

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 06-052

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 May 8, 2006, the Executive Ethics Board received a complaint alleging that Withheld an employee of the State of Washington, Seattle Community College District, sent e-mail to all faculty and staff at four campuses referencing her political campaign.

1.2. 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.

1.3. [Redacted] 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).

1.4. [Redacted] recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. [Redacted] 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.

1.5. [Redacted] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge [Redacted] 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. [Redacted] 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.

1.7. 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.

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

1.9. If the Board rejects this stipulation, or if [Withheld] does not accept the Board's proposed modifications(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 this proposed 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. At all times relevant to this matter, [Withheld] was employed as a full time faculty member with the Seattle Community College District. She also served as the Faculty Union President.

2.2. The computer utilized by Ms. [Withheld] relevant to this matter is owned by the Seattle Community Colleges Federation of Teachers Local 1789 (SCCFT), although it is connected to the College District email system. Ms. [Withheld] is authorized to use the computer for administration of the collective bargaining agreement and negotiations with the District during working hours, as a full time District employee.

2.3. Article 2.8 of the Collective Bargaining Agreement (CBA) allows the use of the college internal communications systems. Article 2.8 states:

The SCCFT shall have the right to use the District communication services and faculty mailboxes for communications to faculty members, including

mass distributions, provided that the material clearly indicates that the Union is the distributor of the material and the material is related to the administration of this agreement. Representatives of the SCCFT shall have the right to distribute materials to faculty members within the District. This right shall include, but not be limited to, access to faculty mailboxes.

2.4. Ms. [Withheld] is allowed released time from her college responsibilities to pursue union activities. Article 2.10 of the CBA states:

In recognition of the responsibilities of the SCCFT regarding faculty representation and matters related to the management of this Agreement, the District agrees that:

- a. during Fall, Winter and Spring Quarters, the SCCFT president will receive 100% released time;
- b. during the Summer Quarter, the SCCFT president will receive compensation at the rate of his/her daily pro-rated salary (based on 169 days) for the number of instructional days in summer quarter.
- c. At the request of the SCCFT, up to the equivalent of 1.33 FTEF annualized released time will be provided on an annual basis for the SCCFT campus presidents and the president for part-time faculty, to be paid by the SCCFT at replacement cost, provided that qualified replacements can be found and hired according to relevant language in Article 6.5 or Article 4.3 of the Agreement.

2.5. The union leases office space from the college that Ms. [Withheld] utilizes to pursue her union activities. Article 2.11 of the CBA states:

An office shall be provided for the SCCFT President at the District headquarters to assist in fulfilling the responsibilities set forth in Section 2.10 above. The SCCFT agrees to reimburse the District at the rate of \$10.00 per square foot per year.

2.6. On August 24, 2005, Ms. [Withheld] filed a Candidate Registration with the Public Disclosure Commission indicating her interest in pursuing a political campaign.

2.7. On May 4, 2006, Ms. [Withheld] sent an e-mail to the following Seattle Community College District email group titles: *Faculty FT North; Faculty FT South; Faculty FT SVI; Faculty PT Central; Faculty PT North; Faculty PT South; Faculty PT SVI* and *Faculty FT Central*. That email stated in part:

...As you can imagine, I have very mixed feelings – I believe I can serve you all and the colleges well as a State Representative and that is very exciting. I also have loved working directly for you as the Union President. I'm thrilled, I'm terrified, I'm sad too.

I hope you'll all be very active from now until September helping to send me to Olympia!

2.8. On June 16, 2006, Ms. [Withheld] sent an e-mail to *Faculty PT Central; Faculty PT North; Faculty PT South; Faculty PT SVI; Faculty FT Central; Faculty FT North; Faculty FT South* and *Faculty FT SVI* entitled *Good Bye!* The e-mail announced her last day as Faculty Union President. The e-mail also states in part: "It's been my privilege to serve you, and I know I can do more as a State Rep for you, for our colleges, our students, and our state."

2.9. On June 22, 2006, Ms. [Withheld] sent another e-mail to *Everyone Central; Everyone North; Everyone Siegal; Everyone South*, and *Everyone SVI* entitled *SCCFT news*. This e-mail stated, in part:

...
As of last Friday, I have stepped down as the President of the SCCFT to run for the State House of Representatives full time this Summer. It has been my honor and privilege to serve faculty and to work with the fine people of our district. I'll be back teaching at Central in the fall.

...
You can email me with personal business at [Withheld] or go to our website at [www.\[Withheld\].oWin.org](http://www.[Withheld].oWin.org).

2.10. The following documentation was found stored on the community college computer server file folders dedicated to Ms. [Withheld] for storage of her work-related documents:

- a. [Withheld] Locks Down Early Labor Council Support. King County Labor Council Solely Endorses [Withheld] for the 43rd State Legislative District Open House Seat. For Immediate Relates dated January 18, 2006.

- b. April 3, 2006 letter from [Withheld] entitled "Dear Sisters and Brothers." This document states in part: "As many of you know, I am running for the State House of Representatives in the 43rd District. From Seattle Central to the UW, to our Seattle public schools, the 43rd District is at the heart of the funding crisis in education. We've seen deterioration in our salaries, increases in tuition making our colleges less accessible, and a decrease in the proportion of state support for higher education. In the public K-12 schools – a similar story – Washington ranks 42nd in the nation for education spending. This is wrong, and I intend to go to Olympia to work for change. ..." I believe my skills and energy can serve you and the state well in Olympia. However, since we are running an intensive grass-roots campaign, the demands of campaigning, and (once I win) the legislature are too much for me to do a good job as your union president. ... I look forward to returning to teaching, and to serving you as a State Representative!"
- c. Flyer of the "official campaign kickoff to elect our [Withheld] as the next State Representative for the 43rd Legislative District ... and [Withheld] 45th Birthday". Scheduled for May 19th at Lincoln High School.

2.11. E-mails relating to Ms. [Withheld] campaign were located on the college computer server that stored Ms. [Withheld] e-mail folders. There are 97 e-mails that were exchanged containing comments regarding Ms. [Withheld] campaign. The majority of the e-mails were sent in response to the three e-mails generated by Ms. [Withheld] in which she references her campaign. Ms. [Withheld] forwarded some of the e-mails to her home e-mail address.

2.12. On September 14, 2006, *The Seattle Times* issued an article entitled *Election 2006 District 43's Democratic hopefuls are 6 of a kind* by Jim Brunner. The article stated that [Withheld] made efforts to rally her fellow employees leading to ethics complaints. The article notes that in one e-mail she said she hoped fellow employees would be active to send her to Olympia. Ms. [Withheld] said that in retrospect she should have been more careful about what she wrote.

2.13. On July 7, 2006, Ms. [Withheld] indicated to Sue Jones, Ethics Investigator, that she had been involved in preparing college policies and was careful not to use the state computer for her political campaign.

2.14. Seattle Community College District Procedure No. 259.10-14 entitled SCCD Electronic Information Services states in part:

- **259.10.01 Electronic Information Resources (EIRs).** All electronic hardware, software and associated data that support or include the following: administrative information systems; desktop computing; library automation; multi-media, data, video and voice networks, including Washington State Department of Information Services (DIS) SCAN network; phone terminals; voice mail; electronic mail (E-mail); Internet access; scanners; electronic publications, including video; or any similar electronic based medium. The use of these resources is a privilege, not a right. It is the user's responsibility to use these resources in a manner that is efficient, ethical and legal.

...

- **259.20.01** SCCD's EIRs are to be used for legitimate District business, and for facilitating the exchange of information to further the District's educational, research, administrative and community service purposes. Such uses shall at all times be consistent with state law and the stated purposes and objectives of the District. In accordance with RCW 42.52.160, no employee may use District EIRs that are in his/her custody or control for the private benefit or gain of that employee or of any other person, unless such use (a) is part of the employee's official duties or (b) is consistent with applicable ethics rules. These rules include, without limitation, WAC 292-110-010, Use of State Resources, which can be viewed at <http://ethics.wa.gov/rules.html>.

...

- **259.20.12** EIRs of the District shall not be used for transmission or storage of information that constitutes or promotes:

...

- e. Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);

...

- g. Solicitation of political financial contributions;

- h. Personal business interests; or

i. Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and ...

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. State employees are prohibited from using state resources for the purpose of assisting a campaign for election. RCW 42.52.180(1) relating to *Use of Public Resources for Political Campaigns* states:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

3.5. "Facilities of an agency" include the state owned and operated e-mail system and the agency computers and other equipment upon which the email system operates. RCW 42.52.180(1); WAC 292-110-030(1).

3.6. "WAC 292-110-010(3) allows state officers to make occasional but limited personal use of state resources in certain limited circumstances. WAC 292-110-010(4)(c), however, prohibits even an "occasional and limited" use of state resources if that use is for "any campaign or political" purpose.

3.7. Based on Findings of Fact 2.1 through 2.14, [Withheld] used state resources in violation of RCW 42.52.160, RCW 42.52.180, and WAC 292-110-010(4).


3.8. In determining the appropriateness of the civil penalty, Board staff reviewed criteria in WAC 292-120-030. In the case at hand: (1) the violations were continuing in nature; (2) the violation tended to significantly reduced the public respect for, and the confidence in, state government employees, and (3) the violations involved personal gain or special privilege to Ms. [Withheld]

Section 4: AGREED ORDER

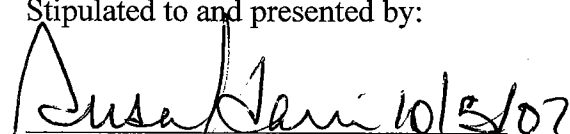
4.1. Ms. [Withheld] will pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500). The civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board unless other acceptable arrangements are made through the Executive Director.

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] Date 10/11/07 for
Respondent

Stipulated to and presented by:


Susan Harris Date 10/15/07
Executive Director

II. 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 12th day of October, 2007.

Evelyn P. Jensen
Evelyn Jensen, Chair

Judith Golberg
Judith Golberg, Vice Chair

Neil Gorrell
Neil Gorrell, Member

Linnæa Jablonski
Linnæa Jablonski, Member

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

Withheld Respondent Date