

Handpicked for the Job?

Allegations of unfair hiring practices by Santa Cruz County

On November 16, 2007, the *Santa Cruz Sentinel* reported that a Grand Jury complaint had been filed by the Service Employees International Union (SEIU). The article described the union's dissatisfaction with the County's whistleblower program and hiring practices. Similar complaints had been previously lodged by SEIU with the County's Civil Service Commission during its July 19, 2007, meeting.

Grievances submitted to the Grand Jury are normally confidential. The jury was concerned whether this complaint was really intended for its investigation or was instead designed only to generate publicity for the union's allegations.

Nonetheless, the Grand Jury moved forward with an investigation focused on the following:

- Allegations of improper provisional hiring practices
- Allegations of nepotism and favoritism in hiring
- The County's whistleblower program

Summary

Provisional hiring practices. The Personnel Director can authorize temporary provisional appointments without any examinations or competition among eligible applicants. Decisions for these hires are often made by department heads or managers. The bulk of the provisional appointments were made within only three of the 27 county departments.

When the position for which they were hired temporarily is permanently filled, provisionally appointed employees are selected over other applicants most of the time. Managers can give their preferred candidates a clear edge without violating civil service rules.

When used sparingly, provisional appointments are a necessary and positive component of the County's hiring process. When used excessively, these appointments are an abusive work-around of merit hiring principles. To ensure proper use in the future, the Grand Jury wants the Civil Service Commission to carefully examine provisional appointments from time to time to assure that "gaming the system" will not be tolerated in Santa Cruz County.

Nepotism and favoritism. The civil service rules contain a clear and precisely-worded nepotism policy that has not been violated. Hiring rules specifically referring to "favoritism" or how to avoid it do not exist.

Whistleblower program. The Auditor-Controller's Office has established a whistleblower program for citizens and employees to report alleged abuses of all kinds by the County. During 2007, out of a total of 15 whistleblower complaints investigated, only four involved personnel issues and hiring practices.

When they contact the whistleblower group, county employees are *not* told their complaints will be forwarded to a department head. Employees in small workgroups can be identified as the complainants and exposed to potential retaliation without ever understanding this would be the inevitable result of their complaints. A whistleblower program independent of County government should be tailored to avoid such problems.

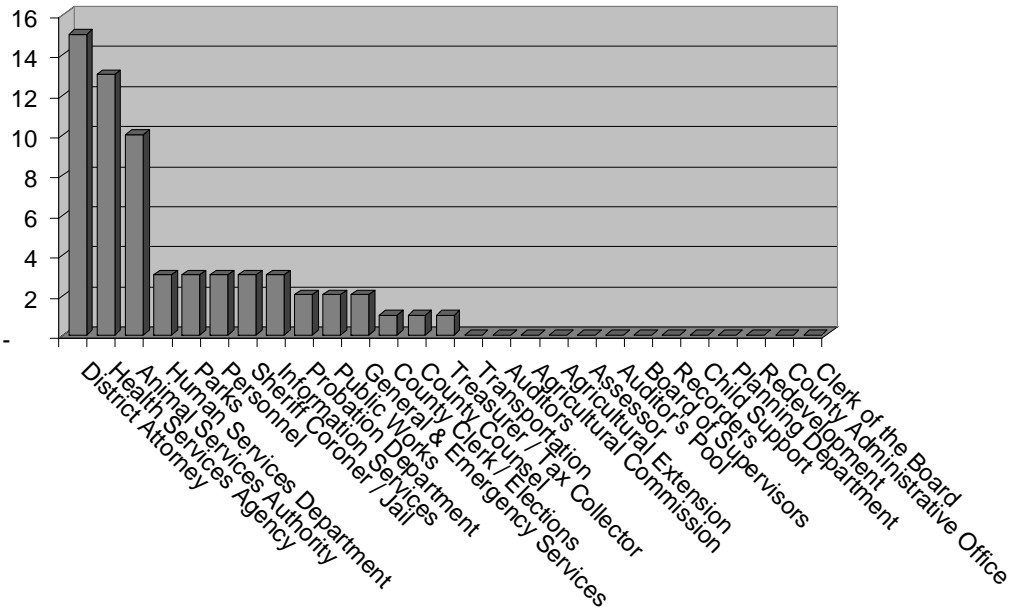
Findings

1. Service Employees International Union (SEIU) has lodged a complaint regarding hiring practices and the county's whistleblower program with the Civil Service Commission.

Provisional Hiring Practices

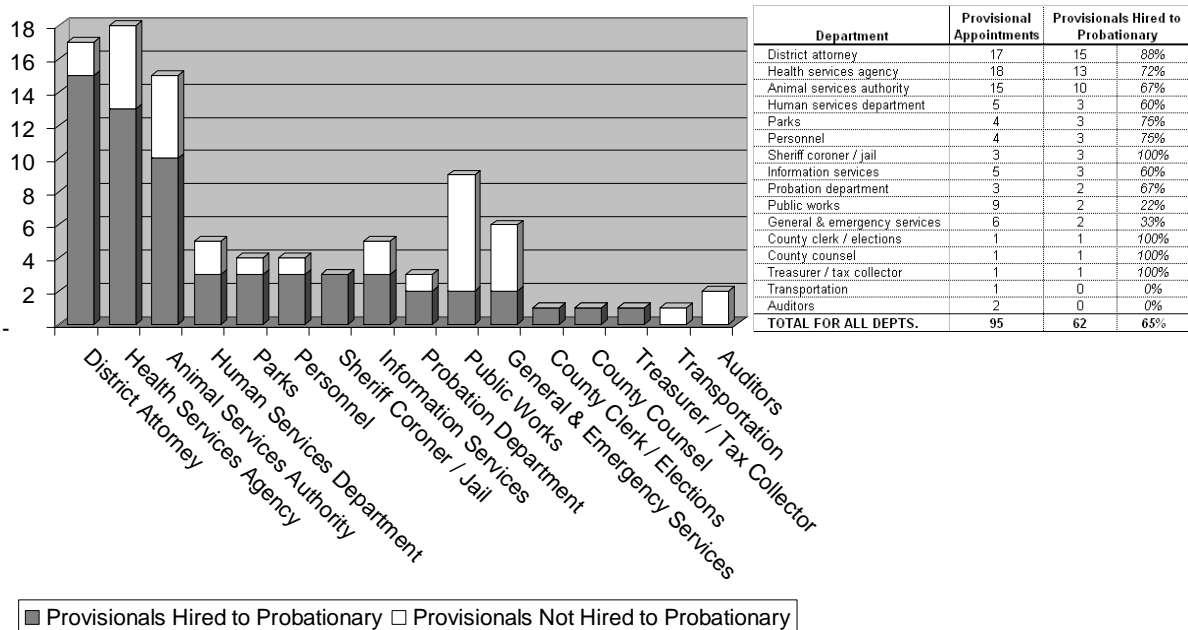
2. During calendar years 2006 and 2007, 62 provisional appointees were hired to permanent positions. These represented just over two percent of the 1,733 total County hires for that time period. (Despite making two requests, the Grand Jury was unable to obtain the number of total hires per department.)
3. Three departments – District Attorney, Health Services Agency (HSA) and Animal Services Authority – accounted for 38 -- or more than 60 percent -- of the provisional appointments hired to permanent positions by the County during 2006 and 2007. Thirteen of 27 departments hired no provisional appointments to permanent positions at all during the last two years. [See Bar Graph 1]

Bar Graph 1. Provisional appointments hired to permanent positions
(Calendar years 2006 - 2007, all County departments)



- Provisionally appointed employees have a clear advantage over other candidates competing for permanent positions the provisionals temporarily occupy. For the last two calendar years, nearly two-thirds of all County provisional appointees were hired to permanent positions; for individual departments the success rate was as high as 100 percent. [See Bar Graph 2]

Bar Graph 2. Provisional appointments successfully hired to permanent positions
(Calendar years 2006 - 2007, County departments with provisional appointments only)



- Santa Cruz County code charges the Civil Service Commission with the responsibility for the process of approving provisional appointments. This responsibility has been delegated to the Personnel Director.

Response from the County: AGREES.

Response from the Civil Service Commission: PARTIALLY AGREES.

Specifically, Santa Cruz County Code Section 3.28.050 provides for provisional appointments and Civil Service Rule 130 Section II states that “The Commission hereby delegates to the Personnel Director the authority to administer the County Civil Service system in accordance with County Code Chapter 3.04, these rules and order of the Commission.”

- Unless there is an appeal, there is no formal oversight by the Civil Service Commission itself of a provisional appointment.
- Civil service rules provide for the creation of “eligible lists” of applicants’ names ranked by their examination scores (written, oral, or training and experience ratings). These lists can remain in effect for a maximum period of two years or be abolished before that term by the Personnel Director. Civil service rules can be interpreted to

allow provisional appointments after the abolishment or expiration of one eligible list and before a new one is created, or even before any valid eligible list exists.

8. County management claims to be unaware of specific employee complaints regarding misuse of the provisional appointment process.

Nepotism and Favoritism

9. Civil service rules prohibit the hiring of first or second degree relatives (spouses, parents, children, grandchildren, or siblings) by department heads. These same relatives may not be given positions as direct reports or be within supervisory line of authority. Department heads are also “discouraged” from appointing first or second degree relatives to volunteer assignments within their departments. However, first or second degree relatives may be hired by different department heads, or may work together within the same department as long as one does not supervise the other.
10. This Grand Jury was unable to confirm any violations of County nepotism policy.

Response from the County: AGREES.

Response from the Civil Service Commission: AGREES.

The Commission accepts the statement that the Grand Jury was unable to confirm any violations of the County nepotism policy.

11. This Grand Jury was unable to find County administration and personnel code or civil service rules defining or prohibiting “favoritism.”
12. Some County employees with hiring practices complaints are not comfortable meeting with the CAO, the Personnel Director, or their representatives, fearing retaliation.
13. County code charges the Civil Service Commission with assuring that, whenever possible, merit employment principles are followed.

Response from the County: AGREES.

Response from the Civil Service Commission: AGREES.

County code section 2.46.080 provides that the Civil Service Commission assure that employees within the civil service system are selected, promoted, evaluated and retained within merit employment principles.

14. The Brown Act restricts the Civil Service Commission’s ability to guarantee confidentiality to employees complaining about the County’s hiring practices because all meetings among three or more commissioners must be public. To conform to the Brown Act and yet still provide a confidential forum for County employee complaints, the Civil Service Commission created an ad hoc committee in 2007 consisting of two commissioners to hear complaints from SEIU members.

Whistleblower Program

15. Santa Cruz County’s whistleblower program was established by the Auditor-Controller’s Office in early 2005, possibly stimulated by federal corporate

governance legislation passed a few years earlier. The program continues to be administered by the Auditor-Controller's Office today.

16. Complaints received by the whistleblower program can address any part of the county's operation, not just personnel issues or hiring practices.
17. Code compliance complaints are referred to the Planning Department.
18. The program was contacted 32 times during calendar year 2007. Fifteen were determined to be outside the scope of the program and two were general questions and referred elsewhere. The remaining 15 were opened as whistleblower cases; 12 were closed during 2007 and three were still open at the end of the year.
19. Four whistleblower cases involved complaints of improper hiring practices. Two complaints were found to be without merit and closed while two others remained under investigation at the end of 2007.

Response from the Santa Cruz County Auditor-Controller: AGREES.

20. Employee complaints received by the whistleblower program are given to department heads for investigation and resolution; employees are not informed in advance about this policy. The Grand Jury received testimony that whistleblowers could be easily identified by coworkers or supervisors.
21. Department heads are given six months to report the results of their investigations to the Auditor-Controller's Office. The CAO and Personnel Director may also be notified about the complaints.

Response from the County: AGREES.

Response from the Santa Cruz County Auditor-Controller: AGREES.



22. Although with careful scrutiny the whistleblower program link can eventually be located, many people have difficulty finding it on the county's website. Typing "whistleblower hotline" into the search box results in "no matches."

Recommendations

1. County management and SEIU should meet regularly to review specific employee complaints concerning hiring practices.

Response from the County: HAS BEEN IMPLEMENTED.

The Personnel Department's labor relations division meets on an on-going basis with SEIU regarding hiring practices and other matters. Civil Service Commission rules govern examinations and appointments in the hiring process and contain appeal procedures for employee complaints. The Personnel Department will, however, discuss this recommendation with SEIU in hopes of improving communication, especially in the

context of verifiable employee complaints that may be outside the scope of standard appeal venues.

Provisional Hiring Practices

2. The Civil Service Commission should periodically review individual provisional appointments to ensure the system is not being abused.

Response from the County: HAS BEEN IMPLEMENTED.

Response from the Civil Service Commission: HAS BEEN IMPLEMENTED.

The first provisional appointment report was initiated by the Commission and received at their July 2008 quarterly meeting. The Commission directed staff to provide provisional appointment reports at each quarterly meeting.

The first report on provisional appointments was issued to the Commission at its July 17, 2008 quarterly meeting. The Commission will now receive these reports quarterly.

Nepotism and Favoritism

3. The Board of Supervisors should direct the Personnel Department to develop and maintain a record of all first and second degree relatives employed by the County and to provide a report on a regular basis to the Civil Service Commission.

Response from the County: WILL NOT BE IMPLEMENTED.

The Personnel Department does not require disclosure or collect data regarding family relationships on job applications and does not require employees to routinely disclose changes in relationships during the course of their employment. The collection of such data could be considered a violation of State or Federal confidentiality protections or prohibitions against discrimination based upon marital, family or other protected status.

The County's nepotism policy prevents department heads from hiring their spouses, parents, children, grandchildren, brothers or sisters (first or second degree relatives) in paid positions within their own departments. Additionally, no person who is related to a manager may be appointed or assigned to a position which is in direct reporting relationship or within supervisory lines of authority to such a manager or supervisor. Family relationship data is necessary in hiring decisions related to department heads and other subordinate/supervisory relationships. However, the County's current nepotism rules do not prohibit the hiring of first or second degree relatives who are unrelated to the department head and are not in the same chain of supervision as their first or second degree relatives.

4. The Civil Service Commission should permanently create a standing committee consisting of two commissioners to hear and investigate personnel and hiring practice complaints. Upon conclusion of each of its investigations, this committee should report its findings and recommendations to the full commission.

Response from both the County and from the Civil Service Commission: WILL NOT BE IMPLEMENTED.

In 2007 the Civil Service Commission created a temporary ad hoc committee, consisting of two commissioners, to hear complaints from SEIU members.

The Brown Act (Government Code Section 54952), County Code (2.46.060), and Civil Service rules (Section 130 I. 1. A.) restrict the Civil Service Commission's ability to create a standing committee and still maintain a confidential forum for county employee complaints.

The meetings of a standing committee composed of less than a quorum of the commission would be subject to the notice, agenda, and public participation requirements of the Ralph M. Brown Act. It is not possible under the Brown Act to set up a permanent standing committee that could accomplish a confidential forum for complaints of County employees.

Whistleblower Program

5. The County website's search function should be updated so that typing in the keyword "whistleblower" results in a path to the hotline information.

Response from the County: HAS BEEN IMPLEMENTED.

Response from the Santa Cruz County Auditor-Controller: HAS BEEN IMPLEMENTED.

6. Effective immediately, all employees complaining to the whistleblower program should receive full disclosure regarding the details of the resolution process for their particular complaint. Specifically, they should be told if their complaint will be forwarded to a department head for action.

Response from the County: HAS NOT YET BEEN IMPLEMENTED, BUT WILL BE IMPLEMENTED IN THE FUTURE.

Changes have been made to the information provided to employees who telephone the hotline and speak to a staff person. Changes are in the process of being made to the English and Spanish versions of the voicemail and website information. Changes will be implemented by November 30, 2008.

Response from the Santa Cruz County Auditor-Controller: HAS NOT YET BEEN IMPLEMENTED, BUT WILL BE IMPLEMENTED IN THE FUTURE.

7. Preliminary results of whistleblower investigations should be required within 60 days of the original complaint.

Response from the County: HAS BEEN IMPLEMENTED.

This requirement is in effect for reports received after August 15, 2008.

Response from the Santa Cruz County Auditor-Controller: HAS BEEN IMPLEMENTED.

8. The Board of Supervisors is encouraged to create a body independent of county government to serve as the first point of contact for all whistleblower complaints; from there they can be forwarded to the appropriate entity for investigation and resolution.

Response from the County: REQUIRES FURTHER ANALYSIS.

The Auditor-Controller will review suggestions for modifying the Whistleblower Hotline and will make appropriate recommendations to the Board.

Responses Required

Respondent	Findings	Recommendations	Respond Within / Respond By
County of Santa Cruz Board of Supervisors	5, 10, 21	1 – 8	60 days September 1, 2008
County of Santa Cruz Civil Service Commission	5, 10, 13	2, 4	90 days October 1, 2008
County of Santa Cruz Personnel Department	5, 10	3	90 days October 1, 2008
County of Santa Cruz Auditor-Controller's Office	19, 21	5 – 7	90 days October 1, 2008

Sources

County of Santa Cruz Civil Service Commission Agenda, April 17, 2008.

County of Santa Cruz Civil Service Commission Minutes, January 18, April 19, July 19 and October 18, 2007, and January 17, 2008.

County of Santa Cruz Code, Title 2, Administration and Personnel, Chapter 2.46, Civil Service Commission.

County of Santa Cruz, General Representation Unit, Memorandum of Understanding, September 11, 2007 – September 10, 2010.

County of Santa Cruz management and staff.

County of Santa Cruz Personnel Department website:

<http://sccounty01.co.santa-cruz.ca.us/personnel/index.htm>

Letter from Auditor-Controller, Mary Jo Walker, and County Administrative Officer, Susan Mauriello, to the County of Santa Cruz Board of Supervisors, *Whistleblower Hotline Annual Report*, March 21, 2008.

Personnel Regulations and References of Santa Cruz County, Section 130, Civil Service Rules.

Ralph M. Brown Act: http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf

Sarbanes-Oxley Act of 2002:

<http://f11.findlaw.com/news.findlaw.com/hdocs/docs/gwbush/sarbanesoxley072302.pdf>

“SEIU Questions County Hiring Practices; Allegations of Nepotism Taken to Grand Jury,” *Santa Cruz Sentinel*, November 16, 2007.

NOTE: The results of the Civil Service Commission investigation were not yet available when this report was completed.

