



SPECIAL INVESTIGATION

**Additional Appointments
of
Supervisory and Managerial Employees**

**Employment Development Department
(California Unemployment Insurance
Appeals Board)**

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 Unemployment Insurance Appeals Board (CUIAB)'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. While the CUIAB is an independent board, its personnel functions are currently administered by the Employment Development Department (EDD). Accordingly, during the compliance review, EDD acted on CUIAB's behalf. However, during the time of the additional appointments, CUIAB processed all human resource functions.

On January 11, 2013, CUIAB had two permanent full-time Staff Services Manager I (SSM I)s and two permanent full-time Staff Services Manager II (SSM II)s who held additional appointments in rank-and-file Senior Legal Typist (SLT) positions on a permanent intermittent basis by way of transfer. On February 13, 2013, EDD separated the four managers from the additional appointments effective on January 30, 2013.

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.

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.

In addition, all applications for a state civil service position must be maintained and preserved on file for at least two years. The two-year retention requirement is mandatory.

In June 2009, CUIAB determined that it did not have an eligible list for the SLT classification and that no eligibles for an SLT position existed on the State Restriction of Appointments (SROA) list or the General Reemployment list. In September 2009, CUIAB advertised for an SLT position in CUIAB for seven days on VPOS, an online service for persons seeking careers in California government. CUIAB, however, did not recheck the SROA list or the General Reemployment list and did not determine if other departments had eligible lists for the SLT classification. The only applications CUIAB received for the rank-and-file SLT positions were from current CUIAB managers. CUIAB hired all the applicants as additional appointments, even though the advertisement had been for only one SLT position. CUIAB subsequently separated the managers from the additional appointments.

CUIAB's recruitment and selection efforts were insufficient. For CUIAB's recruitment strategy to have been as broad and inclusive as necessary to ensure the identification of an appropriate candidate group for the duties of an SLT, it should have rechecked the SROA list and the General Reemployment list, and determined if other departments had eligible lists for the SLT classification. Subsequently, due to CUIAB's recruitment efforts, the candidate pool for the SLT position was limited to only CUIAB managers.

In addition, CUIAB's selection process was overly narrow and did not include hiring interviews or a determination of whether the applicants had all the skills and knowledge necessary to perform the duties of an SLT. CUIAB did not maintain copies of the hiring documentation, including employment applications, for a minimum of two years.

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 EDD/CUIAB 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. EDD/CUIAB should also ensure that its personnel policies and procedures include a minimum two-year retention requirement for all hiring documents, including documents related to employees placed in additional appointments. Further, EDD/CUIAB should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments and retention of hiring documents.

EDD/CUIAB 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 California Department of Human Resources (CalHR) to review those additional appointments.¹ In order to provide a comprehensive

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.

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 CUIAB's supervisors and/or managers in rank-and-file positions on January 11, 2013. On that date, CUIAB had four managers who held additional appointments as rank-and-file employees. Because EDD currently administers CUIAB's personnel functions, EDD acted on CUIAB's behalf during the compliance review.

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 EDD on March 5, 2013, to explain the special investigation process. A material request form was also given to EDD seeking documentation relevant to the special investigation regarding CUIAB.

The SPB examined the documentation that EDD provided from CUIAB, which included cost justifications, duty statements, Vacancy Positions Database (VPOS) advertisement, organization charts, a Notice of Personnel Action (NOPA), and a list certification. The SPB also interviewed appropriate EDD staff.

FINDINGS

Prior to September 2009, the CUIAB faced a backlog of over 4000 un-typed decisions and transcripts. CUIAB had unsuccessfully attempted to reduce, if not eliminate, the backlog by hiring an additional SLT and allowing SLTs to work overtime. On June 15, 2009, CUIAB verified that CUIAB did not have a certified list for the SLT classification and that no eligibles for an SLT position existed on the SROA list or the General Reemployment list.

On September 23, 2009, CUIAB advertised on VPOS for an SLT position. The required skills and knowledge for the position included: transcribing verbatim-proposed Board decisions that contain a large portion of legal, medical, and occupational language; knowledge of the appeals process including the E-File process; logging in decisions and

files according to time lapse date; and assisting in training employees. The advertisement was posted for seven calendar days.

CUIAB could have maintained a continuous filing on VPOS, thus exposing the openings for a longer period of time and to a broader audience. Even though more than 120 days had passed since CUIAB had certified that no eligible lists existed, CUIAB did not recheck the SROA list or the General Reemployment list, or determine if other departments had eligible lists for the SLT classification.

Because of CUIAB's minimal efforts at recruitment, they only received applications² from CUIAB managers, two SSM I's and two SSM II's. The managers were from three different units in CUIAB, Strategic Planning and Training, Fiscal/Budget Operations, and the Workload Operations Unit. CUIAB hired the four managers for SLT positions by way of transfer, even though the advertisement had been for one SLT position. CUIAB did not utilize screening and/or rating criteria or interview the managers. The hiring decision was based solely upon the managers' prior and/or current typing experience.

CUIAB ceased using one of the individuals in the additional appointment in November 2011. The other employees stopped working in the additional appointment in May 2012, October 2012, and January 2013, respectively. On February 13, 2013, EDD separated the four managers from the additional appointments as SLTs with an effective date of January 30, 2013.

In state civil service, "permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination." (Cal. Const., Art. VII, § 1, subd. (b).) 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.)

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

² EDD received a total of five applications. The fifth applicant was a CUIAB management employee, who was also appointed to an additional appointment as a rank-and-file SLT. The additional appointment for this manager, however, was terminated prior to January 11, 2013, and is therefore not within the scope of the instant special investigation.

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 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).)

For CUIAB’s recruitment strategy for the SLT position to have been as broad and inclusive as necessary to ensure the identification of an appropriate candidate group, it should have rechecked the SROA list and the General Reemployment list, and determined if other departments had eligible lists for the SLT classification at or near the time CUIAB advertised for the position. This is particularly true since at least three months had elapsed since CUIAB had certified that there were no eligible lists and the candidate pool for the SLT position was limited to only CUIAB managers.

In addition, CUIAB could have requested lists from other agencies in order to send out contact letters. Research by SPB revealed that at the time of hiring, there were at least eleven lists from different departments available from which to choose. Further, the advertisement on VPOS for only seven days was inadequate exposure of the listing. CUIAB could have listed the advertisement continuously, thereby generating more interest and eventually creating a larger pool of qualified individuals to choose from. CUIAB’s efforts only generated five applications, all of which were in-house.

CUIAB’s selection process did not include hiring interviews or a determination of whether the applicants had all the skills and knowledge necessary for the SLT position. In addition, CUIAB did not maintain copies of the hiring documentation, including employment applications, for a minimum of two years. All applications for a state civil service position must be maintained and preserved on file for at least two years. (Gov. Code, § 12946; Cal. Code Reg., tit. 2, §174.) The two-year retention requirement is mandatory.

Thus, the additional appointments were not in compliance with civil service laws and rules.

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 EDD/CUIAB 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. EDD/CUIAB should also ensure that its personnel policies and procedures include a minimum two-year retention requirement for all hiring documents, including documents related to employees placed in additional appointments. Further, EDD/CUIAB should provide its personnel managers and staff with information and/or training on the laws, rules, and policies related to additional appointments and retention of hiring documents.

DEPARTMENTAL RESPONSE

EDD and CUIAB were offered an exit conference but declined. In addition, EDD clarified in an e-mail response to the initial report that during the special investigation, EDD acted on CUIAB's behalf. However, during the time of the additional appointments, CUIAB processed all human resource functions. This clarification has been made within the body of the final report. CUIAB did not have any additional comments.

SPB REPLY

After carefully reviewing EDD's e-mail response, SPB's afore-stated recommendations will remain the same. It is thus further recommended that within 60 days of the Board's Resolution, EDD/CUIAB comply with those recommendations and submit to the SPB a written report of compliance.

The SPB appreciates the professionalism and cooperation of EDD and CUIAB 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 EMPLOYMENT
DEVELOPMENT DEPARTMENT (THE CALIFORNIA UNEMPLOYMENT INSURANCE
APPEALS BOARD)**

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 Unemployment Insurance Appeals Board.

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 Unemployment Insurance Appeals Board 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