

# **COMPLIANCE REVIEW REPORT**

## **AGRICULTURAL LABOR RELATIONS BOARD**

Compliance Review Unit  
State Personnel Board  
March 27, 2017

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## **INTRODUCTION**

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit-related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

## **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of Agricultural Labor Relations Board (ALRB) personnel practices in the areas of examinations, appointments, EEO, and PSC's from September 1, 2015, through September 30, 2016, and mandated training from September 1, 2014, through September 30, 2016. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Probationary Evaluations Were Not Provided for All Appointments Reviewed	Serious
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Mandated Training Complied with Statutory Requirements	In Compliance

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

### **BACKGROUND**

In 1975, then Governor Jerry Brown signed into law the Agricultural Labor Relations Act (Act) to “encourage and protect the rights of agricultural employees to full freedom of association, self-organization...and to be free from interference, restraint, or coercion” (Labor Code § 1140.2.) Consistent with this purpose, the ALRB’s role is to ensure peace and justice in the fields by providing stability in agricultural labor relations by implementing, protecting, and enforcing the rights and responsibilities of employers, employees, and unions in their relations with each other. The ALRB exercises jurisdiction over approximately 800,000 farmworkers and employers, which were specifically exempted from the coverage of the National Labor Relations Act in 1935.

As established in the Act, the ALRB operates as two independent but related bodies; the Office of the General Counsel and the Office of the Board:

- The Office of the General Counsel acts as the prosecutorial branch of the agency with the responsibility to process, investigate, and prosecute unfair labor practice charges.
- The Office of the Board acts in a quasi-judicial capacity to hear and decide labor disputes and promulgates regulations and policies necessary to implement the Act; reviews on appeal the interlocutory motions in ongoing cases; reviews the record de novo of all cases appealed to the Board; and defends the Board’s final decisions when review is sought in the Court of Appeal. The Board also oversees the conduct of representation elections through which farmworkers can choose whether or not to be represented by a union. The Board also has sole responsibility for the interpretation and administration of the Mandatory Mediation and Conciliation.

The ALRB is headquartered in Sacramento, with regional offices in Indio, Oxnard, Salinas, Santa Rosa, and Visalia. The ALRB employs approximately 54 employees, including attorneys; field examiners, and various levels of managers, supervisors, and support staff.

### **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing ALRB's examinations, appointments, EEO program, and PSC's from September 1, 2015, through September 30, 2016, and mandated training from September 1, 2014, through September 30, 2016. The primary objective of the review was to determine if ALRB's personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the ALRB's examinations and appointments were selected to ensure that various samples of examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the ALRB provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action (NOPA) forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the ALRB's EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The ALRB's PSC's were also reviewed.<sup>1</sup> It was beyond the scope of the compliance review to make conclusions as to whether the ALRB's justifications for the contracts were legally sufficient. The review was limited to whether the ALRB's practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the ALRB's mandated training was reviewed to ensure all employees required to file statements of economic interest were provided ethics training and that all

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<sup>1</sup> If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

On February 17, 2017, an exit conference was held with the ALRB to explain and discuss the CRU's initial findings and recommendations. On February 24, 2017, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as to fairly test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date of the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed in the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

The Employment Development Department (EDD), on behalf of the ALRB, administers all ALRB examinations. During the period under review, the EDD conducted five examinations for ALRB. The CRU reviewed four of those examinations, which are listed below:

Classification	Examination Type	Exam Components	Final File Date	No. of Applications
Associate General Counsel, Unfair Labor Practices, ALRB	Open	Supplemental Application <sup>2</sup>	Continuous	2
Field Examiner II	Open	Supplemental Application	Continuous	7
Hearing Officer I	Open	Supplemental Application	Continuous	8
Hearing Officer II	Open	Supplemental Application	Continuous	9

### **FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules**

The CRU reviewed four open examinations which the EDD administered on behalf of the ALRB in order to create eligible lists from which to make appointments. The EDD published and distributed examination bulletins containing the required information for all examinations. Applications received by the EDD were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications for admittance to the examinations. The EDD notified applicants as to whether they qualified to take the examination, and those applicants who met the minimum qualifications were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the EDD conducted during the compliance review period. Accordingly, the EDD, on behalf of the ALRB, fulfilled its responsibilities to administer those examinations in compliance with civil service laws and board rules.

<sup>2</sup> In a supplemental application (SA) examination, applicants are not required to present themselves in person at a predetermined time and place. Supplemental applications are in addition to the regular application and must be completed in order to remain in the examination. Supplemental applications are also known as "rated" applications.

## Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the ALRB made 16 appointments. The CRU reviewed ten of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	2
Attorney IV	Certification List	Permanent	Full Time	1
Field Examiner I	Certification List	Permanent	Full Time	1
Field Examiner II	Certification List	Permanent	Full Time	2
Attorney IV	Permissive Reinstatement	Permanent	Intermittent	1
Associate General Counsel (Regional Director)	Temporary Authorization Utilization (TAU)	Temporary	Full Time	1
Hearing Officer II	Transfer	Limited Term	Full Time	1
Senior Board Counsel, ALRB	Transfer	Permanent	Full Time	1

For each of the four list appointments, the ALRB properly advertised the job vacancies, sent out contact letters, screened applications, interviewed candidates, and cleared the certification lists for SROA and reemployment, and conducted background and reference checks as appropriate.



The CRU reviewed one retired annuitant appointments. The retired annuitant was appointed to a class that he or she last held permanent or probationary status in or could have been permanently transferred, reinstated, or demoted to at the time of retirement (Gov. Code § 19144). Additionally, ALRB demonstrated the immediate need for the Retired Annuitant's skillset (that could not be met by a current state employee) and appointed the Retired Annuitants 180 calendar days after the date of their retirement (PML, "Student Assistants and Retired Annuitants," 2013-023). Lastly, the ALRB retired annuitant appointment did not exceed 120 days or a maximum of 960 hours in any fiscal year without reinstatement or loss of interruption of benefits (CalHR Class and Pay Guide Section 340).

The CRU reviewed two ALRB appointments made via transfer. A transfer of an employee from a position under one appointing power to a position under another appointing power may be made if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer. (Cal. Code Reg., tit. 2, § 425.) The ALRB verified the eligibility of the candidate to their appointed class.

The CRU reviewed one TAU appointment. When there is no employment list from which a position maybe filled, the appointing power, with the consent of the department, may fill the position by temporary appointment. (Gov. Code, §19058.) No person may serve in one or more positions under temporary appointment longer than nine months in a 12 consecutive month period. The ALRB complied with the rules and laws governing TAU appointments.

However, the ALRB did not provide probation reports for all appointments as described in finding 2.

**FINDING NO. 2 – Probationary Evaluations Were Not Provided for All Appointments Reviewed**

**Summary:** The ALRB did not prepare, complete, and/or retain three required probationary reports of performance.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Field Examiner II	List Appointment	1	3
<b>Total</b>		<b>1</b>	<b>3</b>

**Criteria:** A new probationary period is not required when an employee is appointed by reinstatement with a right of return. (Cal. Code Regs., tit. 2, § 322, subd. (d)(2).) However, the service of a probationary period is required when an employee enters state civil service by permanent appointment from an employment list. (Cal. Code Regs., tit. 2, § 322, subd. (a).) In addition, unless waived by the appointing power, a new probationary period is required when an employee is appointed to a position under the following circumstances: (1) without a break in service in the same class in which the employee has completed the probationary period, but under a different appointing power; and (2) without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period. (Cal. Code Regs., tit. 2, § 322, subd. (c)(1) & (2).)

During the probationary period, the appointing power is required to evaluate the work and efficiency of a probationer at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Gov. Code, § 19172; Cal. Code Regs., tit. 2, § 599.795.) The appointing power must prepare a written appraisal of performance each one-third of the probationary period. (Cal. Code Regs., tit. 2, § 599.795.)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The ALRB states that the ALRB Human Resources Office makes a good faith effort to inform supervisors and managers regarding the

requirements of completing probationary evaluations. During the audit period, Human Resources had a manual notification system in place, but, until recently, lacked the internal controls to monitor the completion and submission of probation reports.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the ALRB submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the probationary requirements of Government Code section 19172.

### Equal Employment Opportunity (EEO)

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the CalHR by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the FPPC, the EEO officer may be the personnel officer. (*Ibid.*)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the ALRB's EEO policies, procedures, and programs in effect during the compliance review period.

### **FINDING NO. 3 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that ALRB's EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Executive Director of the ALRB. In addition, the ALRB has an established DAC that reports to the director on issues affecting persons with a disability. The ALRB also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff. Accordingly, the ALRB's EEO program complied with civil service laws and board rules.

#### Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's a state agency is required to notify the SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the ALRB had 21 PSC's that were in effect and subject to Department of General Services (DGS) approval, and thus our procedural review. The CRU reviewed five contracts, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
California Reporting, LLC	CERT Services – BD Hearing Tour	9/9/15 – 9/15/15	\$6,226.40	Yes
Capital Datacorp	IT & Network Service Provider	7/1/16 – 6/30/18	\$205,800.00	Yes
Excel Interpreting, LLC	Interpreter Services – BD Hearing Tour	9/9/15 – 9/15/15	\$14,650.00	Yes
LawProse Inc.	Legal Writing Seminar – GC	6/13/16	\$19,625.00	Yes
Lexis Nexis	IT & Network Service Provider	7/1/16 – 6/30/17	\$36,842.40	Yes

#### **FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements**

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes *specific and detailed factual information* that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total amount of all the PSC's reviewed was \$283,143.80. It was beyond the scope of the review to make conclusions as to whether the ALRB justifications for the contract were legally sufficient. For all PSC's subject to DGS approval, the ALRB provided specific and detailed factual information in the written justifications as to how each of the two contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the ALRB PSC's complied with procedural requirements.

## Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the California Department of Human Resources (CalHR). (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee’s probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or career executive assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power’s personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and

records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the ALRB's mandated training program that was in effect during the compliance review period.

#### **FINDING NO. 5 – Mandated Training Complied with Statutory Requirements**

The ALRB provided ethics training to its ten new filers within six months of appointment and semiannual ethics training to its 36 existing filers during two-year calendar year period commencing in 2014. The ALRB also provided supervisory training to its two new supervisors within 12 months of appointment. In addition, the ALRB provided sexual harassment prevention training its three new supervisors within six months of appointment, and sexual harassment prevention training to its one existing supervisor every two years. Thus, the ALRB complied with mandated training requirements within statutory timelines.

#### **DEPARTMENTAL RESPONSE**

The ALRB's response is attached as Attachment 1.

#### **SPB REPLY**

Based upon the ALRB's written response, the ALRB will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the ALRB comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

**AGRICULTURAL LABOR RELATIONS BOARD****DIVISION OF ADMINISTRATIVE SERVICES**

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February 23, 2017

**STATE PERSONNEL BOARD**

FEB 24 2017

Compliance Review Unit  
State Personnel Board  
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**Executive Office**

Dear Ms. Ambrose:

The Agricultural Labor Relations Board (ALRB) has received the draft Compliance Review Report prepared by the State Personnel Board's Compliance Review Unit. The ALRB strives to ensure compliance with all civil service laws and rules, and works hard to maintain the integrity of the State's merit based selection process. Generally, we find the report to be thorough and an accurate summary of the processes that existed during the time period reviewed. That said, we are committed to correcting the deficiency noted in the report.

**Finding No. 2 - Probationary Evaluations Were Not Provided for All Appointments**

**Reviewed:** *The ALRB did not prepare, complete, and/or retain three required probationary reports of performance.*

The Human Resources Office makes a good faith effort to inform supervisors and managers regarding the requirements of completing probationary evaluations. During the audit period, Human Resources had a manual notification system in place but, until recently, lacked the internal controls to monitor the completion and submission of probation reports. The department has recently implemented additional controls to this manual process to ensure supervisors and managers are notified in advance of probation evaluations dates, with quarterly reporting to executive level management.

Human Resources will continue to train, educate and remind our supervisors and managers on the importance of probationary report completion. That said, there is a need for a statewide solution to automating the manual notification and validation process of probationary report completion which will remove the human error, and allow for seamless notification, tracking, and validation of completion.

Sincerely,

A handwritten signature in blue ink that reads "Kristine Rodrigues". The signature is fluid and cursive.

Kristine M. Rodrigues  
Chief, Division of Administrative Services