



SPECIAL INVESTIGATION

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION

Compliance Review Unit
State Personnel Board
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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 CRU conducts these reviews on a three-year cycle.

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

BACKGROUND

In 2015, adverse actions were taken against three employees for allegedly improperly receiving interview questions and desired answers before participating in competitive interviews for vacant Fire Captain positions. All three of the employees received promotions to the Fire Captain positions following their interviews. When it was subsequently discovered that the three employees had improperly received the interview questions and desired answers in advance of the interviews, adverse actions were taken to remove them from their positions. Two of the three individuals were demoted from limited-term Fire Captain positions back to their previous Fire Apparatus Engineer classification within the same fire stations. Both were given a 5% salary reduction for 12 months, while the third individual was rejected on probation from the limited-term Fire Captain position to his previous Fire Apparatus Engineer classification at a different fire station than he had been promoted from and given a 5% salary reduction for 12 months. Within 30 days of the effective date of the demotions, however,

two of the demoted employees were re-appointed to Fire Captain positions within the same fire stations they had been demoted to. One was appointed on a limited-term basis and one was appointed on a permanent full-time basis.

After CRU contacted the CAL FIRE to begin this special investigation into the two re-promotions, the CAL FIRE rescinded the original adverse actions issued against the three individuals and served new adverse actions demoting the three individuals to the lower classification of Firefighter II, effective June 1, 2015.

EXECUTIVE SUMMARY

The purpose of this special investigation was to determine whether the two re-promotions to Fire Captain following the original adverse action were appropriate. As part of the special investigation, the CRU reviewed the three original appointments to Fire Captain positions and the two subsequent re-appointments back to Fire Captain following the brief demotion.

The CRU found that CAL FIRE failed to maintain proper documentation, provided inconsistent and contradictory information, and failed to follow established procedures in the appointments. Specifically, CRU made the following findings:

- The CAL FIRE provided inconsistent and contradictory information related to the total number of applications received and the number of candidates interviewed.
- The scores from the developed screening criteria did not correlate to the candidates who were selected for an interview.
- The CAL FIRE provided inconsistent information as to how candidates were selected for interviews.
- The CAL FIRE did not provide documentation of an interview schedule or correspondence history between the CAL FIRE and candidates.
- The CAL FIRE failed to maintain responses to interview questions and scored interview rating sheets.
- One appointment was made on the same day that the first interviews were held.
- The CAL FIRE's certification process is improper, as it does not document that candidates hired were in a reachable rank and that SROA or Reemployment eligibles were properly processed.

Given the lack of documentation and the inconsistent and contradictory information provided by CAL FIRE, the CRU cannot verify that either appointment was based on merit and fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

SCOPE AND METHODOLOGY

The CRU reviewed a total of five appointments: three appointments to Fire Captain positions that subsequently resulted in punitive demotions, and two re-appointments to Fire Captain positions occurring less than 30 days after the candidates' punitive demotions.

The CRU examined the documentation that CAL FIRE provided, which included Notices of Adverse Action, applications, vacancy postings, screening criteria, application scoring sheets, interview rating sheets, employment history records, and correspondence. In addition to the files that the CAL FIRE provided, the CRU reviewed information within the Examination and Certification Online System (ECOS), as well as data from the California State Controller's Office Personnel Information Management Systems (SCO PIMS).

FINDINGS AND RECOMMENDATIONS

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).)

The focus of this special investigation was to determine whether the two re-appointments to Fire Captain positions after a brief period of demotion complied with the merit system. The two appointments in question are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Fire Captain	Certification List	Limited Term	Full Time	1
Fire Captain	Certification List	Permanent	Full Time	1

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; advertising the vacancy, 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.)

Through the use of a sound, job-related selection process, a department can identify and select individuals based upon their job-related qualifications to perform successfully in a given job. The increased effectiveness and productivity of a qualified workforce, selected on the basis of fair, objective, job-related criteria, make it advantageous to a department to conduct selection processes that are merit-based and job-related. (MSM, § 1200, pp. 1200.2)

The CAL FIRE selection process for Fire Captains begins with an advertisement on the California Department of Human Resources (CalHR) Vacant Positions (VPOS) website located at www.jobs.ca.gov. The certification of the applicable eligible lists are ordered in ECOS. Generally, certifications are viable for 120 days; however, with peace officer classifications the certifications can be extended to one year to allow time for intensive background checks. Once the final filing date for applications has passed on the job posting, the applications are reviewed with pre-determined job-related screening criteria. To find the best candidates, the CAL FIRE units are given the flexibility of proceeding in three ways: following up with a supplemental application, inviting the screened applicants in for an interview, or opting to perform a resume review with pre-determined rating criteria specific to their program’s needs following bargaining Unit 8 MOU 9.2 on inter-unit transfers. Once the candidate pool is determined, units send applications to the examination unit at headquarters to verify the minimum

qualifications. If applicable, the units then interview the verified candidates and create a score order candidate listing used at the Statewide Hiring Meeting. For the Statewide Hiring Meeting, representatives meet to determine which candidates will be offered a job for each unit, and update the hiring matrix accordingly. The selection of candidates is based upon the score order candidate listing, the unit's needs, and the budget for the year. Once a job offer is accepted, the Certification List Working Report (CLWR) is notated. Once the certification list expires, regional personnel staff code the entire CLWR, check for legal hires, and send the hard copy to headquarters with other applicable documents for filing. Hiring notes are made on the electronic certification within ECOS, and hire dates and certification numbers are verified in SCO PIMS.

INFORMATION REGARDING THE SELECTION OF CANDIDATES WAS CONTRADICTIONARY

The CRU received contradictory information from CAL FIRE over the course of the review regarding the process of selecting candidates for an interview.

Permanent Appointment

For the permanent Fire Captain appointment on February 23, 2015, the compact disc submitted to the CRU indicated that 103 applications were received for the position, and 43 candidates appeared for an interview. However, on May 5, 2015, the CAL FIRE emailed the CRU a spreadsheet showing 105 applications were received and 47 candidates were invited to interview, although interview rating criteria was only provided for 36 candidates. Documentation of an interview schedule or correspondence history between the CAL FIRE and candidates was not provided.

The CRU found that benchmarked screening criteria was developed and utilized for the first round of screening candidates. However, the scores from the developed screening criteria did not correlate to the candidates who were selected for an interview. Specifically, a candidate with a resume review of 27 out of 100 was interviewed while a candidate with a score of 60 out of 100 was not.

In response to the CRU's questions regarding the interview screening process, the CAL FIRE stated in an e-mail on May 14, 2015, that all applicants who met the minimum qualifications were invited to an interview. However, the documentation provided by the CAL FIRE on May 5, 2015, does not corroborate this. Specifically, there was no documentation demonstrating that the 47 of the 84 candidates who could be verified to meet the minimum qualifications were extended an interview or participated in an

interview, as an interview schedule, documentation of communication to the candidates, responses to interview questions, and scored interview rating sheets were absent from the file. In response to the CRU's questions regarding the number of candidates interviewed, the CAL FIRE stated in an e-mail that all applicants had been invited to the interview by phone and that the non-interviewed applicants did not show up or were not interested in the position.

On May 14, 2015, the CAL FIRE revised the Fire Captain recruitment spreadsheet from May 5, 2015, changing their original response from a "No" to a "Yes" on the "invited to an interview" spreadsheet column for 57 candidates. On June 1, 2015, the CAL FIRE confirmed that they did not keep any documentation showing that all candidates were contacted to participate in an interview.

Given the lack of documentation and the inconsistent and contradictory information provided by CAL FIRE, the CRU cannot verify that the appointment was based on merit and fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

Limited-Term Appointment

For the second appointment reviewed, the limited-term Fire Captain appointment on March 2, 2015, the CAL FIRE provided the recruitment file to CRU on May 8, 2015. The CRU found that 93 applications were received for the vacancy, 14 candidates were scheduled for an interview, 8 candidates appeared for an interview, and 1 candidate was subject to resume review¹. Interviews were held on March 2, 2015, March 3, 2015, and March 16, 2015. The documentation reflected the appointee's effective date as March 2, 2015, the same day that the first interviews were held. The CAL FIRE stated that the hired applicant was the only candidate that had worked in the unit previously and was selected utilizing the resume review method on April 21, 2015. However, the CRU found 14 candidates had experience working within the unit and had applied for the position but were either not interviewed or had their resumes screened out.

To clarify why interviews were held after the appointment of the limited-term Fire Captain, the CAL FIRE responded on April 24, 2015, that there were a total of six limited-term Fire Captain positions within the unit. Therefore, the interviews were conducted for the remaining open positions. The CAL FIRE provided additional material to clear up why it appeared that 12 of the 14 candidates had not been invited to

¹ The CAL FIRE utilizes resume review as an alternative selection method for employees who have worked in a specific unit.

interview. Of the two remaining candidates, the CAL FIRE stated that one was not in a reachable rank, and the other had not completed the Fire Fighter Apprenticeship Committee Program. The CRU found that the first candidate was in fact in a reachable rank on the certification, and that while the second candidate had not been interviewed, the CAL FIRE had invited three other candidates to interview who also had not completed the Fire Fighter Apprenticeship Committee Program.

The CRU requested the CAL FIRE to complete a spreadsheet identifying which candidates were invited to interview, which candidates appeared for an interview, and to provide the reason for excluding any candidate from the interview process. After review of the CAL FIRE's May 12, 2015 response, the CRU found the information listed to be misleading. For example, the CAL FIRE stated that five candidates did not have list eligibility; however, an independent review of SCO PIMS indicated that the applicants had eligibility for appointment by transfer and/or permissive reinstatement.

On May 14, 2015, the CAL FIRE stated that all candidates, excluding those hired from the resume review process, were in fact invited to interview. The CAL FIRE's response indicated 79 applicants either declined the interview or did not show up for the interview. On June 1, 2015, the CAL FIRE confirmed that they did not have documentation to demonstrate that all candidates were contacted to participate in the interview process.

Given the lack of documentation and the inconsistent and contradictory information provided by the CAL FIRE, the CRU cannot verify that the appointment was based on merit and fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

CERTIFICATION PROCESS WAS IMPROPER

For Fire Captain appointments, the CAL FIRE used Certification List Working Reports (CLWR) to code appointments in place of the actual certification lists within ECOS. Since the implementation of ECOS in January 2014, the proper procedure requires that a certification be ordered electronically to certify eligibility of a candidate, and that the hire be documented on the electronic certification. The CLWR is a report within ECOS that acts as a snapshot of a point in time of the status of the certification; however, it is not the official certification. The header on every page of the CLWR states: "CAUTION – DO NOT MAKE APPOINTMENTS OR COMMITMENTS FROM THIS REPORT." This instruction is to prevent agencies from coding the hires on the paper reports. The CLWR expressly instructs agencies to process hires on the electronic certifications.

Between January 1, 2014 and June 26, 2015, 626 Fire Captains were hired. As of May 15, 2015, only 2 of the 626 Fire Captain appointments have been documented on the electronic certifications within ECOS. For one of the two electronically coded hires, the certification number utilized within ECOS did not match the certification number documented in the appointment file and SCO PIMS. These 624 Fire Captain appointments should have been properly documented within the ECOS system given that ECOS was in effect during the time period in which the appointments were made

By failing to document the certification electronically, the CAL FIRE is unable to retain the historical data of their appointments, including verifying that hired candidates were in a reachable rank. This can lead to a violation of California Code of Regulations, title 2, section 254, mandating that vacancies under Government Code sections 19057.1, 19057.2 and 19057.3 be filled by the three highest ranks certified. In addition, if SROA or Reemployment were present, bypassing electronic coding can lead to a violation of California Code of Regulations, title 2, section 599.854.4. In this instance, however, SROA² or Reemployment³ eligible lists were not in effect for the Fire Captain certifications.

CONCLUSION

During the special investigation, the CRU found that the CAL FIRE consistently failed to maintain files crucial to documenting a fair and merit based hiring process. Specifically, correspondence history, interview schedules, responses to interview questions, scored interview rating sheets, and the predetermined standard method of sorting applicants into a resume review process or interview process were missing from the files. Inconsistent data was given to the CRU over the duration of the review. After an in-depth review, the CRU cannot verify the permanent and limited-term Fire Captains were appointed based on merit and fitness because the documentation provided was disjointed and unclear.

² The state restriction of appointments (SROA) program is intended to prevent the layoff and separation of skilled and experienced employees from State service. The SROA program assists in placing affected employees by temporarily restricting the methods of appointment available to appointing powers. Employees on SROA lists are granted preferential consideration over all other types of appointments except appointments from reemployment lists and mandatory reinstatements.

³ Reemployment lists show employees who have been laid off or demoted in lieu of layoff. Hiring departments must hire from reemployments lists before using any other list. The SPB places employees on reemployment lists in seniority order. Employees on reemployment lists are granted preferential consideration over all other types of appointments except mandatory reinstatements.

Furthermore, the CAL FIRE's failure to document the list appointments on the certifications within ECOS resulted in a loss of data and crucial documentation throughout all files. This included the following: proper correspondence notations, hiring of the appointees on the certification, and evidence that the department followed applicable civil service laws and regulations. In addition, not documenting hires within the electronic system is inefficient and hinders the State of California from accessing centralized hiring records.

This is not the first time that the CAL FIRE has been found to have deficient personnel practices. On November 9, 2009, the SPB revoked the CAL FIRE's delegated authority to administer civil service examinations due to a number of irregularities in their examinations for Fire Captain and Fire Captain (Paramedic). In addition to ordering the examinations and lists abolished for these classifications and revoking the CAL FIRE's delegated authority to administer exams, the CAL FIRE's HR staff was placed under the SPB's supervision for a two-year period. SPB staff provided oversight, guidance, and training on examination administration. At the end of the two-year supervision period in 2011, the CAL FIRE's delegated authority was reinstated given the CAL FIRE's renewed compliance with civil service laws, regulations, and policies pertaining to the merit selection process for examinations.

DEPARTMENTAL RESPONSE

The California Department of Forestry and Fire Protection (CAL FIRE) appreciates the opportunity to respond to this special investigation. The CAL FIRE acknowledges and does not contest the findings in this report relative to the supporting documentation for the hires in question. In fact, separate of any investigation, the department recognized the problems associated with those hires and took steps to rescind the original adverse actions, subsequent appointments, and issue new adverse actions with more clearly defined penalties.

In addition, and again separate from any investigation, the CAL FIRE recognized the need for a more consistent hiring process for all classifications, not strictly those related to fire suppression. As a result, the department created a new unit within the Labor and Human Resource Management Office called the Hiring Review Unit (HRU). Implemented in September 2015, this unit's purpose is to review all potential offers of employment to ensure that the selection process has been conducted fairly and equitably for all candidates. Among other things, the HRU reviews screening and rating criteria and ensures that reference checks are being conducted on candidates. Hires

within the department are now being reviewed by the HRU prior to any offer being made.

Furthermore, since the time that the appointments in question were made, and before the CRU released this report, the CAL FIRE began taking steps to ensure that all managers, supervisors, or other employees involved in the recruitment and selection process are properly trained and aware of the appropriate steps to be taken prior to making an offer of employment. Beginning in September 2015, the HRU has been providing Recruitment and Selection Process training to all managers and supervisors statewide. Among other things, this training emphasizes that all hires must be documented with supporting documents retained within a Hiring Retention folder. This folder must contain a copy of the advertisement for vacancies, all applications received, the duties statement, screening criteria, rating criteria, communications regarding the recruitment, and any other documentation related to the selection of candidates for a vacancy. The department will be happy to provide the syllabus for the Recruitment and Selection Process training, as well as examples of the documentation now required for every hire.

Regarding the alleged failure to document list appointments on the certifications within ECOS, the CAL FIRE believes that the manual process it is currently using still ensures that hires are only made out of reachable ranks. However, given the concerns raised in the investigations, the department will reevaluate its current process to see if it can identify and reduce any inefficiencies or loss of data.

The CAL FIRE believes that it has already implemented a number of measures to ensure adherence to civil service laws and State Personnel Board rules with regard to hiring, and it is prepared to report as much through the corrective action plan process. The department is confident that through the formulation and implementation of the Hiring Review Unit, it has already addressed the issues raised in this report, and welcomes any further discussion to provide additional information or clarification.

CRU REPLY

To ensure adherence with civil service laws and Board rules, the CAL FIRE must have HR hiring staff attend California Department of Human Resources (CalHR) trainings specifically on merit and fitness, best hiring practices, and ECOS certification clearance. Within 60 days of the Executive Officer's approval of these findings and recommendations, the CAL FIRE must submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure the

department will improve its hiring practices. Copies of any relevant documentation should be included with the plan. Failure to comply with this may result in further sanctions including the removal of the CAL FIRE's hiring delegation.