

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Joseph Brown
Respondent.

No. 2013-49

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, JOSEPH BROWN, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Evelyn Fielding Lopez, Acting 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 December 19, 2013, the Executive Ethics Board (Board) received a complaint alleging that Wilbur Reed, Steam Plant Supervisor, Joe Brown, Stationary Engineer, and Ron Thompson, Stationary Engineer, (DSHS) may have violated the Ethics in Public Service Act providing a special privilege and conducting activities incompatible with their public duties in the hiring of Chad Dean to a full time Stationary Engineer position and how overtime was being allocated.

1.2. As a result of the initial investigation evidence was produced that would indicate that Mr. Brown may have inappropriately received gifts from a vendor valued at more than \$50 dollars, from National Aluminate Corporation (NALCO) and used state resources to participate in a football pool where cash and prizes were given out. The Board found Reasonable Cause on May 9, 2014.

1.3. 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.

1.4. Joseph Brown 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).

1.5. Joseph Brown recognizes that the evidence available to the Board staff 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 set forth below.

1.6. Joseph Brown 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this stipulation, the Board will release and discharge Joseph Brown 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. Joseph Brown 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.

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

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

1.10. If the Board rejects this stipulation, or if Joseph Brown does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Joseph Brown waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Joseph Brown 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. Joseph Brown was first employed by DSHS as a part time intermittent Stationary Engineer in August of 1991. In July of 2005, his status was changed to on-call. In October 2010, Mr. Brown applied for a full time position as a Stationary II Engineer, day-shift/safeguard controls. Mr. Brown was in that position for all times pertinent to this investigation.

2.2. The EEB Investigator reviewed Mr. Brown's state emails to ascertain if there was any evidence regarding the allegations. As a result of that review, the investigator found no evidence to support the allegations by the complainant. However, the review did reveal evidence that Mr. Brown was using the state email system for his personal benefit and that he did receive gifts valued at more than \$50 from NALCO, a vendor used by DSHS to purchase supplies and services.

2.3. The email evidence also indicated that Mr. Brown was in a weekly football pool with other non-state employees, with a cash reward given to the participant with the best record. Board staff notified Mr. Brown of the evidence found and offered him the opportunity to respond.

2.4. Mr. Brown indicated in his response that the entry fee was \$20 and it went to buy prizes that would be awarded at the end of the season. He stated that it only took a few minutes to email his picks for the week, so he never thought it was an ethics violation.

2.5. Email evidence shows that in 2011 and 2012, Mr. Reed was contacted by a vendor for NALCO, a local water treatment and service company used by the Lakeland Village and Eastern State Hospital facilities for the operation of their steam plants, was offered free tickets to a Spokane Indian baseball game for himself and his employees. Mr. Reed passed along the invitation to his employees via email. Mr. Brown accepted the invitation by responding to Mr. Reed with how many tickets he wanted. Mr. Reed then passed this information along to the NALCO vendor. Mr. Brown's tickets would then be available for him to pick up at the ballpark on the night of the game.

2.6. Evidence indicated that Mr. Brown asked for five tickets for the August 2011 game and at least one ticket for a 2012 game. The NALCO representative told EEB investigators that the cost per ticket was about \$12 to \$15 per ticket and an additional \$15 to \$17 per ticket for their meal, which included food and a beverage. The total value of the ticket was approximately \$27 to \$32 each.

2.7. Mr. Brown stated that he did not attend the ball game in 2011. That he did receive two tickets and attended the game in 2012. He went on to indicate that NALCO received a discount on the tickets and was told that they only paid between eight (8) and ten (10) dollars each.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Joseph Brown 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, Chapter 42.52 RCW, limits state employees from accepting gifts. RCW 42.52.150(1) states:

No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

3.4. Based on Findings of Fact 2.5 through 2.7, Joseph Brown accepted gifts from NALCO with a value of more than \$50 in violation of RCW 42.52.150 (1).

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. 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.

3.6. Based on Findings of Fact 2.2 through 2.4, Joseph Brown used state resources for his personal benefit by his participation in a football pool where it was possible to win cash and prizes.

3.7. 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is a mitigating factor that, Mr. Brown did not believe the value of tickets received from NALCO was more than \$50 and any violation was unintentional. There were no aggravating factors determined for this case.

Section 5: AGREED ORDER

5.1 For the violations of RCW 42.52.150(1) and RCW 42.52.160, Joseph Brown will pay a civil penalty in the amount of, one thousand, five hundred dollars (\$1,500.00). The Board agrees to suspend (\$750.00) on the condition that Joseph Brown 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.

5.2 The civil penalty of \$750 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Joseph Brown, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; 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 and Agreed Order, I understand that I will receive a signed copy.

Joseph Brown 7-7-2014
Joseph Brown Date
Respondent

Stipulated to and presented by:

Evelyn Fielding-Lopez 6/23/2014
Evelyn Fielding-Lopez Date
Acting 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

 ✓ 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 12th day of September 2014

 Lisa Marsh
Lisa Marsh, Chair

 Approved via telephone
Anna Dudek Ross, Vice-Chair

 M. Williams III
Matthew Williams III, Member

 Samantha Simmons
Samantha Simmons, Member

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Sumeer Singla, Member

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

Joseph Brown, Respondent Date