BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: GARY HAUGLAND, Respondent.	No. 01-05 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, GARY HAUGLAND, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, 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 March 7, 2000, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Gary Haugland, an employee of the State of Washington, Department of Transportation, Washington State Ferries (WSF), improperly received higher wages when he submitted signed timesheets claiming captain's wages while at the same time signing the vessel logs as a mate. The Executive Ethics Board reviewed this referral and issued a complaint on March 22, 2001.

1.2. On July 11, 2003, upon receiving the Board staff's investigative report and recommendation, the Board made the determination that there was reasonable cause to believe

the Gary Haugland had committed one or more violations of chapter 42.52 RCW, and that the potential penalty was in excess of $500. The reasonable cause determination was based on alleged violations of RCW 42.52.070 and .160.

1.3. On August 15, 2003, Gary Haugland filed a written response to the reasonable cause determination.

1.4. 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.

1.5. Gary Haugland 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).

1.6. Gary Haugland recognizes that the evidence available to the Board staff is such that the Board may conclude Gary Haugland violated the Ethics in Public Service Act even if he did so unintentionally. 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.

1.7. Gary Haugland 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 respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed

modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.8. If the Board accepts this stipulation, the Board will release and discharge Gary Haugland 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. Gary Haugland 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.

1.9. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Gary Haugland and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.10. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.11. If the Board rejects this stipulation, or if Gary Haugland does not accept the Board's proposed modification(s), if any, Mr. Haugland waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Gary Haugland 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. When the complaint in this matter was filed, and at all times material hereto, Washington State Ferries employed Gary Haugland as a mate hired for seasonal help. Mr. Haugland was a former captain with WSF and was retired at the time that he was called back as a seasonal worker.

2.2. WSF, through an agreement with the Masters, Mates, and Pilots (MM&P) union, rehires retired captains and mates when increased summer traffic creates a need for seasonal help.

2.3. The title captain and master are used interchangeably. The captain is entirely responsible for the operations of the vessel at all times. The captain has full authority and responsibility for maintaining discipline, safety, and efficiency of the personnel and equipment.

2.4. The chief mate is responsible for carrying out and enforcing all orders of the captain. The chief mate is licensed to navigate the vessel and is responsible for the safety of the crew and passengers while performing navigation duties under the direction and supervision of the captain. When the chief mate is navigating the vessel, he performs all of the tasks that the captain would perform

2.5. A provision of the MM&P labor agreement allows a mate to receive captain's wages under certain circumstances. If a mate has worked for seven days or more in any given work period as a captain, the mate will be paid at captain's wages for the entire 80-hour work period.

2.6. Mr. Haugland asserts that before he accepted seasonal work in 1997, he was assured by WSF personnel that he would receive captain's pay regardless of the position work. Ethics Board staff were unable to verify this assertion.

2.7. Mr. Haugland was rehired as seasonal help during the summer of 1997. Mr. Haugland signed the vessel logs as a mate, but submitted his signed payroll timesheets claiming the higher captain's wage during the 1997 summer season. Mr. Haugland asserts that he did this at the direction of WSF personnel. Board staff were unable to verify this assertion.

2.8. The SAO and Department of Transportation's (DOT) Audit Office reviewed payroll records and vessel logs and determined that Gary Haugland did not meet the criteria to be paid the captain's wages.

2.9. Gary Haugland's time sheets were not countersigned by another deck officer, but were reviewed by DOT Operations Department staff, who did not identify the erroneous time sheet entries at the time.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Gary Haugland 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. The Ethics in Public Service Act prohibits state employee from using their position to secure special privileges for themselves and/or others. 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.

3.4. The Ethics in Public Service Act also governs the use of persons in an officer or employee's official control or direction and the use of public resources to benefit others. RCW 42.52.160(1) states:

> No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.5. Based on Findings of Fact 2.1 through 2.9, Gary Haugland violated RCW 42.52.070 and RCW 42.52.160(1) when he signed the vessel logs as a mate and submitted payroll timesheets for captain's pay.

3.6. 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. It is a mitigating

factor that Gary Haugland believed that all returning captains were guaranteed captain's wages for any work performed. (WAC 292-120-030(4)(e)).

Section 4: AGREED ORDER

4.1. Gary Haugland will reimburse the Board for two hundred fifty dollars ($250.00) investigation fees. Gary Haugland will also repay one thousand five hundred dollars ($1,500.00) to DOT for overpaid wages. Gary Haugland also agrees to comply with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The reimbursement costs of $250 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

4.2. The $1,500 for overtime wages is payable to the Washington State Department of Transportation and which shall be delivered to the Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Gary Haugland, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

Gary Haugland 10/1/03
Gary Haugland Date
Respondent

Stipulated to and presented by:

10 OCT 03
Brian R. Malarky Date
Executive Director

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

__X__ 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 1st day of October, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice Chair

Laquita Fields, Member

Paul Zellinsky, Member

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

_____

Gary Haugland, Respondent Date