State of California

CALIFORNIA HIGHWAY PATROL

Final Personnel Audit Report

Prepared by the
staff of the
State Personnel Board

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CALIFORNIA STATE PERSONNEL BOARD

July 2006

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Background

The Department of the California Highway Patrol's (CHP) Personnel Management Division (PMD) is organized with a Division Chief, who is in the top management position as a Career Executive Assignment (CEA 2). There is also an Assistant Chief[1] position. The division office organization chart lists the following positions within the PMD: one Staff Services Manager I (SSM I); seven administrative assistants[2] (all of which are relevant to this report); and one Office Technician. Reporting to the division office are four sections: Personnel Services Section, Hiring and Special Projects Section, Selection Standards and Examinations Section, and the Disability and Retirement Section. Employees for each Section are supervised by a Section Commander.

During 2005, the State Personnel Board (SPB) received information from individuals employed at PMD concerning allegedly improper appointment practices occurring within the PMD. More specifically, for purposes of this report, PMD staff, including PMD supervisors, reported that an employee had been promoted to a newly-created Staff SSM I, Supervisor,[3] position within the PMD, despite the fact the position did not require the supervision of any employees.[4]

Prior to the SPB commencing its investigation or notifying the CHP about the allegations it had received, during December 2005, the CHP's Internal Affairs Investigative Office contacted the SPB and the DPA, requesting that both the

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[1] Working title.

[2] Staff Services Manager I (SSM I), Associate Governmental Program Analyst (AGPA), Staff Services Analyst (SSA)

[3] The SSM I, classification is typically the first working supervisor level. In general, employees at this level supervise a small group of analysts or they may be non-supervisory staff specialists, in which case they are classified as SSM I, Specialist. They are utilized in a wide variety of fiscal, management, and staff services functions including such areas as personnel. The Department of Personnel Administration (DPA) reports that at the time the SSM I allocation was approved at CHP, CHP had full delegation from DPA for position allocation determinations under a Delegated Position Allocation Agreement. However, along with this delegation of authority came the responsibility for ensuring that CHP positions met class specification and allocation guideline criteria.

[4] The information received by the SPB indicated that the newly-created SSM I, Supervisor, position was ostensibly responsible for supervising four administrative assistants who had previously been supervised by four Section Commanders within the PMD, but that in reality, the administrative assistants remained under the supervision of the four Section Commanders.

SPB and the DPA review, among other things, the propriety of the above-described promotion. To facilitate that review, the CHP provided SPB and DPA staff with all documentary evidence in its possession underlying the promotion. The SPB's Executive Officer thereafter directed SPB staff to conduct an investigation into the alleged improprieties.

SPB staff reviewed all documentary evidence presented by the CHP concerning the promotion in question, and interviewed several CHP employees who were purported to have knowledge of the facts underlying the promotion. Although the CHP declined to provide the SPB with copies of its own investigative findings concerning the promotion, citing confidentiality and privilege concerns, the CHP did facilitate interviews of all CHP staff requested by SPB personnel, and cooperated with SPB staff during the investigation.

SPB staff also consulted with DPA staff, who informed the SPB that, based upon their analysis of the job description for the SSM I, Supervisor, position in question, it was improper for the position to have been classified as a supervisory position, as the position did not perform a sufficient level of recognized supervisory functions to be so designated. DPA staff also informed the SPB that the duties of the position were also inadequate for it to be designated as an SSM I, Specialist, position, as the duties in question were primarily administrative in nature.

Preliminary Report

Upon completion of its investigation, the SPB issued a preliminary report containing its findings. In that preliminary report, SPB staff concluded that the promotion was illegal, as the position did not perform a number of the duties ordinarily associated with an SSM I, Supervisor. SPB staff further concluded that the promotion was not made in good faith, as it was not reasonable for the PMD Chief – the individual responsible for creating the position and approving the promotion – to conclude that the position warranted classification at the SSM I, Supervisor, level. Similarly, SPB staff concluded that the promotion was not accepted in good faith, as the individual appointed to the position could not have reasonably concluded that, given the position's job duties, the position was appropriately classified at the SSM I, Supervisor, level.

As a result, in the preliminary report, SPB staff made the following recommendations:
(1) Effective immediately, the CHP's Commissioner shall issue a memorandum to all PMD employees directing them to follow all state hiring requirements when processing appointments; (2) Prior to issuing the memorandum, CHP shall forward a copy of its draft to SPB's Executive Officer within 30 days of receipt of this Audit Report for SPB approval; (3) Since the CHP and SSM I incumbent acted in other than good faith, SPB staff will take action to void the bad faith appointment; (4) SPB's Merit Employment and Technical Resources Division

shall review and approve all PMD list appointment, PMD transfer, and PMD reinstatement hiring packages prior to each proposed effective date. This probation and monitoring process is effective immediately and will continue for an indefinite period of time; (5) Within thirty days, CHP will provide SPB with a list of all appointments (list, transfer, reinstatement, etc.) in PMD for the past two years; and
(6) SPB strongly recommends that DPA staff immediately conduct an audit review of the position allocations within PMD and give careful consideration to CHP's delegated personnel management functions.

Response to Preliminary Report

Both the CHP and the individual promoted to the position were provided with a copy of the SPB's preliminary findings, and were afforded an opportunity to submit written responses to the SPB prior to the issuance of the SPB's final report. In its response, the CHP asserted, among other things, that:

- Prior to the SPB commencing its investigation, the CHP had already initiated its own investigation regarding possible improprieties within the PMD. As a result of its investigation, the CHP determined that the promotion in question was inappropriate, and took corrective action against the individual responsible for initiating and approving the promotion. In addition, the CHP's investigation revealed no wrong-doing on the part of the individual who accepted the promotion, and determined that no punitive action should be imposed on that individual.
- As a result of its investigation, the CHP has implemented strict management controls to ensure further appointments within the PMD are made in compliance with all appropriate laws.
- While some form of mutually agreed upon probation and monitoring may be worthwhile, the SPB's Merit Employment and Technical Resources Division's approval of all PMD list appointment, transfer and reinstatement hiring packages prior to each proposed effective date for an indefinite and unspecified period of time is unnecessarily burdensome and risks bringing the division's hiring process to a halt.
- Although the SPB is welcome to review whatever hiring and appointment materials it believes necessary for its official purposes, requiring the CHP to compile a list of all appointments of any kind for a two-year period, and strongly recommending that "DPA staff immediately conduct an audit review of the position allocations within PMD and give careful consideration to CHP's delegated personnel management functions" is overly broad, overly vague, and excessive.

The employee in question also submitted a response, asserting, among other things, that:

- The organization chart was not inaccurate, as analysts did report to the employee, who reviewed their work and provided appropriate feedback. In addition, the employee had direct responsibility for the supervision of the Division's Administrative Analysts, an Associate Governmental Program Analyst, a Staff Services Analyst, and an Office Technician.
- The employee performed SSM I, Supervisor, level duties by providing the highest level of input and review to every complex issue within the PMD and, in fact, performed duties on par with that of an Assistant Chief. A desk audit of the position's duties would reveal that it was properly classified at the SSM I, Supervisor, level.
- The PMD Chief did not direct that only a "paper change" be made to the organization chart to inaccurately reflect that four administrative assistants would be reporting to the position in question. Instead, the focus of the discussion was that the four administrative assistants would remain in their same physical location, but would be reporting to the newly created SSM I, Supervisor, position.
- The employee was to provide supervisory oversight of the four administrative assistants, and the respective Section Commanders would provide oversight of other duties, such as approval of vacation, annual leave, sick leave, etc. Although the employee was to consult with the Section Commanders regarding each administrative assistant's annual performance evaluation, the employee did not actually do so due to a breakdown in communication between the Section Commanders and the employee.
- The employee was not initially aggressive in assuming all of her supervisory duties due to resistance from other employees regarding the change in assignments.
- SPB failed to interview all appropriate individuals who would refute any allegation that the employee did not perform an appropriate supervisory function.

Legal Standards

The SPB is tasked with overseeing the state civil service to ensure that all appointments and promotions within the civil service are made on the basis of merit. Toward that end, Article VII, section 1, of the California Constitution provides that:

> (a) The civil service includes every officer and employee of the State except as otherwise provided in this Constitution.
>
> (b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination.

Section 3 further provides that:

> (a) The [State Personnel] board shall enforce the civil service statutes and, by majority vote of all its members, shall prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions.
>
> (b) The executive officer shall administer the civil service statutes under rules of the board.

The selection process for regular civil service positions begins with the examination phase and is followed by an appointment phase. Persons are appointed (hired for the job) to regular civil service positions based upon a classification-specific selection process typically consisting of a written test and/or oral interview. Appointments may be from an employment list, by transfer from another state civil service classification or by reinstatement.

When there are job openings in state civil service, persons who are reachable on the employment eligibility lists are contacted for a hiring interview. In most instances, the department is refilling the vacant position without a change in its duties. Most positions are full-time and employees gain permanent status after successfully completing a probationary period.

The SPB recognizes, however, that circumstances may sometimes justify a change in duties, classification level, or a change that impacts a department's reporting relationships in its organization. The DPA allows, within limited circumstances, a department to make changes to its position level and duties, as long as all modifications stay within parameters set by DPA's Delegated Position Allocation Agreements and Guidelines. While it is not rare to have an operational need to change a position's duties or level, under the law, the subsequent appointment must be to a bonafide position with appropriate duties[5] and made in good faith.[6] If a lack of good faith exists on the part of either the department or the employee, the Executive Officer may cancel the improper appointment without regard to the one-year time limitation set forth in Government Code section 19257.5.[7]

In accordance with the rule-making authority conferred upon it by Article VII, section 3, and Government Code section 18701, the SPB enacted 2 C.C.R.,

[5] Government Code section 19051 provides that no person shall be appointed under a class not appropriate to the duties to be performed.
[6] Title 2, California Code of Regulations (2 C.C.R.) § 8.
[7] 2 C.C.R. § 8.

section 8, which sets forth the standards used to determine whether an appointment was offered and accepted in good faith.[8]
Pursuant to the provisions of Government Code section 18654,[9] the SPB has delegated to the CHP, and to all other state agencies and departments, the authority to conduct civil service examinations and to appoint and promote

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[8] 2 C.C.R. § 8 provides: "To be valid, a civil service appointment must be made and accepted in "good faith" under the civil service statutes and board regulations. For purposes of administering the civil service statutes, including Government Code Sections 19257 and 19257.5 and board Regulations, "good faith" is presumed to exist in the following circumstances:

(a) In order to make an appointment in "good faith," an appointing power and all officers or employees to whom an appointing power delegates appointment authority must:
(1) Intend to observe the spirit and intent of the law; and
(2) Make a reasonable and serious attempt to determine how the law should be applied; and
(3) Assure that positions are properly classified; and
(4) Assure that appointees have appropriate civil service appointment eligibility; and
(5) Intend to employ the appointee in the class, tenure and location to which appointed under the conditions reflected by the appointment document; and
(6) Make a reasonable and serious attempt to provide the relevant reference materials, training, and supervision necessary to avoid any mistakes of law or fact to the persons responsible for the pertinent personnel transactions; and
(7) Act in a manner that does not improperly diminish the rights and privileges of other persons affected by the appointment, including other eligibles.

Any officer or employee who violates any of the foregoing provisions of this regulation, or any other officer or employee in a position of authority who directs any officer or employee to violate any of these provisions, shall be subject to civil or criminal sanctions as provided in Government Code Sections 19680, 19681, 19682, 19683, 19764, as well as adverse action as provided in Government Code Sections 19572, 19583.5, or 19682.

(b) In order to accept an appointment in "good faith," an employee must:
(1) Intend to serve in the class to which the employee is being appointed under the tenure, location and other elements of the appointment as reflected by the appointment document; and
(2) Provide the appointing power with complete, factual, and truthful information necessary for a proper appointment; and
(3) Make a reasonable attempt to seek correction of any aspects of the appointment that the employee knows are illegal.

Violation of any of the foregoing provisions of this section by an employee shall be cause for adverse action.

If a lack of good faith exists on the part of either the appointing power or the employee, the executive officer may cancel the improper appointment without regard to the one-year limitation set forth in Government Code Section 19257.5 subject to the provisions of Section 266."

[9] Government Code § 18654 provides: "The intention of the Legislature is hereby declared to be that the executive officer shall perform and discharge under the direction and control of the board the powers, duties, purposes, functions, and jurisdiction vested in the board and delegated to him by it. ¶ Any power, duty, purpose, function, or jurisdiction which the board may lawfully delegate shall be conclusively presumed to have been delegated to the executive officer unless it is shown that the board by affirmative vote recorded in its minutes specifically has reserved the same for its own action. The executive officer may redelegate to his subordinates or to an appointing power he designates, unless by board rule or express provision of law he is specifically required to act personally."

individuals within the state civil service. Along with this delegation of authority, however, comes the responsibility for ensuring the integrity of the State's overall personnel classification system and responsibility to engage in sound personnel management practices. Moreover, the delegation of authority is subject to review by the SPB, and can be modified or withdrawn in its entirety if the SPB determines that a particular agency's or department's examination, appointment and promotion processes are inadequate to ensure compliance with the constitutionally-mandated merit principle. In addition, in those instances where the SPB determines that an appointment is illegal, the SPB is authorized to take appropriate remedial action including, but not limited to, correcting or voiding the appointment.[10]

Analysis

After reviewing all of the information presented concerning the promotion in question, including the replies submitted by the CHP and the individual appointed to the SSM I position, it is determined that the promotion was illegal, as the position did not require the performance of a sufficient number of supervisory duties for it to reasonably be regarded as a bonafide supervisory position. More specifically, although the position required review and evaluation of the work product being produced by four administrative assistants, the position was not responsible for initiating any formal or informal corrective or other disciplinary measures with respect to the assistants, nor was the position responsible for approving sick leave or vacation leave, or for approving changes in the assistants' daily work schedules, nor was the position responsible for issuing official performance evaluations for the assistants. Instead, those duties remained with the four Section Commanders who had previously supervised the assistants. In short, the position appears to have been created as a form of hybrid "supervisory" arrangement, which did not include the full range of responsibilities ordinarily associated with a supervisory classification.

SPB staff, therefore, concur with the findings of DPA staff that the position was not appropriately classified as an SSM I, Supervisor, position. SPB staff further conclude that, given high degree of experience possessed by the PMD Chief with respect to state civil service system requirements, it was not reasonable for the PMD Chief to believe that the position was appropriately designated at the SSM I, Supervisor, level.

The most troubling aspect of this case, however, involves information received by the SPB that indicates that the PMD Chief was aware of the shortcomings of the proposed position, and specifically instructed staff to create an organization chart that disguised the fact that the position would not be performing the full range of supervisory duties ordinarily associated with an SSM I, Supervisor. Such allegations must be treated extremely seriously, as they represent a direct assault on constitutionally required merit principles.

[10] 2 C.C.R. § 266.

It is noted that the PMD Chief specifically denies having ever issued instructions that PMD staff create a misleading organization chart. It is also noted that the individual promoted to the position in question also denies being aware of the PMD Chief having done so, and asserts that the person(s) that provided the information to the SPB must have simply misconstrued what they had been told with respect to the organization chart, or that they lied about what they had been told about the organization chart.

After carefully considering all the information presented regarding the organization chart, SPB staff conclude that the PMD Chief did inform certain PMD staff that the organization chart needed to be altered to inaccurately reflect that the position would be performing the full range of duties of supervisor for four administrative assistants, despite the fact that the four assistants would also continue to be supervised by their respective Section Commanders. As discussed, *infra*, the position was not required to perform a number of the supervisory functions ordinarily performed by an SSM I, Supervisor, and exercised only nominal supervisory control over those assistants. As also discussed, *infra*, it was not reasonable for the PMD Chief to have believed that the position could properly be classified at the SSM I, Supervisor, level. Consequently, the PMD Chief had a motive to create an organization chart that inaccurately reflected that the newly-created SSM I, Supervisor, position would serve as the supervisor for the four administrative assistants when, in fact, the Section Commanders retained primary supervisory control over the assistants.

In addition, documentary evidence that was created during a meeting with the PMD Chief concerning the alteration of the organization chart reflects that a verbal instruction was given that, although the organization chart would be changed to indicate that the four administrative assistants would be reporting to the newly-created SSM I, Supervisor, position, the four Section Commanders would still maintain primary supervisory control over the assistants. SPB staff have no basis to doubt the veracity of the author of the document in question.

It is determined, therefore, that the promotion in question was not made in good faith by the CHP, as the PMD Chief did not: intend to observe the spirit and intent of the law; make a reasonable and serious attempt to determine how the law should be applied; or assure that position was properly classified.[11]

With respect to the good faith, or lack thereof, on the part of the individual who accepted the promotion, SPB staff do not dispute that the employee intended to serve in the class to which the employee was being appointed under the tenure, location and other elements of the appointment, as reflected by the appointment document.[12] Nor do SPB staff have reason to believe that the individual did not provide the CHP with complete, factual, and truthful information necessary for a

[11] 2 C.C.R. § 8(a)(1)-(3).
[12] 2 C.C.R. § 8(b)(1).

proper appointment.[13] The question that remains, therefore, is whether the employee made a reasonable attempt to seek correction of any aspects of the appointment that the employee knew were illegal.[14]

In the instant case, the employee steadfastly maintains that, irrespective of DPA's determination that the position in question was improperly classified at the SSM I, Supervisor, level, a desk audit of the position would demonstrate that the position was properly classified as supervisory, and that the employee routinely performed supervisory duties. The employee further maintains that, in addition to the employee's reasonable, good faith, belief that the position was properly classified, the employee has no experience as a Classification and Pay Analyst and, therefore, reasonably relied upon assertions from the PMD Chief that it was appropriate to classify the position at the SSM I, Supervisor, level.

In order for the SPB to conclude that an employee accepted an appointment in bad faith, 2 C.C.R. § 8(b)(3) specifically requires a finding that the employee knew one or more aspects of the appointment was illegal and failed to seek appropriate correction of the illegal aspects. Because, given the information presented in this case, SPB staff cannot conclude with reasonable certainty that the employee actually knew that one or more of the aspects of the promotion were illegal, it is determined that the employee did not accept the promotion to the SSM I, Supervisor, position in bad faith.

Conclusion

The information received by the SPB demonstrated that an SSM I, Supervisor, position created within the CHP's PMD was not appropriately classified, as the position did not require the performance of a sufficient number of supervisory duties. The promotion of an individual to that position must, therefore, be deemed illegal. It is also determined that the CHP's PMD Chief did not act in good faith in creating the position or in promoting an employee into the position, as it was not reasonable for the PMD Chief to have believed that the position was properly classified. Moreover, it is found that the PMD Chief did not act in good faith in attempting to disguise the fact that the position would exercise only nominal supervisory control over four subordinate employees. It is not, however, found that the employee acted in bad faith in accepting a promotion to the position, as insufficient information was presented to establish that the employee actually knew that one or more aspects of the promotion were illegal.

The SPB has delegated to the CHP the authority to examine, appoint, and promote civil service employees, subject to review by the SPB. With that delegation comes the responsibility on the part of the CHP to ensure that all examinations conducted, and all appointments and promotions made within the CHP, comport to civil service merit requirements. In the instant case, the SPB

[13] 2 C.C.R. § 8(b)(2).
[14] 2 C.C.R. § 8(b)(3) (emphasis added).

finds that the CHP's PMD Chief improperly classified an SSM I, Supervisor, position, and then illegally appointed an individual to that position. In aggravation, the information presented established that the PMD Chief – the individual within the CHP in whom the SPB must necessarily place the most trust for ensuring compliance with civil service merit principles – attempted to circumvent civil service merit principles by disguising the improper classification. Such actions call into question the propriety of the SPB continuing to delegate its authority to the CHP to examine, appoint, and promote civil service employees.

In mitigation, however, it is found that the CHP acted in good faith by initiating contact with the SPB when it discovered that possible improprieties had occurred within the PMD, and invited SPB review of those matters. The CHP also cooperated with the SPB's investigation into the matter, and has taken steps to ensure greater internal oversight of personnel transactions occurring within the PMD. Consequently, the SPB's delegation of authority to the CHP to examine, appoint, and promote civil service employees is still appropriate, albeit with certain limitations, as set forth below.

Corrective Actions

(1) Effective immediately, SPB's Merit Employment and Technical Resources Division shall review the procedural correctness (as opposed to the person selected) and approve all PMD list appointment, PMD transfer, and PMD reinstatement hiring packages[15] prior to each proposed effective date. SPB staff will provide the CHP with technical assistance, guidance, and/or oversight, as needed. This review and approval process is limited solely to those personnel transactions occurring within the PMD, and not within any other CHP division. The probation and monitoring process will remain in effect for one year, unless the Executive Officer concludes, based upon subsequently identified procedural deficiencies, that an additional probation and monitoring period is warranted.

(2) Because the position in question was created, and an appointment was made to the position, in other than good faith, SPB staff will take action to void the appointment, as well as all subsequent appointments concerning the employee that were based upon the initial appointment.

(3) Because there is no finding of bad faith on the part of the employee who accepted the appointment, that individual shall not be required to reimburse the state for any salary received while performing the duties of the position.

(4) The SPB recommends that DPA staff conduct an audit review of the position allocations within PMD to determine whether the positions have been

[15] "Hiring Packages" means CHP's Request for Personnel Action Form, Duty Statement, Organization Chart, Justification, Cleared Certification List if applicable, and any other relevant documents needed to review the request.

appropriately allocated, and requests that the DPA share its findings with the SPB's Executive Officer.

(5) The Executive Officer shall issue a memorandum to the PMD Chief directing him to follow all state hiring requirements when processing appointments.