOT held a personnel hearing with Withheld to address the findings from the SAO investigation. A pre-disciplinary hearing was held on January 12, 2006. During that meeting, Withheld acknowledged that she had misused state resources but explained that there were extraordinary circumstances that led to that misuse. Withheld separated from her partner of nine years in February 2004; they have five children, she lost her apartment and spent 18 months living with friends, and was in counseling. At times, her work computer was the only computer she had access to. Withheld did not deny the misuse of state resources and accepted the responsibility for the violations but asked that her job performance before her personal crisis occurred be considered when disciplinary action was contemplated.

2.6. Withheld estimated the amount of time she spent on personal email during the nine-month period of time considered in the investigation as 5-10% of her time. In January 2006, WSDOT Assistant Regional Administrator Dave McCormick informed Withheld that her salary would be reduced ten percent from \$5,044/month to \$4,570/month for three months, for a total loss of salary of \$1,422, but that the effective date of the reduction would be deferred for up to 12 months. McCormick cited Withheld admission to the violations, her remorse for the misuse and her cooperation during the investigation as reasons for deferring the discipline. If there were no further similar infractions during that time, that discipline would not be enforced. In January 2007, after

determining that no further similar infractions had occurred in the preceding 12 months, the proposed discipline was not enforced.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state property “under the officer’s or employee’s official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.”

3.4. [Withheld] used her state computer to create and send hundreds of personal emails; to access Internet sites of personal interest; to store documents and hundreds of pictures and other images unrelated to her work; and to access her personal Yahoo! email account. Based on Findings of Fact 2.1 through 2.6, [Withheld] used state resources in violation of RCW 42.52.160.

3.5. The Board is authorized to impose sanctions for violations of the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

II. AGGRAVATING & MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Aggravating factors include that [Withheld] as a team leader for WSDOT, had significant official, management or supervisory responsibility, and that she incurred no other sanctions as a result of the violations. It is a mitigating factor that Ms. [Withheld] cooperated fully with the State Auditor’s Office during its investigation and has admitted that her actions were a violation of public trust.

III. AGREED ORDER

Ms. [Withheld] will pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). The Board agrees to suspend one thousand dollars (\$1,000.00) of the civil penalty on the condition that Ms. [Withheld] complies with all terms and conditions of this Stipulation and Order. If Ms. [Withheld] fully pays the remaining amount of one thousand five hundred dollars (\$1,500.00) and commits no further violations of chapter 42.52 RCW within two calendar years of the date this order is accepted by the Board, Ms. [Withheld] will have fully satisfied her civil penalty obligations with regard to this matter and will be released from any obligation to pay the remaining suspended one thousand dollars (\$1,000.00) of civil penalty. Ms. [Withheld] will make monthly payments, payable to the Executive Ethics Board, of one hundred dollars (\$100.00) commencing thirty days from the date this order is accepted by the Board until the unsuspended portion of the penalty is paid. If Ms. [Withheld] violates the terms and conditions of this Stipulation or commits further violations of chapter 42.52 RCW, then Ms. [Withheld] will continue to make monthly payments, payable to the Executive Ethics Board, of one hundred dollars (\$100.00) until the full civil penalty in the amount of two thousand five hundred dollars (\$2,500.00) is paid in full.

CERTIFICATION

I, [Withheld] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

[Withheld]
[Redacted] 8-30/07
Date

Respondent

Stipulated to and presented by:
Susan Harris 9/4/07
Date

Susan Harris
Executive Director

IV. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

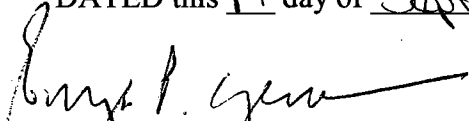
ACCEPTED in its entirety;

REJECTED in its entirety;

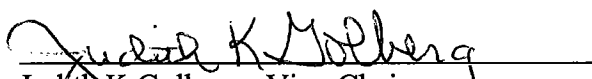
MODIFIED. This Stipulation will become the Order of the Board if the

Respondent approves* the following modification(s):

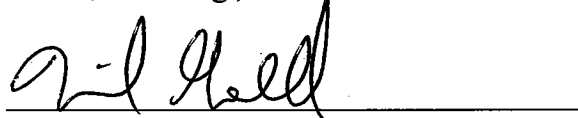
DATED this 14th day of Sept., 2007.



Evelyn P. Yenson, Chair




Judith K. Golberg, Vice-Chair

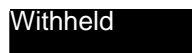


Neil Gorrell, Member



Linnaea Jablonski, Member

* I,  accept/do not accept (circle one) the proposed modification(s).

 Respondent _____ Date _____