BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: KAREN INCE, Respondent.	NO. 03-024 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, KAREN INCE, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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 20, 2003, the Executive Ethics Board received a referral from the Department of Retirement Systems (DRS) alleging that Karen Ince, an employee of the State of Washington, DRS, used her state computer to respond and seek participation of others regarding political issues, including lobbying the legislature on union matters. The Executive Ethics Board reviewed this referral and issued a complaint on June 11, 2004.

1.2. 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.

1.3. Karen Ince 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).

1.4. Karen Ince recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. Ince 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 set forth below.

1.5. Karen Ince 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) 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Karen Ince 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. Ms. Ince 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.

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

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

1.9. If the Board rejects this stipulation, or if Karen Ince does not accept the Board's proposed modification(s), if any, Ms. Ince 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, Ms. Ince 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, DRS employed Karen Ince as a Financial Analyst 2.

2.2. On January 15, 2003, Marian Gonzales, a Washington Public Employees Association (WPEA) Representative forwarded an e-mail to Lisa Bird, an employee with DRS and the WPEA DRS Chapter President, requesting Ms. Bird's assistance in obtaining DRS member input on a potential bill relating to a pension system governance issue. The title of the e-mail was "DRS Member Input on Potential Bill."

2.3. On January 15, 2003, Ms. Bird forwarded Ms. Gonzales' message to 179 DRS employees requesting input on the proposed merger between DRS and the Department of

Personnel (DOP). This matter was actually a potential bill, supported by the WPEA, relating to a pension system governance issue.

2.4. Later on January 15, 2003 by hitting "Reply to All", Ms. Ince responded to Ms. Bird and all other recipients of the original message stating:

> Some of us looked over the message and went to RCW 41.56. Basically, Public employees are employees of political subdivisions, etc. This might be a better arrangement then staying a state employee under the new Civil Service Reform Act. You would not be part of the larger state bargaining agreement nor a local DRS chapter but ??? directly represented by WPEA. I guess the question would be to whom would the Director report. How independent of the Civil Service Director would you be? You as an employee might just have better rights to negotiate then if you remained a state employee. Check it out – take a look at the RCW – look for the differences – attend the meeting with questions.

2.5. DRS Policy restricts the use of state resources. DRS Policy HR-1 *Code of Ethics/Conflict of Interest*, states in part:

> DRS employees may not use state resources for political campaigns. DRS employees with the authority to direct, control, or influence the actions of another employee may not knowingly acquiesce to their use of state resources for a political campaign.

DRS Policy ISD-1, *Using Electronic Communications Systems*, prohibits "[p]ersonal use of e-mail distribution lists". Further, the policy notes that electronic communication system uses are subject to the following prohibitions:

- Prohibited to support, promote, or solicit for any outside organization, charity, or group unless provided for by law or authorized by an agency head or designee ...
- Prohibited to use to promote personal political beliefs ...
- Prohibited to use to access, transmit, display, chat, or post on the Web or use the Internet for reasons or practices other than authorized business use related to assigned job duties ...

2.6. Ms. Ince contends that, because the message came from the union representative, it had been authorized by the agency head. The WPEA Collective Bargaining Agreement does not allow the use of state resources to support or oppose a ballot initiative or to lobby the legislature, but only for negotiation and administration of the CBA. The CBA states in part:

> Reasonable work time and equipment may be utilized by WPEA job representatives and chapter officers when needed to conduct official business relative to the maintenance of the collective bargaining agreement and relationship between the parties. [Section 2.9.]
>
> WPEA job representatives and chapter officers will be permitted to use agency electronic media in accordance with Agency policy and procedures to solicit agenda items for Labor/Management meetings and inform employees of Labor/Management and Association meetings. Such notices are to be approved by the Employer prior to the release. [Section 2.10.]

2.7. On March 21, 2003, DRS issued a counseling memorandum to Ms. Ince for her conduct in this matter.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Karen Ince 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. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

3.4. Public funds are prohibited from being used for lobbying. RCW 42.17.190(2) states:

> Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying: PROVIDED, This does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties:

3.5. The Ethics in Public Service Act allows for de minimis personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal

use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources.

3.6. WAC 292-110-010(6) explicitly prohibits the private uses of state resources for the purposes of supporting, promoting the interest of or soliciting for an outside organization or group, assisting in a campaign for the promotion or opposition to a ballot proposition, participating in or assisting in an effort to lobby the state legislature or a state agency head, or any use related to conduct that is prohibited by a law or rule or a state agency policy.

3.7. Board Advisory Opinion 02-01 regarding the *Use of State Facilities to Conduct Union Business* holds that "Conduct that may directly conflict with the Ethics in Public Service Act includes, but is not limited to, ... a use of state resources for Union activities that are not reasonably related to the negotiation and administration of collective bargaining agreements, such as Union organizing, internal Union business, or advocating for a Union in a certification election, except as authorized under statute or rules ..."

3.8. Based on Findings of Fact 2.1 through 2.8, Karen Ince used state resources in violation of RCW 42.52.160, WAC 292-110-010 and violated agency policy.

3.9. 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 Ms. Ince received a counseling memorandum as a result of her conduct (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

4.1. Ms. Ince will pay a civil penalty in the amount of two hundred fifty dollars ($250.00) The Board agrees to suspend one hundred fifty dollars ($150.00) of the civil penalty on the condition that Ms. Ince complies with all terms and conditions of this Stipulation

and Order and commits no further violations of chapter 42.52 RCW. The civil penalty of $250.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Karen Ince, 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.

Karen Ince 6/30/05

Karen Ince Date
Respondent

Stipulated to and presented by:

Susan Harris 9/8/05

Susan Harris Date
Interim 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 9th day of September, 2005.

Paul Zellinsky, Chair

Trish Akana , Vice Chair

Marilee Searbrough, Member

Evelyn Yenson, Member

Judith Golberg, Member

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

_____

Karen Ince, Respondent Date