

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2017-62

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On November 8, 2017, the Executive Ethics Board (Board) initiated a complaint alleging that ██████████), Maintenance Superintendent for the Eastern Region with the Washington State Department of Transportation (WSDOT), may have violated several provisions of the Ethics in Public Service Act. The complaint alleged ██████████ received a special privilege from another WSDOT employee when that WSDOT employee issued a Commercial Driver Training Employer Certification to the son of ██████████).

2. The process to obtain a CDL in Washington State is as follows:

- Visit a DOL Office;
- Provide a current driver's license, Social Security number, and proof of U.S. Citizenship;

- Self-certify as to what type of operation you will be conducting;
- Pass a knowledge test;
- Get a Commercial License Permit (CLP);
- Obtain a Skills Test Results form (STRF) from a DOL representative;
- Take the Skills Test with a DOL examiner or Third Party Examiner (TPE); and
- Return to the DOL office with the completed STRF form and DOL training certificate issued by an approved school or register employer (Commercial Driver Training Employer Certification).

3. Board staff contacted several of the DOL approved CDL training schools to determine the approximate cost to obtain the DOL training certificate required by DOL. See chart below:

Training School Name	City/State	Total Hours	Total Cost
PNW CDL Training	Yakima/WA	160	\$ 3,534.00
CDS	Auburn/WA	142	\$ 4,195.00
OK CDL Training	Tonasket/WA	160	\$ 4,050.00
DRIVE 509	Spokane/WA	UNK	\$ 3,000.00
Independent Truck Driver Training	Union Gap/WA	UNK	\$ 2,800.00

4. In March of 2016, [REDACTED] was appointed as the Maintenance Superintendent, Eastern Region for the WSDOT. [REDACTED] was in that position for all times pertinent to this investigation.

5. [REDACTED] indicated in his response to Board staff that he has a long time personal relationship with WSDOT employees, Carl Remmers (Mr. Remmers) and Moody Harmon (Mr. Harmon). He further indicated that Mr. Remmers is in his chain of command and Mr. Harmon is not.

6. Mr. Remmers is an Equipment Technician who reports directly to the Equipment Tech Supervisor, who reports to the Equipment Operations Superintendent, who then reports to the Maintenance Superintendent, Eastern Region [REDACTED]

7. In a phone conversation with Board staff, Mr. Remmers stated that he was a lifelong friend of [REDACTED] and that they were both attending a funeral of a friend when the topic of [REDACTED], [REDACTED] came up. Mr. Remmers stated that [REDACTED] mentioned that [REDACTED] was interested in obtaining his CDL. At that time, Mr. Remmers told [REDACTED] that he could help in providing some driver training for [REDACTED]. Mr. Remmers stated that the training was done using [REDACTED] personal equipment and that none of the training occurred on state time.

8. Mr. Remmers told Board staff that he provided about 200 hours of training to [REDACTED] (100 hours of “walk around” and 100 hours of actual driving). He further stated that at the time of the training he believed that Phillip was living at home with [REDACTED].

9. In a follow up response to Board staff, Mr. Remmers indicated that the training he provided to [REDACTED] occurred approximately mid-January to May 2016. Mr. Remmers also indicated that he did not communicate with Mr. Harmon regarding training [REDACTED].

10. Mr. Harmon is the WSDOT Region Maintenance Trainer. He is responsible for the training of WSDOT’s Eastern Region maintenance staff.

11. Mr. Harmon indicated in his response to Board staff that he has known [REDACTED] since high school and they have both worked in the Eastern Region for their entire WSDOT careers.

12. Mr. Harmon indicated in his response that since 2008 he has been the Region’s Maintenance Training Coordinator and was in that position during the period pertinent to this investigation.

13. Mr. Harmon indicated in his response that one of his responsibilities, as the training coordinator, was to certify that WSDOT employees who needed to obtain a CDL had the proper skills necessary to obtain a CDL with DOL. Mr. Harmon would certify that a WSDOT employee had the necessary skills to obtain their CDL by signing the Commercial Driver Training Employer Certification

form. This certification would speed up the CDL licensing process for the employee and would benefit the agency or company providing the certification.

14. DOL has established a list of companies and state agencies approved to provide the Commercial Driver Training Employer Certification to their employees. WSDOT is a DOL approved company/agency and Mr. Harmon is approved to certify WSDOT employees.

15. Mr. Harmon indicated in a response to Board staff that [REDACTED] mentioned he was encouraging [REDACTED] to obtain his CDL. Mr. Harmon indicated in his response that at that time he advised [REDACTED] that he could use his farming business to train [REDACTED]

16. Mr. Harmon also indicated in his response that he told [REDACTED] that if he could get someone to work with [REDACTED] on the skills to pass the DOL testing process he felt that he would be able to sign the wavier, meaning the Commercial Driver Training Employer Certification.

17. Mr. Harmon indicated in his response that [REDACTED] advised him that Mr. Remmers was providing the drivers training to [REDACTED]. Mr. Harmon indicated that he never discussed [REDACTED] training with Mr. Remmers directly but was provided updates of the training by [REDACTED]

18. [REDACTED] indicated in his response that he never talked with Mr. Harmon about his son's qualification. [REDACTED] indicated that once Mr. Remmers and Mr. Harmon volunteered to assist his son, he gave [REDACTED] Mr. Remmers' and Mr. Harmon's phone numbers to contact them directly to set up meetings, training, and other communications about his CDL training process.

19. Mr. Remmers indicated in a response to Board staff that he would talk to [REDACTED] regarding [REDACTED] progress and sometimes [REDACTED] would be present during the training.

20. Mr. Harmon indicated in his response that he would use Mr. Remmers to provide training to WSDOT employees and was confident in his abilities to provide the proper training to [REDACTED]

21. Mr. Harmon indicated in his response that at some point [REDACTED] told him that Mr. Remmers felt that [REDACTED] was ready to pass the DOL process to obtain a CDL.

22. On February 11, 2016, Mr. Harmon issued a Commercial Driver Training Employer Certification to [REDACTED]. Mr. Harmon signed the certification under the penalty of perjury under the laws of the State of Washington that the information provided on the form was true and correct.

23. The Commercial Driver Training Employer Certification signed by Mr. Harmon indicated that [REDACTED] was an employee of WSDOT.

24. Mr. Harmon indicated in a response to Board staff that he was aware that [REDACTED] was not an employee of WSDOT. Mr. Harmon further indicated that at the time he issued the certification he thought he had made the right decision but after looking into details of the certificate, he would make a different decision now.

25. Mr. Harmon indicated that he knew that [REDACTED] benefited by saving money and time by not having to attend a CDL Training School but did not know what that savings in money or time would be.

26. Mr. Harmon indicated in his response that he did not believe he contacted [REDACTED] to let him know that he had signed the Commercial Driver Training Employer Certification form for [REDACTED], it may have come up in a later conversation, but he did not make it a point to notify [REDACTED].

27. Mr. Sims indicated in his response that at no time did anyone imply that [REDACTED] was an employee of WSDOT.

28. Mr. Sims indicated in a response that he sought and received permission from his supervisor at the time Larry Chatterton (Mr. Chatterton), indicating that Mr. Chatterton approved the process.

29. Mr. Chatterton told Board staff that he did not recall discussing the issue with [REDACTED], but stated that if he had he would have advised him that as long as no state resources (equipment or time) were used, it would be allowable. Mr. Chatterton further stated that he retired from state service in November 2015.

30. Board staff contacted Harold White (Mr. White), [REDACTED] current supervisor. Mr. White indicated in his response to Board staff that he has known [REDACTED] for many years and has worked with him on various work related projects.

31. Mr. White indicated that he has been [REDACTED] direct supervisor since November 1, 2015. Mr. White further stated that he was not aware of this incident until he was notified by WSDOT Human Resources.

32. On December 28, 2017, [REDACTED] received a letter of reprimand from his agency.

B. CONCLUSIONS OF LAW

1. 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.

2. Based on the stipulated facts, [REDACTED] received a special privilege from Mr. Remmers because of [REDACTED]' relationship with Mr. Remmers and his position within WSDOT in violation of RCW 42.52.070.

3. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees and that at the time of the violations Mr. Sims was in a management position within WSDOT.

In the matter at hand, it is a mitigating factor that [REDACTED] received a letter of reprimand from his agency.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ernie Sims and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. [REDACTED] agrees that if any or all of the alleged violations were proven 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).

5. [REDACTED] further agrees that the evidence available to the Board 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.

6. [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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. [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.

8. If the Board accepts this stipulation, it 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. No other claims of alleged violations are pending against Ernie Sims at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. 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 before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information

obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of two thousand dollars (\$2,000) associated with a violation of RCW 42.52.070. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that [REDACTED] 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

12. The civil penalty in the amount of one thousand dollars (\$1,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.

[REDACTED]

2/7/18
Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

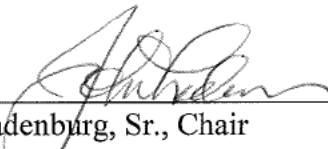
2/13/18
Date

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):

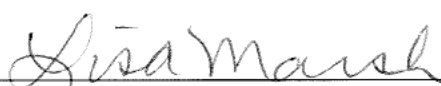
DATED this 11th day of May, 2018




John Ladenburg, Sr., Chair



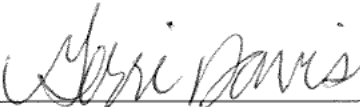
Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

[REDACTED], Respondent _____ Date