



COMPLIANCE REVIEW REPORT

CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD

Compliance Review Unit
State Personnel Board
March 11, 2015

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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 four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) 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 the California Agricultural Labor Relations Board (ALRB) personnel practices in the areas of examinations, appointments, EEO, and PSC's from November 1, 2012, through November 1, 2013. 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	Serious
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated From All Applications	Very Serious

Area	Finding	Severity
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules	In Compliance
Personal Services Contracts	Personal Services Contracts Complied with Procedural 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

The ALRB was created in 1975 to ensure peace in the fields of California by guaranteeing justice for all agricultural workers and stability in agricultural labor relations. The Board seeks to achieve these ends by providing orderly processes for protecting, implementing, and enforcing the respective rights and responsibilities of employees, employers, and labor organizations in their relations with each other. To carry out the ALRB’s mission, the ALRB maintains 5 offices located throughout the state with a total of 50 employees comprised of appointed officials, attorneys, field examiners, and support staff to serve the stakeholders and public alike.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing ALRB examinations, appointments, EEO program, and PSC’s from November 1, 2012, through November 1, 2013. The primary objective of the review was to determine if ALRB personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

A cross-section of ALRB examinations and appointments were selected for review to ensure that samples of various 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 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 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 CRU also interviewed appropriate ALRB staff.

ALRB PSC's were also randomly selected to ensure that various types of contracted services and contract amounts were reviewed. The ALRB contracted for Xerox maintenance, transcription services, mobile phone services, and moving services, among others.¹ It was beyond the scope of the compliance review to make conclusions as to whether ALRB justifications for the contracts were legally sufficient. The review was limited to whether ALRB practices, policies, and procedures relative to PSC's complied with applicable statutory law and board regulations.

On January 30, 2015, an exit conference was held with the ALRB to explain and discuss the CRU's initial findings and recommendations. The ALRB was given until February 13, 2015 to submit a written response to the CRU's draft report. On February 13, 2015, 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 fairly to 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

¹If 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.

of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for 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 by 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.)

During the period under review, the ALRB conducted one examination. The CRU reviewed the examination, which is listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Field Examiner I	Open	Education & Experience (E&E) ²	12/07/12	4

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

The ALRB administered one examination to create an eligible list from which to make appointments. For the examination, the ALRB published and distributed an examination bulletin containing the required information. Applications received by the ALRB were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQs) for admittance to the examination. The ALRB notified applicants as to whether they qualified to take the examination, and those applicants who met the MQs 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

² In an Education and Experience (E&E) examination, one or more raters reviews the applicants' Standard 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

arranged in order of the score received by rank. Competitors were then notified of their final scores.

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

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 15 appointments. The CRU reviewed 13 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Administrative Assistant I	Certification List	Permanent	Full Time	1
Associate General Counsel, Union Labor Practices	Certification List	Permanent	Full Time	2
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Information Systems Analyst (Specialist)	Certification List	Permanent	Full Time	1
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Legal Counsel	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Senior Board Counsel	Certification List	Permanent	Full Time	1
Staff Services Analyst	Certification List	Limited Term	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accounting Officer I	Transfer	Permanent	Full Time	1
Senior Legal Typist	Transfer	Permanent	Full Time	1

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

Summary: The ALRB did not prepare, complete, and/or retain required probationary reports of performance for 2 of the 13 appointments reviewed by the CRU.

Classification	Appointment Type	No. of Appointments	No. of Uncompleted Prob. Reports
Administrative Assistant I	Certification List	1	1
Associate Personnel Analyst	Certification List	1	3
Total		2	4

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 had an insufficient system in place to track the completion of Probationary Evaluations. The ALRB is establishing an electronic Report of Performance for a Probationary Employee reminder system for supervisors.

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 § 19172.

FINDING NO. 3 – Equal Employment Opportunity Questionnaires Were Not Separated From Applications

Summary: Out of 13 appointments reviewed, 2 appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where

such data is determined by CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, “This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions.”

Severity: Very Serious. The applicants’ protected classes were visible, subjecting the agency to potential liability.

Cause: Removal of the EEO information was an inadvertent oversight. Management counseled Personnel staff and provided additional training on the process.

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 the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

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 California Department of Human Resources 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 ALRB, 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 program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate ALRB staff.

FINDING NO. 4 – 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 the ALRB 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 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.

Personal Services Contracts

A personal services contract (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 35 PSC's that were in effect. The CRU randomly selected 15 of those contracts, one of which was subject to Department of General Services (DGS) approval and thus our procedural review, which is listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Xerox	Xerox Maintenance Services	7/01/2013-6/30/2016	\$100,500.00	Yes

FINDING NO. 5 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the Department of General Services 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 the PSC reviewed was \$100,500. It was beyond the scope of the review to make conclusions as to whether 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 the contract met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, ALRB's PSC's complied with procedural requirements.

DEPARTMENTAL RESPONSE

The ALRB has taken into account the findings identified by the SPB's Compliance Review. The ALRB has provided additional training to Personnel staff and is revising procedures in response to the other adverse finding. Any additional steps will be documented in a Corrective Action Plan (within 60 days from the date the findings are published).

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.