

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT  
PERSONNEL COMMISSION  
MEETING MINUTES**

**November 19, 2009**

A meeting of the Personnel Commission was held in the Community Room at the Board of Education Building. Present were Mr. Bohn; Ms. Early, Vice Chairperson; Mr. Barabani, Member; and Mr. Jeff Josserand, Executive Director.

**I. CALL TO ORDER**

Mr. Bohn, Chairperson, called the meeting to order at 5:32 P.M. Mr. Barabani led the pledge of allegiance.

**II. APPROVAL OF MINUTES**

Mr. Bohn: Thanks for everyone being here. It looks like we have few new faces out there tonight that aren't normally here. So I hope the meeting is productive for you. First order of business is item II, Approval of Minutes, and we have two minutes to approve tonight; one for October 27<sup>th</sup>, 2009 and the Special Meeting minutes on November 4<sup>th</sup>, 2009. We'll look at October 27<sup>th</sup>, 2009 first.

Ms. Early: Commissioner Bohn, I move to approve the minutes from October 27<sup>th</sup>, 2009 minutes.

Mr. Bohn: We have a motion to approve the October 27<sup>th</sup> minutes. Do I have a second?

Mr. Barabani: I'll second it.

Mr. Bohn: I have a second. All of those in favor say Aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Bohn. Aye. We'll move on to the next, November 4<sup>th</sup>.

Ms. Early: Commissioner Bohn, I move to approve the Special Meeting minutes from November 4<sup>th</sup>, 2009.

Mr. Bohn: I have a motion to approve the minutes from November 4<sup>th</sup>, 2009. Do I have a second?

Mr. Barabani: I'll second that.

Mr. Bohn: I have a second. All of those in favor say Aye.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Bohn: I'll abstain since I was not there for that meeting. Motion passed.

### **III. APPROVAL OF AGENDA**

Mr. Bohn: Approval of the agenda.

Mr. Barabani: I'll make a motion to approve it.

Mr. Bohn: I have a motion to approve it. Do I have a second?

Ms. Early: I'll second.

Mr. Bohn: I have a second. All of those in favor say Aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Bohn: Aye.

### **IV. REPORT BY THE EXECUTIVE DIRECTOR OF CLASSIFIED PERSONNEL AND THE PERSONNEL COMMISSION**

Mr. Bohn: Report of the Executive Director, item IV.

Mr. Josserand: Good evening Mr. Chairperson, Commissioners and members of the public. It is with profound regret that I have to report that relations between the Commission and the District continue to deteriorate. It's been, on reflection, three long years since I first came into the District; first as a mediation and conciliation and eventually, as a temporary Director and now, as a full time Executive Director. It's with the most profound regret that we are not meeting the goal set by the Commission. Discussions between the Executive Director and senior Administration continue. I hold little optimism at this point; the most recent communication from senior Administration was a request for a 90-day cooling off period. I have shared that with the various constituencies and interest groups. I tried to broker some possible solutions to lower the tenor of the current debate and was unsuccessful at this time although, I am still hopeful that cool heads will prevail. Regrettably, we have entered a new era, from my perspective as the Executive Director, threats, retaliation, incriminations perhaps violations of protected class activities. It's taken a very disturbing trend on a personal and professional level. A week ago Monday, I believe access to the SAP system was restricted for the Personnel Commission by the Administration. Contact with the IT department revealed that Ms. Ortega, the Assistant Superintendent of Labor Relations, had ordered those changes through personally or through her agents. We've pushed back as the Commission had been noticed that that has crippled the Commission's functioning and specifically, without getting into a great deal of technical debate, at this point I can no longer certify any payroll activities because I don't have

visibility on the system through the required screens or my staff does not. Additionally, we can't complete eligibility lists and we have been unable to complete eligibility lists because we can't gain access to employee information to verify promotional points and those sorts of things. Essentially this looks like a concerted activity to hinder if not stop the Commission from functioning and performing its legally mandated duties. There are a number of things on the agenda tonight we'll talk about, from the Director's perspective, to share with possible alternatives for the Commission for their action or consideration. The reality for staff is that in a merit system in public education if the District or its agents refuse to comply there are a lot of limits on what staff can do. With the environment of threat and retaliation that's a very unhealthy circumstance; just not a good situation. The 90 days I have shared with the District representative; as the Executive Director, we have to solve problems, we have to be part of the solution but, continued efforts that had been pretty clear in correspondence in the last couple of weeks indicate that there has been a shift in the tactics perhaps of the Administration. I continue to report that we have excellent relationships with the bargaining unit, I believe. They don't always agree with what we do, they don't always agree with what I do but we have reasonable discourse and I can't remember them ever threatening me, which is a good thing. It's regrettable that we find ourselves in this position, it's regrettable that our principal three duties that we have to publish Rules for the governance, the Classified service, to enforce those Rules and also for the betterment of kids in the Classified service and also to have appeals of discipline, there's so much redirect about that, and also with the recruiting process the Commission is well aware of the difficulties we have had in securing that funding from the District or from the county with the county's help as part of our budget negotiations. We think, at least I think, that the situation was handled poorly and we need to have it fixed in some appropriate manner. Currently, I have failed to be able to resolve it with my own authority and I think that increasingly we're coming to the point where outside assistance is necessary. That being said, I'm always an internal optimist that cooler heads can prevail that there's opportunities to solve stuff and it's very simple to me is that the merit system is here and it needs to work. We need to follow the law it's not a bad thing it's a good thing it's fair and equitable for everybody but right now we've generated into a situation that's reminiscent of when we came in three years ago. I think the difference is, from my perspective and my view, is that we haven't been accused of provocative or outrageous behavior. We've tried to be respectful, we've tried to be dignified and handle our office and the responsibilities we bear with respect. This current situation that we are in now is that I'm uncomfortable meeting with certain District officials without the counsel of the Commission present because of the threats of retaliation and in my view most recently contained in Ms. Gordon's letter which from my perspective, not being personal or disrespectful to her, I think took civility out of the argument and the threats that were leveled at me and the Commission and the process I don't think were helpful. So, I think we're at that point where I'm not giving up I'm certainly not saying that but I'm saying that in the present circumstance I don't think I can solve it without outside intervention. Mr. Chairperson that concludes my remarks.

Mr. Bohn: Do any of the Commissioners have any comments? I'd like to make a brief comment. I'm near the end of my term at the end of this month it is rather discouraging to have spent three years at this process and we are absolutely in no better position as a Commission than we were three years ago when I came on. We do have two or three extra employees that have been given to us that does not represent the amount of people that are needed to do the job or did the job when it was handled by the District. I can see where your frustration is Jeff. Where

we're going from here, where the District is going, or where CSEA is going to end up it looks to me that we'll end up in a monumental legal battle that will expend not hundreds of dollars, thousands of dollars, but tens of thousands of dollars for legal fees for the District lawyers and for the lawyers that represent the Commission. The only things that are losers in this are educational programs, teachers who don't get supplies they need, CSEA doesn't get equipment to be fixed to repair the things that need to be repaired, and the District can't service those sites that take places for our educational programs. It's just unbelievable the amount of money that it appears the District is willing to just throw down the drain for what reasons I honestly can not figure out. I do not understand why there is this conflict going on unless there is some kind of strategy that is there that nobody wants to tell anybody about. It is disturbing and I wish the Commission, the new Commissioner the absolute best luck in moving forward. At this time it doesn't appear that the District wants a Personnel Commission to function or to have any say except to show up here once a month as it used to do a number of years ago and go down the list and just say yes, yes, yes and get up and go home five minutes later with very little input to being sure that Classified employees are all treated fairly, hired fairly in that process. So all of you folks out there have to make your own opinion many of you have been around the three years that I have been here and you might have better answers than I do but I certainly don't have the answers. Anything else?

Ms. Early: I agree.

Mr. Barabani: I also agree.

#### **V. MATTERS BROUGHT BY THE PUBLIC**

Mr. Bohn: Then we'll move on to matters brought by the public. This is the time where anyone here may come forward and speak about any topic that is on the agenda later on. I'd encourage those if you're speaking on an item that is going to be on later to bring that up now so that when we get there, we don't have to go back a number of times over the same thing.

Ken Holt, CSEA Chapter President: I just had a response as well. It's a shame that we are here today and the District wants to waste that kind of money. As a representative of Classified employees I know what happens when money comes short; the cuts come to us and it's a shame. Not so long in the distant past, the District goes to the state school board to bypass the Commission and take those functions back. I think at some point I would hope that the Commission would take a proactive stance and send a report to the state school board and let them know what kind of tyrants are running the school District. It's a shame; it's not only an attack against the Classified, the Commission, their attacking our children and our community. We've got some horrible, horrible management in the school District and it needs change. So I would encourage you guys to send a report to the School Board and let them know what's going on because this is ridiculous. It's not just hurting us in this room it's hurting our kids, our Classified employees live and work in the District here and our children go to this District so it's affecting our children as well. It's appalling that the District always takes these tactics not only have they declared war with the Commission they have done it with CSEA. You can count the number of times we have gone through nepotism, cronyism and all those other isms that are out there that the District just wants to push under the carpet and make it seem like it's ok. It's appalling and I commend all of you guys up there and your staff; it's a huge job in trying to

overcome such a hard obstacle that you've tried over the last three years. I appreciate every moment of your service Mr. Bohn, it's been commendable; might not always have agreed with everything you said but you always did what was fair and I appreciate that. I just hope that you guys would send some sort of response to the State School Board and let them know what is going on here in San Bernardino. I'm going to encourage CSEA to do the same. Thank you.

Ms. Gordon: Good Evening. I just want to inquire and ask for clarification. Is the Commission going to change its normal practice and ask for comments on agenda items now rather than as they come up? For instance, you have a public hearing on this evening; a public hearing normally anticipates that there will be comments; there are several other items on the agenda if you want all of the comments now...

Mr. Bohn: I did not mean we had to have all the comments now but sometimes in the past we've had people to just get up and talk it seems like and it didn't really address the situation and so I understand...

Ms. Gordon: I just don't want to waive the District's opportunity to speak to agenda items.

Mr. Bohn: No, No I'm not cutting anybody off.

Ms. Gordon: Thank you.

Charlie LaChance, CSEA Labor Representative: Everybody is taller than me. Good Evening. Actually, I think there's something that I'd like to bring up that...

Mr. Bohn: Would you introduce yourself?

Charlie LaChance, CSEA Labor Representative: I'm sorry. Charlie LaChance, I'm the CSEA labor representative for Chapter 183 here at the District. There's a couple of items that we had discussed and they're on the agenda so, I'll wait to discuss those when they come up. However, I would like the Personnel Commission to look at an issue that came up at the Board meeting on Tuesday night, and I have a copy if you don't have a copy, it actually came up that they were going to for employment, under the Personnel Recommendations, that they were going to recommend that they were going to hire an eight hour twelve month Rec Aide at a school. And I think I discussed with you before that a Rec Aide/Noon Duty is someone who comes in to watch the children when they're on to recess or out to lunch. Rec Aides should not get more than two hours and although we are in discussions with the District, and there will probably an unfair filed; I think that maybe the Commission as they look at approving these positions or testing for these positions to be aware that there's no reason for an eight hour Rec Aide. If you have an eight hour Rec Aide that means one thing and one thing only that that Rec Aide/Noon Duty is doing Classified work. That people that have been reduced in hours or reduced in months, their taking that Rec Aide and having that Rec Aide do the (cum) work the filing, security, food service whatever it happens to be, and I would like to have the Commission do an investigation on why this District has eight hour twelve month Rec Aides, particularly when we have people who have been reduced in hours or months; if that's under your purview. The second thing is that again that we have folks who have been reduced; a layoff is a reduction of hours and months so

(inaudible) we have layoffs for Classified. Recently a memo went out from Dr. Delgado that principals and supervisors would have the right, upon their discretion; to close school sites where they normally haven't during Thanksgiving holiday; now there is an unfair labor practice out there that will address that. However, what I believe the Commission can address, is that those three days prior to Thanksgiving; if we are being told that our Classified cannot work; their sites being closed, they should not fill that position with a sub or Provisional employee; it should be a Classified employee who is on reduced hours or reduced months; I'd like you to look into that, to investigate. Is that within your purview, Jeff?

Mr. Josseland: With your permission Mr. Chairperson? In the first issue that you brought up, there may be traction and the second issue, absolutely. By the new Commission Rules that are now in effect I have to establish that all Provisional employees meet minimum qualifications and I am responsible to certify the payroll of those assignments; as you can understand, substitute employees in a large urban school District like this one are a very complex topic; I have tried to engage the District in the discussions about how I offered them to stay legally compliant, but also accomplish their mission; I was prepared and am continuing to be prepared to help them do that, but it would be absolutely, in my judgment, improper to take a position that a regular Classified employee vacated and then put them in with a substitute employee. There are two parts of coercive power in the Education Code from the Commission's perspective one, is that violations of merit system Rules, and I'm not a lawyer, Ms. Gordon might correct me, can be oftentimes considered a misdemeanor in the state of California. I also understand, and Ms. Gordon, as the Districts counsel, can clarify as well, that violating people rights under merit system law opens the perpetrator, or the person that violated the rights, up to personal liability that we as practitioners question whether the District can indemnify and protect if it's an inevitable act. The fact that the Education Code specifically makes it personally liable in the Education Code related to violations of merit system law, should, I would hope, be a very sobering reality for the enlightened who would choose to conduct misconduct.

Charlie LaChance, CSEA Labor Representative: I have worked in merit Districts before and we have gone to the District Attorney and filed suits because of violations of the Ed Code, and I don't want to do that here, I'm hoping that; George there is one thing that I want to say to you, you said that we were no further along in three years than we were, there is one area that we are, Classified employees feel like they can come to the Commission and talk about their issues and they get respected and listened to, I think that all of you are responsible for making that happen. Rhonda, you have always listened, George, you have always listened, and Jeff since you've been here; Gino, you are new, we hope that you will continue on the same path. The one good thing about this Commission is that they have listened, and no, I don't always agree with you, I don't always like what you do, but I know that you do it with some reason, that you have studied it; you've done it because you believe it is the right thing to do. We appreciate that. I see the District, like you said, it didn't work out with the last Director, and his behavior may have been provocative, we could look at that and say that that's why, but why now? We have a Commission that is willing to work to make sure that the school functions, that the students are taken care of, that the Classified are taken care of. Personnel Commissions were created to keep corruptness, threats, retaliation out of the school District, that's why it was started in LA School District, that's how it should it function. Regrettably, I do see that the District is trying to dismantle what we have here, CSEA is going to do whatever they need to do legally as well, to

ensure that this Board keeps functioning as it has been, with the integrity that you have given it; we will do whatever we can to make that move forward. I just wanted to thank you for that and let you know there has been a little light at the end of the tunnel with the Commissioner's that we have had. We respect you, we feel like you respect us and that is certainly more than what we are getting from the District, we will do whatever we can to continue to move forward to report to you where there are issues you can help us with and if you can let us know that this is off the mark and you can't help us. Thank you.

Tom Hernandez, CSEA Chief Job Steward: Good evening Commissioner's, Tom Hernandez, Job Steward. There is not much more you can say from what the President shared with you, plus what Charlie shared with you a second ago. We all feel the same way. We are more than deeply grateful in the way that you have served us for three years. We have been sticking with this for more than three years, some of us a lot more than three years. We've had past Commissioners, just like you addressed sir, that would just benchmark anything that we would come to address the Commission from our Classified rights; they would just look over the agenda, skip it, and move on. Meetings, like you were saying, 10-15 minutes long; so again, I too want to share with you tonight that we feel the same thing; we show up at school board meetings, very vocal, we are looked at as, like we don't count. To share a little bit about what we have given up as Classified employees, we have given up 2.09 on our salary reduction, we gave that up for the District, under our Chapter, we gave that up for the District to help our own Classified employees, to save jobs, we gave that up. I just feel it's hard, it's a long struggle. We have come so long, I just want to thank you, and like what Charlie said, if you do need our help, whatever we can do; let us know as a Chapter. Thank you very much and have a nice Thanksgiving.

Robert Peña Lozano Sr., Classified Employee: Good evening Commissioner's. My name is Robert Peña Lozano Sr. and I am the new Nutrition Services Custodian/Utility Technician and I thank you very much for finally getting that across for us, we have been fighting this for years and years and years and I, as well as the other custodians, appreciate it and thank you very much; we know that you will work very hard to straighten things out within our District, we have a lot of things, especially at the Nutrition Center that needs to be resolved and hopefully, we will get this Personnel Commission back on track, working hard because Classified really does need you. We do appreciate you very much. Thank you for all of the help you have given us. Have a happy Thanksgiving.

Liz Madera, Classified Employee: Good evening, my name is Liz Madera, Classified employee. I just want to add a few comments and questions as well. Thank you Mr. Bohn for your service, I do appreciate your integrity that you have brought to this panel and all of your service, and all of the other Commissioner's as well. This relates to where we are now, just a little background; this is an article from The Sun newspaper dated November 24<sup>th</sup> 2006, the title is, Labor Talks Rely on Nonexistent Union Accord I'm just going to read a couple points, it will just be a minute:

*An unorthodox hiring system in city schools has promoted nepotism and cronyism for years, some labor and hiring officials say. But for more than a month, members of the San Bernardino City Unified School District staff have defended their procedures by saying a written agreement with the labor union approved the controversial policies. District officials admitted this week -that to their surprise- there actually is no agreement. Of about 100 school Districts in California that have merit systems, San*

*Bernardino City is the only one whose Commission does not do the testing and interviewing of jobs candidates; District employees perform these duties.*

This is a quote. "We don't necessarily believe that just because everyone else is doing something we should do it to too". That's from Dr. Delgado. Also Delgado said he is open to discussing with the Commission where District should test candidates, but not now. Again, this is from a reporter. My question, is when and as to why this is happening, why? This was three years ago, we are all kind of saying the same thing; I just wanted to add those comments. Thank you.

Mr. Bohn: Is there anyone else who would like to speak under Matters Brought the Public, on anything?

## **VI. ACTION ITEMS**

### **A. Consider approval of the following eligibility lists (Items will not be read individually).**

Mr. Bohn: We will move on to Action Items. Number A) consider the approval of the following eligibility lists, items will not be read individually, there are four items. Is there a motion to approve that?

Charlie LaChance, CSEA Labor Representative: Charlie LaChance, CSEA. I have a question on the Accounting Services Director. Is that a new position? Is that a position that has been vacant? Do we know?

Mr. Josserand: With your permission? I believe that it's a position that has been vacant. He retired.

Charlie LaChance, CSEA Labor Representative: There is no one in that position right at the moment?

Mr. Josserand: There could be a Provisional or Limited Term employee unbeknownst to the Commission. That is the topic that we are going to talk about later in the agenda. Nobody is in it now.

Charlie LaChance, CSEA Labor Representative: So you know what my concern is, when reduction of hours and months; as positions are vacated for Classified, they are just vacated. I'm wondering if with Accounting Services Director, if that was a position that needed to be filled, or if it is one of those that we are creating at a higher rate of pay, but if you don't know the answer, you don't know the answer.

Mr. Josserand: It has been established priority by the District to complete that recruitment. As an aside, I have signed these four lists, pending subsequent Commission ratifications, but I have held these lists in the Commission, under the new Rules, it's the Commission's authority to certify those to the appointing authority as per established rule. I have tried to contact the principle Assistant Superintendent in this area for the past 10 days or so to talk out the details, I have been regrettably rebuffed, but I did receive contact from her late last night to try to move some of these along; alleging public safety/student safety, a matter that I'm very sensitive to;



hopefully these highly paid Administrators and myself, as a highly paid Administrator, can resolve these silly games and get the public's work done in a legally compliant way.

Charlie LaChance, CSEA Labor Representative: Thank you.

Mr. Bohn: Motion so noted. (inaudible) We have a motion to approve the eligibility lists. Do I have a second?

Mr. Barabani: (inaudible) Move to motion to certify.

Mr. Bohn: We have a motion to approve the eligibility lists. Do I have a second?

Ms. Early: I second.

Mr. Bohn: All of those in favor say aye?

**B. Consider approval of the following recruitment.**

Mr. Bohn: Item B) consider the approval of the following recruitment, just one item.

Ms. Early: I move to approve the recruitment for the Storekeeper.

Mr. Bohn: I have a motion to approve the following recruitment. Do I have a second?

Mr. Barabani: I'll second it.

Mr. Bohn: Those in favor say aye?

**C. Public Hearing to consider whether the Provisional Employee Relations Director/Human Resources Classified Director has been properly appointed.**

Mr. Bohn: C) Public Hearing to consider whether the Provisional Employee Relations Director/Human Resources Classified Director has been properly appointed.

Mr. Josseland: I'm trying to be very careful as we deal with this because as we deal with the high stakes political relations between the District and the Commission, I would describe us as being big boys and big girls who maybe aren't being nice to each other and maybe aren't following the Rules, but those are things that I'm paid to deal with. Additionally, the Senior Administrators in the District are paid to deal with that, I would argue. So, I want to go on the record that this is the first of what appears to be, a major departure from proper legally mandated practice. This is the first case that I am bringing before the Commission; the fact that this is the first case has nothing to do with the individual, I judge them to be totally innocent and an excellent employee of the District, personally from my perspective, and above reproach. However, I am sworn to uphold the law for the state of California which includes your Rules. The specific Rule that I am offering is in violation here is that someone working provisionally in an assignment; we have established, to my satisfaction, that this person is, I have tried to establish whether he or she meets the minimum qualifications; you have been copied on repeated attempts to do that; I have been greeted with silence. It is a sensitive topic in that I have tried not to vilify this particular person

because once again, for the record, they have done nothing wrong; it is the Administration that has departed from our policy that requires my certification of payroll on initial new hires or changes in status; it has come to my attention that I have not signed any of those things. I have tried, as the Commission is aware, in correspondence to address these concerns with the appropriate Assistant Superintendent's and Business Manager; I have been met with silence. I have no other choice but to bring before the Commission the recommendation that you make a determination whether the person has been properly placed, I'm asserting that they have not been. Since I cannot certify the payroll, its incumbent upon my office to bring it to the Commission; the next step would be for you to find or not find that they have been hired in error and in which case, to direct staff to notice of vote; if that's what you choose to do; that the person not be paid from the time of the decision forward for their assignment. Other state laws require those people, prior to Commission action to be paid, but after the Commission takes action, that pay has to cease; that is what I am recommending. In recognition of the people involved, I am trying to keep it at that level, but that concludes my outline.

Mr. Bohn: Yes Ms. Gordon?

Ms. Gordon: Thank you for the opportunity to make what will be brief comments. I would like to provide some critical facts for the Commission's consideration this evening. This matter was brought as a Public Hearing to consider whether the provisional appointment of Employee Relations Director/Human Resources Classified Director has been proper. First, I would like to point out that there is no such position in the District. There are two different positions that appear to have been blended into one in the opinion of the Executive Director. There may have been some confusion because the Assistant Superintendent's title is Assistant Superintendent of Employee Relations/Human Resources Classified. There is no director-level position that is comparable where it has that same title. Second, there is no person currently serving in a Provisional, or a regular position, or an out of class position, or a Limited Term position that is doing both of those jobs. As you are well aware, the District has been trying for some time, working through the Commission, to change the current job description for Employee Relations Director; that's a work in progress. No one has been appointed to that position on a regular basis; no one is working in that position currently; in an out of class basis, in a Limited Term position, or in a Provisional assignment. The former Human Resources Classified Director retired some time ago from the District, that is the other half of this slash position that has been put on for Public Hearing when there are two separate positions but no one person is doing one half to the extent that the Human Resources Classified Director duties are being performed currently; they are being performed, not a Provisional basis, they are being performed on an out of class basis. So before you launch into your consideration of the question on the agenda before you, we just thought it necessary to provide you with some reality touches as to what is out there so that you won't take action on your next agenda item regarding something that isn't happening. I thank you for the opportunity to clarify that for the record.

Mr. Bohn: Thank you. Ken?

Ken Holt, CSEA Chapter President: It is a covered up shell game in the Human Resources office. At one point, they had a certificated person doing all of the Classified work; they played the shell game when they moved people around. If you don't vote on it tonight, I would strongly suggest

that you do a thorough investigation of that department because they do like to play games and move people around in positions; Working Out of Class, Provisional, that aren't qualified for those positions at all. So I would encourage you to investigate that, but it is a shell game so you might have a complaint today and tomorrow, they will move that shell around to somewhere else, so I would encourage you guys to investigate that thoroughly because it is a problem in that office. I thank Jeff for bringing this up.

Charlie LaChance, CSEA Labor Representative: Charlie LaChance, CSEA. I don't know if a motion is in order, but I would like to move that you investigate this because there is an individual who has done both of those positions and Ken probably put it better, but there is a shell game, to have them in the position of the Employee Relations Director and then they move them over to Human Resources Director and we don't know where that person is at; if that person is Working Out of Class, then I would ask who put in for that out of class pay and is it appropriate because we put in for out of class pay for two Classified employees in the Commission and have been denied; why would they be denied? The reason they were denied is because it was said that they were working while the Director was there, well, this individual has been working while the Assistant Superintendent is there, so why would they get out of class pay? Why isn't it apples for apples and oranges for oranges? I would ask that there is a motion that you investigate not only those positions and how they are moving this individual, but how is that person getting out of class pay? How is that right?

Mr. Josseland: This has been an ongoing issue for some time. From the Executive Directors perspective, the problem first came to my attention from the Business Services Department when they indicated that there had been paperwork submitted; they believe circumventing my signatures to a point this subject individual into the Labor Relations Director job, which essentially was at the pay rate of an Assistant Superintendent. There was a significant pushback about that; the Commission was noticed of opportunities; (inaudible) the individual was in place in the automated HRS system that we have as the Human Resources Classified Director. To clarify, for Ms. Gordon's benefit, as a relatively new attendee to this particular problem, we are trying to figure out which position that this particular individual is in. In accordance with my last view into the HRS system, the person was being run as the Human Resources Director of Classified, but that they weren't performing any of the duties. I've tried to establish their minimum qualifications as the Commission is aware in a number of e-mails and I have had no response. I have no other choice but to recommend to the Commission that the Commission vote that this person has been improperly placed as a Provisional employee and notice the County Superintendent of Schools of the prohibition of the Working Out of Class; there is no paper record, that's new information that has never been shared with the Commission and it's the most disturbing fact yet in essentially what appears to be a smokescreen or charade that borders on protected class activities. The retaliatory behavior of senior administration towards the Commission staff and myself where the person can work out of class; it's very curious, I am not playing a tit-for-tat game, but its very curious that I have two minority people that can't get paid and have to go through the grievance process in an area that I am an expert in, but yet, this can continue. The public can see this, the light is being shown on what's happening here, it must cease. I regret that this impacts individual employees, but we can paint whatever we want to paint it, it's an inevitable act in the Executive Director's opinion. That concludes my report.

Mr. Barabani: Ms. Gordon here made reference that this job doesn't exist.

Mr. Josserand: It's two jobs. One is Classified Director of Human Resources Classified and the other one is an old position that had been occupied by Ms. Ortega's predecessor, his name escapes me, and has been vacant since he retired.

Mr. Barabani: So, we are dealing with Employee Relations Director and the other job is Human Resources Classified Director?

Mr. Josserand: Yes.

Mr. Barabani: The position requesting pay is which one?

Mr. Josserand: I'm not sure. We have been cutoff from the HRS system. The last visibility that we had was that they were being run as the Human Resources Director of Classified. I've asked for the subject persons minimum qualifications for either position and have been rebuffed. I've consulted with the senior administration, the number two person in the District today in an eleventh hour effort to try to resolve this without potentially embarrassing this excellent employee and I was told, a fascinating argument, that there were others in the same situation so, if you choose this one, why aren't you going after the others? Well, for the record, the Executive Director responded, that I am going after the others, it is not personal, it is a matter of law and it is incumbent upon my duties; this was just the first one. I find it particularly reprehensible that this is so close to the person who allegedly supervises some of my activities and the violation is happening between our two offices. Does that answer the Commissioner's questions?

Mr. Barabani: Some.

Ms. Gordon: Let me try again, and if I don't answer your question, rephrase. I believe you asked, of the two jobs, which one is currently being performed on an out of class basis? That would be Human Resources Classified Director.

Mr. Josserand: May I ask you whose filling it?

Ms. Gordon: We haven't been using names.

Mr. Josserand: Then let me modify the question. If the District will admit, for the first time that it is doing that, I believe that that is an important step; I believe that is specifically why our computer access was withdrawn, to protect this ongoing improper act.

Ms. Gordon: I'm not admitting anything. To my knowledge, based on the information provided to me, in order to be able to respond to you, there is one person Working Out of Class in the position of Human Resources Classified Director; someone that has been referred to by yourself this evening as an excellent employee. I'm sure we are not talking about anyone other than that same excellent employee.

Mr. Josserand: I agree.

Ms. Gordon: Does that answer your question sir?

Mr. Barabani: That helps a lot. This now goes back to the original, we are trying to find out if this person filling this position out of class meets the minimum qualifications. Is that right?

Mr. Josserand: Yes sir, that is absolutely correct.

Mr. Barabani: And you have requested that?

Mr. Josserand: Yes sir, I have.

Mr. Barabani: Have you gotten an answer?

Mr. Josserand: No sir, I have not.

Charlie LaChance, CSEA Labor Representative: I need to ask another question on this same issue, Charlie LaChance. Human Resources Classified Director is someone who deals directly with Classified. When Karen Hoch was there, that's who retired, we worked directly with her. We have not been given, and Ken, maybe you have, I haven't yet; this is the first we have heard of this, we have not been given, and again, that person works directly with Labor Rep, directly with CSEA on a myriad of issues, transfers, classifications, issues, we have not been notified by the District that there was anyone filling that position. The person that we are talking about, we all know who it is, I love working with her, she is a wonderful person, this isn't about persons, it's about issues; I think that we have all made that very clear so, I don't know if there is some insinuation that it's not a person, because there's not, but we have not been notified at all. This person, to my knowledge, was working in the position of Employee Relations Director, or they were trying to so, I would like the Commission to clarify, from the District, it sounds like Ms. Gordon can't specify that with absolute; she has been given information from the District to come here and to speak on their behalf, but it doesn't sound like she can say without a doubt and admit, whatever it is, that that is what is really happening. Maybe that is what we need to do before we move on this at all; just a thought.

Ms. Gordon: As a point of clarification from both of us. I'm sure that we both can say; Ms. LaChance comes here to share information that's been given to her, she's not in the workplace when things are happening. I don't sit in the workplace; I am answering a specific question from the Commission. You asked which part of the job was being done, and I answered that. The same that Ms. LaChance would answer a question based on something that a bargaining unit member or perhaps an association officer had told her doesn't necessarily mean it's her first-hand knowledge; I've not heard her be questioned when she is relayed that kind of information to the Commission.

Charlie LaChance, CSEA Labor Representative: Number one, we are not talking about me, but thank you for bringing up that subject; we are not talking about Charlie LaChance or even you. If I am representing somebody, than I do speak with authority and if I do tell you something, I am

saying that that's what occurred. I am just trying to clarify because as a Labor Rep and as Union Officers, we deal directly with that person and we have not been told that at all.

Mr. Josserand: To try and make some sense of this, it's a simple matter. If, as the District, has appears to now admit for the first time, that we have a person working in position of Human Resources Classified; they must meet the minimum qualifications; it's black letter law.

Ken Holt, CSEA Chapter President: I am an employee of the District and what Charlie has stated is true and correct, we don't know who's working in what department because it is a shuffle there. The mere fact that Yolanda Ortega's not here tonight to answer some of these questions sparks some interest in me. We are wasting tax dollars to pay for an attorney to speak for her, taking away from the kids in the District; it is just amazing why she isn't here to speak on this? When it's convenient, she's gone, every other time you've seen her in the last three years, she sits right here in this audience. There is something funny going on. Generally when someone does something bad, they get their lawyer; that's what we see here tonight so, I hope you guys will take that into consideration, but there is something funny going on in that office, whether it is the shell game, they don't want to mention names; there is something improper going on and it does need to be taken care of. Thank you.

Mr. Josserand: Staff recommends that the Commission take action tonight to direct staff to notice the County Superintendent that the payroll of this particular person related to their out of class, or Limited Term, or Provisional, or whatever masquerade, or whatever position it is, is terminated; it is a very simple resolution. The District needs to share the paperwork with the Commission and we need to demonstrate that the person meets the minimum education/work experience requirements. End of story; it could be resolved in five minutes tomorrow if there was a willingness on the part of the employer to comply with the law in this matter.

Mr. Barabani: First of all, thank you for your willingness to answer my questions. I know this is tough because I don't know who this person is and I don't want to, you know, we're just dealing with the position and I did get a clear answer. I know we're looking to do this today, but can we go down the road, outside the Commission, and find out who's in this position? Find out if they're qualified? Since, we're meeting again in a few weeks.

Mr. Josserand: Absolutely. I do know who it is.

Mr. Barabani: And then maybe can I ask for that?

Mr. Josserand: We already have. I found information; verified it myself last week.

Mr. Barabani: (inaudible) Charlie here is asking for an investigation; I'd like to see a little clarification so that I can understand everything that has happened.

Mr. Josserand: I would suggest, with the Chairperson's permission, if I could ask Ms. Gordon a couple of questions?

Charlie LaChance, CSEA Labor Representative: May I say something first just to Gino and to the Board? It doesn't matter who it is, they still need to qualify.

Mr. Barabani: I understand that, but now we are making an assumption that person doesn't. Correct?

Charlie LaChance, CSEA Labor Representative: Well, I've heard him say five or six times that he's asked for those qualifications and the District hasn't given it to him. Is that correct?

Mr. Josserand: Yes. You have to meet the qualifications before you go in, not after the fact, there's not a double standard here.

Charlie LaChance, CSEA Labor Representative: If that were a custodian, or a food service worker, or a nurse, they wouldn't be hired without those qualifications.

Mr. Josserand: And for the record as the Commission is aware, I've asked the District to establish minimum qualifications on eleven other Provisional employees and so far, I've been refused. Indications are that those people are currently not working.

Ms. Early: I would hate to see the individual get caught in a crossfire of failure to communicate between Personnel staff and District staff. So, I would like to make a recommendation that you again, request the information and put a time limit; say you need it by close of business on whatever date and if you haven't received then you'll move forward.

Mr. Josserand: May I comment? I think that's an excellent answer and an excellent possibility. I would like amplifying instructions however from Ms. Gordon and direction from the Commission as well. Whether you give it tonight isn't the key issue. I believe that the Commission has the authority to subpoena as part of this investigation. The District must be compelled to produce these records as the Education Code requires and that I'm asking the Commission to task me to make that so. I'm asking Ms. Gordon publicly for a request for legal services to insure that the District either willingly complies or with the offering of a subpoena. I'm asking for her assistance to insure that that happens so I can report back to the next Commission meeting as what I interpreted your request to be.

Mr. Bohn: It could be at the next meeting but I would like to see, when we're dealing with something like this, that we come with a written document that gives us dates and things that have happened and so on so that we can logically follow a sequence of what happened. It's very hard for me to get a real feel of what the whole thing is and all the back and forth things that have gone on in the District during the normal working day and so on. For us to come here and not know that on Tuesday I asked this and I sent this and I got this back and so on so forth. Then it becomes quite easy to deal with it once we have all the facts down. It's a little confusing for me.

Mr. Josserand: I understand and I agree.

Mr. Bohn: So then as I understand it we've sent you back with some information to find some more additional information put it in a written form and to bring it back to us at a later date. It would seem to me that item D which is tied to this situation would also become as part of the whole or is item D totally different?

Mr. Josserand: No it's part of the same thing. Staff agrees with the sense from the Commission that we're getting. It's staff's hope. Ms. Gordon can you speak for the District? You're speaking for them tonight; can you assure their co-operation in this matter to provide us access to the documents to put them to the Commission one way or another of what's happening?

Ms. Gordon: I would have to discuss this matter that you are now discussing with my client. I will make a request for a copy of the tape of this meeting so they can hear verbatim what it is that you're asking for and I will assure you that we will discuss that.

Mr. Josserand: Yes ma'am.

**D. To determine whether the Employee Relations Director/Human Resources Classified Director has been properly appointed.**

Tabled.

**E. Final reading and consideration for the adoption of Commission Rules, Chapters 19.**

Mr. Bohn: So we're moving. We talked about C and D we're going to move on to E if there's no objection from anyone, final reading and consideration for the adoption of Commission Rules, Chapters 19. Explain a little bit why this is back on the agenda?

Mr. Josserand: I referenced the fifty three-page I think, letter from Ms. Gordon earlier tonight. I have to thank her on this particular matter in that she did point out an error by the Executive Director that I think is absolutely correct. I had failed to give the District 14 days advance notice as required before the first reading of the chapter. The chapters are out there so, staff took it upon themselves to modify, to give a new first reading tonight but I will point out that the District did have a definitive deadline to provide input and unless your letter constituted the input Ms. Gordon I don't believe we've gotten any comment from the District one way or another; other than maybe from my perception, threats. It would be the intention of staff to bring it back for a final reading on the 30<sup>th</sup> of November.

Ms. Gordon: Am I to understand by your comment sir, that the District will be precluded from providing oral comment this evening?

Mr. Josserand: No ma'am.

Ms. Gordon: Would you like me to remain here and do that now, or is there a more appropriate time for me to do it?

Mr. Bohn: I think if it's talking about chapter 19, this would be the appropriate time.



Ms. Gordon: I would remind the Commission that this is the second proposed version of amendments for Chapter 19. The District received the first proposed version on the evening of October 27<sup>th</sup>, at the end of the meeting. Just shortly after that we received a second version. That version is reality was not new to the District. The version you have before you this evening is a melding of two things. It is the version you received the first time; which comes to us from Montebello and perhaps it came to Montebello from somewhere else. The new part from this evening for your first reading, is some new language on Progressive Discipline. That language the District had seen before. It was proposed at the bargaining table to the District by CSEA. After some discussion CSEA withdrew the proposal saying they just got what they wanted for the Commission and now you are being asked to do just that. The District will deal with the surface bargaining issue and CSEA in the proper venue. It doesn't have anything to do with you, but in the haste to bring a proposal forward to the Commission for its consideration the CSEA language was inserted in the Montebello language and the clear trail on this is that when that was done there was no attempt made to reconcile what was already in the Montebello language with what was being requested by CSEA. I will just note briefly for the Board's consideration that if you look at page 163 at the bottom beginning at 19.1.5, there's an entire section called progressive discipline that goes on to page 164 and onto the top of 165; that's the new language that's the language; the District was given at the bargaining table; it's the language that was withdrawn that language apparently was placed in the proposal to come to you and then the balance of it was renumbered; and the way you tell that is that 19.1.6 which was in the original proposal that comes from Montebello, is inconsistent with the language in the newly inserted provision just above it, and 19.1.7 is inconsistent with 19.1.6 above that, was inserted. It is one thing for an association to engage in surface bargaining and we won't deal with that this evening. It's another thing for you to be used as pawns in the rush to be a benefactor not being reconciled it's going to lead to problems in the future. Not only is there an internal inconsistency now in the Rules the amended Rules that are being proposed to you these Rules apply to the entire Classified service and there's no distinction being made or no consideration that I've heard being made as to if and how these Rules should apply to Classified managers, confidential, or to employees in other Classified bargaining units; and you have at least one other at the current time working on a collective bargaining agreement. Thank you for the opportunity to bring these issues to your attention for your consideration and hopefully so that the inconsistencies and problems noted will be corrected.

Ken Holt, CSEA Chapter President: Where to start? First off, it's not something that we withdrew it's something that we've been trying to get into our collective contract for years. The District does not believe in fair discipline with anybody. We were asked by the Commission to give input when we were coming up with the Rules CSEA actually did what you asked us to do unlike the District who sat on it and gave you nothing. They had the opportunity to do it and they did nothing. I haven't heard that these are bad only that it holds the District to a standard they never had before where they have to treat people with dignity and respect and a fair manner. I see nothing wrong and I haven't heard nothing wrong about these Rules until now. I don't know how many opportunities we had to sit in these committees to discuss these Rules just like normal with everyday business with the District they're never available. So I don't know why all of a sudden the stalling; well, I do know why they're trying to pull a stall tactic again not to move forward with these Rules. I would encourage you guys to pass these Rules but it wasn't on the part of CSEA at a bargaining table. We were asked to give some input on the Rules this

came up we gave that input and it was utilized for what it was, input to the Commission. The District failed to do so they had a time limit to give input and they did not. So I'd appreciate you considering these Rules as the first reading so we can move forward. Thank you.

Steven Holt, CSEA First Vice President: Good Evening Commissioners. Just to go on a few of the things that President Holt had said we've been trying for progressive discipline for years and to correct the record the District had met with us every time; we're not going to go there. There is no bargaining process they throw it back at us and say they're never going to have progressive discipline and just food for thought they do use something called *The Frisk* in this District. When we were given a copy upon our request; and that's seldom utilized. So this notion that CSEA somehow has not been trying to work with the District; we are always open they can always demand to negotiate anything they would like to we are always willing to meet and sit with the District. I am personally disturbed that they seldom want to talk and communicate or meet with us. Likewise, they don't put their input into the Commission and we hear it at the eleventh hour, "well, we don't like this." Where was the input before? Why don't they put their input and they can be a part of the process instead of complaining about the process. I thank the Commission for your time.

Charlie LaChance, CSEA Labor Representative: A couple of things. We're not surface bargaining at all. The progressive discipline we wanted it and when the Commission came to us and said this is what we'd like to do, we'd like your input we did what we were told to do or asked to do, not told, but asked. The District had the same exact opportunity that we had to have input to sit and work with us or work with the Commission and go to the Commission and bring it back to us. However they wanted to do it. We've complied with what the Commission asked for. If the Rules are adopted and I hope they are because the reason for the Rules is to make discipline even handed. So that if I like Rhonda and she's absent ten days, in a row I don't say anything to her but if I don't like Gino and he's only been absent three days so I discipline him. These Rules and Regs will make sure that that doesn't continue to happen and it does happen. It will be consistent and every site every principal every manager will have specific Rules and right now they don't they all do things their own way and how they see fit. If the District is unhappy with this they have the right, once these Rules are adopted, to say to CSEA we want to sit down and bargain this and we will gladly do that but until that is bargained, these Rules that would be put in place would stand; so until and if and maybe the District doesn't want to negotiate it with us, maybe they'll like these and keep them just the way they are and have to go through the Personnel Commission. But legally if something can be negotiated if it is put into the Commission's Rules and Regs either party CSEA or the District has the right to demand to bargain. So the District has a get out of jail card if they don't like this since they didn't take the time since March of last year to have their input or June or September or this last month they still have a get out of jail free card they can still say CSEA we demand to bargain and we'll have to do that. So I'd like you to consider during this first reading moving forward with these Rules; it's been stall, stall, stall, we've been talking to you for over a year it's come up again and off again and I just think that's it's not appropriate that you punish those that do what you ask and reward those that don't and the District didn't do what you asked them to do. We did took a lot of thought; yes, there is some language that we have given the District; in the past I think we have it to them four years ago; gave them two years ago; and why reinvent the wheel if you've asked us as a Commission to give input, why would we say let's trash everything we know and

start from new? We did take some of that language absolutely we're not going to deny that we took that to try and insert; it and what you had done and how you were to come up with what you came up with. I know that the District has had some language in the past that they have given us, they could have given it to you if they; they chose not to. So there's no denying that some of this language the District has seen before absolutely. So you think it would have been easier for them to respond to it. So we humbly ask that the Commission move forward with what they started to do with the integrity that you have and to keep the integrity of the Classified employees and give them a way to have even handed discipline. Thank you.

Mr. Josserand: The Commission, unless it chooses to, doesn't have to take any action or do anything tonight unless you want me or want to come to some sort of direction. Staff has taken note of well thought out comments of Ms. Gordon and will with the Commission's permission, will try to reconcile any potential inconsistencies in chapter 19. If it's the judgment of staff; if it's left to staff to resolve those differences but it is the intention of staff unless directed otherwise, to bring Chapter 19 for a final reading on November 30<sup>th</sup>.

Mr. Bohn: Question. This is a presentation of the Rules the way are printed here, is that correct?

Mr. Josserand: There's two versions here. There's one where staff was kind enough to spend time on to please and make as a draft presentation of what we would adopt and there's a second version that has the strike outs and line outs with the various changes and additions for the Commission's consideration. So now there's two versions of it in there?

Mr. Bohn: So if we have two versions?

Mr. Josserand: Well they're both...

Mr. Bohn: Which version are we approving?

Mr. Josserand: An excellent question. You're not approving either version. Both versions are the same with one slight difference, the line outs and strike out and any changes are portrayed in manner that's easily discerned from staff's judgment in one version and the other version, is that that is currently in staff's view of the final version to be presented to the Commission without comment or action from the Commission.

Mr. Bohn: I would think that the Commissioners' would want to identify for sure which version we are considering for adopting. That doesn't mean that we are adopting it? Is that right.

Mr. Josserand: Yes sir.

Mr. Bohn: I'm still confused. Which version are we putting out there at this point?

Mr. Josserand: They're both the same. It's that one reflects the changes and additions so it can be easily discerned...

Mr. Bohn: Is there written language that differs in the two documents?

Mr. Josserand: No sir.

Charlie LaChance, CSEA Labor Representative: Mr. Bohn if I may?

Mr. Bohn: Yes.

Charlie LaChance, CSEA Labor Representative: CSEA had requested that when they took the Rules and Regs that they show us a copy where they struck out what wasn't going to be used and added. It's something that you do in negotiations to strike-out the old language, put a line through it, and then you either italicize, or put in a different color the new language. So they're exactly the same. One just shows what was stricken out is no longer in there except there's a line through it and it means it's no longer good and then when it shows it, that what's left is there they're the same just shows how you changed it. For some folks who are visual like myself, I need to see the changes and that's the way to see them. So, they are the same Rules. It just shows you what was struck out; what no longer exists. Thank you for doing that.

Mr. Josserand: Thank you. That was better said than what I mumbled around on. But they're extensively the same document, but one shows the evolution of how we got there with the line outs, the other one has dropped the line outs and the line outs are no longer there. So it's the second version, to answer the Chairperson's question that that's the one being considered for a first reading. The top version just shows the Commission and the public how we got there.

Mr. Bohn: So there's one version here in front of us?

Mr. Josserand: There's two versions. The top version is the one with line outs that reflect the minor changes that were made and where they were made. Ms. Gordon explained that there was some language added; that there was also some language struck to make room for the language that was added.

Mr. Bohn: So one shows us what was struck-out and the other version shows us what it would look like without those items?

Mr. Josserand: Yes sir.

Mr. Barabani: We don't have to take any action on this?

Ms. Early: It's just a reading.

Mr. Bohn: Well I think that the Commission has; I would think the Commission has to say it's our Rules and we're saying that this is the first reading of these Rules. If we take no action whatsoever there's nothing happening, there's not first reading. So we have to say...it would appear to me that this Chapter 19 is what we want to put forward as the first reading. And if it is we have to say that?

Mr. Barabani: Ok. I make a motion that we put this forward as the first reading.

Mr. Bohn: I have a motion for the first reading. Do I have a second?

Ms. Early: We will take into consideration the information that Ms. Gordon gave us.

Mr. Josserand: Absolutely ma'am.

Mr. Bohn: Do I have a second?

Ms. Early: I second.

Mr. Bohn: I have a motion and a second to put forward Chapter 19 as the first reading as it appears in the documents. All of those in favor say aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Bohn: Aye. Opposed?

**F. In the matter of appeal for Abram Flory: Appointment of Hearing Officer.**

Mr. Bohn: Item F) In the matter of appeal for Abram Flory: Appointment of Hearing Officer.

Mr. Josserand: As the Commission is aware, Mr. Flory was the former Director of Classified Personnel here in the District. He has asked for an open hearing. So, we agendaized this matter in Open Session. The hearing for his appeal was scheduled to go this week; there was a move by his counsel to challenge the Hearing Officer that the Commission had selected based on the recommendation. As part of an abundance of caution because of the timeliness of the matter and the sensitivity and fiscal resources in support of it, I'm required counsel right now their objections. I received those in a timely manner based by our deadline. I worked with counsel, I deemed advise from counsel and I concluded that out of an abundance of caution, although I did not agree with what Mr. Flory's counsel had asserted, I believed it was in the best interest of justice and fairness to terminate that particular hearing and come back to the Commission. On reflection, I have recommended to the Commission that you make a motion and approve that our attorney, Mrs. Chidester who is present today, honored guest, wonderful woman, and a wonderful attorney, be tasked by the Commission to work with me to obtain a list from the Federal Mediation and Reconciliation Service of potential Hearing Officers to strike from. If a proviso, we have difficulty as there may be timeliness issues in this, if we have difficulty obtaining a list in a timely manner, it is the desire of the legal counsel and myself to give us the authority, if the Federal Mediation Reconciliation Service cannot provide the list, is it is to go to the American Arbitrators Association, AAA...

Mrs. Chidester: American Arbitration Association.

Mr. Josserand: I'm learning stuff everyday. Thank you ma'am. That's the recommendation. This is a high stakes appeal I've received what I believe is improper pressure from various

entities. I'm not prepared to say at this point that we cannot continue and conduct a fair and impartial hearing, but I will take this opportunity to caution all parties that that's the Executive Director's intent and that is I believe the Commission's intent to conduct this hearing in a fair and equitable manner and we will go to whatever lengths necessary within the law to ensure that that happens. Too much little children's money is at risk to do otherwise. So it is recommended to the Commission to make a motion to task Mrs. Chidester to seek a list of potential Hearing Officers and facilitate striking by Mr. Flory's attorney. In an absence of a timely submission from the Federal Service to go the American Arbitration Association Service. Does that meet your interest ma'am?

Mrs. Chidester: It does. Thank you.

Mr. Bohn: I would move that the Commissioners' approve the process of finding a new Hearing Officer that is in agreement with the District and the Commission.

Ms. Early: I second.

Mr. Bohn: I have a second. All of those in favor say aye.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Bohn: Aye. So moved.

**G. To consider creating and funding as needed provisional assignments for Director Classified Personnel.**

Mr. Bohn: Consider creating the funds, item G) to consider creating and funding as needed provisional assignments for Director Classified Personnel.

Mr. Josseland: This is a matter that I revised by choice. I placed it on the agenda to clarify for the public why I was doing this and to insure that I had the Commission's support and that I anticipate resistance and it has been shared with me that I will receive resistance from the District. I have shared with the Commission on few retaliations that I have been threatened; I believe that I have been threatened, in my interpretation, by correspondence from the District's attorney record. This is a difficult almost untenable situation for me to then enforce laws on these same people that are threatening me and calling me names in my opinion. As part of succession planning it's my intent to recommend to you in this issue that we move \$10,000 approximately of our money within the Commission budget to fund a provisional appointment for Director of Classified Personnel, that's the position that was formerly been occupied by Mr. Flory. I had taken it upon myself to bring a qualified Director of great experience and a technical expert in the field of industrial and organizational relations, Mr. Maher. I will note for the record that Mr. Maher is one of the Interim Directors that had been employed by the District in the past on a daily rate. My recommendation would be on demand and that his funding would be at the appropriate step by Commission Rule of the salary for Director of Classified Personnel. I would request that you make a motion to approve that or at least consider it; my fear is that

there will be an attempt to take me out, to cut the head off of the Commission as part of the continuing tactic to stop us from fulfilling our duties. This would be a person that would appear as my replacement; that's the primary reason to recommend him. The secondary one is we took the money for the Senior Analyst position, that the District from my position, would not let us fill properly from my perspective; their prevention to fund the remainder of the salary. The mere staff that we do have is to greater efficiency based on its technical fume in industrial organizational relations or examinations rights.

Gladys Byrd, HR Officer: Good evening my name is Gladys Byrd. I am a Human Resources Officer, Classified HR. The District would like me to inform you given the extreme financial situation of the state; the District urges caution and conservatism in maintaining a financial solvency between the Commission and the District on this matter, thank you.

Mr. Barabani: Who's position with the person that all of you paid, (inaudible) exactly, paid by non-cost, all of them cost, correct?

Mr. Josseland: Yes sir. There's a variety of ways to make that happen. It could require as an example that I obtain your permission after a brief indoctrination period with any time assignment for him in the future, we can exercise close control and distant control to Executive Director of his position. With this course report on a day by day, it can always be done, if we choose to go forward and wise enough. I am mindful of the well intended comments from the District about being physically responsible and I assure you that the Commission staff is being as physically responsible as possible, but I also must say that sometimes there's this saying, I think it was Franklin, "Any lies come foolish" and there's significant liability and concerns that I think certainly justify employing someone to assist the Commission as far as loss litigation prevention, I heard that a number of times from members of the District staff as late as this afternoon.

Ken Holt, CSEA Chapter President: I just want to make a comment, I am aware of the threats that they have made and I will hate to see the District, as we say, cut off the head of the snake. We do need an assurance plaque; you know they talk about physically responsible, yet they are willing to rage battle with the Commission over whose function's what, and spend tens of thousands of dollars of our children's money. We are talking about tens of thousands of dollars to protect the Commission's interest. Who's not being responsible here is the question I would ask. So you know, in just the fact that they are spending that money on their attorney to sit here and speak for them tonight proves how responsible they are. I think it is a great assurance policy to take for the Commission because we know the games that the District likes to play, thank you.

Mr. Bohn: I may be a little bit confused. This position is created for the purpose, if the function, if you no longer function, is that correct?

Mr. Josseland: That's one of the two principle reasons, yes Mr. Chairperson.

Mr. Bohn: What is the other one?

Mr. Josseland: Is to benefit from limited staff that the Commission has, the training expertise and subject area expertise that Mr. Maher has by increasing our efficiencies with what limited

resources that we have; assuming that our computer system gets turned on as I am hopeful it will tomorrow since we have shined the public light on it, so we can continue to function and produce eligibility lists and fill District positions. So there is two fold purposes it is really up to the Commission how extensive you want to be and how much money to invest. Based on my assessment of the budget, an initial obligation of ten thousand dollars should get us through for this foreseeable future depending on what the Commission's desires are.

Mr. Barabani: When you say in a foreseeable future, do you have an idea? I can see far away.

Mr. Josserand: Well the near term, mid term, far term I believe that we are in a chess game and its not really in our control, the situation can change tomorrow if reasonable people will comply with the laws of this State of California and deal reasonably with people's lives, its as simple as that (inaudible) and then everything is fine. But based on three years of experience and the long slide that I fought daily, I'm not optimistic this time.

Mr. Bohn: It appears to me that we basically are hiring a part time person.

Mr. Josserand: Yes.

Mr. Bohn: And that part time person could show up on your steps tomorrow if you deem that, correct?

Mr. Josserand: If the Commission gives me the authority, yes sir.

Mr. Bohn: So we have two things, one if for some reason you can't function, I think the Commissioners need to be where both requirements and decide what you want, do you want both requirements? Do you want one option this and not the other or?

Mr. Barabani: I think we can go ahead with creating funding positions because this will come up again in like a month also, we do have limits; I was kind of looking for a time, but I understand what he is saying, he is saying we don't know if we're going to need it; I guess the bad (inaudible), I can go with that.

Mr. Bohn: So you are saying that you want to fund this position for both of the reasons that was said.

Mr. Barabani: Considering faring funding of Provisional assignments for the Director.

Mr. Bohn: So our Director is going to be able to call this person that we're (inaudible) by?

Mr. Barabani: As should we, is something we should have (inaudible).

Mr. Bohn: Well I'm asking you that.

Mr. Barabani: Yes.



Mr. Bohn: Chairperson: Is that what you want to do?

Mr. Barabani: I believe so, yes, I believe so that is exactly what we should do.

Mr. Bohn: You want to give him that option? Without coming back here, so if you do that, I just want the Commission to be sure what their (inaudible) are, is if you do that, the person can be on the door step tomorrow working for a couple of hours, for some reason and you have not approved that reason, it only be the Director's (inaudible)

Mr. Barabani: Yes, I understand, we are going to trust his judgment and I trust his judgment, yes for right now. And we do also have that limiting factor of ten thousand dollars, you know, I mean if he spends it all between now and next meeting I guess then we have issues.

Mr. Bohn: Personally, I think the Commission needs to have that thought, if it needs to be explained to us why we are instituting that.

Liz Madera, Classified employee: I just have a quick clarifying question, because when I see Classified Personnel I think of HR-Classified, is this Classified Personnel Commission?

Mr. Josserand: Personnel Commission, yes.

Liz Madera, Classified employee: It seems that there is something missing.

Mr. Josserand: It is the position that was formerly occupied by Mr. Flory and that the new position was created over that position and that position was modified so that position reports to me. One of the background pieces that would address your question, perhaps, is that Mr. Flory's position was fully funded by the Commission and from the Executive Director's perspective, it was unilaterally removed from funding of Commission and that is a significant issue of debate potentially in a legal setting between the Commission, the District, and County Office of Education in that we have an employee on field for that position but our funding has been taken away by the District, I believe improperly. So, (inaudible), but yes.

Mr. Bohn: Yes sir?

Ken Holt, CSEA Chapter President: I just want to make a suggestion maybe I could bare at least if you guys, if you do not give them some sort of lead way and you want the Commission to make this decision on it, my fear is that the District will evoke discipline on him and there is no way to get it to the Commissioners to prove that. I would suggest maybe have some sort of stipulation if the District does evoke discipline to remove the Executive Director then that would bring this temporary person in at that point because that is what the apparent safe guard is supposed to be because if that doesn't happen, if they remove him tomorrow, who is going to do the job until you guys get back together again? I can see the safe guard is but I also see your concerns, I think we should use some sort of language work to make it a safeguard.

Ms. Early: I'm not sure I understand the rationale for this position and if we decide that we need someone in this position, I'm not sure why we would not be following the application process?

Why would we be appointing someone to this position as opposed to seeking applicants, seeking application, reviewing their application and then determining who would be the most qualified for this position. Right now we are at a point where we are saying that you cannot function because you don't have computer access, if we are bringing someone in and we haven't established that connection yet, then you got two people that cannot function because they don't have computer access. I think that we have some other things that we need to spend energy fixing before we go down this road, we need to consider this.

Mr. Josserand: I agree, perhaps a way to resolve this would be to direct me to run a recruitment for the Director of Classified Personnel and Personnel Commission, so you have an available list ready to go. Now a Provisional employee is somebody not of an eligibility list as I understand the Commission knows, but for the benefit of the public, this was a near term fail/safe, by not taking action you still have (inaudible) if you so choose. You are aware of his capabilities and contributions in the past. The Commission's interest into show and moving in the right direction, we can certainly create an eligibility list and have it ready to go right now, it will just take us about 45-60 days to accomplish it if it was a priority, but that certainly is a reasonable response, in my judgment.

Mr. Barabani: If we are to have some type of emergency situation, something (inaudible) health wise and stuff like that, who would we call in the meantime?

Mr. Josserand: Well that is the question, that is why I made the recommendation that I did. If I'm moving to fast, one of the things that I'm hearing is if the Executive Director is moving too fast on this issue, maybe it is just a risk we are willing to take.

Mr. Barabani: How about we do something to fill that gap in 45-60 days and then move on to the other, then we can proceed. Ms. Early's suggestion that we get a list going and then it looks like something, something we draw from that would the shortest (inaudible) definition at the same time around.

Mr. Josserand: My obligation is to lay problems before the Commission, make recommendations for possible solutions as the Commission may direct. What you just suggested certainly minimizes the risk, I'm not saying that I'm very hopeful that the Commission is not the victim of some sort of knight in the middle of the night strike, but I'm certainly seeing signs of that. I'm trying to outline a succession plan and some assurance for you, but if it is a risk you are willing to tolerate, I have accomplished my goal by outlining it. It's however, I don not have a dog in this fight, as the Commission is always so ordered.

Mr. Bohn: We can approve this as it is presented which creates the ability to hire this person, in the second part (inaudible) for the Director will be able to do that. We can go back and change this terminology around if you chose to create the authority to hire this individual that will be the Commissions authority to do it, you could then also tie onto that if you want to go looking for or advertising for the positions during this time. There is a whole number of ways you might approach this.

Mr. Barabani: I would make a motion then, if we can go down this road, that we consider creating funding, a Provisional assignment Director of Classified.

Mr. Bohn: Take the word consider, either you are or you're not.

Mr. Barabani: We are. The Director of Classified Personnel for 60 days. With an executive responsibility it means to call him in or the Commission can call him in, we can bring somebody in now. After that I'd like to see an eligibility list that we looked over the applications.

Mr. Bohn: Do you want to start the process of being in the sheered motion with the intent to start the process for the eligibility list immediately?

Mr. Barabani: Yes, as long as we're giving them 60 days.

Mr. Bohn: There's going to be a 60 day process, the motion is that this person being called be able to be called by our record. At the same time the correct would be charged with advertising this position, correct?

Mr. Barabani: I like the way you are saying and also that cap of ten thousand dollars.

Mr. Bohn: I have that motion; do I have a second for that motion? I do not hear a second to the motion. Motion guides provide a second. We are going to take a five minute recess.

Ms. Early: I would like to table item G.

Mr. Bohn: The motion is to table, is there a second?

Mr. Barabani: I'll second.

Mr. Bohn: The motion is to table, table motion is debatable. All those in favor say aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Bohn: The motion asked is that the item is tabled.

**H. To consider a CSEA request for the Commission to investigate Classified employment issues at Golden Valley.**

Mr. Bohn: Item H, to consider a CSEA request for the Commission to investigate Classified employment issues at Golden Valley.

Mr. Josserand: To refresh the Commission's memory, CSEA will correct me if I miss say anything, the issues were that the perhaps this location is understaffed, perhaps their issues with people Working Out of Class, perhaps their issues with noon duty aides or whoever the District what name they would use in the Ed Code, I believe they are Noon Duty aides improperly there

was certainly an overlap from practitioner's stand point between bargaining issues and Commission issues. The Commission asked me to agendize this and come back with the recommendation. Because of the difficulties on other fronts we have not been able to talk to the administration about this present matter. Where I see potential traction is for the District to ensure that Noon Duty aides are used properly in accordance with the law. To have the Commission and Commission resources being limited the way they are having to referee and run around and potentially find the District is very simple, the District must comply with the law the Commission would not have to be involved if that is in fact what would happen. The allegation from CSEA is that its not happening; there is a couple of choices there, short of trying to engage the District in more detail, what engagement I have had was we have told those people to stop. Well, seals up a red flag, if the District is true to their word, I have no doubt in this case probably they are, and they order the Administration at that site to stop; it becomes an employee discipline issue. Since it would be a Certificated or Classified it would be inappropriate for us to get into that issue. What I would suggest is the Commission table this issue until I can try to meet with the District and perhaps use my skills to mediate and fashion the solution or at least come back to the Commission on whether it is something we should get involve in or not. I'm always reluctant to insert the Commission into matters that could have easily be resolved if both parties want things to work.

Charlie La Chance, CSEA Labor Representative: I have with me Sharon Thurman from that particular school, from Golden Valley. I would ask you not to table this, I would ask if the Commission in writing request or hire or someone to do, I don't how the process is, to find someone to audit that school site not just for Rec Aides but for work loads issues and reason Sharon is here she works there she lives and breeds the work load issue. Which means now that there has been a reduction in months and hours, you had eight hours worth of work now you have twelve and by gosh you better get it done, but no overtime and then they engage the Rec Aides when everybody turns the blind out, I think if there was a work audit done it would be clear to everyone the District; the District always isn't connected to the Supervisor or the Principal and oftentimes the sites do things that Administration doesn't want them to do, I'm not saying the Administration is guilty of making that happen, but there is a disconnect, so if there is a work audit done at that site it makes it very clear to the District, very clear to the Commission, and very clear to CSEA what is going on and think at this point I will let Sharon speak about what she means about work load issues and you get a better understanding of that.

Sharon Thurman, Golden Valley: My name is Sharon Thurman, I work at Golden Valley as an Attendance Tech. I want to say the work load issue is really ridiculous, they keep piling on more duties, more duties, more duties, more duties and they don't understand how much time it takes for those extra duties to be done, they don't understand the work that it takes to make the whole cycle of that one workload that they have just added, they don't understand what it takes. My Vice Principal has went to the Principal and tried to tell her, because she's going "Oh my god I can't believe we are doing this", and I'm doing it everyday and its like I go out of there with stomach pains, my back is hurting all the time and is just ridiculous the workload issues. Its not just my job, they have decreased the hours for the VP's clerk to 6 hours from 8 hour day to 6 hours, it's a new clerk in there because she's bilingual and she says "and I left my other job for this?", she can't get the work done, she is so overwhelmed and there is people in there who have had their hours decreased and its like, why? We have too much work in this office to do to have

our hours decreased. We get to the point where we come over and start hitting each other and going "I can't take this", unless somebody comes and sees it; you would never understand what it is. I just really hope that someone along the line, somebody would see that there needs to be an audit done and somebody needs to wake up and smell the coffee because it's ridiculous, thank you,

Steve Holt, CSEA First Vice President: I'd just like to bring up to the Commission, I've brought to the attention of the Executive Director, last Commission meeting we had talked about a request from CSEA also doing an investigation to Custodian force, those positions were abolished or so called grandfathered out, process affects that was never negotiated with CSEA, we are asking where the duties of those custodians went? Subsequently, the Custodian III now are coming at our attention; there was talk by the District that they were going to either abolish or get rid of those positions and last we were told by the District is that they were going to keep those positions but they are not being interviewed, they are not being transferred, I believe the District's own policy is that when there's a new position transferees are taken in first for the interview process, I don't think that's occurring. I would ask the Commission, just to remind them of that and to expand that to look into the lead Custodian positions on what's going the District has failed to communicate after repeated requests, with CSEA we will be following up on that, but I would ask the Commission's help to look into any of the matters concerning that too and if you could agendize that in the future meeting and get information back to us I would really appreciate it.

Mr. Josseland: I apologize to the Commission and that the item that we are considering, is H, the Commission tasked me at the last meeting to agendize the Custodian III and IV issue and by error on my part, I put myself on report, I neglected to do so, I'm bad and I apologize and I will comply at the next meeting with the Commission direction. Back on Golden Valley, did you have any comments on that?

Steve Holt, CSEA First Vice President: Just that I can testify what's going on there and it's the same situation where we are meeting a lot of resistance and we are doing part, as representatives, on labor side to do what we can, but is just road block and we a feeling that maybe the Commission can go into areas that we can't, we are hoping that you can look into that and you take the recommendations of our Labor Representative and perhaps an audit of that school needs to be done to shed some light on it but, I don't know, it's a continuing problem it's been ongoing for some time now that I have been aware of and we are hoping that the Commission can help us go forth on that matter.

Mr. Bohn: It was prepared to be at this is an ongoing thing and CSEA is talking about for a long period of time that there ought to be some language, some place that describes what's going on and necessarily specific individuals but a scenario, I would think that CSEA ought to be talking with the folks at the site

Steve Holt, CSEA First Vice President: Yes sir.

Mr. Bohn: And developing a document that spells out the kinds of things that are taking place its very difficult for us, or for me anyway, to sit here and meeting and have one person to come

forward which is wonderful if there was more people coming forward and I don't know that lots of people want to come forward but its certainly is CSEA's responsibility to go out to that site and start collecting some information about it or if they want more people to come forward, I don't think that we are to determined how that site is run.

Steve Holt, CSEA First Vice President: If it pleases the Commissioners, I will go forward and I can get the names and CSEA can get the list and get everything in detail for the information that you are asking and we can get statements if that is the type of thing you are looking for?

Mr. Bohn: I'm just making a suggestion, I'm not telling you to do it, I'm making a suggestion it would just seem to that the CSEA if they recognize a problem in the field needs to be developing some language that explains the whole thing.

Steve Holt, CSEA First Vice President: That would be presented to the Commissioners?

Mr. Bohn: Yes.

Steve Holt, CSEA First Vice President: Yes sir, thank you.

**I. To consider a CSEA request for the Commission to investigate issues related to job duties, recruitment, selection and assignment of duties related to the Storekeeper position and Nutrition Services Custodian/Utility Technician.**

Mr. Bohn: We are going to move on to item I), to consider CSEA request for the Commission to investigate issues related to job duties, recruitment, selection and assignment of duties related to the Storekeeper position and Nutritional Services Custodian/Utility Technician.

Mr. Josserand: The Commission's been asked by CSEA to investigate this matter, on primary review and at the direction of the Commission, agendize to gain your direction the results of the preliminary review is that it looks that there maybe some traction for the Commission in the area that one of the employees in the three positions of Utility Worker Custodian was improperly hired I don't necessarily need you direction to investigate that, it is on my list, but there certainly seems to be a problem and as a good faith gesture, I wanted to share that with the Commission. The second issue is that listening to CSEA's complaints and after careful consideration there may be, in fact, be traction that the Commission was asked by the administration to create management position we ran the recruitment and there is this person hired into the position and now there's a question on whether, Mrs. Gordon maybe you can help as technical expert, there's federal law that talks about what makes a manager exempt from overtime and sorts of things is that the Fair Employment Labor Standards Act?

Sheri Gordon, District Attorney: Yes, sir.

Mr. Josserand: Yes ma'am. There may be some issues there and (inaudible) the person is in fact management. The allegation is that Commission may recall is that this person took the duties with them and have been performing duties improperly. My hope would be is well thought out people working collaboratively between the District, the Commission and the Labor Union could easily resolve this. The Commission, I would suggest, could offer the services in my office to try

to help craft the solution here, as always we are mindful that we don't want to hurt anybody we just want to help and we want to ensure legal compliance. There are some questions that may have some validity if the Commission is interested in going.

Ken Holt, CSEA Chapter President: I just wanted to touch a bit on that Storekeeper position and thank the Commission, we have gotten half way we are actually recruiting for it; this is an issue that's been going on for several years it's not months but years. The problem does lie though is the person that was in that position, they created a management position for him to up his salary, did his job change? No, he is still doing all the Storekeeper work. In fact, we got documentation from several employees that show everything that he is doing, we could provide that to the Commission to you if you guys need to see that. Half of the problem is solved so far the other half of the problem is they have this person in this management position doing the exact same job is what they left vacant all this time which is the Storekeeper. He is a Storekeeper making management salary not working as a manager, I think that's the issue that we're trying to fix down on the other half of the problem. I want to thank you guys though for fixing the first half, I am delighted to see that you guys are recruiting for it and is one step forward on many issues that we have at Nutrition Services some of that are purview of the Commission and some that are not that CSEA as the labor organization has to handle outside. I do appreciate the two steps forward on this issue and I hope you follow up with the last half of the problem because it is a problem and it is Classified work that this manager is doing currently, thank you.

Robert Peña Lozano Sr.: Good evening again, on the situation about the Nutrition Services Custodian Utility Technician, me and my co-worker were grandfathered into that position. There was a sub long term custodian that was in that position and Nutrition Services instead of taking and posting, testing and interviewing for that position they just automatically took that sub and handed her the position without regard to what the Personnel Commission had requested and I believe that's violating the exact issue that we are trying to fight with the District about their unfair policies in hiring practice. This is why we are asking that you investigate why did they hire this person in there illegally without testing, without interviewing, without posting the position and also we would like for you to investigate that as Nutrition Services Custodians we are the only building, the only building in this District that does not have a night person. We have to work diligently with people working around picking after them, we are given 30 minutes, and 30 minutes to finish our whole clean up of the whole building. I would like to invite to walk through the whole entire building and see exactly the work load that we have over there. It is very very hard for us to maintain and knowing that we are dealing with food that is being presented to our children, I believe that there is also a sanitary issue in there. I would like for you all to really take not only the possession that is being illegally the hiring but also investigating how the process of cleaning that building is taking place, thank you very much.

Mr. Barabani: I have question?

Robert Peña Lozano Sr.: Yes sure.

Mr. Barabani: When you said they put a sub there, are you talking about a person who is not working for the District or so let's say this person is a custodian and they were substituting in this position, were they ever a permanent employee?

Robert Peña Lozano Sr.: She was one of those 40 people that they interviewed altogether at some point she had gone in, first she was worked as a Sub Groundsworker then she was a Sub Custodian then they put her in there as a sub. Later on when they tested the whole group of, I don't know I believe it was 40 people at Maintenance & Operations, then all of a sudden they said well we are going to grandfather her in also, is what we were told. Does that answer you question?

Mr. Barabani: Somewhat.

Charlie LaChance, CSEA Labor Representative: I can answer it. Yes she was a sub she was not a permanent employee period.

Mr. Josserrand: With the Chairperson's permission, the Executive is investigating the assignment of this third Custodian Utility person position. It appears, and what I have alleged to the Senior Administration of the District is by some manner they filled the position off of the custodial list as opposed to a new recruitment for Utility Worker Custodian. I have brought that to the Senior Administration's attention and the initial response was that was part of the memorandum of understanding between the Union and the District. I have challenged, on two occasions, to see that memorandum of understanding and then to take that memorandum of understanding would be my intent and then assess with legal counselor based or based on my own technical expertise whether I believe it's defensible under the law or by those Merit Systems principles. The date I've been promised that Classified Personnel has been directed to provide it to me but I have not received. Does that clarify your question Mr. Commissioner?

Mr. Bohn: So we are in the process on active investigation anyway?

Mr. Josserrand: Just related to the assignment of that one particular employee in that I certified they payroll and under it was a proper number it was a Custodial position, now I have come to find out that it was not changed in the system but it is in fact a Custodian/Utility Worker. It would be a certification error, as the Commission is aware, currently prior to the adoption of the most recent decision of the Commission related to Commission Rules certification was in hands of the District. This is a prime example where I don't have the information necessary currently to make an adequate assessment whether it was legal and proper decision. There's been an allegation that it was based on memorandum of understanding between the Union and the District. I have obvious questions on whether negotiations come from the Ed Code in this particular case but I am waiting for source documents to review them, (inaudible) may be a problem.

Charlie LaChance, CSEA Labor Representative: Let me clarify, a lot of this issues are referred to the contract or not. The one is this certification of that classification we have a letter of understanding that person was not in that and I'll give you a copy of that tomorrow if you'd like, Jeff, you say you don't have it?

Mr. Josserrand: Not at this time.

Charlie LaChance, CSEA Labor Representative: We'll give you a copy of that tomorrow.



Mr. Josserand: That'll be very kind of you.

Charlie LaChance, CSEA Labor Representative: Alright thank you.

Mr. Bohn: We are moving forward on this and we'll expect report back and this is actually two different issues which you should come back with separately I believe my understanding of the process is.

**J. To consider a response to the letter from Ms. Gordon to the Commission in relation to Personnel Commission Rules.**

Mr. Bohn: Item J) to consider a response to the letter from Ms. Gordon to the Commission in relationship to Personnel Commission Rules.

Mr. Josserand: You have in your packet a fairly large letter that Ms. Gordon presented, I'm assuming that you wrote, and it was delivered to the Commissioners themselves not myself as the Secretary of the Commission which is required to accept them and handle all the correspondence from the Commission for the Commission. Certainly troubling document, I have got on record thanking Ms. Gordon for pointing out my error about the 14 days related to Chapter 19. Some of the other stuff I've been very frank about I think this need to see the light of day and if the Commission wants us to respond or how they want us to respond, that's the question before you. We have legal counsel I have obtained a conflict in this matter to address this, one possible resolution here would be is for the legal counsel to review the document and make recommendations to you at future dates and perhaps prepare responses as need be, that would be a normal part of my assignment asking that's probably what I would recommend as the best course of action in this one. Since it makes a variety of statements and allegations and statements of alleged fact I think its incumbent upon us to not distribute the (inaudible). Have the Executive Director and staff in concert with the attorney figure out what to do.

Mr. Barabani: I got an issue with this, that issue that I have with this is that is was handed to me at the last meeting when we first started setting down; our staff gave me this paperwork and another young lady from HR handed me this envelope to be added to this.

Mr. Bohn: You didn't get that in the mail?

Mr. Barabani: No I was handed it over the counter here and assumed this was part of the packet we do everyday. The problem is, I believe it should have went through our staff or Ms. Gordon should have been presented so it would have been in the public record as opposed just coming up here and handing it to me, I turned around and I told Jeff lets make copies of this to see what this is but I think we bypass the process, I personally not going accept anything anymore across the table here until the gavel was hit and the meeting hadn't even started.

Mr. Josserand: What's troubling from the Executive Director's perspective in this is that once the Commission took recent action related to the Rules I almost became a non-(inaudible). Is that there was correspondence that went from Ms. Ortega her attorney copy to the Commission not copied to me now that we got this example we have others in my favor to respond. We shared with in great detail with all this that we are facing. From the Executive Director's stand point I

received correspondence for you, it's my tasking to provide that to you, its certainly departures from protocol and just good business practice on what transpired in this particular case. It's not helpful from my perspective... (switch sides on tape). We are in a situation where are playing (inaudible).

Mr. Bohn: Does anyone want to make a response for this discussion?

Mr. Barabani: Just like I was stating; I think all matters like this from now on; I think the Commission should be in session and should be handed, that way it's in the public record at that time, right? Because I don't know if everyone had the opportunity to see this because it was given to me, I didn't know if it was confidential or what? In this meeting you weren't her, in fact that Jeff was not handed, is just the fact that it happened before the (inaudible) took place. Like I said we were in so much (inaudible) that I didn't realize what was been given.

Mr. Josserand: Without specific direction from the Commission the staff's intention is deciding to ask our lawyers to review it to actively consider Ms Gordon's statements and to try to make this part of the solution rather than worsening the problem.

Mr. Barabani: I'm not trying to make it worse I'm just looking in the future to make sure that this is a little bit better than it did.

Mr. Bohn: I think there a lot worse going on done this by Ms. Gordon put forward it certainly a good point to start working from to solving some of the District grievance that exist between the District, CSEA and Commission in these Rules some of these little changes other there needs work and I will help if the Director moves forward with finding a process by which we can look at these differences is what we look forward to.

Mr. Josserand: That's the Director's clear intent.

Ms. Early: I realize that at the last meeting the Commissioners made decisions that might be unpopular to some but we acted based on the information that we were given. We have been told that numerous attempts have been made to acquire input from District staff and we received none, we did receive input from CSEA, we received nothing from District staff. I Mr. Josserand many times to see it we had gotten any input from the District and each time I was told no. I appreciate the input that you gave us Ms Gordon, however, I consider it untimely, there's a statement in here that says that the Commission acted irresponsibly and I surely believe that is a misrepresentation of the services that we provide, I disagree with that statement but I appreciate your input.

Mr. Bohn: Any other comments?

Mr. Barabani: No, I believe I agree with everything she said. Once again, I don't want to get into this stuff, had this been had this been handed to me in an envelope, right? As it wasn't given to me, it was before the meeting and I hadn't looked at this stuff, how did they expect this had gotten to the Commission? I'm for lost, basically I chose to open it and that's how I got this.

That's why I'd like from now on I really would like this to be in our (inaudible). I did read it and looked it over; I do expect to hear input from both sides.

**K. To consider seeking outside investigation(s).**

Mr. Bohn: Moving on to item K) to consider seeking outside investigation.

Mr. Josseland: The reality in Commission, District, relationships and Labor Union relationships is a very thin line. Our ability to compel our organization to comply with Rules and law (inaudible). What I've shared with you and what others have shared with tonight is perhaps frustration perhaps fact that we are not making progress on key areas, I think that opens the District up to significant litigation. I alleged that there's lame tactics, I alleged that there may in fact be more sinister forces to work here. I don't make those feelings, I don't make those statements likening. The frank ability of the Commission to enforce law if its not done in a collaborative manner between consenting adults that make things work for the right reasons. Sometimes you force rather alternatives and I think is incumbent upon me to notice the Commission that you do have other alternatives. Violations of Commission Rules, violations in my interpretation as a practitioner not lawyer, the Education Code those are the laws. I'm charge as your agent to enforce them. Sometimes I'm feeling likely like a cop of audacity, I live next to audacity. Its part of the popular mythology and that's not what our children deserve it's not what should happen. You do have alternatives; you could ask for grand jury investigation, there is pluses and minuses for that to enforce law you can notice the county attorney the District attorney to investigate matters of law that are misdemeanors, whether they choose to investigate, whether that grand jury will choose to investigate. My hope is that we don't get to that point what I think we are at that point that it has to be talked about that we may get to that point. Is that decent people have to follow the law and resolve difficulties, its very simple if you do the right thing for the right reason that's it, common sense. Why we are in this situation I don't have an answer that defies all logic to me, we've been tempering on our speech we've been respectful in our relationships we try to be professional we have given time we've made accommodations for the District to step back from the (inaudible/ brink) that we were three years ago, its regrettable we find ourselves in it. We've talked some about not making progress this year or last year, well we did, we had unilateral act by the District to get us back a portion of our duties but they gave inadequate staff. Then they tried to hold us accountable for productivity based on inadequate staff, looked to me like a self fulfilling prophecy where we were going to be part of the strategy to make us fail. We went through the proper procedures in the District process and development process to come up with a budget, I as required by law noticed the District that there was going to be a public hearing I presented the budget based on what I thought as an expert practitioner on what the Commission needed, we made recall that the District made no comment it was total silence. Then we found out that the County Superintendent of Schools was going to propose to reject our budget, we got very curious decision from them and without being provocative to Ms. Gordon she has to do what she has to do. I was surprised to find the District attorney sitting on the table talking as an advisor to the county Supt that just smacks to me as old country boy if not being a fair pool. Then we were presented as what I call a selfish choice either take what the District offered or we are going to freeze you where you were before but not recognize any of the progress that the board and the Commission had made towards legal compliance on the half of my salary, the positions that were transferred to us on an annualized basis failure to recognize that there needed to be an interactive process, I am mindful of the fact that we are in the most

difficult budgetary times of my lifetime and yours. I am mindful of the requirements to serve our children; I am personally incensed that we are on the brink of having to go to court or having to go to some other venue or to seek outside assistance because some adults in this District from my view can't play nice. I think we are almost there ultimately is the Commission decision, my abilities to enforce Commission Rules Commission law that we have been very judicious and very slow in assuming our responsibilities, well we do, I have Commission Rule I have to enforce the law that's the legal mandated that I've sworn to hold but ultimately I am not the final arbitrator of justice the next step is I bring the problem to the Commission as we did tonight in the example related to the payroll issue. I do not want to hurt any particular individual in this District that's not the intent but the intent is to help everybody by providing a fair (inaudible) work place that is in compliance with the California Laws that we are sworn all four of us are sworn to uphold. None of us want to go down this abyss that we are currently facing. I made a joke in the break a minute ago that I got a suit that my wife paid a lot of money for, I really don't want to get down on my knees but I will if it's necessary to solve this with the District, it is as simple as legal compliance and being fair and equitable. I am not an animal the Commission is not animals we need to make this work quickly, its taking too long and the situations that I have become aware of in this my three year involvement with the District places in my view an extraordinary liability risk and it needs to be solved.

Mr. Bohn: Are you asking the Commission to do something in particular?

Mr. Josserand: Not at this time, Mr. Chairperson. I am advising the Commission that if you chose to consider seeking outside involvement from the District attorney or some other body in consultation with our lawyer that is certainly an option. Right now staff has to report that we are currently unsuccessful in enforcing the laws in the state of California in this District.

Mr. Bohn: I think if we are going to go forward with this and it tends to be a problem, we need some thing in writing dates, times, what we have done what we haven't done and so on. Thinking of something to deal with, I hope that may come in the future.

Mr. Josserand: Just from the Executive Director's stand point I hope we never get there, but I am ringing the bell clearly and no unfettered terms that this has to stop that we have to get along and work this out quickly

Mr. Bohn: We are at item VII, Commissioner's remarks. Do any of the Commissioners have any remarks?

Ms. Early: I want to express my concern for the information that you have shared with us this evening about the environment in which you are working. I am concerned about the lack of computer access to perform certain duties, what do you need us to do to look into that?

Mr. Josserand: An excellent question, it would be an intend of staff after we a have impassionate plead tonight which was by design to lay ground work for possible action on November 30<sup>th</sup> on a variety of this issues. I am hopeful that our internet access is turned back on tomorrow, I am hopeful that we are recognized as responsible citizens and partners with a job to do I hope that happen. Short of that if adults can't behave then I think ultimately somebody needs to come in, either an arbitrator, some legal body that has authority in this or because staff has to report and

very carefully choosing my words right now I am required by law to certify that people are properly hired. I am now aware that I am not certifying all those documents in there as hiring going on. I would hope that the District recognizes that (inaudible) is intended as a well intended ring of the bell that I am coming and I won't be intimidated I won't be stopped I will comply with the law. But on November 30<sup>th</sup> if there hasn't been, I don't mean this to come off as a threat, I don't think I have any choice but to report to the Commission in great detail the specifics of these allegations. I am, as you are, mindful that we are playing with the same money that school board is playing with, ultimately the money that's at risk here is little children's money. I am reluctant to go into great detail tonight in public session with my concerns and that I think that it opens us up to significant liability and I think I have an obligation to notice everybody concerned that the misbehavior has to stop. Doesn't mean that we are going to solve everything right now it just means that it's got to stop. The issue that is separate but related, related to the staffing of the Commission, related to facilities that the District has to provide, computer services that the District provides those are auxiliary aspects in this. I would ask that the Commission continues to do what they think is right and think its best and at this point I think it's pretty clear to everyone that is here what going on. It just needs to stop it can be stopped that quick. As far as the Commission taking any effective action tonight other than turning the lights on and putting under the spotlight I think that that is what we have accomplished. Where my predecessor may or may not have made mistakes is that he didn't bring me facts, I am prepared to that. Although I think it puts the District's financial health at risk if I do that. It would be much better for us to work things out closely and in collaboration to do the right thing. Then that goes back saying it the way I see it, I am imploring the District to work with the Commission and do the right thing. At this point I have no specific request other than to prepare you for the eventuality. As part of the political relations I have been very complimentary of the District for a long time, I have tried to calm the waters, I have tried to gain trust, mutual respect for each other. It is not that I am covering up the wrong doing is that I recognize that we didn't get in this situation overnight and we are sure we are not going to fix it overnight and that we have to play nice to get it fixed, whatever happened we stopped playing nice. Did that answer the Commissioner's question, ma'am?

Ms. Early: Yes

Mr. Josserand: Yes, ma'am.

Mr. Bohn: Are there any other remarks from the Commissioners?

Ms. Early: I have one more. I just want to, to Commissioner Bohn, I just want to tell you that it has been a privilege working with you. I appreciate your dedication, I can remember prior to your appointment where the Commission was not meeting, we had Christopher Sherman here and there were two Commissioners who had turned in the resignation because of frustration regarding similar events that we have just heard about tonight. After your appointment things were stabilized, the Commission started meeting on a regular basis and to my knowledge you have only missed two meetings in three years and those were special called meetings. I can remember when six months in a row we travelled to San Diego to attend the Merit Academy. As a sign of our appreciation we were committed to provide stellar service to the Commission and it

has been a privilege and an honor to work with you. I think you served not only the Commission but the District well. I appreciate the services that you provided it's been a pleasure.

Mr. Josserand: We do have a plaque for Mr. Bohn that will be presented to him at the next meeting and we will agendize that and I am trying to find a legal way to have a little cake for Ms. Gordon and I and a little punch so we can celebrate your kind service. I'm working on that now and that would be November 30<sup>th</sup> so just a heads up on your calendar.

Mr. Bohn: Thank you, anybody else? If there are no more remarks we will move to closed session as provided by law the Personnel Commission will meet in closed session for consideration of the following.

Mr. Josserand: We do anticipate reports out and its staff's recommendation, Mr. Chairperson, that we handle the employee discipline matter and they would clear this room except for the parties involved that would include Ms. Gordon would stay here, she has asked for an opportunity to address the Commission on this first matter and CSEA has also asked for an opportunity to address the Commission. Mrs. Chidester will make a brief synopsis of the important mastering the Commission questions.

Mr. Bohn: That's fine.

Mr. Josserand: The Commission may in fact go back into deliberations in the small room on this narrow issue but then we will come back out and bring everybody back in and if they are so interested and they want to stay and make a public announcement if you would make a decision. It's incumbent upon us to report that decision out and I asked Ms. Chidester to do that one the decision is made. With the Commission permission I'd like to temporarily clear the room except for the parties that are involved and my intentions is the Commission's recorder to stay on unless there's objections to help me facilitate the record of this. We will call you back in when it's an appropriate time but if you do not know whether to stay then that is a request for you to leave. If people should stay they know they should stay.

## **VII. COMMISSIONER'S REMARKS**

No Commissioner's remarks.

## **VIII. CLOSED SESSION**

As provided by law, the Personnel Commission will meet in Closed Session for consideration of the following:

- A. Public Employee Performance Evaluation: Director of Personnel Commission, Government Code Section 54957.
- B. Conference with legal counsel, anticipated litigation, initiation of litigation pursuant to Government Code Section 54956.9 (c), two possible cases. Anticipate litigation regarding San Bernardino City Unified School District Personnel Commission funding, duties and authority of the Personnel Commission.

B. Public Employee Discipline/Dismissal/Release per Government Code Sections 54954.5 (e) and 54957.

C. Conference with legal counsel, existing litigation-Abram Flory v. San Bernardino City Unified School District per Government Code Sections 54954.5 (c) and 54956.9 (a).

**Commission went into closed session at 8:20 P.M.**

### **IX. ACTION REPORTED FROM CLOSED SESSION**

**Back from closed session at 9:02 PM.**

Mr. Josserand: The Commission met in closed session and Mrs. Chidester the attorney for the Commission in this matter will make a report.

Mrs. Chidester: Thank you Mr. Josserand. The Commission after having reviewed the record in this matter and the recommended decision of its hearing officer voted by a vote of two to one; with Mr. Barabani voting against and the other Commissioners' voting for to adopt the recommended action of the hearing officer and for clarification that was that appellant shall be demoted to a position in which he has prior service and to be awarded back pay in accordance to the appropriate range and step at the lower classification from the date of the dismissal. The Commission made two points of clarification one being that having reviewed the record they understood the prior service to mean as a food service worker and the Commission did consider the testimony given by the appellant himself as to what his employment was and also was pointed in argument exhibit ten does list service as a food service worker but not as a custodian. Finally, the Commission determined that the appellant be assigned to a site other than that of his most recent employment for the District? Have I omitted anything Ms. Josserand?

Mr. Josserand: No ma'am.

Mrs. Chidester: Thank you very much.

Mr. Josserand: Could I just with the Commission's permission? Ms. Gordon you will notice the District of the decision and the HR Officer. Do you need any additional information from the Commission to implement the decision?

Mrs. Chidester: Mr. Josserand, I apologize for speaking for Ms. Gordon and speaking out of turn but I believe it's the Commissions responsibility under your Rules to give notice. I'm glad to prepare that for you.

Mr. Josserand: That would be wonderful.

Mr. Bohn: The Commission will now return to closed session as provided by law.

Mr. Josserand: It is possible that there could be a report out on one of the items. I can not deter whether it's likely or not likely. So it's for the benefit of those of you that are out there if you choose to stay you can if you don't we will of course alert all of the interested in the morning.

**Commission went into closed session at 9:06 PM.**

#### **IX. ACTION REPORTED FROM CLOSED SESSION**

**Commission returned from closed session at 10:25 P.M.**

Ms. Kwong: The Commission met in closed session regarding anticipating litigation, initiation of litigation in two possible matters with respect to Personnel Commission funding, duties and authority of the Personnel Commission. In closed session, a vote was made as to whether or not litigation should be commenced. All those favored in litigation were George Bohn, Ms. Early and Mr. Barabani. Those opposed were none.

Mr. Josserand: Unless there's additional comment, its protocol for someone to make a motion to close out the evening and adjourn and then a second and then take a vote, Mr. Chairperson if that pleases you.

Mr. Bohn: We have a motion to adjourn.

Mr. Barabani: I'll second that.

Mr. Bohn: We have a motion to adjourn and we have a second. All of those in favor say aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Bohn: Aye. So moved. Meeting is adjourned.

#### **X. ADJOURNMENT**

Meeting was adjourned at 10:27 P.M.