

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

April 7, 2010

A meeting of the Personnel Commission was held in the Community Room at the Board of Education Building. Present were Ms. Rhonda Early, Chairperson; Mr. Barabani, Vice Chairperson; Mike Salazar, Member.

I. CALL TO ORDER

Ms. Early called the meeting to order at 5:39 P.M. Mr. Salazar led the pledge of allegiance.

II. APPROVAL OF MINUTES

Ms. Early: First agenda item is Approval of Minutes. We are looking at the Personnel Commission meeting minutes for March 24, 2010.

Mr. Barabani: I make a motion to accept the minutes.

Mr. Salazar: I second.

Ms. Early: There's been a motion to approve the minutes for March 24, 2010 and seconded all in favor signify with the voting sign of aye.

Mr. Salazar: Aye.

Mr. Barabani: Aye.

Ms. Early: Aye. Minutes approved.

III. APPROVAL OF AGENDA

Ms. Early: Next agenda item is Approval of Agenda.

Mr. Barabani: I make a motion to approve the agenda.

Mr. Salazar: I second.

Ms. Early: It's been moved and seconded to approve the agenda all in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye.

IV. PUBLIC COMMENTS ON AGENDA ITEMS

Ms. Early: Next agenda item is Public Comments on Agenda Items.

Charlie LaChance, CSEA Labor Representative: Is that the Agenda Items?

Ms. Early: Yes.

Charlie LaChance, CSEA Labor Representative: Ok. Just one second, please.

Charlie LaChance, CSEA Labor Representative: I will wait until regular public comments. I am not ready for the number of agenda items.

Ms. Early: We are on the item Public Comments on the agenda.

Charlie LaChance, CSEA Labor Representative: I thought you meant public comments about things you had on the agenda. I apologize. Sorry it has been a long day. Good evening, my name is Charlie LaChance and what I would like to talk about tonight is ask the Commission to do several things to help me and the Personnel Commission run effectively, efficiently and consistently on behalf of CSEA we request that the Commission retain legal counsel to force the District to pay the director that you appointed, his name is Pat Maher, force the District to give you the tools that you need to effectively and efficiently run the Personnel Commission by means of access to the computer along with the components that you need to have to test, rank and classify employees so that they may be hired or reclassified. That you retain staff for the Commission and that you per hear funds if you ask the School Board to give funds to follow through with obtaining NEOGOV which is the process in which you can recruit and test or recruit employees to this District for the purposes of recruiting and retentions. I believe sometime ago, I am sorry I can't remember, its been perhaps a year ago we discussed NEOGOV and the cost it can be, I can't remember what it is but it if you can revisit that and see if it falls within the budget I think this will help the Commission run effectively and efficiently. We are in extraordinary rough times right now, there are layoffs, reductions and hours, there are positions that are vacant or being abolished in every district not just this one. This is no different than other districts but in that being said, when these opportunities to hire someone we need to hire them. I have been told by the District, several of their different officials that there is approximately 250 to 260 vacancies, although there are layoffs and reductions, not all those vacancies will be filled by our own members. There may be the opportunity or the need for someone specialized to be hired and I would like them to be hired knowing that they are hired correctly, with the proper testing and knowledge that is necessary. So, I think that these things will help that happen and I would request that the Board, sometime tonight, make that motion; that you ask the District to do these things rather that being through your own voice or through legal counsel preferably through legal counsel. Does that answer questions to clarification of what we are requesting? O.K. Thank you.

Ms. Early: Thank you.

Steven Holt, CSEA Vice President: Acting President for Chapter 183. I want to put this on public record so you guys know it's a little shocking just found out today that the District totally admitted something we already knew that the problems between the District and Commission they are hiring provisional employees in my understanding when the District needs to be pulled from the eligibility list, something needs provisional employees are not happening they are hiring reporting the excess of 90 days and right out of the District, some of it its being hired on permanent positions and that is something we are trying to verify. I am in shock that with everything that is going the District once again seems to be trying to assume duties of the Commission which is spelled out in the law of whose duties and functions are what. So I am going to ask you to discuss that amongst yourself and be aware that they admitted that to us, either we have schools of employees that can come forward and testify to that. So I do not know whether you had hearing of that at some point we have subpoena power and you need witnesses, we can provide that for you. Thank you very much.

Ms. Early: Thank you.

Gary Underwood, Chief of Police for SBCUSD: This is one of those rare occasions that I decided to air my complaints publicly rather than privately. As you probably know we have a number of vacancies in our School Police Department and there have been for a number of months some in excess of 12 months, are you aware of that, perhaps or not? Any case, we have several full-time dispatchers they work 24 hours a day seven days a week we are open everyday, we've had two openings in that position for over several years. We have one dispatcher now who has been qualified and now we are just waiting for paperwork to be signed that has not been signed. I discussed this issue privately a number of months ago with Jeff and received assurance that public safety will not be jeopardized by the current dispute between the District and the Commission. I'd like to give you another specific example of problems we are having, we have the Personnel Commission interview police officer candidates months ago we have yet to see that list. I like to assure you give you another example of the human phase, gentleman's name is Juan Marquez, he has a family, and wife is pregnant. He worked for us for a number of years as Campus Security Officer. To work as a security officer you have to pass a polygraph and P.O.S.T. background check. He is a man of remarkable character; he also has a Bachelor's degree and a teaching certificate so he was recently able to get a job in the School District teaching in the ROTC program. Unfortunately, after a number of months his replacement came back from Iraq so, he was recently laid off. By the way, he is still eligible to come back to work as a Campus Security Officer, we have three openings. We had the three openings for months. We submitted the paperwork like you're supposed to do. The paperwork is ready for you to sign or Commissioner for whomever to sign so that Juan Marquez can come back to work for us as Campus Security Officer. Juan Marquez by the way lost his health insurance, his wife is pregnant and is due to have a child any day, I think she may have already had it. So we submitted the paperwork number of weeks ago, thinking it will be a simple process, once again nothing. I think that there has to be some resolution here to the human dilemma that we

have knowing we have a public safety issue but we also have a human component of someone whose well qualified and all that requires simply is a signature. So that I will ask you forbearance and I will ask your consideration to look into this issues and see the Personnel and the HR Department, the young woman who I worked with for years and who has done an incredible job helping fill this positions and all of a sudden the only thing that we notice is the paperwork waiting for your staff to sign. Thank you very much for listening to my concerns and hopefully you will be able to help us.

Mr. Barabani: Can I ask you a question? When you spoke to Jeff Josserand, did he mention the process that how far it's gone? Was any other information other than that given to you?

Gary Underwood, Chief of Police for SBCUSD: No, I rarely speak to Jeff, it was months ago that I spoke to him, what we try to do have the process work, so when I call my HR Specialist who is always, by the way incredible, who has always been truthful and frank and open in all our discussions and simply said we are waiting for them to sign the paperwork. That is it. Thank you.

Ms. Early: Mr. Underwood, can you leave your phone number with Ms. Garcia so that we can follow up. Thank you.

Mr. Underwood: Yes, I certainly can, I see her about once a week at the gym. My phone number is 909-388-6030.

Charlie LChance: I would like to add a comment under Chief Underwood's comments and his difficulty and perhaps of solution to that. One, there is a lot you need to research on that whole scenario, has the Commission actually received that paperwork, is it somewhere in Human Resources? I think probably one of the logical conclusions would be since there is no director, where is the paperwork going? That is exactly what I was talking about by the stalemate as we are calling it with the District is that we have someone who the Commission voted on democratically to hire, the District has the means to pay them for some reason not on will, who said he will get folks hired within 60 days and it is not just a matter of public safety as Chief Underwood said, these are human lives and families who can't take care of families because of the negligence of the School District to come forth and pay what they need to pay. I have another question for your legal counsel and that question is since we have no director, who's the one who signs off on the paperwork, do the Commissioners have the legal responsibility or can they legally sign the paperwork? Do you Commissioners have the ability to test, rank and classify so we can get individuals hired, at this point there is no one to sign the paperwork, and we can help the Chief or officer Marquez, because I can't sign the paperwork, Yolanda Ortega can't sign the paperwork, and Ken Holt can't sign the paperwork? We are not the director. So, if you can find out from your legal counsel if you have the ability to do that and if you do what would it take for that to occur. Thank you.

Ms. Early: Thank you. Ms. Kwong would you like to respond to that question?

Ms Kwong: To answer these questions, there are several options in this. Your Personnel Director can sign off the paperwork, the Commission can act as a unified body on paper personnel actions with agenda and have open sessions as we are here today, that is another option. The third option is the Commission can vote to appoint one of the Commissioners to carry out these functions.

Ms. Early: Thank you. Any other public comments or concerns?

V. ACTION ITEMS

Ms. Early: Next agenda item we are moving on to Action Items. Action Item A, move that the Commission appoint Patrick T. Maher as the Provisional Personnel Commission Director effective March 24, 2010.

Mr. Barabani: I make a motion that Action Item A is accepted.

Ms. Early: I second. Any discussion? This one actually eliminated some of the previous concerns that had been brought up during the public comment section. All those in favor signify with sign of aye.

Mr. Barabani: Aye.

Mr. Early: Aye. Any opposed?

Mr. Salazar: Nay.

Ms. Early: Motion passes.

Ms. Early: Action Item B move that the District be asked to move forthwith in processing the employment or reemployment of Patrick T. Maher as Provisional Personnel Commission Director and as an appointee of the Personnel Commission or to appear before the Commission at the next meeting to explain why they are unwilling to process his employment and send his employment to the Governing Board for action.

Ms. Early: Mr. Salazar, do you have concerns?

Mr. Salazar: I don't have any comments.

Mr. Barabani: I move that Action Item B be accepted.

Ms. Early: I second. It has been moved and seconded that the District be asked to move forthwith in processing the employment or reemployment of Patrick T. Maher as Provisional Personnel Commission Director and as an appointee of the Personnel Commission or to appear before the Commission at the next meeting to explain why they are unwilling to process his employment and send his employment to the Governing Board for action. All those in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye. Any opposed?

Mr. Salazar: I will oppose.

Ms. Early: Motion passes.

Ms. Early: Action Item C move that the Commission is authorized to appear before the Governing Board for the purpose of seeking cooperation in the administration of the merit system and the apparent practice of litigating all aspects of the merit system and Commission action and authority.

Mr. Barabani: I make a motion for Action Item C to be accepted.

Ms. Early: I second. Any discussion? All those in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye

Ms. Early: Aye. Motion carries.

Ms. Early: Action Item D move that Musick, Peeler, & Garrett be substituted as attorney to serve as conflict counsel. To approve continuous contract with Kristine E. Kwong, Attorney at Law, for reasonable cost of legal services necessitated by the District's legal counsel's ongoing conflict of interest in providing representation to the Personnel Commission in accordance with Education Code 45313, until end of fiscal year June 30, 2010.

Ms. Early: I so move.

Mr. Barabani: I second.

Ms. Early: Any discussion? All those in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

Ms. Early: Action Item E move that Commission withdraw Hinshaw & Culbertson LLP to serve as conflict counsel for the Commission.

Mr. Barabani: I make a motion to accept Action Item E.

Ms. Early: I second. Any discussion? All those in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Motion carries.

Ms. Early: Action Item F move to request opinion and to respond to letter from Alan C. Jablin to the Commission, dated March 25, 2010 to determine if Mr. Jablin is asserting that his firm has been appointed as legal counsel to the district in lieu of Atkinson, Andelson, Loya, Ruud & Romo, if so the date of the board acted to do so and if in his letter he is offering formal legal advice to the Commission as an attorney formally advising the Commission under Education Code Section 45113 as its counsel to the Commission or if he is simply acting on behalf of the district and merely stating a legal position for the district alone. Furthermore, to advise Mr. Jablin that the Commission and Mr. Maher have both notified the district administration that the Commission has appointed Mr. Maher as the Provisional Personnel Commission Director and have requested that the district process Mr. Maher as an employee but they have failed to take a single action to do so, thereby thwarting the Commission's authority to appoint its staff and to appoint the Personnel Director.

Ms. Early: I so move.

Mr. Barabani: I second.

Ms. Early: Any discussion?

Mr. Salazar: Well that seems like a mouthful doesn't? Was it me? I mean, I read that and by the time I get to the end, I am a bit confused.

Ms. Early: Each of us received the letter from Mr. Jablin giving us legal advice. We do not know who he is. We do not know if he is actually representing the District and in what capacity he represents the District. We have always been told and all of our correspondence has been the legal office that Ms. Gordon is associated with, so basically we are asking him, what capacity he is in and what gives him the authority to give us legal advice?

Mr. Salazar: So you are referring to the letter of March 25th right? That is what we are talking about?

Ms. Early: He wrote us a letter dated March 25th and he also sent Mr. Maher a letter advising him that he can't work for the District.

Mr. Salazar: So I think, can we talk about that letter?

Ms. Early: We can.

Mr. Salazar: We can, O.K. I read two letters the one dated the 25th to Mr. Maher and one to the Commissioners. The one to Mr. Maher says that he broke the rules of the District. We are asking if he represents the District, but in the letter it says that he represents the District.

Ms. Early: Correct.

Mr. Salazar: O.K. so we fill the application that he represents the District.

Ms. Early: And in what capacity he represents the District?

Mr. Salazar: So is that really the question here we just want to find out why if he represents the District or not?

Ms. Early: Well actually, yes. We sent the letter to Ms. Gordon's law firm, so we are not sure why he is responding. She gave us a response to the letter that we sent her, we don't know where this response is coming from, his office is located in Arizona, so we do not know who this is.

Mr. Salazar: I hope this does not sound too silly; I am going to say it anyways. Is it possible that the District is represented by more than one law firm?

Ms. Early: That is possible.

Mr. Salazar: So I am trying to understand what it's really saying.

Ms. Early: We are asking whether or not he's being appointed to provide legal counsel to the District in lieu of Atkinson, Andelson, Loya, Ruud & Romo also known as Sherry Gordon as our point of contact because that is the law firm that we have always dealt with.

Mr. Salazar: Could we then ask that question but also ask that if it's possible that two law firms are representing the District. So they don't have to ask the questions if they tell you well yes he does and we can come back and say?

Ms. Early: We should not have to deal with two law firms. We should have one law firm that we go to for legal advice, so that is why we are asking if they are acting in lieu of this other law firm that we already or have prior to, been dealing with.

Mr. Salazar: But they could have two law firms, is that correct? I'm trying to understand, that it is possible that we might have to answer questions to additional law

firms or Personnel Commission counsel would have to answer questions to more than one law firm if the District just hired another firm, but we are not opposed to doing that.

Mr. Barabani: Would the District notify us?

Mr. Salazar: I don't know, the District doesn't always notify us of everything apparently.

Mr. Barabani: This seems like a court matter.

Mr. Salazar: Well it's a letter here it's from the law office of Marder who says he represents the School District. Do we need to have any more clarification than this?

Ms. Early: Yes. We need to get clarification not only from him but also from the District, if he is saying that he is representing the District as it relates to this issues then we need to know what capacity he is representing the District in and on what date the board acted to change our contact from our prior legal office to this office in Arizona..

Mr. Salazar: So the Board, could they have one attorney and the District have another attorney? Or do they all have to have the same attorney?

Ms. Early: I think they have different attorney to take care of different things. If you read our agenda we have another attorney that the Personnel Commission works with and she is on agenda item for tonight but she handles other things for us as apposed to Kristine Kwong, so they are assigned specific duties. This item is basically just asking for clarification.

Mr. Salazar: Who are going to ask?

Ms. Early: We are going to send a letter to him for his response.

Mr. Salazar: To ask him who he represents?

Ms. Early: Let me restate. We are moving to request an opinion to respond to the letter to Alan Jablin to the Commission dated March the 25th and we all received that letter to determine if Mr. Jablin is asserting that his firm has been appointed as legal counsel to the District in lieu of Atkinson, Andelson, Loya, Ruud & Romo. If he has been appointed in lieu of this firm we already dealt with, we are asking for him to supply us with the date that the Board appointed him to this position. And if in his letter he is offering formal legal advice to the Commission as an attorney formally advising the Commission under Education Code Section 45113 as its counsel to the Commission or if he is simply acting on behalf of the district and merely stating a legal position for the district alone. Furthermore, to advise Mr. Jablin that the Commission and Mr. Maher have both notified the District Administration that the Commission has appointed Mr. Maher as the Provisional Personnel Commission Director and have requested that the District process Mr. Maher as an employee but they have failed to take action to do so, thereby thwarting the Commission's authority to appoint its staff and to appoint the Personnel Director.

Mr. Salazar: So we are really asking for more than just the question of whether or not this guy represents the School District in that question right?

Ms. Early: We are asking for him to tell us what his capacity is. Then the bottom of that is just letting him know what the Commission has already done.

Mr. Salazar: So, maybe I will re-simplify this, couldn't we ask the School District if this guy represents them?

Ms. Early: We can do both, but if someone is giving me a letter, and they are giving me legal advice I want to know number one, how do they know about me, who instructed them to give me that advice and if they are not acting in any capacity I might disregard the letter and throw it in the trash. If they are acting in a legal capacity then I will pay more attention to the letter. So basically, we are asking for clarification.

Mr. Barabani: Yes, when I received the letter and looked at it, I have many concerns as you do. And my first concern is it legitimate? That is my first concern. It's not very clear what they are after, what they are saying, are they offering opinion? I read this letter three times and still I did not understand.

Mr. Salazar: Which one?

Mr. Barabani: March 25th not the one for Mr. Maher but the one he sent us. It's not clear, like I said, I do not know these people, I never seen them before, who are they?

Mr. Salazar: Thank you.

Mr. Barabani: I make a motion that Action Item F be accepted.

Ms. Early: I second. All in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye. Any opposed?

Mr. Salazar: I am going to oppose, it's still a little confusing to me, thank you.

Ms. Early: Motion carries. Also, Action Item G actually is asking for response from the District. It says move that the Commission formally request from the District the identification of the law firm that serves as general counsel for the District and for the Commission pursuant to California Education Code Section 45313. So it's covered in here, we are asking the District and also the author of the letter. I so move.

Mr. Barabani: I second that motion for Item G.

Ms. Early: Any discussion?

Mr. Salazar: I like to comment, so you know I recognize the authority of the Chair and I also recognize that the Action Item G is a separate action item from Action Item F.

Ms. Early: O.K. and that is why we are voting on it separately. It's listed as a separate item.

Mr. Salazar: I understand, just wanted to make sure to put that out there as a public comment.

Ms. Early: All in favor of the motion signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Motion carries.

Ms. Early: Action Item H move that the Commission authorize conflict Counsel Margaret A. Chidester & Associates be authorized to appear on behalf of the Commission as its legal representation at the Appeal Hearing of Abram Flory on April 19-22, 2010, at such other times that the hearing may be conducted.

Mr. Barabani: I move that Action Item H be accepted.

Ms. Early: I second, any discussion? All in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

Ms. Early: Action Item I move that the Commission formally request from the Governing Board the prompt payment of fees and legal expenses to Margaret A. Chidester & Associates. I so move.

Mr. Barabani: I second that Item I.

Ms. Early: Any discussion? All in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

Ms. Early: Action Item J move that the Commission Chair and/or Commission counsel be authorized to contact the County Superintendent of Schools requesting review of the District's extensive legal expenditures concerning compliance with the merit system. I so move.

Mr. Barabani: I second that.

Ms. Early: Any discussion? All in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Any opposed? Motion carries.

Ms. Early: Action Item K move that Jeff Josserand be notified that as a result of the action of the Commission revising his job specification and removing all duties associated with the Personnel Commission from his position that Mr. Josserand no longer has any authority to perform any duty as a Personnel Director as specified in the California Education Code or the Personnel Commission Rules and Regulations or otherwise act on behalf of the Personnel Commission.

Mr. Barabani: I make a motion to accept item K.

Ms. Early: I second, any discussion? It has been moved and seconded to accept item K all in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

Ms. Early: Action Item L move that the Commission approve the budget plan for Personnel Commission for the fiscal year 2010-2011. Unfortunately, our provisional director has not been brought on board this was actually an assignment that he was going to present to us at tonight's meeting so right now we do not have a budget before us to approve. Hopefully, in fact I am going to ask if this can be placed on the agenda for our next Commission meeting and hopefully there will be a budget before us. Any other comments?

Ms. Early: Moving on to Action Item M move that the Commission approve WRIPAC Spring Training & Meeting for May 4-7, 2010. We have three Commission staff

members that are interested in attending this training there was information included in our packet on what will be covered at that training.

Mr. Barabani: I make a motion to accept item M.

Ms. Early: I second, any discussion on this item. All in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

Ms. Early: Action Item N move that the Commission approve payment for CSPCA Annual Association Dues for school year 2009-2010 for the amount of \$1,118.00. I so move.

Mr. Barabani: I'll second.

Ms. Early: Any discussion?

Mr. Barabani: Yes, one quick question, how long does the year 2010 last for?

Ms. Early: I believe so, this actually is past due.

Mr. Barabani: O.K. that is fine.

Ms. Early: It has been moved and seconded that the Commission approve the payment for CSPCA Annual Association dues for school year 2009-2010 for the amount of \$1,118.00. All in favor signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

VI. COMMISSIONER'S REMARKS

Mr. Barabani: I like to say there has been a lot of work here, as I heard from the audience out there. I think sometimes we do not appreciate our staff enough and I like to tell them you guys are doing a good job, working hard and holding the ship together right now. Thank you.

Ms. Early: Mr. Salazar, do you have any remarks?

Mr. Salazar: I do not have any comments or remarks.

Ms. Early: We have some suggestions and concerns that were presented to us tonight on the Public Comments. We have Chief Underwood's contact information; we will follow up with him. We have been informed that the District is hiring provisional employees and recruiting for permanent positions and that is a concern to me. Especially since we are having trouble bringing our provisional employee on board. We have some suggestions that were given to us tonight from Ms. LaChance, we noted your concerns. One of them I am specifically interested in that is in the acquisition of NEOGOV. I see the system in place and heard from other commissions that are using that and they love it, so I like that suggestion. You also asked us to retain legal counsel to force the District to pay Mr. Maher and for them to provide the tools that the Commission needs to run effectively, we have noted your concerns and we will be looking into that we thank you for your comments.

VII: CLOSED SESSION

At this time in our agenda the Commission will move into Closed Session as provided by law, the Personnel Commission will meet in Closed Session for consideration of the following: Conference with legal counsel, Kristine E. Kwong, Musick, Peeler & Grant LLP, anticipated litigation, initiation of litigation Pursuant to Government Code Section 54956.9(c), two possible cases. Anticipated litigation regarding San Bernardino City Unified School District Personnel Commission court case, duties and authority, and anticipated litigation regarding appointed of provisional Personnel Commission Director. I do not think we will have a report out of closed session is that correct Ms. Kwong.

Kristine Kwong, Attorney at Law: That is correct.

Ms. Early: At this time we will adjourn for Closed Session, thank you for coming.

Ms. Early: There is no report from Closed Session.

VIII. ADJOURNMENT

Meeting was adjourned at 6:25 p.m.