

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 13-031

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] 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 October 2, 2013, the Executive Ethics Board (Board) received a complaint against [REDACTED] a Relief Terminal Supervisor for the Washington State Ferries (WSF) alleging that she may have violated one or more sections of the Ethics in Public Service Act.

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 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. [REDACTED] 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 [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. [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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] 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. [REDACTED] was a Relief Terminal Supervisor for the Washington State Ferries (WSF) for the Washington State Department of Transportation (WSDOT) for all time pertinent to this investigation.

2.2. [REDACTED] is the Secretary of Ferry Agents, Supervisors and Project Administrator's Association (FASPAA), which operates under a Collective Bargaining Agreement ("the Agreement") between FASPAA and the WSF that expires on June 30, 2015.

2.3. The Agreement does not set forth any language that allows the use of state resources to complete FASPAA internal business with the exception of contract negotiation or the conducting the grievance process.

2.4. WSDOT has two policies regarding ethics and/or the use of technology. WSDOT Policy 1004 – Ethics in public Service, states in part, that ethics in public service is a personal

responsibility of each WSDOT employee, and is governed by RCW 42.52. The policy does allow the use of a limited amount of state resources to support specific outside groups; WSDOT Memorial Foundation, Fund raising for charitable Organizations, Toastmasters International Meetings, and the WSDOT wellness program. All other uses of state resources to support outside groups is prohibited under RCW42.52.

2.5. WSDOT Policy 1021 – Use of Electronic Communication (C3) Prohibited Use Established states, No support, promotion, or solicitation for any outside business interest, organization, charity, or group unless provided for by law or authorized by the agency head or designee.

2.6. [REDACTED] used the state email system to conduct FASPAA internal business.

Some examples are shown below:

- On Saturday, June 19, 2013, [REDACTED] sent an email with attachment to Dennis Duff, FASPAA's Executive Leadership. [REDACTED] was asking Mr. Duff review the minutes of their last meeting. She indicates in this email that she is aware that she should not be using the state email system to conduct FASPAA business.
- On Saturday, August 24, 2013, [REDACTED] received an email from Sue Lowery, (FASPAA Secretary) regarding editing of the FASPAA meeting minutes for August 20 meeting. The meeting minutes were attached.
- On Sunday, July 7, 2013, [REDACTED] sent an email to Debbie Smith, FASPAA member regarding Ms. Smith's new address.

2.7. Several word document related to FASPAA were located on [REDACTED] computer hard drive and the WSDOT servers, to include FASPAA meeting minutes, FASPAA list of officers, and FASPAA membership list.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 and WAC 292-110-010(5)(d) from using state resources for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private business, or a political party, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee.

3.4. RCW 42.52.560 states:

(1) Nothing in this chapter prohibits a state employee from distributing communications from an employee organization or charitable organization to other state employees if the communications do not support or oppose a ballot proposition or candidate for federal, state, or local public office. Nothing in this section shall be construed to authorize any lobbying activity with public funds beyond the activity permitted by RCW 42.17A.635. (Emphasis added)

(2) "Employee organization," for purposes of this section, means any organization, union, or association in which employees participate and that exists for the purpose of collective bargaining with employers or for the purpose of opposing collective bargaining or certification of a union.

3.5. The Ethics Board issued Interpretive Statement 07-01 on September 8, 2006 defining the term, "Distribute" for the purpose of RCW 42.52.560. The Board stated that this term means:

to provide or disseminate information to a group of others. Nothing in this section permits the use of state resources for the purpose of composing, editing, copying or for any purpose other than distributing. Methods of distribution include, but are not limited to: electronic mail, internal mail, facsimile, hand-to-hand exchange, placing information on desks or workstations and posting on designated and approved bulletin boards. (Emphasis added)

3.5. Based on Findings of Fact 2.3 through 2.7, [REDACTED] used state resources in violation of RCW 42.52.160 and WAC 292-110-010(5)(b) and not consistent with the use

permitted under RCW 42.52.560. The de minimis use rules under WAC 292-110-010(2)(d) do not apply to uses prohibited under WAC 292-110-010(5)(b).

3.7. 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.

Section 5: AGREED ORDER

██████████ concedes that if the case went to a hearing, the Board could find that her use of state resources for union matters violated RCW 42.25.160, WAC 292-110-010(5)(b) and was not consistent with the provisions of RCW 42.52.560. The parties agree that ██████████ will accept a letter of instruction from the Board as the appropriate and sole action to be taken by the Board. The parties further agree that no civil penalties, damages, costs or other monetary or non-monetary sanctions will be imposed or sought by the Board against ██████████ stemming from the complaint for case 2013-031.

CERTIFICATION

I, [REDACTED] 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.

[REDACTED]

12-30-13

Respondent

Stipulated to and presented by:

Melanie deLeon 1-6-14

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

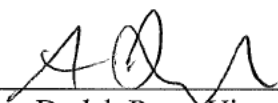
✓ ACCEPTED in its entirety;
 REJECTED in its entirety;
 MODIFIED. This Stipulation will become the Order of the Board if the

Respondent approves* the following modification(s):

DATED this 10Th day of January 2014.



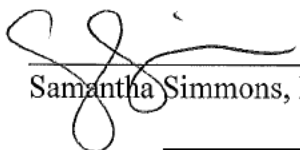
Lisa Marsh, Chair




Anna Dudek Ross, Vice-Chair


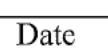


Matthew Williams III, Member



Samantha Simmons, Member

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

 Respondent  Date