



SPECIAL INVESTIGATION

Additional Appointments of Supervisory and Managerial Employees

California Department of Food and Agriculture

Prepared By:
State Personnel Board
Compliance Review Division
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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.

In addition, the SPB may review an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. The four major areas of review are examinations, appointments, equal employment opportunity (EEO), and personal services contracts.

The SPB may also conduct special investigations of an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. Special investigations may be initiated in response to a specific request or when SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

In response to a request by the Legislature, the SPB conducted a special investigation into the Department of Food and Agriculture (CDFA)'s personnel policies and practices related to two supervisorial and/or managerial employees who held additional appointments in a rank-and-file position on January 11, 2013. On that date, CDFA's records reflect that a full-time permanent Security Guard held by way of a list appointment an additional appointment as a permanent intermittent Assistant Satellite Facility Supervisor. CDFA's records also show that a permanent intermittent Satellite Wagering Facility Janitor held by way of a list appointment an additional appointment as a permanent intermittent Satellite Wagering Facility Admissions/Program Clerk.

Regardless of whether an appointment is an additional appointment, civil service laws and rules apply to the appointment, unless the appointment is expressly exempted from civil service. Generally, those laws and rules require hiring departments to ensure a competitive and fair selection process that includes advertising for the position; determining whether an eligible list for the classification exists; collecting applications; and conducting hiring interviews.

In addition, an appointment by way of an eligible list must be determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures assessing job-related qualifications. Selection procedures must be designed and administered to select those individuals who best meet the selection need.

Given the twelve-year duration of the Security Guard's additional appointment, CDFA could not provide documentation to show that a competitive and fair selection process was conducted for the Assistant Satellite Facility Supervisor position. This process would have included advertising for the position, determining if an eligible list for the classification existed, and conducting hiring interviews. In addition, given the over five-year duration of the Satellite Wagering Facility Janitor's additional appointment, CDFA could not provide documentation to show that a competitive and fair selection process was conducted for the Satellite Wagering Facility Admissions/Program Clerk position. Thus, it cannot be determined if the additional appointments were in compliance with civil service laws and rules, or merit principles.

While departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR's Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that CDFA review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. Further, CDFA should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments.

The CDFA must comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

BACKGROUND

Section 350 of the SPB's Personnel Management Policy and Procedures Manual on "Appointments and Status" (300-911 (1/79) Rev. 10/30/86) states, in pertinent part, that an additional appointment is subject to civil service laws and rules, as follows:

Additional appointment is the term used when a State civil service employee is appointed to a second position in State service. The term is descriptive only since the fact that an appointment is held as an additional appointment does not change the civil service law and rule provisions that would otherwise apply to it.



There are no laws or rules that relate specifically to additional appointments. The authorities for making additional appointments are the same as for making any other appointment. These include the provisions on list appointments, transfers, reinstatements, etc. For example, an Office Assistant II who was reachable on the promotional list for Stenographer could receive an additional appointment as a Stenographer in the same manner as any other reachable eligible.

Section 350 also addresses two areas of “particular concern” regarding the good faith of an additional appointment:

1. The intent of the appointment must not be to circumvent the full-time appointment process; for example, making two part-time appointments of an individual who is eligible for part-time, but not full-time employment.
2. The intent of the appointment must not be to circumvent the overtime provisions.

Additionally, to ensure the proper use of additional appointments, Section 350 provides these examples: an additional appointment “to a distinctly different employment situation than the employee’s initial appointment; typically, this would involve appointment to a different class, department or State facility.”

The following departments had supervisors and/or managers who held additional appointments in rank-and-file positions within the same department on January 11, 2013:

Department	Count
California Department of Consumer Affairs	1
California Department of Corrections and Rehabilitation	227
California Department of Education	2
California Department of Food and Agriculture	2
California Department of Forestry and Fire Protection	1
California Department of Motor Vehicles	2
California Department of State Hospitals	173
California Department of Social Services	101
California Public Employees’ Retirement System	56
California Department of Veterans Affairs	2

Source: State Controller's Office

The Legislature requested that SPB and the Department of Human Resources (CalHR) review those additional appointments.¹ In order to provide a comprehensive review in the most expeditious manner, CalHR focused on compliance with classification, compensation and labor laws, rules, and policies, while SPB focused on compliance with civil service laws, rules, and policies.

This report contains only the results from the SPB's review.

SCOPE AND METHODOLOGY

The scope of this special investigation involved a review of additional appointments held by CDFA's supervisors and/or managers in rank-and-file positions on January 11, 2013. CDFA's records reflect that a full-time permanent Security Guard held by way of a list appointment an additional appointment as a permanent intermittent Assistant Satellite Facility Supervisor. In addition, CDFA's records show that a permanent intermittent Satellite Wagering Facility Janitor held by way of list appointment an additional appointment as a Satellite Wagering Facility Admissions/Program Clerk.

The primary objective of this review was to determine if the additional appointments complied with state civil service laws, rules, and policies, and to recommend corrective action for any violations identified.

The SPB held an entrance conference with CDFA on March 5, 2013, to explain the special investigation process. On that same date, a material request form was provided to CDFA requesting the appointment file and information relating to the additional appointments.

The SPB examined the documentation that CDFA provided, which included duty statements for the Security Guard, Assistant Facility Manager, Satellite Wagering Facility Janitor, and Satellite Wagering Facility Admissions/Program Clerk; a CDFA organization chart; an employee-history printout; a request for personnel action; and,

¹In January 2013, CalHR issued Policy Memo 2013-007 to Personnel Management Liaisons (PML) prohibiting departments from processing any new additional appointments. On April 25, 2013, CalHR issued Policy Memo 2013-015 instructing that effective immediately departments were no longer authorized to make any additional appointments for managers and supervisors. Policy Memo 2013-015 also sets forth options departments can consider in lieu of appointing managers and supervisors to additional positions.

the Notice of Personnel Action (NOPA). The SPB also interviewed appropriate CDFA staff.

CDFA was provided a copy of the SPB's draft report on April 22, 2013. CDFA was given until April 24, 2013 to submit a written response to the SPB's draft report. On April 24, 2013, the SPB received and carefully reviewed the department's response, which is featured at the conclusion of this final compliance report.

FINDINGS

Departments must have recruitment strategies designed to be "as broad and inclusive as necessary to ensure the identification of an appropriate candidate group." (Merit Selection Manual [MSM], § 1100, p. 1100.2 (Oct. 2003); Cal. Code Reg., tit. 2, § 50.) Generally, the typical steps a department takes after determining that approval to fill a vacant position has been secured include: determining whether there is an eligible list for the classification; determining whether an eligible list is necessary to fill the position; advertising the position, which may include certifying the eligible list; receiving applications, and if no applications are received, re-advertising the position with increased recruitment efforts; screening applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conducting hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.)

SPB rules require that appointments to permanent positions in state civil service by way of eligible list be made on the "basis of merit and fitness, defined exclusively as the consideration of each individual's job-related qualifications for a position...as determined by candidate performance in selection procedures, including, but not limited to, hiring interviews, reference checks, background checks, and/or any other procedures, which assess job-related qualifications" (Cal. Code Reg., tit. 2, § 250, subd. (a).)

SPB rules also require that "[a] new probationary period shall be required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list" (Cal. Code Reg., tit. 2, § 322, subd. (a).)

In addition, "Where the appointment of an employee has been made and accepted in good faith, but where such appointment would not have been made but for some mistake of law or fact which if known to the parties would have rendered the appointment unlawful when made, the board may declare the appointment void from the beginning if such action is taken within one year after the appointment." (Gov. Code, § 19257.5)

Government Code, section 12946 requires a two-year retention of all applications and personnel records:

“It shall be an unlawful practice for employers, labor organizations, and employment agencies subject to the provisions of this part to fail to maintain and preserve any and all applications, personnel, membership, or employment referral records and files for a minimum period of two years after the records and files are initially created or received, or for employers to fail to retain personnel files of applicants or terminated employees for a minimum period of two years after the date of the employment action taken....”

A full-time permanent Security Guard for CDFA held by way of a list appointment an additional appointment as a permanent intermittent Assistant Satellite Facility Supervisor. The additional appointment was effective on November 1, 2000. Given the twelve-year duration of the additional appointment, CDFA could not provide any written documentation related to the hiring and selection process for the position.

A permanent intermittent Satellite Wagering Facility Janitor held by way of a list appointment an additional appointment as a Satellite Wagering Facility Admissions/Program Clerk. The additional appointment to the Satellite Wagering Facility Admissions/Program Clerk was effective on August 1, 2007. Given the five-year duration of the additional appointment, CDFA could not provide any written documentation related to the hiring and selection process for the position.

Although CDFA states that it is their policy to advertise positions, given the twelve-year duration of the Security Guard’s additional appointment, CDFA could not provide documentation to ensure that a competitive and fair selection process took place when the Assistant Satellite Facility Supervisor position was filled. A competitive and fair selection process would have included advertising the position, collecting applications, and rating the candidates. CDFA also did have documentation verifying that the Security Guard served probation in the Assistant Satellite Facility Supervisor classification.

Given the age of the effective date of the appointments, CDFA is not in violation of the two-year records retention rule. Absent records, however, it cannot be determined if the additional appointments were in compliance with civil service laws and rules, or merit principles.

It should be noted that both additional appointments were funded by a temporary help blanket. Civil service laws and rules apply to all appointments, unless expressly exempted from civil service, regardless of how the positions are funded (i.e., funded

through the department's regular/on-going position budget or funded through the department's temporary help position budget). The additional appointments at issue here were not exempt from civil service laws and rules.

Regardless, given that these additional appointments have been in place for over one year and no evidence exists that either the employees or the hiring authority acted in bad faith, it is recommended that these appointments stand.

While departments are currently prohibited from appointing managers and supervisors to additional appointments (CalHR's Policy Memo 2013-015), this policy could be changed or modified in the future. Accordingly, it is recommended that CDFA review, and if necessary, update its personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, unless the additional appointment is expressly exempt from civil service. Further, CDFA should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments.

DEPARTMENTAL RESPONSE

CDFA replied by email as follows:

Thank you for your audit report. The CDFA understands and agrees with your concerns, and will update our personnel policies and procedures to ensure that all additional appointments, regardless of the funding source, comply with civil service laws and rules, and merit principles, and will provide the requisite training to our hiring supervisors and managers.

SPB REPLY

In its written response, CDFA concurs with the SPB's findings and recommendations. It is thus further recommended that CDFA comply with the afore-stated recommendations within 60 days of the Board's Resolution and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of CDFA during this special investigation.



**BOARD RESOLUTION ADOPTING
SPECIAL INVESTIGATION REPORT AND FINDINGS BY SPB
COMPLIANCE REVIEW DIVISION OVER ADDITIONAL APPOINTMENTS OF
SUPERVISORIAL AND MANAGERIAL EMPLOYEES IN
THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

WHEREAS, the State Personnel Board (SPB or the Board) at its duly noticed meeting of May 16, 2013, carefully reviewed and considered the attached Special Investigation Report submitted by SPB's Compliance Review Division concerning additional appointments of supervisory and managerial employees in the California Department of Food and Agriculture.

WHEREAS, the Report was prepared following a special investigation that was conducted in response to the Legislature's request to examine whether the practice of appointing supervisory and/or managerial employees in additional rank-and-file positions within the California Department of Food and Agriculture violates civil service laws.

WHEREAS, each Report details the background, scope and methodology of the review, the findings and recommendations, and the affected department's response.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein, and authorizes the issuance of the Report to the Legislature in response to its request for review. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

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The foregoing Board Resolution was made and adopted by the State Personnel Board during its meeting on May 16, 2013, as reflected in the record of the meeting and Board minutes.



SUZANNE M. AMBROSE
Executive Officer