

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2017-022

4 **FINAL ORDER**

5 Respondent
6

7 **I. PROCEDURAL HISTORY**

8
9 On September 8, 2017, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, [REDACTED], violated the Ethics in Public
11 Service Act while employed as an HVAC supervisor at Community Colleges of Spokane
12 (CCS). Notice of the Reasonable Cause Determination and the right to request a hearing was
13 served upon [REDACTED] by regular mail and certified mail on September 11, 2017. Mr.
14 [REDACTED] failed to respond to the Reasonable Cause Determination within 30 days as required
15 by WAC 292-100-060(2).

16 The Board entered an Order of Default on November 17, 2017. On November 17, 2017,
17 Board staff provided [REDACTED] with notice of the Board's Order of Default by regular and
18 certified mail.

19 Pursuant to WAC 292-100-060(4) [REDACTED] was allowed 10 days to request
20 vacation of the Order of Default. [REDACTED] has not moved to vacate the order entered on
21 November 17, 2017.

22 **II. FINDINGS OF FACT**

23 1. [REDACTED] was hired as an HVAC Supervisor in the Facilities Department at
24 CCS in December 2007 and held that position until September 2015, when he was terminated
25 following the investigation into his individual purchases using the CCS Purchase card (P-
26 card).

1 2. The Facilities Department at CCS typically employed six employees. As the
2 HVAC Supervisor, [REDACTED] was responsible for overseeing the division's employees and
3 project work performed. The HVAC Supervisor and the five HVAC technicians each had a P-
4 card giving them authority to purchase supplies and parts as needed for assigned projects. Mr.
5 [REDACTED] reviewed and approved technician purchases and the Facilities Director monitored
6 purchases made by [REDACTED].

7 3. In October 2014, John Gillette (Mr. Gillette) became the Facilities Director
8 and the division established a more detailed review over facility operations, including review
9 of HVAC purchases.

10 4. As part of their tracking system, the Facilities Department uses a log to track
11 daily purchases. The purchaser briefly describes the item purchased and from which vendor
12 and then attaches receipts. Mr. Gillette routinely views the log and then checks corresponding
13 receipts for more purchase details since one receipt may include multiple items.

14 5. In July 2015, Mr. Gillette identified purchasing activity on [REDACTED] P-
15 card that appeared to be personal in nature, specifically motor oil purchased at Walmart in
16 June 2015. Motor oil is not used in HVAC operations due to additives and detergents. Mr.
17 Gillette told Board staff that purchases from Walmart are a red flag since Walmart is not a
18 contracted vendor.

19 6. [REDACTED] had written in the tracking log that he had purchased
20 "compressor" oil from Walmart on June 10, 2015 at a cost of \$62.35. Mr. Gillette checked the
21 receipt and discovered the purchase was assigned to work order #159024 on June 8, 2015,
22 however, that work order had been closed on June 2, 2015. Additionally, when [REDACTED]
23 added the oil to the closed work order rather than signing his name, he indicated "Paul N" had
24 made the purchase.
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26

1 7. Mr. Gillette told Board staff that Paul N. is a plumber who performed some
2 prior work on the job assignment. Mr. Gillette obtained the SKU number from the receipt,
3 went to Walmart and confirmed the oil purchased by [REDACTED] was motor oil.
4

5 8. In the process of reviewing additional receipts, he found, among other things,
6 numerous purchases made by [REDACTED] assigned to previously closed work orders, and
7 purchases [REDACTED] made on days when he was out sick or on vacation.

8 9. In August 2015, Mr. Gillette met with Gary Nilsson (Mr. Nilsson), Human
9 Resources Director, to discuss some of the charges involving [REDACTED] P-card and to
10 conduct a further investigation.

11 10. On August 13, 2015, Mr. Gillette and Mr. Nilsson met with [REDACTED] to
12 discuss several purchases. When asked about some of the purchases, [REDACTED] told them
13 he had nothing to say. After that meeting, he was placed on home assignment pending further
14 investigation.
15

16 11. Shortly after his home assignment began, [REDACTED] sent a letter of
17 resignation to Mr. Gillette. Mr. Gillette said he refused the resignation and [REDACTED] was
18 terminated from the college in September of 2015. [REDACTED] did not respond to multiple
19 requests by the SAO investigator during the SAO investigation.
20

21 12. During the internal investigation conducted by CCS, one of the Maintenance
22 Mechanics, Matt Bayley (Mr. Bayley), was assigned to assist due to his knowledge of the
23 department's work orders and equipment the department used. He reviewed purchases to
24 determine if expenditures matched with work orders or equipment that the department used.
25
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1 For the purchases reviewed and determined not to be for college use, the following criteria
2 were used:

- 3 • The item(s) purchased did not match equipment or work orders assigned to the
4 purchase.
- 5 • The item(s) were purchased after the work order was closed.
- 6 • The item(s) purchased were items that CCS used, but could not be found nor were
7 they installed on work projects.
- 8 • The item(s) purchased were not materials or parts that CCS used, or were not used
9 in the HVAC department. Examples were wood, non-industrial or non-electrical
10 items.
- 11 • The item(s) were purchased from a vendor CCS does not use.
- 12 • [REDACTED] purchased the item on a day when he was not at work.

13 13. The review also included the purchase activities of technicians working under

14 [REDACTED]. Since each technician had their own P-card, they would only need to have Mr.
15 [REDACTED] make purchases if they exceeded their individual card limits.

16 14. Board staff learned that in his supervisor position, [REDACTED] rarely left the
17 office and did not work beyond his normal eight hours, so purchases made outside of his work
18 period were of particular concern. [REDACTED] was a classified employee, so any overtime
19 or work performed outside of his normal shift would require prior approval by the Facilities
20 Director and there was none.

21 15. The investigation by CCS focused on the period of July 2009 to June 2015¹.
22 Initially, CCS believed [REDACTED] made unauthorized purchases totaling more than
23 \$50,000. As the investigation continued and HVAC technicians were interviewed, some
24 purchases were accounted for and some losses could not conclusively be assigned to Mr.

25 ¹ The complaint identified purchases by [REDACTED] from 2009-2015 however, pursuant to
26 RCW 42.52.540, any action taken by the Board must be within five years of the date of the violation.
Accordingly, the allegations regarding purchases prior to 2012 were not included in this investigative
report.

1 [REDACTED] Based on this information, CCS identified 174 invoices from [REDACTED] that
2 were questionable.

3 16. Once CCS revised the loss figures, the losses were estimated at \$23,400 with an
4 additional \$9,183 in questionable purchases. Examples include:

- 5 • \$2,147 in HVAC parts and supplies purchased by [REDACTED] that were applied to
6 facilities project work orders that were already closed or considered complete.
- 7 • \$2,490 in HVAC parts and supply purchases made when [REDACTED] was not present
8 at work, either calling in sick or taking vacation time.
- 9 • \$4,850 in HVAC software related purchases made without authorization of the IT
10 Department, where [REDACTED] initiated the purchases and personally received the
11 software license information. During the ongoing audit, some of this software was
12 accounted for and had been installed on [REDACTED] college laptop or another
13 employee's computer.

14 17. Both the CCS internal investigation and the SAO spent time evaluating Mr.
15 [REDACTED] software purchases made outside of the IT Department. The software was HVAC
16 related software called LonWorks. The following software purchases by [REDACTED] were
17 reviewed:

- 18 • LonWorks software (Echelon Store, \$1,675) purchased on February 1, 2013. This
19 purchase was considered suspicious because IT handled a purchase request from Mr.
20 [REDACTED] for the same software on April 6, 2014. LonWorks software was found
21 installed on [REDACTED] college issued laptop, however; it was not installed until
22 May 4, 2014. It is likely the second purchase of the software by IT on April 4th was the
23 software installed on his computer. A second version of the software was not located
24 during the audit.
- 25 • LonWorks software/add-on (Echelon Store, \$1,136) purchased March 20, 2013 was not
26 located during the audit.
- The IT Department performed a search of their network in January 2017 and found
only one copy of LonMark software installed on one HVAC technician's computer.
LonMark is only a portion of the LonWork software suite.
- The number of software licenses purchased could not be accounted for on other staff

1 computers, which left the quantity of software licenses purchased by [REDACTED]
2 highly unusual.

3 18. Purchases made by [REDACTED] were considered questionable because the
4 normal process was for technicians to purchase parts and supplies themselves as needed for
5 assigned projects. Based on this expectation, [REDACTED] P-card should have had very
6 limited activity. Most of his purchases were for HVAC related items.

7 19. The SAO investigation determined that due to some internal control
8 weaknesses, they were unable to assign all of the confirmed losses identified by CCS to Mr.
9 [REDACTED]. The SAO considered all of the identified purchases made by [REDACTED]
10 questionable losses. Some control weaknesses identified were:
11

- 12 • HVAC related items purchased years ago that were once listed as being in the “shop”
13 per the original invoice, may have gone missing, but responsibility could not be clearly
14 assigned to [REDACTED] just because he was identified as the purchaser.
- 15 • Access to the shop was not restricted to HVAC employees and inventory of shop items
16 was not consistently maintained.
- 17 • Since most of the purchased items were HVAC related and occurred several years
18 earlier, it was difficult to determine if the item was not used or needed.
- 19 • [REDACTED] had purchasing authority up to \$3,000; all of his purchases were within
20 his authority.

21 20. Between 2012 and 2015, [REDACTED] made purchases totaling \$1,340.19 and
22 assigned them to a work orders that were closed or considered complete.

DATE	VENDOR	AMOUNT
6/10/2015	Walmart (Motor oil)	\$ 62.35
10/8/2014	Johnstone Supply	\$18.28
7/23/2014	Ace Hardware	\$15.96
7/14/2014	Lowe's	\$28.45
7/11/2014	Onset	\$201.00
7/ 14/2013	Sturm Heating Inc.	\$136.84

6/14/13	Thrift Supply	\$24.75
6/4/2013	NAPA	\$35.52
5/6/2013	Grainger	\$113.24
4/29/2013	Johnstone Supply	\$30.09
4/18/2013	Grainger	\$286.41
3/12/2013	Home Depot	\$67.91
10/26/2012	Lowe's	\$18.56
10/19/2012	Johnstone Supply	\$43.64
10/17/2012	House of Hose	\$257.19

21. The CCS internal investigation determined that [REDACTED] used his P-card to make several purchases between 2012 and 2014 on days when he was out sick or vacation leave. [REDACTED] would have no reason to purchase HVAC supplies while not at work. Board staff was able to confirm [REDACTED] made at least three purchases while on sick leave totaling \$613.60 between 2012 and 2014.

Purchase Date	Vendor	Cost	Leave Status
4/22/2013	Grainger	\$348.28	8 hours Sick leave
5/16/2013	Amazon	\$42.99	16 Hours Sick leave
10/13/2014	Johnstone Supply	\$222.33	8 Hours Sick

22. During the SAO investigation, several HVAC employees were interviewed. Employee #1 told investigators his P-card spending limit is \$3,000 and he handles purchases for jobs he is assigned. He indicated that [REDACTED] never handled any purchases for him. He reviewed two purchases that [REDACTED] made at Johnstone Supply for \$721.53 and \$714.87. He confirmed both purchases were HVAC related, but said he would not have expected [REDACTED] to handle the purchases since both were within the tech's spending authority.

1 23. Employee #2 also said he had some concerns about [REDACTED] activity.
2 He had gone to one of their commonly used vendors (Grainger) to pick up a part and was asked
3 by the manager if he was there to pick up parts ordered by [REDACTED]. He said no, but
4 inquired what the parts were. The parts described were parts the individual technicians would
5 have purchased for their particular work projects and would not have needed [REDACTED] to
6 purchase them.
7

8 24. Employee #2 told investigators he was not aware of any outside employment
9 [REDACTED] had. He said [REDACTED] had a habit of disappearing during the workday and
10 staff could not reach him. According to Employee #2, this became progressively worse during
11 the last three years of his employment when [REDACTED] was gone 4-5 hours a day
12

13 25. Employee #3 told investigators that [REDACTED] stayed in his office about
14 95% of the time and rarely went out on jobsites to provide guidance to technicians. He said it
15 would not be accurate to see [REDACTED] listed on a work order, as having been involved
16 with repairs or purchasing items needed for the project since that was not his role.
17

18 26. Mr. Gillette told Board staff it made no sense for [REDACTED] to be ordering
19 parts and supplies for technicians performing the work, because they had purchase authority.
20

21 27. When reviewing [REDACTED] purchase activity, Board staff noted that other
22 than the Walmart oil purchase in June 2015, [REDACTED] had only one other questionable
23 purchase since November 2014. The bulk of his questionable purchases by [REDACTED]
24 occurred prior to Mr. Gillette being hired.
25

26 28. Mr. Gillette said the technicians and [REDACTED] were aware of the closer
purchase scrutiny, because he was requesting additional information from them on any

1 purchases he was unclear about. He believed this closer scrutiny correlated with Mr.

2 [REDACTED] reduction in unauthorized purchases between November 2014 and June 2015. Mr.
3 Gillette said prior to his hire, the District Director of Facilities was only able to fill in on a part
4 time basis for only a couple of hours a day so oversight may have been lacking.

5
6 30. In addition to closer review of purchases, Mr. Gillette put an emphasis on
7 reviewing work orders and closing them. He had concerns about the extremely high number of
8 open HVAC work orders, more than 200 at the time. Currently, they only have approximately
9 20-30 open work orders. [REDACTED] had been responsible for closing work orders. Mr.
10 Gillette believes that keeping work orders open provided [REDACTED] the ability to make
11 unauthorized purchases, and then assign that purchase to a work order that might closely
12 match, to prevent discovery.

13
14 31. Mr. Gillette told Board staff that while most of [REDACTED] purchases were
15 HVAC related, some were obviously not. He said [REDACTED] had a woodworking hobby
16 and some of the items he had purchased were wood products such as finished maple and wood
17 sandpaper. He also purchased a number of small electronic parts unrelated to HVAC.

18
19 32. [REDACTED] did not respond to Board staff's attempts to contact him during
20 the investigation.

21 III. CONCLUSIONS OF LAW

22 1. RCW 42.52.020 – Activities Incompatible with public duties states:

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

1
2 RCW 42.52.070- Special privileges states:

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

8 RCW 42.52.160 – Use of persons, money or property for private
9 gain states:

10 No state officer or state employee may employ or use any
11 person, money, property under the officers or employees
12 official control or direction, or in his or her official custody, for
13 the private benefit or gain of the officer, employee or another

14 2. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
15 over [REDACTED] and over the subject matter of this complaint.

16 3. Based on the evidence, [REDACTED] activities as outlined above, were in
17 conflict with the discharge of his official duties in violation of RCW 42.52.020. [REDACTED]
18 further secured special privileges for himself by using his position as the HVAC supervisor to
19 make purchases for personal use in violation of RCW 42.52.070. [REDACTED] also used state
20 resources for a private benefit or gain in violation of RCW 42.52.160.

21 4. The Board is authorized to impose sanctions for violations to the Ethics Act
22 pursuant to RCW 42.52.360.

23 5. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
24 120-030 have been reviewed.

25 **III. FINAL ORDER**

26 Based on the foregoing:

IT IS HEREBY ORDERED Respondent [REDACTED] is liable for and shall pay a
civil penalty of four thousand dollars (\$4,000). The payment shall be made to the Executive
Ethics Board within forty-five (45) days of this Order.

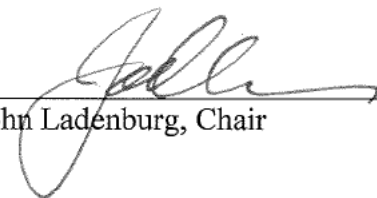
1 **IV. AUTHORITY AND PROCEDURE**

2 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for
3 Reconsideration stating the specific grounds upon which relief is requested. The Petition must
4 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington
5 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10)
6 days of service of the Final Order upon Respondent.

7 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
8 Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely
9 Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the
10 petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a
11 written notice specifying the date by which it will act on a petition.

12 Respondent has the right to petition the superior court for judicial review of the Board's
13 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
14 for Judicial Review, see RCW 34.05.510 and sections following.

15 DATED this 12th day of January, 2018

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17 
18 _____
19 John Ladenburg, Chair

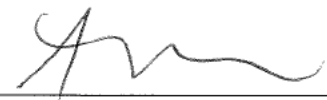


Lisa Marsh, Member

20
21 
22 _____
23 Shirley Battan, Vice-Chair



Gerri Davis, Member

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26 _____
Anna Dudek Ross, Member