

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent,

No. 2012-075

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 MELANIE DeLEON, 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 December 12, 2012, the Executive Ethics Board (Board) received a referral from Highline Community College alleging that Withheld Custodial Supervisor, Highline Community College (HCC) may have violated the Ethics in Public Service Act when he used state resources to support his outside custodial business, A & A Janitorial Services. The Board found Reasonable Cause on July 12, 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 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. 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 his 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions 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 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 [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 modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and [Withheld] waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [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. [Withheld] was hired by HCC in July of 2009 as the Custodial Supervisor. Mr. [Withheld] was in that position at all times pertinent to this investigation.

2.2. Employee 1 worked at HCC for the last three years and during that time Mr. [Withheld] was his supervisor. During the time, he worked for Mr. [Withheld] outside janitorial business four or five times. Mr. [Withheld] paid him \$10 per hour and each job was about four to five hours long.

2.3. Employee 1 saw Mr. [Withheld] take supplies and equipment from HCC to use for his outside business. He and other employees would help Mr. [Withheld] load up his truck on Friday nights with the HCC equipment.

2.4. Employee 1 was directed by Mr. [Withheld] to load a portable basketball hoop and its water-filled base into Mr. [Withheld] personal truck. Employee 1 and another HCC employee (Employee 7) assisted, using the agency's fork lift to load it into truck. The basketball hoop is still at Mr. [Withheld] house in the front yard. Employee 7 confirmed that he assisted in loading the basketball hoop into Mr. [Withheld] truck

2.5. Employee 1 documented actions taken by Mr. [Withheld]. Some examples of these actions are:

- In 2011, Mr. [Withheld] took a frame of a basketball hoop that was not being used at HCC and transported it to his home for his child to use. It is still there.
- In November of 2011, Mr. [Withheld] took staging equipment and risers to use for an event at the Catholic Church that he was hired to clean. This happened at least three times over the past two years. Mr. [Withheld] had his subordinates at HCC help him load and unload the equipment. It was not until one of his subordinates inquired about renting or checking-out the equipment for themselves that they learned that it was property of the college and could not be used for any other purpose.
- In July of 2010, Mr. [Withheld] took one rotary machine, one vacuum, one carpet shampoo machine, and various chemical/equipment (wax, toilet paper, paper towels, cleaning supplies/chemical, etc.) to do a job he was hired for at a building located in downtown Seattle. He used these state resources to clean the entire building.
- In May of 2010, Mr. [Withheld] took two rotary machines, two wet vacuums, two shampoo machines, and various chemicals/equipment (wax, toilet paper, paper towels, etc.) to scrub and waxed the floors of a school near the Catholic Church in Seattle.
- In January of 2011, Mr. [Withheld] took one rotary machine, one wet vacuum, and various chemicals to scrub the bathrooms at the Catholic Church in Seattle.

2.6. Employee 2 worked for HCC during Mr. [Withheld] tenure as the lead custodian. Employee 2 was aware of Mr. [Withheld] outside business and worked for him two or three times cleaning at the Catholic Church, making about \$80 to \$100 each time.

2.7. Employee 2 helped Mr. [Withheld] load a table and stage onto Mr. [Withheld] truck. Employee 2 would use college equipment when he would help Mr. [Withheld] at outside jobs.

2.8. Mr. [Withheld] was Employee 3's direct supervisor and he had worked for Mr. [Withheld] for almost three years. Employee 3 worked for Mr. [Withheld] outside business one time for five hours and was paid \$50. The equipment and supplies that he used for Mr. [Withheld] private business were the same as those that he used at the college.

2.9. On November 18, 2011, Employee 3 and other employees assisted Mr. [Withheld] with unloading a large rental truck at the facilities building at HCC. At that time, he became aware that the stage he unloaded had been used for an event off campus at Saint Lourdes Catholic Church in Seattle. Employee 3 was told by his coworkers that Mr. [Withheld] used the stage on two other occasions.

2.10. Employee 4 worked at HCC under Mr. [Withheld] for about two years. He also worked for Mr. [Withheld] at his outside business on two occasions, both on Saturdays. Employee 4 worked six hours one Saturday earning \$60 and five and a half hours on the second Saturday, earning \$55. He never saw Mr. [Withheld] remove supplies or equipment from the college to use for his personal business.

2.11 Employee 5 worked at the college for about a year and a half and Mr. [Withheld] was her supervisor for that time. She worked one Saturday for Mr. [Withheld] and was paid \$50 in cash. At the time she worked for Mr. [Withheld] she noticed that the supplies she was using to clean the church were the same supplies that she used at the college.

2.12 Mr. [Withheld] supervised Employee 6 at HCC for 3 years. Employee 6 also worked for Mr. [Withheld] outside business two times. He was paid \$10 per hour. He helped Mr. [Withheld] and other employees remove stage equipment from a truck. He stated that while he had

heard from other employees that Mr. [Withheld] was using state supplies and equipment for his outside business, he had not seen it firsthand.

2.13 On October 8, 2012, Mr. [Withheld] resigned from his position at HCC.

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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (Conflict of Interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

3.4. Based on Findings of Fact 2.1 through 2.12, [Withheld] conducted activities incompatible with his public duty in violation of RCW42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.6. Based on Findings of Fact 2.1 through 2.12, [Withheld] secured special privileges in violation of RCW42.52.070.

3.7. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) 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.

3.8. Based on Findings of Fact 2.1 through 2.12, [Withheld] used state resources for his personal benefit.

3.9. The Board is authorized to impose sanctions for violations to 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 Board reviewed the criteria in WAC 292-120-030. Aggravating factors are that Mr. [Withheld] was in a supervisory position at HCC, that these types of violations significantly reduce the public respect and confidence in state government employees and that Mr. [Withheld] benefitted financially because of these violations. It is a mitigating factor that Mr. [Withheld] resigned from state service.

Section 5: AGREED ORDER

5.1 For the violations of RCW 42.52 mentioned above, [Withheld] will pay a civil penalty in the amount of, eight thousand dollars (\$8,000).

5.2 The civil penalty of \$8,000 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. 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

9/24/13
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 10/2/13

Melanie deLeon
Executive Director

Date

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 8th day of November, 2013

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

Matthew Williams, III
Matthew Williams, III, Member

Samantha Simmons
Samantha Simmons, Member

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

Withheld Respondent Date