

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2018-028

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 by participating in outside employment with a business that he had regulatory and compliance responsibilities over.

2. On ██████████ was hired by LNI as a temporary Elevator Inspector 1 from July 18, 1994 through June 30, 1995. He was rehired by LNI as an Elevator Inspector 1 effective September 25, 1995

and currently works in the FS&PS Elevator Program in the Tukwila Office. [REDACTED] work schedule is Monday through Thursday from 7am to 5:30pm.

3. [REDACTED]' 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.

4. The LNI investigative report provided the following information: [REDACTED] signed and received a copy of his 2009-2010 Performance Planning and Appraisal Form (PPAF) evaluation on September 13, 2010, which indicated he received and read LNI Policy 3.41 – Conflict of Interest.

5. On August 1, 2011, [REDACTED] signed and received a copy of his 2010-2011 PPAF evaluation in which he indicated he received and read LNI Policy 3.41 – Conflict of Interest.

6. [REDACTED]' LNI training records indicate that he attended LNI Ethics in State Government training in April 2007 and LNI Region 2 Ethics in Public Service training in January 2013.

7. 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.

8. 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] was also listed as retired.

9. 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.

10. 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 cards in order to work for elevator companies while also being concurrently employed by LNI. That same day Ms. Stanlaske spoke to Tom Kawamoto (Mr. Kawamoto), owner of Northwest Elevations, who told Ms. Stanlaske that he recently hired [REDACTED].

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

12. On September 19, 2017, Ms. Buchanan conducted an interview with [REDACTED]. According to Ms. Buchanan’s investigative report, [REDACTED] admitted he initiated contact with Mr. Kawamoto, owner of Northwest Elevations, to arrange for and set-up outside employment with his company. [REDACTED] admitted to working one 8-hour day for Northwest Elevations on May 12, 2017, as an Elevator Mechanic. [REDACTED] stated he performed one day of work for Northwest Elevations so he could draw his union retirement pension from IUEC Local 19.

13. [REDACTED] said his LNI work schedule is Monday through Thursday (4/10’s) with every Friday off. He said May 12, 2017, was his scheduled Friday off. [REDACTED] said he was not planning to perform any additional outside employment.

14. Board staff obtained a copy of [REDACTED] time sheet for the month of May 2017 and confirmed that May 12, 2017, was a regularly scheduled day off for [REDACTED].

15. When asked if he had a license to perform Elevator Mechanic work by Ms. Buchanan, [REDACTED] said he did not need to have a license to be an Elevator Mechanic. He then provided a different response to Ms. Buchanan by stating he worked on May 12, 2017 as an Elevator Mechanic Assistant to Mr. Kawamoto and that Mr. Kawamoto was the primary Elevator Mechanic. [REDACTED] described the work he did that day with Mr. Kawamoto as driving around to drum up business, getting bids for Northwest Elevations, going to 2-3 residences, and having lunch.

16. During an interview with Board staff, [REDACTED] confirmed he worked for Northwest Elevations for one day. He said he rode with the owner of the company checking on a couple of bids. He said he was just working as an Apprentice/Mechanic's Assistant. He said that in the 23 years he had been with LNI he had probably inspected Northwest Elevations 2-3 times and had not inspected them since May 12, 2017.

17. Board staff contacted LNI and confirmed that during the timeframe of April 1, 2012 through May 11, 2017, [REDACTED] did one inspection for a "residential new install" for Northwest Elevations on April 12, 2017. There is no record of any further inspections done on Northwest Elevations by [REDACTED] after May 12, 2017.

18. According to the LNI investigative report, when asked if he was familiar with the outside employment reporting at LNI, [REDACTED] responded "I don't know." He said he had never heard of a COI form. He said he did not think he had done anything wrong.

19. Ms. Buchanan states that she confirmed with Mr. Kawamoto, owner of Northwest Elevations, that [REDACTED] was hired to work for his company for one day on May 12, 2017. Mr. Kawamoto did not respond to Ms. Buchanan's request to verify whether he was hired as an Elevator Mechanic or as an Elevator Mechanic Apprentice/Assistant.

20. Board staff contacted Mr. Kawamoto and he confirmed that [REDACTED] worked at Northwest Elevations for 8 hours on May 12, 2017. He said they just rode around and looked at jobs. Mr. Kawamoto told Board staff that he would provide a copy of the May 12, 2017 pay stub for [REDACTED] but to date he has not done so.

21. 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 May 12, 2017 by Northwest Elevations. Mr. Strafer said that [REDACTED] must have worked for the one day as an Elevator Mechanic, which requires having a valid Elevator Mechanic license to be eligible to receive his retirement pension. Mr. Strafer confirmed that he sent Mr. Jones a congratulatory retirement letter and he believes [REDACTED] is currently receiving his retirement pension each month.

22. 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.

23. On September 20, 2017, Mr. Jones completed and submitted a COI form to Ms. Stanlaske. The description of the outside employment activity [REDACTED] was seeking approval for was for the one day he had already worked for Northwest Elevations as a Mechanic Assistant on May 12, 2017. [REDACTED] indicated he worked for one day to meet the requirement and become eligible to collect his union pension. On or around November 8, 2017, [REDACTED] was notified by HR that his COI form was denied.

24. On January 22, 2018, [REDACTED] attended a pre-disciplinary meeting (PDM). [REDACTED] confirmed he became eligible to receive his union retirement/pension from IUEC Local 19 in 2017.

25. During the PDM, [REDACTED] recounted a conversation he overheard, and then involved himself with, between his supervisor Rich Metcalfe (Mr. Metcalfe), and another Elevator Inspector, Perry McKenzie (Mr. McKenzie) in April 2017. During the conversation, [REDACTED] said he discussed outside

employment and conflict of interest. ██████████ contended that he heard Mr. Metcalfe say “if you do it on your day off, I don’t see it as a problem” and “if it were me, I’d do it on my day off. “

26. During the PDM, ██████████ said after the April 2017 conversation with Mr. Metcalfe, he contacted and asked more than one elevator company if he could work for their company for one day in order to get his union retirement/pension. ██████████ said he contacted Otis, Northwest Elevations and ThyssenKrupp. He said that Northwest Elevations was the first to say yes. When asked if he contacted the elevator companies while at work at LNI, he said he called them on his day off.

27. During the PDM, ██████████ was asked if he had an agreement with or now owed something to Mr. Kawamoto or Northwest Elevations in return for him employing him so he could get his union retirement/pension, as in “quid pro quo”, ██████████’ response was no.

28. During the PDM, ██████████ concluded that because his outside employment with Northwest Elevations would occur on his scheduled day off from LNI, at the time he did not see it as a conflict of interest. ██████████ admitted during the PDM that he could now see it as a conflict of interest. However, he said as a result of the statements he heard Mr. Metcalfe make to Mr. McKenzie during the April 2017 conversation, he had the understanding that it was okay to participate in outside employment on his day off.

29. ██████████ stated that he was truly sorry for not following the policy or pursuing outside employment in the correct manner, and it was not his intent to cause any embarrassment for the state. Conversely, he expressed the feeling that the information in the pre-disciplinary letter was attacking his integrity.

30. According to the investigative report, after the PDM, David Puente (Mr. Puente), Assistant Director of FS&PS, contacted Mr. Metcalfe. He said Mr. Metcalfe recalled being approached by Mr. McKenzie about the outside employment and conflict of interest, but he denied ever being

approached by or speaking directly to [REDACTED] about these same subjects. Mr. Metcalfe stated that the day he talked to Mr. McKenzie, he recalled seeing [REDACTED] in an adjacent workstation, but was unaware if he was listening to their conversation and [REDACTED] never asked to join in nor did he involve himself the their conversation. 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. After Mr. Metcalfe ended his conversation with Mr. McKenzie, he recalled seeing [REDACTED] and Mr. McKenzie talking to each other

31. 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 the outside employment was approved by LNI management via the COI form, then he would choose to participate in the one day of outside employment on his day off rather than request to use vacation leave or leave without pay to cover the absence from work.

32. Board staff contacted Mr. Metcalfe and went over his interview with Mr. Puente. Mr. Metcalfe said the statement was accurate and he had nothing to add to it. He said Mr. McKenzie was the one asking the questions and he was talking directly with him, not [REDACTED]. He said [REDACTED] was in the cubical next to Mr. McKenzie so he could have overheard the conversation between him and Mr. McKenzie.

33. Board staff contacted Mr. Jones and asked him if he had any concerns with the report by LNI. He said he only glanced over the report. He said he was frustrated because he doesn't think this was an ethics violation but he can't afford an attorney to fight it. He said he read the ethics policies, but really did not understand them and there was nobody to ask questions about them. [REDACTED] said since the

investigation, he has read the ethics policy over and over again and doesn't believe what he did was an ethics violation.

34. ██████ told Board staff he did not want to get back to working in the trades; this was just an opportunity for him to get his union pension. ██████ said he paid the union about \$300 to reinstate his membership. He said the dues were reduced because he joined as an apprentice. ██████ confirmed that he had recently starting receiving his union pension but it did not cover the penalty he received from LNI.

35. Board staff were provided a copy of a notice of disciplinary action from LNI dated June 4, 2018, that advised ██████ 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 15% from \$6,183 to \$5,334 effective September 1, 2018 through November 30, 2018, resulting in a \$2,547 penalty 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, ██████ 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] pay being reduced by 15% from \$6,183 to \$5,334, effective September 1, 2018 through November 30, 2018, resulting in a \$2,547 penalty 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

12-31-18  
Date

Presented by:

K. Reynolds  
KATE REYNOLDS  
Executive Director

1/2/19  
Date

