

Responsible Personnel Practices in the Public Sector

Reason for the Investigation

This investigation was initiated by a complaint received in July 2008. The complainant stated that the former lead counsel of the Legal Services Joint Powers Agency (LSJPA) for the Sonoma County Office of Education (SCOE) remained on salary and continued to be paid after his resignation from the position.

The specific detail of the complaint was that the former lead counsel of LSJPA was hired September 1, 2007 and was put on a leave of absence in February 2008. He continued to be paid for six months after February. Resignation paperwork was initiated in June 2008, but he remained on the payroll for two further months after that. He also received what appeared to be an increase in salary July 1, 2008 before his compensation finally ceased August 31, 2008.

Background

The LSJPA is a separate and specific agency formed in 2001 for the purpose of pooling resources to provide legal services at a competitive cost to education institutions in Sonoma, Marin, Humboldt and Mendocino counties. The LSJPA Board consists of one representative from each participating organization, and has overall authority for the agency's operations. The Sonoma County Superintendent of Schools is the current president of the LSJPA Board. The president's term is two years. The Board meets quarterly and creates minutes.

The LSJPA client base includes more than 100 school agencies including their insurance group and transportation agencies. The funds used to pay for legal services are public funds made available to the educational entities. The LSJPA budget is approximately \$4 million per fiscal year, about 70 percent of which is labor cost, which is typical for a service function. The LSJPA payroll is processed by SCOE, which provides accounting services. SCOE does not have oversight authority for LSJPA expenditures.

The LSJPA Board is responsible for hiring lead counsel. The Board may go outside to recruit people or may hire from within. The former LSJPA lead counsel was an outside hire. There were also internal candidates applying for the job.

There are typically ten attorneys on the LSJPA staff and several retired attorneys on call. The LSJPA also employs a non-attorney legal specialist. It is the practice of the LSJPA to offer employment contracts for certain high-level positions as needed, including lead counsel.

Investigative Procedures

The investigation focused primarily on the personnel practices of the LSJPA. Six investigative interviews were conducted between August 15 and December 9, 2008 with a member of the Sonoma County Board of Education and with five individuals employed by the LSJPA, SCOE, and the County of Sonoma.

The investigation also included a review of the following documents:

- Letter of resignation and termination contract, as well as payroll records for the former lead counsel of the LSJPA
- Documents chartering the LSJPA to supply legal services to educational entities
- Meeting minutes of the Personnel Committee of the LSJPA

The Grand Jury reviewed several California, corporate and government web sites dedicated to explaining the advantages of various hiring practices and employment law.

Findings

F1 With respect to the former lead counsel whose employment was the subject of the complaint, the LSJPA Board decided to replace him after he worked six months of his two-year contract. The settlement was structured to be paid out over the course of the next six months, ending August 31, 2008. The monthly payment amounts varied based on withholding requirements, which may have led to the perception that there was a salary increase. Payroll records indicate that approximately \$100,000 was paid out from March 2007 through August 2007, during which time the former lead counsel was no longer performing duties for the LSJPA. The LSJPA lead counsel was replaced by an internal staff attorney.

F2 During the course of the investigation the Grand Jury heard two arguments in support of the use of employment contracts:

They enable competitive hiring of skilled and qualified individuals because people making a move often want some guarantee of security in order to leave another situation.

They ensure continuity within an organization because people tend to stay for the duration of their contracts – rather than seek other opportunities because their tenure is protected by the terms of the contract.

F3 A decision to exit or end an employment contract before its term is complete generally indicates some dissatisfaction or change in situation on the part of one or both parties. When an employment contract is terminated there may be a settlement to avoid lengthy or costly legal action and lead to the lowest cost solution

F4 The use of employment contracts in the recruitment of high-level personnel from outside the LSJPA staff can result in substantial financial risk of public funds.

F5 Merit systems and civil service systems make it possible to provide fair and open competition for positions, apply clear standards and testing for positions, and use established due process to ensure rights are protected.

Commendation

The Grand Jury commends the LSJPA Board for its intention to manage costs and provide competitively priced legal services to its members. This creative structure and the way that it is administered should make it possible to track and measure cost, performance, and overall value of its delivery specialized legal services.

Conclusions

As a result of its findings, the Grand Jury questions the use of employment contracts for highly compensated employees within the scope of LSJPA.

The management of the employment and release of the former LSJPA lead counsel resulted in a costly situation for Sonoma County and the other entities comprising the LSJPA. The amount of money expended to end the contract could have been used to advantage in the classroom.

An employment contract binds both parties, limits flexibility, and may pose problems if one of the parties later determines it is necessary to end the contract. A simple termination resulting from recognition that the initial hiring decision was a mismatch may become a breach of contract resulting in an employer being legally responsible not only for violating the contract, but also for breaching its covenant of good faith and fair dealing.

As budgets continue to shrink, we question whether it is appropriate that a publicly funded entity use employment contracts. It may be argued that they are needed to attract and retain personnel and ensure continuity of operations. Current talent acquisition and management practices across many private and civil service employers are based on the development of internal talent and paying competitive salaries for at-will employment while avoiding the financial risk of employment contracts. Further, continuity of operations should be predicated on the development of teamwork and sound performance management practices rather than employment contracts.

The Grand Jury concludes that merit systems and civil service systems can form the model for recruitment and hiring practices that are more in line with the fiscal realities our community faces today.

Recommendations

R1 The LSJPA review and evaluate its employee management and development policies and establish a documented succession planning policy and procedure to demonstrate its commitment to emphasize promotion and hiring from within. If it becomes necessary to hire from outside, then succession planning policies and practices should be reviewed and probably modified.

R2 The LSJPA Board evaluate whether employment contracts are appropriate or needed as the state's educational system faces more and more financial pressure.

Required responses

R1: LSJPA Board

R2: LSJPA Board