SPECIAL INVESTIGATION

Additional Appointments
of
Supervisorial and Managerial Employees

California Public Employees Retirement System

Prepared By:
State Personnel Board
Compliance Review Division
May 16, 2013

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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 California Public Employees' Retirement System (CalPERS)'s personnel policies and practices related to supervisorial and/or managerial employees who held an additional appointment in a rank-and-file position on January 11, 2013. On that date, 56 full-time CalPERS managers held additional appointments as temporary intermittent rank-and-file employees for CalPERS. Five of the 56 managers held two additional rank-and-file appointments, for a total of 61 temporary intermittent rank-and-file additional appointments. Forty-one of those additional appointments were by way of reinstatement, and seven were by way of transfer. The remaining 13 additional appointments were by way of reinstatement or transfer; the type of documentation provided by CalPERS (Employee History Summary) does not differentiate between the two.

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 transfer or reinstatement 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.

CalPERS appointed its managers to additional appointments in rank-and-file positions without a competitive and fair recruitment and selection process that included advertising for the positions, determining if eligible lists for the classifications existed, or conducting hiring interviews. The additional appointments were thus not in compliance with civil service laws and rules, or merit principles. CalPERS has separated the supervisors and/or managers from the additional appointments.

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

CalPERS 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 that SPB and California 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 CalPERS supervisors and/or managers in rank-and-file positions on January 11, 2013. On that date, CalPERS had 56 full-time managers who held 61 additional appointments as temporary intermittent rank-and-file employees for CalPERS. Five of the 56 managers held two temporary intermittent rank-and-file appointments; the other 51 managers held one additional temporary intermittent rank-and-file appointment.

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 CalPERS on March 14, 2013, to explain the special investigation process. A material request form was also given to CalPERS to request documentation relevant to the special investigation.

The SPB examined the documentation that CalPERS provided, which included internal memoranda requesting and authorizing the positions, duty statements, Notices of Personnel Action (NOPA), Personnel Action Requests (PARs), and employee history summaries. The SPB also reviewed a seven-page memorandum from CalPERS that

[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.

summarized the conditions that mandated their use of additional appointments and their approach to selection.

On April 24, 2013, an exit conference was held with CalPERS to explain and discuss the SPB's initial findings and recommendations. CalPERS was also provided a copy of the SPB's draft report. CalPERS 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 attached to this final compliance report.

FINDINGS

CalPERS' use of additional appointments supplemented other staffing and resource options the department had previously employed in an endeavor to meet the temporary, intensive demands related to the development, launch, and implementation of the my|CalPERS technology project. These included voluntary and mandatory overtime for CalPERS staff, and "hiring outside consultants, permanent intermittent staff, students, seasonal clerks and retired annuitants where permitted."

All of the 61 reviewed additional appointments were designated as temporary intermittent. Forty-one of the additional appointments were made by way of reinstatement, and seven were by way of transfer. The remaining 13 additional appointments were by way of reinstatement or transfer; the type of documentation provided by CalPERS (Employee History Summary) does not differentiate between the two.

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

The my|CalPERS technology project was large, complex, and time-sensitive. To complete the project in a timely and cost efficient way, CalPERS identified candidates for additional appointments who possessed the skill sets necessary to accomplish the technical tasks at issue, either because they had performed the function in the past or had supervised the function in the past, and/or because they were considered subject matter experts within the applicable area. CalPERS is confident that only the highest qualified candidates filled the additional appointments.

However, prior to hiring the supervisors/managers for the additional appointments as rank-and-file employees, CalPERS did not determine whether eligible lists existed for the seven rank-and-file classifications that were utilized for the my|CalPERS project. CalPERS also did not advertise for the positions, nor solicit for or receive any applications. In addition, CalPERS did not conduct any hiring interviews. Consequently, CalPERS offered supervisors and/or managers additional appointments as rank-and-file employees without engaging in an appropriate recruitment and selection process. CalPERS has separated the supervisors and/or managers from the additional appointments.

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

DEPARTMENTAL RESPONSE

CalPERS was provided a draft copy of the initial report to review. A copy of CalPERS' response is attached.

SPB REPLY

CalPERS' written response concurs that the process CalPERS used to place supervisors and/or managers in rank-and-file additional appointments was imperfect. It is thus further recommended that within 60 days of the Board's Resolution, CalPERS comply with the afore-stated recommendations and submit to the SPB a written report of compliance.

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

California Public Employees' Retirement System
Human Resources Division
P.O. Box 942718
Sacramento, CA 94229-2718
TTY: (877) 249-7442
(916) 795-3065 phone (916) 795-4001 fax
www.calpers.ca.gov

Memorandum

April 24, 2013

To: JAMES MURRAY, Chief
Compliance Review Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

From: KATRINA S. HAGEN, Chief
Human Resources Division

Subject: STATE PERSONNEL BOARD COMPLIANCE REVIEW

Thank you for the opportunity to provide comments on your April 2013 draft report entitled, "Special Investigation Additional Appointments of Supervisorial and Managerial Employees." We respectfully request that you consider a clarification, as explained below.

The report at the second to the last page inaccurately states that CalPERS undertook "none" of the actions listed in State Personnel Board (SPB) regulation section 250(a).[1] This characterization is inaccurate because CalPERS did, in fact, undertake an evaluation of the merit and fitness of employees when considering individuals for the additional appointment positions.

CalPERS used "other procedures," as authorized under subdivision (a) of the regulation, to assess "job-related qualifications" for the positions. CalPERS considered the job performance, skills, abilities, experience, education, training, and fitness of each employee for the positions at issue. As a result, the qualifications of each candidate were considered by CalPERS

[1] Cal. Code Reg., tit. 2, § 250, subd. (a) provides in pertinent part: "Appointments to positions in the State civil service . . . shall be made on the basis of merit and fitness, defined exclusively as the consideration of each individual's job-related qualifications for a position, including his/her knowledge, skills, abilities, experience, education, training, physical and mental fitness, and any other personal characteristics relative to job requirements, 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 and are designed and administered to select those individuals who best meet the selection need."

management in the additional appointment process. Although CalPERS did not advertise these positions or conduct formal interviews, it is inaccurate to state that CalPERS did nothing required by the regulation. While the processes used were not perfect, they were designed to appoint the highest qualified person for each of the positions filled. Finally, we are confident that all those appointed were qualified for the additional position they filled and there is no indication that unqualified people were appointed.

As we previously noted, CalPERS primarily utilized additional appointments to address critical organizational needs essential to the success of our mylCalPERS technology project during periods of development, launch and implementation. These positions required unique and specialized skills, including experience with CalPERS 49 legacy computer systems, familiarity with the new system, and the technical experience to perform the necessary technology development and testing functions, and/or the processing skills necessary to assist with the clearing of backlogs in retirement applications, death benefits, and service credit requests. Delaying the launch and implementation of the new system would have resulted in significant additional costs and was not a feasible option (due to the limited window when the launch would not impact other critical business operations). The specialized skill sets were needed immediately and there was no time to hire and train new employees from outside of CalPERS, thus the only viable candidate pool appeared to be those individuals already employed at CalPERS.

At the times decisions were being made relative to the use of additional appointments, CalPERS acted reasonably and with the good faith belief that it was operating within all applicable statutes, rules and policies in making the appointments. While the process utilized to make the additional appointments might have been imperfect, we believe that the use of additional appointments solved a large, complex, time-sensitive resource requirement in a way that was fair to employees, resulted in cost savings, and met the needs of our organization to continue to deliver pension and health benefits to our members.

Again, thank you for the opportunity to comment on the draft report. CalPERS remains committed to working with the SPB and other state agencies on the issues raised.

CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall Sacramento, CA 95814 | www.spb.ca.gov

Governor Edmund G. Brown Jr.

BOARD RESOLUTION ADOPTING SPECIAL INVESTIGATION REPORT AND FINDINGS BY SPB COMPLIANCE REVIEW DIVISION OVER ADDITIONAL APPOINTMENTS OF SUPERVISORIAL AND MANAGERIAL EMPLOYEES IN THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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 Public Employees Retirement System.

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 Public Employees Retirement System 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