

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2018-027

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 June 19, 2018, the Executive Ethics Board (Board) received a referral from the Department of Labor and Industries (LNI) alleging that ██████████, an Elevator Inspector 1 in the Field Services and Public Safety (FS&PS) Division of LNI, may have violated the Ethics in Public Service Act. The referral indicated he participated in outside employment with a business he had regulatory and compliance responsibilities over.

2. ██████████ was hired by LNI as an Elevator Inspector 1 on April 1, 2010. ██████████ currently works at the FS&PS Elevator Program in the LNI Tukwila Office. ██████████ work schedule is Tuesday through Friday from 7am to 5:30pm. ██████████ job description includes,

performing inspections of all types of conveyances to ensure conformance with the laws and rules pertaining to RCW 70.87 and WAC 296-96, national codes adopted under state law, operation manuals, policies and guidelines. February 1, 2018, the Executive Ethics Board (Board) received an SAO referral alleging [REDACTED] may have violated the Ethics in Public Service Act by using state resources for private benefit or gain by failing to submit leave when he was absent from work.

3. The LNI investigative report stated that [REDACTED] signed the New Employee Checklist indicating that his supervisor at the time, Jesse Jameson (Mr. Jameson) reviewed and discussed with him, LNI policies 3.00 – Compliance with Ethics Laws and Rules and 3.41 – Conflict of Interest. [REDACTED] LNI Training Records indicate that he attended Ethics in Public Service EEB 101 training in March 2011 and LNI Region 2 Ethics in Public Service training in January 2013.

4. LNI provided Board staff with a copy of Inside LNI News article posted on March 1, 2017. The article was titled *"You asked, we listened: LNI updates conflict of interest policy."* The article provided a link to LNI Policy 3.41-Conflict of Interest. Among other information provided, the article informed employees that if they intend to accept or participate in outside employment they must complete the Conflict of Interest Analysis (COI) form, which must be carefully reviewed by the Supervisor, Manager, Appointing Authority and HR so that the employee and the agency do not violate ethics rules or state law.

5. During the August 22, 2017, statewide LNI Elevator Inspector training, Dotty Stanlaske (Ms. Stanlaske), Chief Elevator Inspector, received information that [REDACTED] was listed in the July 2017 issue of The Elevator Construction Magazine as having reinitiated his union card with the International Union of Elevator Constructors (IUEC) Local 19. In the same issue of the magazine, [REDACTED] [REDACTED] was also listed as retired.

6. Board staff were provided a copy of the July 2017 edition of the magazine and confirmed that [REDACTED] was listed as having “Reinitiated” and “Withdrawn” his union membership.

7. On August 29, 2017, Ms. Stanlaske spoke with Jim Norris (Mr. Norris) at the IUEC Local 19 about her concerns that [REDACTED] and other Elevator Inspectors had reinstated their union card in order to work for elevator companies while also being concurrently employed by LNI. Mr. Norris confirmed that [REDACTED] had gone to work for West Coast Elevator. Ms. Stanlaske also received a verbal confirmation of [REDACTED] outside employment from Silvia Gange (Ms. Gange), owner of West Coast Elevator.

8. On September 5, 2017, Lynne Buchanan (Ms. Buchanan), an Internal Investigator with HR, was assigned to conduct an investigation into whether [REDACTED] complied with state ethics laws and agency policy regarding conflict of interest and outside employment.

9. On September 19, 2017, Ms. Buchanan conducted an interview with [REDACTED]. According to Ms. Buchanan’s investigative report, [REDACTED] stated that prior to his employment with LNI as an Elevator Inspector; he worked in the trades as a licensed Elevator Mechanic for 20 years. He said that the past 8 years, IUEC Local 19 required its members who have left the trades to pay a membership fee and then complete a full day of work for an elevator company in order for the member to qualify to begin receiving his/her retirement pension.

10. According to Ms. Buchanan, on February 22, 2017 Ms. Stanlaske sent [REDACTED] an email indicating he needed to complete a COI form requesting to work for an elevator company for one day. Board staff were provided a copy of the COI form and the email the document was attached to.

11. Specifically, the email [REDACTED] received included an email dated February 8, 2017 from Dixie Shaw (Ms. Shaw), LNI's Liability Prevention Manager which stated, *"Have the employee fill out a conflict of interest form explaining the circumstances and put through the chain of command for*

their review just like if an employee was getting a second job. Be sure to explain it's just for one day. The form will come to David (Assistant Director for HR) for sign-off after it's been reviewed through the chain of command. We can then make a determination whether there is a conflict."

12. Ms. Buchanan stated that during the investigation, [REDACTED] supervisor, Rich Metcalfe (Mr. Metcalfe), recalled that sometime in March/April 2017, [REDACTED] asked him if he could take vacation leave or use leave without pay to work for an elevator company. Mr. Metcalfe said that he told [REDACTED] he could not approve it and he would need to make such a request up through the FS&PS chain of command.

13. Mr. Metcalfe told Board staff that he spoke to [REDACTED] around April 2017. He said he couldn't remember who brought it up, but the conversation came up about if the conflict of interest was approved why [REDACTED] would need to take leave without pay. If it was approved he could just work on his day off. Mr. Metcalfe said all of this was based on approval by LNI of the COI form in order for [REDACTED] to work the eight hours for his pension.

14. According to the LNI investigative report, at the pre-disciplinary meeting, [REDACTED] stated that in early April 2017 he had one or two conversations with his supervisor, Mr. Metcalfe, prior to participating in outside employment with West Coast Elevator. He said he talked to Mr. Metcalfe about participating in outside employment on his scheduled day off or by using leave without pay. He said Mr. Metcalfe told him it was a conflict of interest, but [REDACTED] disagreed about how it would be a conflict because he would doing it on his day off.

15. Board staff were provided an email to Tracey Zeth (Ms. Zeth), HR Consultant with LNI, from Mr. Metcalfe dated April 5, 2017 in which [REDACTED] was also a recipient. The email was inquiring about [REDACTED] request to work one day for an elevator company and whether a COI form was needed. On the same day, Ms. Zeth sent [REDACTED] and Mr. Metcalfe an email stating,

“Perry, per our phone conversation this afternoon, attached is a link to LNI Policy 3.41 – COI and to the COI Form (which includes links to additional policies you’ll need to review).....thanks.”

16. Board staff contacted Ms. Zeth and asked her about her conversation with [REDACTED]. In a written response, she said that it had been 17 months so she couldn’t recall all the specifics of her conversation with [REDACTED], but she did recall receiving a telephone call from him on April 5, 2017, sometime after receiving Mr. Metcalfe’s 11:00 am email.

17. At the outset of the phone call, she believes [REDACTED] asked her if she saw Mr. Metcalfe’s email or he made reference to the email. She recalled [REDACTED] telling her about his union pension from when he worked in the elevator trade and the union’s requirement that he needed to work for one day for an elevator company in order to begin receiving his union pension. [REDACTED] also said something about his birthday coming up in a few weeks and that his age on his birthday was a factor in him becoming eligible to begin receiving his union pension.

18. Ms. Zeth said she would have told him that even if he wanted to be employed by another company/employer for just one day while also employed by LNI, he would need to complete the COI form and route it through his management chain for approval per agency policy.

19. Ms. Zeth said she recalled saying that the COI form approval needed to be completed before he worked the one day. She recalled [REDACTED] questioning her about if he worked the one day on his scheduled day off or if he used vacation leave or leave without pay. She specifically recalled telling him it didn’t matter. She would have explained to him that the policy required the form be completed for any outside employment, even if it was just for one day or if he participated in outside employment on his day off.

20. She recalled telling [REDACTED] that she would email him the policy and the new COI form because she knew the agency had just updated both the policy and the form. As soon as the phone

call was completed, she sent her April 5, 2017 email at 1:43 pm to [REDACTED] and cc'd Mr. Metcalfe and HR Consultant, Tracy Wynder (Ms. Wynder), which included links to the policy and COI form.

21. [REDACTED] confirmed with Board staff that he spoke with Ms. Zeth, but didn't remember what was said. He said that based on what he was told and understood, he thought he could take leave without pay or work on his day off. He said he could have just left the state and worked the eight hours, but then he would have to go through the whole rehiring process which would have taken a couple of months.

22. According to the LNI investigative report, at the pre-disciplinary meeting, [REDACTED] said he recalled having another conversation with Mr. Metcalfe after the April 5, 2017 phone conversation with Ms. Zeth and after receiving the follow-up email she sent to him and Mr. Metcalfe the same day. [REDACTED] said despite the instruction from Ms. Zeth to complete the COI form, he heard Mr. Metcalfe say "if it was up to me, I would do it on my day off." [REDACTED] said the way he interpreted Mr. Metcalfe's comment was that if he participated in outside employment on his scheduled day off, the COI policy did not apply and the form was not needed. [REDACTED] said that Michael L. Jones (Mr. Jones), another LNI Elevator Inspector, also witnessed the early April 2017 conversation and heard the "if it was up to me..." comment Mr. Metcalfe made to [REDACTED], and that he interpreted his comment the same way [REDACTED] did.

23. [REDACTED] told Board staff that based on his conversation with his supervisor, Mr. Metcalfe, he thought as long as he worked on his day off or took leave without pay, it was okay to work for West Coast Elevator. He decided to work on his regular day off, based on his understanding of the COI policy.

24. According to Ms. Buchanan, [REDACTED] admitted he participated in outside employment on April 17, 2017, when he worked for West Coast Elevator for one day to fulfill the IUEC

Local 19 requirement in order to begin withdrawing his retirement pension. [REDACTED] said his LNI work schedule is Tuesday through Friday (4/10's) with every Monday off. He said April 17, 2017 was his scheduled Monday off.

25. Board staff obtained a copy of [REDACTED] time sheet for the month of April 2017 and confirmed that April 17, 2017 was a regularly scheduled day off for [REDACTED].

26. Ms. Buchanan confirmed with Mr. Strafer at IUEC Local 19, that [REDACTED] was listed on the 'out of work list' as an Elevator Mechanic prior to being employed on April 17, 2017 by West Coast Elevator. Mr. Strafer said that [REDACTED] must have worked for the one day as an Elevator Mechanic, which requires having a valid Elevator Mechanics license, in order to be eligible to receive his retirement pension. Mr. Strafer confirmed that he sent [REDACTED] a congratulatory retirement letter and he believes [REDACTED] is currently receiving his retirement pension each month.

27. [REDACTED] told Board staff that he is presently receiving his union pension.

28. Board staff contacted the IUEC and they said that members can sign a form that allows them to work as an Apprentice/Assistant Mechanic and they would not need to be licensed.

29. According to Ms. Buchanan, [REDACTED] admitted he did not have a current Elevator Mechanic license on April 17, 2017, the day he worked for West Coast Elevator. He contended that he did not perform any elevator mechanic duties. He described the work he did that day for West Coast Elevator as primarily to ride along with another Elevator Mechanic, Walt Almond (Mr. Almond), and he conducted some pre-work using a straightedge and took notes.

30. He acknowledged that if an individual is working without an Elevator Mechanic license, that person could be issued a citation by an LNI Elevator Inspector. In addition, he stated a licensed Elevator Mechanic must have a permit that is acquired by their employer or be subject to a citation.

During his April 17, 2017 employment with West Coast Elevator, [REDACTED] acknowledged he could have been cited by an LNI Elevator Inspector for failing to have a valid Elevator Mechanic license.

31. According to the investigative report, during a pre-disciplinary meeting, [REDACTED] confirmed that he worked for West Coast Elevator as a Mechanic Assistant/Apprentice on April 17, 2017. He stated he just sat in the passenger seat, filled out his W-4 form, and rode around with Mr. Almond. He said he and Mr. Almond surveyed about 3-4 jobs to take measurements and assess what repairs or replacement parts were needed. Then Mr. Almond would go back another day to do the repair work. He said this type of "surveying" work is appropriate for a Mechanics Assistant.

32. Board staff confirmed with [REDACTED] that during his employment with LNI as an Elevator Inspector, he performed inspections, including issuing "corrections," for West Coast Elevator.

33. [REDACTED] told Board staff that he previously inspected West Coast Elevator about three times. He said he hasn't inspected them since working for them. If they were on a site he was inspecting he would notify his supervisor and have another inspector come to the site.

34. Board staff confirmed with LNI that [REDACTED] conducted three inspections on West Coast Elevator since 2015; June 23, 2015, November 3, 2015 and August 5, 2016. According to LNI, their records indicate that [REDACTED] has not done any inspections for West Coast Elevator since April 17, 2017, and he requested to "hand off" all West Coast Elevator inspections as of June 2018.

35. During a pre-disciplinary meeting, [REDACTED] confirmed that West Coast Elevator sent him a paycheck in the mail for his outside employment on April 17, 2017, but he could not recall the amount.

36. When asked if he had an agreement or now owed something to Mr. Almond or West Coast Elevator in return for them employing [REDACTED] so you could get his union retirement/pension, he responded no.

37. Ms. Buchanan confirmed with Ms. Gange, owner of West Coast Elevator, that [REDACTED] was hired to work for one day as an Elevator Mechanic on April 17, 2017. Ms. Gange said that [REDACTED] performed no actual elevator mechanic work, but rather it was a ride along. Ms. Gange said she “donated” [REDACTED] wages to him for that day so he could receive his retirement pension from IUEC Local 19.

38. Board staff contacted Ms. Gange and confirmed that [REDACTED] spent an eight-hour shift at West Coast Elevator. She said he did not work while there, he just rode around with the project manager, Mr. Almond. She said he was having problems collecting his pension so she just tried to be a good person and help him out so he could collect his pension. Ms. Gange agreed to provide Board staff with a copy of [REDACTED] pay stub, but she has not done so.

39. On September 19, 2017, [REDACTED] completed and submitted a COI form to Mr. Stanlaske. The description of the outside employment activity he was seeking approval for was for the one day he had already worked for West Coast Elevator as a Mechanic Assistant on April 17, 2017. He indicated he worked for one day to become eligible to collect his union pension. On or around November 8, 2017, he was notified by HR that his COI form was denied.

40. On January 5, 2018, [REDACTED] attended a pre-disciplinary meeting. [REDACTED] stated that he worked for 30 years in the elevator trade and wanted to get his union retirement/pension from IUEC Local 19 at age 58, but he needed to work in the trade for 8 hours in the year that he retired. He said IUEC Local 19 was possibly going to change this rule and increase the number of hours required to work, so he wanted to qualify as soon as he was eligible.

41. [REDACTED] said that he contacted IUEC Local 19 and they approved him to be placed on the “out of work” list. He paid the required fee, and then he had to go out and find work for the required 8 hours. He said he contacted six elevator companies, including Kone, Otis, ThyssenKrupp and

Eltec. When asked about West Coast Elevator, ██████████ said Mr. Almond at West Coast Elevator called him about an LNI inspection. ██████████ said he proceeded to ask Mr. Almond something like “do you think your company would be willing to let him work for 8 hours so he would be eligible to get his union retirement/pension?”

42. In his conversation with Board staff, ██████████ didn't recall how the conversation with Mr. Almond was initiated. Mr. Almond might have been calling about something regarding an inspection. ██████████ stated he didn't know Mr. Almond from the trades. He might have seen him at the union hall or when doing some inspections. He said the first time he actually met him was when he worked for West Coast Elevator on April 17, 2017. Mr. McKenzie believed he was paid around \$300.

43. During the pre-disciplinary meeting, ██████████ estimated he saw Mr. Almond about three times per year, and that within the last year he conducted three minor alteration inspections for West Coast Elevator. ██████████ added that in his LNI assigned inspection area, there have been about 15-20 units done by West Coast Elevator during this same time period. ██████████ added that he would be willing to have another LNI Elevator Inspector conduct the inspections so there would be no conflict.

44. According to the investigative report, ██████████ took responsibility and acknowledged he made an error by not completing the COI form. He stated he relied on the statement Mr. Metcalfe made during the April 2017 conversation and his impression that as long as he participated in outside employment on his scheduled day off the form was not needed.

45. After the pre-disciplinary meeting, David Puente (Mr. Puente), Assistant Director of FS&PS, said he contacted Mr. Metcalfe. Mr. Metcalfe adamantly denied ever saying or implying that it was okay to participate in outside employment without following the agency's policy or prior to submitting the COI form.

46. Mr. Metcalfe admitted making a comment like “if it was me, I’d do it on my day off,” however, he explained he never said or in any way implied it was not necessary to follow the policy and complete the COI form if the outside employment occurred on the employees’ day off. Mr. Metcalfe clarified that his comment was only intended to mean that if LNI management approved the outside employment, he would choose to participate in the one day of outside employment on his day off rather than requesting to use vacation leave or leave without pay to cover the absence from work.

47. Board staff was provided a copy of a notice of disciplinary action from LNI dated June 4, 2018, that advised [REDACTED] that he would be receiving a reduction-in-pay as an Elevator Inspector 1 in the FS&PS Division. According to the document, his pay would be reduced by 20% from \$6,183 to \$5,077 effective September 1, 2018 through December 31, 2018, and from \$6,307 to \$5,179 from January 1, 2019 through January 31, 2019, resulting in \$4,446 in lost pay.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from activities that are incompatible with public duties. 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 dutiesstate officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

2. Based on the evidence reviewed by Board staff, [REDACTED] engaged in a business/professional activity that is in conflict with the proper discharge of his official duties as a state employee, in violation of RCW 42.52.020. 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 they were continuous in nature. In the matter at hand, it is a mitigating factor that disciplinary action taken by LNI resulted in [REDACTED]. [REDACTED] pay being reduced by 20% from \$6,183 to \$5,077 effective September 1, 2018 through December 31, 2018, and from \$6,307 to \$5,179 from January 1, 2019 through January 31, 2019, resulting in \$4,446 in lost pay.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 his 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 [REDACTED] 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 violations of RCW 42.52. The Board agrees to suspend five-hundred dollars (\$500) 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, five-hundred dollars (\$1,500) 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]

Respondent

12/29/2018
Date

Presented by:

K Reynolds
KATE REYNOLDS
Executive Director

1/2/19
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 January, 2019

John Ladenburg, Sr.
John Ladenburg, Sr., Chair

Shirley Battan
Shirley Battan, Vice-Chair

Lisa Marsh
Lisa Marsh, Member

Anna Dudek Ross
Anna Dudek Ross, Member

Gerri Davis
Gerri Davis, Member

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

 , Respondent Date