

GOVERNMENT & ADMINISTRATION COMMITTEE

Conflict of Interest/Employee Evaluations

Citizen Complaint #C21 & #C22-02/03

Reason for the Report

A citizen's complaint alleges a conflict of interest exists because of the relationship between the Interim Chief Administrative Officer and the Director of Human Resources. The complaint also alleges a conflict of interest carried over into evaluations.

Scope of the Investigation

The Grand Jury interviewed the following persons:

- The Director of the Department of Human Resources;
- The Interim Chief Administrative Officer (CAO);
- Members of the Board of Supervisors individually;
- Various El Dorado County employees regarding performance evaluations.

The Grand Jury reviewed the following items:

- El Dorado County Charter (Charter);
- County Policies and Procedures;
- Various Memoranda of Understanding (MOUs).

Background

The Grand Jury agrees that a conflict of interest is possible because the CAO would need to evaluate a very close friend. However, no such evaluation took place. In this regard the Interim CAO treated the Director of Human Resources no differently than any other director in this respect.

Although the Charter states the CAO is responsible for evaluations of all the Department Directors, upon investigation it was found these evaluations were not being performed consistently. Some evaluations were not performed in a timely manner while others had not been done in the past eight years.

In addition, an MOU negotiated for July 1, 1999 to June 30, 2003 which in part stated: "Effective September 1, 1999 and for the trial period of two years, employee performance evaluations are eliminated...".

It was also determined Human Resources Department does not perform reference checks on any prospective County employee. In addition they do not verify experience or educational requirements.

Human Resources, relied on Department Directors to do background checks, and verify experience and education.

Findings

- F1. The Board of Supervisors delegated responsibility for negotiating the MOU to the Director of Human Resources.

Response to F1: The respondent agrees with the finding.

- F2. Some El Dorado County personnel have not been evaluated in over eight years.

Response to F2: The respondent agrees with the finding. The following information is provided as a context to this response. Performance evaluations were suspended in 1999 for a trial period based upon the respective negotiated Memorandum of Understandings (MOU) between the County and most of the bargaining units. This suspension of performance evaluations applied to the three bargaining units represented by the El Dorado County Employees Association (EDCEA), Local #1: the general bargaining unit, the professional bargaining unit, and the supervisory bargaining unit. The suspension of annual performance evaluations was also negotiated for two of the three bargaining units represented by Operating Engineers, Local #3: the Trades and Crafts bargaining unit and the Probation bargaining unit. The suspension of annual performance evaluations also applied to the unrepresented employees covered by the Salary and Benefits Resolution.

In response to the prior Grand Jury recommendation to re-institute annual performance evaluations, Human Resources met with the respective bargaining units to negotiate and implement the annual performance evaluation for employees. The negotiation process generated a new form for the employees in the three bargaining units covered under the EDCEA, Local #1 MOU. This new form is also used for employees in the confidential unit. The new form may also be used in lieu of the old management evaluation form for administrative management employees. This new electronic format for annual performance evaluations was distributed to all county Department Heads in October 2002.

There was a three-year gap in written performance evaluations due to this trial period of verbal feedback replacing written evaluations.

- F3. The majority of Department Directors do not annually evaluate their personnel.

Response to F3: The respondent disagrees partially with the finding. Respondent agrees that performance evaluations were suspended for a period of three years. As stated in the response to Finding 2, performance evaluations were suspended in 1999 based upon the respective negotiated Memorandum of Understandings (MOU) between the County and most of the bargaining units, as well as the unrepresented employees.

Annual performance evaluations were re-instituted in October 2002 after a lengthy negotiation process. All county Department Heads were notified by memorandum from the

Director of Human Resources on or about October 17, 2002, with five training dates scheduled in November 2002. Human Resources provides a notice to each department two months before an evaluation is due. This notice contains a list of the employees for which a performance evaluation will need to be completed. Performance evaluations are received in Human Resources daily. As this new procedure has been in place for less than one year, staff cannot yet judge the accuracy of the Grand Jury finding.

- F4. Department Directors are not evaluated in a timely manner.

Response to F4: The respondent agrees with the finding.

- F5. Human Resources does not perform reference checks on employment applications.

Response to F5: The respondent disagrees partially with the finding. In general, the Human Resources Department does not perform reference checks on employment applications. It has been the County's position that the appropriate time to conduct reference checks on an applicant is when a job offer has been made conditioned upon the results of the background check. Department Heads are instructed to verify relevant background on final candidates and are provided information on how to do so. Human Resources staff is available to assist when questions on background procedures arise. Human Resources staff **does** perform reference checks on employees hired within the Human Resources Department and on final Department Head candidates as requested by the Board of Supervisors.

The department heads act as the appointing authority for their departments as outlined by County Charter, resolution, code and the direction of the Board of Supervisors. Additionally there are some departments, including Sheriff, District Attorney and Department of Child Support Services, where there are currently specially trained investigators in place to handle in-depth background investigations on selected applicants.

- F6. Human Resources does not require submission of transcripts/diploma nor do they contact former employers to verify accuracy of the experience listed on the application.

Response to F6: The respondent agrees with the finding. The following information is provided as a context to this response.

The El Dorado County Employment Application states in Section 17, EDUCATION:

“Written verification of education listed to meet minimum qualification will be required prior to offer of employment.”

Section 18 of the application, CERTIFICATES, LICENSES OR PROFESSIONAL REGISTRATION WHICH APPLY TO THIS POSITION, currently requests the applicant to attach a copy of the certificate, license, or registration.

Notice on the application which requires applicants to provide education verification (transcripts) prior to offer of employment is designed to allow applicants time to secure such evidence from schools, colleges, universities, etc. and permit the recruitment and testing process to continue expeditiously.

- F7. The Department Directors have the responsibility to ensure that reference checks are conducted and that other pertinent background evaluation are performed.

Response to F7: The respondent agrees with the finding.

Recommendations

- R1. The CAO should have an experienced contractor negotiate future Memoranda of Understanding (MOUs).

Response to R1: The recommendation has been implemented. In the past, the task of negotiating the MOUs with the respective bargaining units rested with the Human Resources Director, the Deputy Director, and one Senior Personnel Analyst – all experienced negotiators. A decision was made by the Board of Supervisors on July 22, 2003 to contract with an outside negotiator to conduct negotiations for all of the MOU's expiring in 2003.

- R2. Director of Human Resources should not be a negotiator for future MOUs, but serve as a technical advisor to these negotiations

Response to R2: The recommendation has been implemented. A decision was made by the Board of Supervisors on July 22, 2003 to contract with an outside negotiator to conduct negotiations for all of the MOU's expiring in 2003.

- R3. County Counsel should be accountable for reviewing all issues contained in MOUs.

Response to R3: The recommendation has been implemented. County Counsel reviews all contract language as to form only. The Board of Supervisors gives direction to the Negotiator as to the terms and issues to be negotiated in an MOU. County Counsel provides legal advise as necessary during the negotiation process.

- R4. The Auditor-Controller should be accountable for reviewing financial aspects for all issues that have a major financial impact on the County.

Response to R4: The recommendation has been implemented. On March 25, 2003, the Board approved the recommendations of the CAO, Auditor-Controller and County Counsel, as set forth in their letter to the Board dated March 24, 2003, specifying two types of financial decisions to be reviewed by the County Auditor as follows:

- (1) Any commitments to the expenditure of \$500,000.00 or more, the actual cost of which, or ability of the County to pay for the commitment, depends upon projections of future costs, actuarial determinations and future projections of revenues. Examples would

include commitments to ongoing employee benefits, the cost of which is uncertain or may be subject to variability.

(2) Approval of any contracts involving the expenditure of more than \$100,000.00 and which are recommended for approval pursuant to provisions of the County Ordinance Code or State law that allow the award of the contract to be exempted from otherwise applicable competitive bidding requirements.

R5. All Department Directors should be evaluated yearly by the Chief Administrative Officer.

Response to R5: The recommendation has been implemented. The Chief Administrative Office has been directed to evaluate all Department Directors on an annual basis.

R6. All Department Directors should be responsible for their employee evaluations and held accountable on their evaluation.

Response to R6: The recommendation has not yet been implemented, but will be implemented in the future. Department Directors are already responsible for their employee evaluations. The format used to evaluate Department Directors has not specifically included holding them accountable for completing evaluations on their employees in a timely fashion. Human Resources will work with the Chief Administrative Officer on an evaluation format that includes performance evaluations as criteria of Director performance. As a note, this criteria has already been incorporated in the performance evaluation form used for supervisory and management personnel represented by Local #1.

The Interim Chief Administrative Officer is currently working with a group of Department Heads to review/revise the evaluation instrument and criteria. This recommendation will be implemented during October 2003 when it will be time to begin Department Head evaluations again.

R7. Human Resources should be responsible for obtaining all records required on application transmittals. (Licenses, college transcripts, diploma's, etc).

Response to R7: The recommendation has not yet been implemented but will be implemented in the future. Human Resources received and processed 3,954 applications between July 1, 2002 and June 30, 2003. This response is based upon the expectation that all records should be required as part of the recruitment process.

Applications are screened for minimum qualifications prior to any testing and/or interviewing. A Human Resources representative screens the application and all additional information submitted to determine whether the candidate has provided information that shows they meet the qualifications listed in the job specification/recruitment flyer. For many licensed professions in California, verification of the licenses can be done through a State website. The application form does require a copy of the current license, however in many cases, candidates simply write down their license number. The El Dorado County job application requests applicants to provide copies of any professional licenses required as a

minimum qualification of the position for which they are applying. The El Dorado County job application requests applicants to provide copies of any professional licenses required as a minimum qualification of the position for which they are applying. In many recruitments, Human Resources verifies the validity of the licenses in order to ensure that the applicant meets the minimum qualifications for the position. The application states, "Written verification of education listed to meet minimum qualification will be required prior to offer of employment." This provides the applicant with notice that we will be requiring documentation of their relevant licensure and educational attainment. As many of our job postings are open for only two weeks, many applicants may not be able to readily obtain and provide copies of transcripts/certificates/licenses in time to submit them with the original application. As previously stated, a copy of a diploma can be so easily altered that it is not sufficient to prove educational attainment.

The County hires approximately 180 - 190 employees annually. It receives in excess of 3,000 applications (3,954 in FY02/03). An up front application verification process as recommended would require approximately one to two additional staff at an approximate cost of \$55,000 to \$93,000. Additional considerations in implementing this recommendation would include the following factors. An "up-front" investigation/inquiry process would necessitate a longer period of time within the recruitment process and prolong the time until a certification list could be provided to the hiring authority. A longer processing time within the "recruitment" period is not desirable to departments as vacant positions burden existing employees with increased workload demands, which, over time, can increase turnover or burnout.

In order to address the Grand Jury's concern, the CAO proposes that the application be amended to require evidence of required education, licensure and/or certification by the time an applicant becomes a finalist. (The Final Certification List) Verification will be completed by the Department Head with assistance by Human Resources. Because this could result in fewer qualified candidates the County will do this for a trial period of six months. Following the trial period, Human Resources will return with statistics to show the impact this change has on the recruitment process.

Responses Required for Findings

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| F1 through F7 | El Dorado County Board of Supervisors |
| F2 through F7 | El Dorado County Chief Administrative Officer
Director, Department of Human Resources |

Responses Required for Recommendations

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| R1 through R7 | El Dorado County Board of Supervisors |
| R1, R2 and R7 | El Dorado County Chief Administrative Officer |

R3

El Dorado County, County Counsel

R4 through R7

Director, Department of Human Resources

R4

El Dorado County Auditor/Controller