



SPECIAL INVESTIGATION

**Additional Appointments
of
Supervisory and Managerial Employees**

Department of Motor Vehicles

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 Motor Vehicles (DMV)'s personnel policies and practices related to supervisory and/or managerial employees who held an additional appointment in a rank-and-file position on January 11, 2013. On that date, DMV had a Staff Services Manager I (SSM I) who held an additional appointment as a Personnel Specialist (PS), and a Manager III who held an additional appointment as a Custodian.

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.

The Manager III's additional appointment as a rank-and-file Custodian position was first created in 1981. At that time, the Manager III was a rank-and-file Licensing Registration Examiner (LRE), thus creating a rank-and-file to rank-and file additional appointment.

He was subsequently promoted to Manager III in 1993. As a result of the age of the additional appointment, no documentation was available to review since the retention period has passed. Therefore, the SPB is unable to make any determination as to whether the additional appointment violated any civil service laws or rules. The Manager III, however, has not worked in the position in over 10 years. According to DMV, personnel records incorrectly continued to show the employee in the additional appointment due to an oversight. DMV has since terminated the additional appointment.

As to the SSM I's additional appointment as a PS, DMV did not ensure a competitive and fair selection process for the PS position that included advertising for the position, determining if eligible lists for PS classifications existed, or conducting hiring interviews. Instead, DMV only offered the rank-and-file position to the SSM I. The additional appointment was thus not in compliance with civil service laws and rules, or merit principles. However, the employee never worked any hours in the additional position and was retroactively separated from the additional appointment effective in December 2011.

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 DMV 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, DMV should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments.

The DMV 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
Employment Development Department (CUIAB)	4
Total	571

Source: State Controller's Office

The Legislature requested the SPB and the Department of Human Resources (CalHR) to 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 DMV's supervisors and/or managers in rank-and-file positions on January 11, 2013. DMV had two additional appointments, one involving a Staff Services Manager I who simultaneously held a rank-and-file PS position and a Manager III who simultaneously held a rank-and-file Custodian position.

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 DMV on March 5, 2013, to explain the special investigation process. On that date, a material request form was also given to DMV to request documentation relevant to the special investigation.

The SPB examined the documentation that DMV provided, which included a DMV action request, an organization chart, a duty statement and a Notice of Personnel Action (NOPA). The SPB also interviewed appropriate DMV staff.

¹ In 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.

FINDINGS

The appointment of the Manager III holding an additional appointment as a rank-and-file Custodian was first made in 1981. At that time, the Manager III was a rank-and-file LRE, thus creating a rank-and-file to rank-and file additional appointment. He was subsequently promoted to Manager III on November 23, 1993.

The Manager III has not worked in the additional appointment in over 10 years. DMV's payment history confirms that the employee had not worked in the additional appointment for at least three years. DMV states that continuation of the additional appointment was a recordkeeping oversight. Since the additional appointment was made over 20 years ago, there is no documentation available to review to determine whether it was made based on merit principles, rules, and regulations. DMV has since separated the Manager III from the additional appointment.

Accordingly, the additional appointment of the Manager III as a Custodian existed only on paper on January 11, 2013, and was the result of an inadvertent recordkeeping error. Given DMV's prompt response to update and correct its personnel records, no corrective action is necessary.

As to the second additional appointment, DMV reinstated a permanent full-time rank-and-file APA to a permanent intermittent rank-and-file PS on January 10, 2011. The employee was subsequently promoted from an APA to an SSM I on April 2, 2012, and continued in the additional appointment as a PS through January 11, 2013, thus creating a manager/supervisor to rank-and-file additional appointment.

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 also require appointments to positions in state civil service by way of transfer or reinstatement 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).)

At the time the APA was reinstated into the PS position on January 10, 2011, DMV did not advertise the PS position, check eligible lists, or conduct hiring interviews. In addition, DMV did not conduct any screening or rating criteria prior to appointment.

DMV stated that the additional appointment was necessary for completing a backlog of work at the PS level, which was more cost effective than paying overtime to an APA level employee. Additionally, DMV explained it did not believe advertisement was necessary as the rank-and-file position was funded through the temporary help blanket.

Regardless of the reason or funding source for the additional appointment, DMV must still comply with all the civil service laws and rules for additional appointments. 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 PS position was not exempted from civil service laws and rules.

DMV further stated that rank-and-file employees within the unit were given the opportunity to perform the PS work on an overtime basis prior to the additional appointment of the APA. Information related to the PS position was thus limited to only current departmental employees within the specific unit.

As noted above, recruitment strategies must be designed to be as broad and inclusive as necessary to ensure the identification of an appropriate candidate group. Therefore, other job seekers were denied the opportunity to compete for the additional rank-and-file positions.

Additionally, the employee never worked any hours in the additional position, including during the time after she was promoted to the SSM I position. DMV has since separated the additional appointment.

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 DMV 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, DMV should provide its personnel managers and staff with

information and/or training on the laws, rules, and policies related to additional appointments.

DEPARTMENTAL RESPONSE:

The report's recommendation is *“that DMV be required to 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 exempted from civil service. To effectively implement these amendments, DMV should also be required to provide its personnel managers and staff with training on the revised policies and procedures.”*

DMV has a “Hiring Guide” that details hiring policy and process to managers and supervisors. The DMV will add the following statement to the “Hiring Guide”:

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 in making a civil service appointment include: determining whether there is an eligible list for the classification in which the vacancy exists; determining whether an eligible list is necessary to fill the vacancy; advertise the vacancy, which may include certifying the eligible list; receive applications, and if no applications are received, re-advertise the position with increased recruitment efforts; screen applications to determine which candidates meet minimum qualification requirements and are eligible for appointment; and conduct hiring interviews. (MSM, § 1200, pp. 1200.7-1200.8; Cal. Code Reg., tit. 2, § 50.) These requirements are also necessary when recruiting and hiring for “additional appointments unless that appointment is expressly exempted from Civil Service.”

SPB rules also require appointments to positions in state civil service by way of transfer or reinstatement must 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).)

DMV will provide access to its updated “Hiring Guide” to all managers and supervisors and incorporate it into training. Furthermore, DMV understands that CalHR has

undertaken a review of the additional appointment policy. Should CalHR issue a new policy DMV will issue a Human Resources Memorandum to all managers and supervisors detailing the new policy.

SPB REPLY:

DMV's response will effectively implement the corrective actions recommended herein. It is thus further recommended that DMV 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 DMV 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 MOTOR VEHICLES**

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 supervisorial and managerial employees in the California Department of Motor Vehicles.


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 supervisorial and/or managerial employees in additional rank-and-file positions within the California Department of Motor Vehicles 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.

* * * * *

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