

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 2012-035

STIPULATED FACTS,
CONCLUSIONS AND ORDER

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 MELANIE DE LEON, 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 July 13, 2012, the Executive Ethics Board (Board) received a referral from the State Auditors Office (SAO) alleging that Withheld a Fire Alarm Control Technician Lead at the University of Washington, may have violated one or more sections of the Ethics in Public Service Act. The Board found reasonable cause on May 10, 2013.

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

1.4. Mr. [Withheld] recognizes that the evidence available to the Board Staff is such that the Board may conclude he 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. [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.

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

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Mr. [Withheld] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. Furthermore, any and all stipulations by Mr. [Withheld] are for the sole purpose of settling this matter and are not admissible or stipulated to for any other purpose than the ethics board proceedings.

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 modification(s), if any, Mr. [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, [Withheld] understands and agrees that if this proposed Stipulation, with any applicable modification by the Board, is rejected by him, 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. [Withheld] is a Fire Alarm Control Technician Lead for the Fire Alarm and Signal Shop at the University of Washington (UW) and was so for all times pertinent to this

investigation. During the period under investigation, Mr. [Witheld] supervised five Fire Control Technicians.

2.2. As a Lead, Mr. [Witheld] general duties included leading and working with Fire Control Technicians to perform journey-level work in the inspection, testing servicing, programming and maintenance of the complex buildings Fire Alarm Systems ensuring regulatory compliance. He was to assign work to personnel, inspect work for quality and completeness, keep detailed records and create work assignments for the regulatory preventive maintenance program of the Seattle Campus Fire Alarm Systems.

2.3. On April 19, 2011, the SAO received an assertion that Mr. [Witheld] used state resources for personal purposes and that their supervisor had inappropriately approved overtime for them.

2.4. The Fire Alarm Control Division (Shop 24) is responsible for monitoring and routinely testing the fire alarms and fire alarm control panels in UW's approximate 500 buildings. UW has nine fire alarm technician positions and two technician lead positions.

2.5. The Fire Control Leads and Technicians fall under the Collective Bargaining Agreement (CBA) between the Board of Regents of the University of Washington and the Washington Federation of State Employees. Under this CBA, overtime work must be approved in advance by the Employer. According to UW representatives, overtime is usually approved verbally by the Supervisor/Manager in advance, with follow-up completion of the authorization after the fact.

2.6. Per Mr. [Witheld] his work schedule is 6:00 am – 2:30 pm, Monday through Friday. He does not work a flexible schedule. Mr. [Witheld] work crew works the same schedule. Shop 24 does not have a night crew, nor any reason to be in the shop after the normally scheduled work

hours unless there was an emergency situation requiring a shop employee to be called back to handle.

2.7. Mr. [Withheld] has his own private office with a computer. Technicians do not use Mr. [Withheld] computer, but computers located on the shop floor. Mr. [Withheld] spent the majority of his time in the office, not out working with the technicians at the actual work site.

2.8. The SAO reviewed [Withheld] computer use. On June 29 and 30, 2011, SAO auditors imaged the hard drive in Mr. [Withheld] computer and made a bit stream image of the drive. After reviewing the contents of the hard drives, the SAO concluded that there was evidence to indicate the Mr. [Withheld] used his state computer for non-work related activity.

2.9. The SAO audit contained a report entitled, "HTTP(S) Tagged Activity Sorted by Date." The Board investigator reviewed activity between April 21, 2010 and June 23, 2011—a 14-month period. The top sites Mr. [Withheld] visited during this 14-month period included social networking sites, sports, music and movies, vacations and celebrity news.

2.10. The website activity report identified 432 different sites Mr. [Withheld] had visited at least once. Of these 432, Mr. [Withheld] visited Bing.com or .net sites over 122 times; Hotmail over 68 times; Foxsports 28 times; Match.com 5 times and Wendy's School of Dance 4 times. He surfed ESPN websites 471 times an average of 29 times per month. All toll, Mr. [Withheld] visited non-work related sites 1060 times, or 76 times a month, every month. The internet activity report indicates that Mr. [Withheld] used his computer for non-work related matters at all times of the day and night.

2.11. Mr. [Withheld] spent at least 28 hours visiting sites on his state computer that were not job-related. The UW paid Mr. [Withheld] overtime on the days where he was using the state computer for non-work related matters.

2.12. Mr. [Withheld] is salaried, yet overtime eligible. He earns a monthly salary of \$5,461 or \$65,532 annually. His overtime rate is \$47.25 per hour.

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. [Withheld] stipulations to the following conclusions of law are for the sole purpose of reaching settlement in this matter and are limited to these proceedings. These stipulations and conclusions are not admissible for any other purpose or proceedings.

3.4. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for personal gain or benefit. RCW 42.52.160(1), Use of persons, money, or property for private gain, states:

No state officer or state employee may employ or use any person, money, or 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.

3.5. Based upon the facts as stipulated above, Mr. [Withheld] recognizes that if the facts regarding his use of state resources were to be presented at hearing before the Board, the Board would likely conclude that he violated the state ethics law, even if unintentionally. Additionally, Mr. [Withheld] recognizes that if the Board concluded that he had violated the state ethics law, the Board would impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5000, or the greater of three times the economic value of anything received or sought in violation of 42.52 RCW, for each violation found. Finally, he recognizes that the Board would also likely order the payment of restitution or costs.

3.6. 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Aggravating factors include: the violations were continuing in nature and involved personal gain. It is also an aggravating factor that Mr. **Withheld** had significant official, management, or supervisory responsibility.

Section 5: AGREED ORDER

5.1 **Withheld** will pay a civil penalty in the amount of five thousand dollars (\$5,000.00) and restitution to the University of Washington in the amount of one thousand three hundred twenty-three dollars (\$1, 323.00). The Board agrees to suspend \$2,500 of the civil penalty on the condition that **Withheld** complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$2,500 is payable in full within forty-five (45) days after this stipulation is accepted by the Board or as agreed to by the parties. Mr. **Withheld** shall pay the restitution directly to the University of Washington.

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 this Stipulation 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 this Stipulation and Agreed Order, I understand that I will receive a signed copy.

Withheld



10/19/2013
Date

Respondent

Stipulated to and presented by:

Melanie de Leon 10/24/13


Melanie de Leon Date
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):

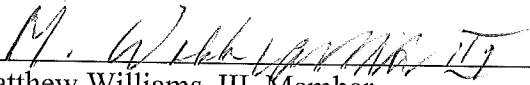
DATED this 8th day of November 2013.



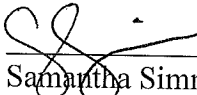
Lisa Marsh, Chair



Anna Dudek Ross, Vice-Chair



Matthew Williams, III, Member



Samantha Simmons, Member

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

Withheld _____
Respondent Date