



Washington State Auditor's Office

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Whistleblower Investigation Report Department of Transportation

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January 25, 2016

Lynn Peterson, Secretary
Department of Transportation

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 15-040 at the Department of Transportation.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

TROY KELLEY
STATE AUDITOR
OLYMPIA, WA

cc: Steve McKerney, Director of Internal Audit
Governor Jay Inslee
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

Our Office received a whistleblower complaint asserting a Washington State Ferries employee granted herself a special privilege when she placed herself on a union-represented promotional roster while holding an exempt position. The complaint also stated she extended a special privilege to union representatives by allowing them access to a state office for organizing efforts.

We found no reasonable cause to believe an improper governmental action occurred.

Background

Washington State Ferries (Ferries) is a division of the Department of Transportation (Department). Ferries has approximately 1,700 employees with 13 collective bargaining agreements represented by 11 unions. The subject is a member of one of the three largest unions, the Marine Engineers Beneficial Association (MEBA).

The MEBA collective bargaining agreement covers unlicensed engine room employees, such as oilers and wipers. According to the union branch manager, MEBA is notified by Ferries when it has job openings. MEBA fills the open positions based on its members' seniority on the promotion roster. In order to be placed on the roster, one must meet the minimum requirements for the position. Minimum requirements may include time at sea, possession of a merchant maritime license, negative drug testing and a transportation worker identification credential card.

About the Investigation

We examined the subject's personnel file, the MEBA collective bargaining agreement and conducted interviews.

According to the MEBA branch manager, Ferries offers fleet employees temporary administrative positions within the Department or the union, while maintaining their position on the fleet. When the employee accepts the administrative position, he or she is put on a leave of absence from the union position and may request to have his or her name placed on a union promotion roster. This allows employees the opportunity to gain Department or union managerial experience and still retain or advance in seniority. The MEBA branch manager said this opportunity is only available to Ferries employees who are appointed to internal or union positions. He said he has been on a leave of absence from his union fleet position for approximately 10 years and was recently promoted within Ferries even though he has not worked there since taking his union position.

We spoke with a Ferries human resource consultant about this practice. She said members of management generally return to the fleet because the fleet positions have better benefits. She gave an example of a port captain who returned to the fleet and immediately retired as a relief master. His accrued vacation time was paid out at the higher rate of relief master and included 20 percent assignment pay. In addition, he received a lifetime ferry travel pass.

During an interview with the subject, she said she has been in the maritime industry since 1996. Prior to her position at Ferries, she held a position in the private sector that was covered by MEBA. She began working for Ferries in October 2010 in a non-union position, but retained her membership in MEBA. In December 2015, after accepting her current exempt appointment, she requested human resources place her on every promotional roster for which she qualified; she was placed on the oiler promotion list. The subject said Ferries has a past practice of allowing employees to be placed on the lists while they take extended leaves of absence from their fleet positions.

We interviewed the subject's supervisor, who said this practice is one of the benefits Ferries and the union can offer employees that the private sector cannot. She said the employees on the fleet are greatly underpaid compared to the private sector and allowing them to participate in this practice is an enticement - especially to those with families. She said employees may go back to their fleet positions at any time.

We found no reasonable cause to believe the subject granted herself a special privilege.

We also spoke to the subject and her supervisor regarding whether union representatives are allowed access to a state office. They explained that unions are allowed access to offices and terminals for situations such as grievances, human resources issues and fact-finding investigations. They do not have to have a pre-scheduled appointment, but must be accompanied by a union member and must state their reason for the meeting. They do not have unlimited access to the offices, whether in Seattle or at the terminals, and are not allowed access for purposes of organizing a bargaining unit.

During the investigation, we found no evidence the subject allowed union access to state offices for the purpose of organizing bargaining units. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

State Auditor's Office Concluding Remarks

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.52.070 Special Privileges.

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.