

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

**July 6, 2010**

A special meeting of the Personnel Commission was held in the Personnel Commission Office at the Board of Education Building. Present were Ms. Rhonda Early, Chairperson; Mr. Barabani, Vice Chairperson, and Mr. Michael Salazar, Member.

**I. CALL TO ORDER**

Ms. Early called the meeting to order at 5:41P.M. Ms. Early led the pledge of allegiance.

**II. APPROVAL OF AGENDA**

Ms. Early: We need to approve tonight's agenda.

Mr. Salazar: I move to approve the agenda.

Ms. Early: I second.

Ms. Early: All in favor of approval of tonight's agenda say aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries.

**III. PUBLIC COMMENTS ON AGENDA ITEMS**

Ms. Early: Public Comments on Agenda Items.

Ms. Early: None?

Ken Holt, CSEA President: It's kind of the topic; I am not sure if it is appropriate or not, you can stop me. I know it's on the Personnel Report at the board meeting tonight, but they are working quite a few people in the Employee Relations Department in out of class positions that they don't qualify for. It is my belief that it should be going through the commission for those type of appointments. That was a concern that I had; all essentially based out of Employee Relations/HR.

Ms. Early: Any other public comments? Seeing none, we'll move down to item IV. Action Items.

**IV. ACTION ITEMS**

Ms. Early: First item A: The appointee of the governing board and the appointee of the classified employees will discuss the process for identifying potential candidates to fill

the pending term of the joint appointee to the commission for the 2010-2013 term of office and will take action as it deems appropriate.

Ms. Early: Again, I am not apart of this discussion.

Mr. Salazar: Well, I have a couple of questions. Let me just go ahead and get started on this particular item. If we go back a few pages, there's this agenda backup for today; Action Item IV (A); it has a whole narrative in here. I guess my first question is where did this come from?

Ms. Early: It is outlined on our Commission Rules.

Mr. Salazar: Where in the rules? I've looked in the rules and I have not seen it. Is there somebody that can show me where that is in the rules?

Ms. Early: We are operating under the old rules.

Mr. Barabani: It's past practice; what the commission has done here in the past and its also (inaudible).

Mr. Salazar: Is it in the rules; the current rules that we are using or not I guess is my question?

Mr. Barabani: No, I don't believe it is.

Mr. Salazar: Ok and where did this come from?

Mr. Barabani: It's past practice; what most commissioners do; and it kind of goes along with the Ed Code.

Mr. Salazar: Let me make my question a little clearer; how did this physically get on the agenda? Where did it come from?

Ms. Early: In our Commission Rules it gives us a timeline and timeframe of when things need to be done and this is actually coming out of our rules and I can take time to find it, but I don't have the agenda to my rules in this book; it gives you the timelines in the rules. This right here is a suggested application; it's basically the application I filled out when I became a commissioner. You can choose to use it. You can choose not to use it. But you can it might be helpful to use it as a template. You can make whatever changes the two of you decide to make.

Mr. Salazar: Did you put this on the agenda Ms. Early?

Ms. Early: Yes.

Mr. Salazar: Ok, so you put this on the agenda? And this is information to guide Mr. Barabani and I; you took the initiative to help guide Mr. Barabani and I to fill and appoint the current position that you sit in? Well, I thought the last meeting that we had the discussion was that Mr. Barabani and I were going to work on this?

Ms. Early: Correct. You are.

Mr. Barabani: We are.

Mr. Salazar: So I am kind of curious; excuse me Mr. Barabani I am not done yet; I am just kind of curious how the Chair got involved in providing this?

Ms. Early: I am not involved in the discussion. Ideally, someone else would have taken the initiative like our Personnel Commission Director; we currently don't have one sitting in that position. So kind of, it's a little bit confusing because I am sitting in two chairs. Right now I am sitting on the chair as Commissioner; so I am not a part of this item.

Mr. Salazar: For the record, I have a concern about the Chair putting this Action Item; this agenda backup into our agenda for purposes of appointment of her position. This is an item; again, going back to last week, that Mr. Barabani and I agreed to work on it together; and with all due respect to the Chair, that was our project. So I just wanted noted for the record that I don't think that it is appropriate that this item was put on the agenda for tonight's meeting, a project that we were going to be working on.

Ms. Early: I see a hand.

Ken Holt, CSEA President: If I may speak; curious if you brought any information forward since last week?

Mr. Salazar: Actually I did and I will share that in a moment. Mr. Barabani will do so as well. Thank you for asking.

Ken Holt, CSEA President: Because I didn't see anything else on the agenda.

Mr. Barabani: This is the same for the record since you want to place it on the record. This is the same thing that was on last week; this is before you and I had a discussion; to set the record straight, we didn't agree on anything last week.

Mr. Salazar: Actually, I actually think that you will find that we have the minutes that we did agree.

Mr. Barabani: What did we agree on?

Mr. Salazar: Well, let me tell what we agreed on. We agreed that we will work together to come up with a policy to appoint that position.

Mr. Barabani: No.

Mr. Salazar: Yes we did.

Mr. Barabani: You agreed that we were going to meet July 4<sup>th</sup> and I said what day what time do you want to meet? And you sarcastically proposed July 4<sup>th</sup> and I told you what time and that was not a legal day. So is that where we are going from there?

Mr. Salazar: No, let's not change the subject here Mr. Barabani.

Mr. Barabani: Oh, that's exactly the subject.

Mr. Salazar: Let's not change the subject here. The subject is that you and I agreed that we will work on this appointment together and a procedure for the appointment. Let's make that very clear.

Mr. Barabani: And you repeated it over; you said that I don't want to agree with you, I am not going to agree with you; I am paraphrasing; let CSEA and the board do it.

Mr. Salazar: Let's go ahead and take a look at the minutes when they are published and we will find out exactly what was said.

Ms. Early: I see two hands.

Patrick Maher: The rational is not a procedure about how you identify the people you are going to appoint; this just describes the legal requirements that's in the Education Code that talks about deadlines and limits and who does it and its telling you that in some way you need to come together to make a decision; that's all it does. It doesn't set up a procedure of how you're going to decide; how you're going to identify with people; it doesn't mention that at all.

Mr. Salazar: Did you write this?

Patrick Maher: I helped prepared it yes.

Mr. Salazar: Thank you, for the record Mr. Maher helped write this. So it sounds like it's relatively new because you were not around last year if there was a procedure in place or the appointment or three years when there was an appointment made last so, thank you for clarifying that sir. I don't really have any other questions about this, I just want to know and understand where it came from and I am sure you will point out to me where it is in our commission handbook. Thank you from here.

Ms. Early: You have your rules too; it is listed on the table of contents. And if you have copies of any kind of procedures that you said you want to submit tonight this would be a good time to do.

Mr. Salazar: Ok. So I recommend that we go with the published Ed Code Section 25244, Section 45245; and I will wait for your suggestions to Mr. Barabani; and Section 45245 and 45246 sub paragraph B (2) and F and Education Code 45248 paragraph A; the Ed. Code stipulates how we do this. We don't need the local rules, if we can find them that would be nice to look at.

Ken Holt, CSEA President: Is there a copy of your suggestions available?

Mr. Salazar: It's in the Ed Code.

Ken Holt, CSEA President: Just for the record did the district help you prepare that?

Mr. Salazar: Actually, I went and asked the district to help me to understand where the process was.

Ken Holt, CSEA President: Thank you very much.

Mr. Salazar: So it's already a process in place; that kind of goes under the umbrella; I don't think we need to reinvent the wheel; we've already got a process that's good enough for the state superintendent, it should be good enough for San Bernardino.

Ms. Early: Unfortunately, these rules are not currently the rules we are operating under; these were the newly revised rules; Nerci is actually going to get our old rules for us.

Mr. Salazar: Which we won't find this in there because of what was recently written.

Ms. Early: Mr. Maher?

Patrick Maher: Let me make some clarifying comments. First of all, I would like to point out that I was appointed as the Provisional Personnel Director and so far as I know, I am still serving as a Provisional Personnel Director. I have a duty and obligation to support the commission and following through with procedures. I might be limited because of the actions of the district, but I am still the Provisional Personnel Director and it is certainly my due responsibility to provide assistance. Number two, what you talked about the Education Code Section disfollows the Education Code section; not specific details, but there are time limits. But the Education Code does not tell you and you will not find anywhere in the code as to how you, each of you respectfully, decide who you are going to nominate. The step is to nominate somebody and at later time, have a public hearing, at that public hearing anyone can come and comment on the person you nominate and then you make a decision. That is what this produce outlines on a more general sense. It does not tell you however, how you find your nominee and how Mr. Barabani finds his nominee; there is nothing in the code that explains that. This procedure was intended to follow a commonly accepted procedure followed by most merit systems in which through some process, the public is advised of the opportunity for the opening in the commission, they submit some kind of an application, they come before the commission, they each have a chance to be heard as to why they should be a

commissioner, and each of you respectfully nominate who you want; that is the most common way it's done throughout the state in terms of identifying who you're individually going to nominate. The other way it is sometimes done, is that each person just decides on their own or they both decide they are going to reappoint the person currently in that seat and they go forward; none of that is found anywhere in the code; you are not going to find a word of how you will identify your nominee; how Mr. Barabani identifies his nominee and who you are going to nominate; its not there. That is what this was intended to do was give you an opportunity to, as a starting point for discussion, of what is commonly followed recommended by CSEA, recommended by CSPCA, and commonly followed by districts throughout the state, as well as provided to you as a suggestion; so let's just make it clear in terms of what this represents and what it does not represent. You are following a procedure and the Education Code would not tell you how to identify your nominee or tell Mr. Barabani how he would follow his nominee or how to identify his nominee. It is not there so, you guys have to figure out something on your own; find out what you will come up with.

Mr. Salazar: I appreciate that you helped write this.

Mr. Barabani: I thought you said, just for the record; I thought there wasn't any in there; the rules? Did I hear wrong?

Mr. Salazar: I don't know what you are talking about.

Mr. Barabani: You said there is nothing in our rules about how to appoint (inaudible) for the Personnel Commission. Did I hear wrong?

Mr. Salazar: Is there?

Mr. Barabani: Did I hear wrong?

Mr. Salazar: I said I haven't found any.

Mr. Barabani: Ok well it appears to be right here in San Bernardino City Unified School District Personnel Commission; Friday, March 08, 2002, page 14 of 95 Appointment and Terms of Personnel Commission; revised 8-23-89. These are the rules that we have to operate on; that's what the district took us (inaudible) about.

Mr. Salazar: So there you go, but it's not this.

Mr. Barabani: This is nothing, this is a suggestion.

Mr. Salazar: You and I can both agree to disagree about this or we are going to agree or we can just throw it away?

Ms. Early: The timelines of this are actually the same as what is in our Commission Rules; so they are not in conflict.

Ms. Barabani: I am confused of where we are at now. You have a procedure you would like us to follow?

Mr. Salazar: Still waiting on yours. I've already offered the state Ed Code and I've given you plenty of things to consider, maybe what we should do; my suggestion would be to take some time, go back, take a look at that and think about what it is what we all might want to do.

Mr. Barabani: When would you want to meet on that?

Mr. Salazar: Well, you know, we have a regular meeting that comes up later this month.

Mr. Barabani: You and I would have to meet together, you and I will meet; we will make it here in a public forum; that's the way we should do it, everything in public. Can we choose a date this time, one that is not funny?

Mr. Salazar: My recommendation is already on the table sir.

Mr. Barabani: No date?

Mr. Salazar: I recommend we meet at the regularly scheduled point of time.

Mr. Barabani: Well, I recommend we meet tomorrow.

Mr. Salazar: I can't make it tomorrow.

Mr. Barabani: The next day?

Mr. Salazar: I can make it on the 20<sup>th</sup>.

Mr. Barabani: You can't make it anytime between now and the 20<sup>th</sup>?

Mr. Salazar: I can make it on the 20<sup>th</sup> Mr. Barabani, whenever that meeting is scheduled.

Mr. Barabani: So one of the duties of this position is to meet to try to get this done so we can do it during the regular meeting.

Mr. Salazar: We are having a special meeting tonight and we have a regular meeting on the 20<sup>th</sup>, I don't see any reason why we can agendize this for the regular meeting and we will take care of it.

Mr. Barabani: Because we need to move on at the next meeting; we should have some kind of procedure. If we don't get things done within the next few days we won't have time.

Mr. Salazar: Actually, I know you read this and it says that we have till; we have plenty of time sir.

Mr. Barabani: Well, depends if we decide to go to the public we have to have time to publicize it; to run an ad and we are running out of time to do that. That was my suggestion last time, but if we drag it out till the end of the month, my suggestion might as well be gone; it does not matter.

Mr. Salazar: My humble opinion is we have plenty of time to meet at the regular meeting.

Mr. Barabani: Well that is all it is, just an opinion; then we are going to be running against the wall.

Mr. Salazar: Ok.

Mr. Barabani: So my suggestion of opening it up that's gone now, ok.

Mr. Salazar: You know I won't sit up here and be bullied.

Mr. Barabani: I am not bullying you; I made my suggestion last week you told me I am not voting for anything you want.

Mr. Salazar: I didn't agree with your method. We have a procedure here now. You know you don't agree with the procedure that's in the Ed Code. This is the Education Code for the state of California. It is good enough for me, sorry it is not good enough for you, but I won't sit up here and be bullied by you.

Mr. Barabani: I am not bullying you I am asking kindly when you want to meet, you know we took an oath to do this job and try to do it right. I am willing to meet anytime that's public and during any time here and you seem to be unavailable.

Mr. Salazar: What do you want me to do about that? I am at a special meeting tonight.

Mr. Barabani: Honor your oath. Honor your oath.

Mr. Salazar: I'm at a special meeting tonight and I'm going to be at a regular meeting on the 20<sup>th</sup>; I mean when it's convenient for you, doesn't necessarily mean it's convenient for me sir; my apologies.

Mr. Barabani: So the commission and the duties of the commission are only done when they are convenient for you?

Mr. Salazar: The 20<sup>th</sup> is a regularly scheduled day; it does not conflict with the timing of getting this appointment done. There is no conflict there.



Mr. Barabani: Its conflict if I would like to open it up to the public, I can't because we don't have enough time to advertise it. Ok you are right.

Mr. Salazar: So the 20<sup>th</sup> it is, it sounds like.

Mr. Barabani: Well, you don't want to meet any other time. So what difference does it make?

Mr. Salazar: Thank you sir for agreeing.

Mr. Barabani: I did not agree; I got to agree because you are not willing to meet any other time.

Mr. Salazar: Thank you for agreeing.

Mr. Barabani: That is not agreeing.

Mr. Salazar: You said it twice that you agree.

Ms. Early: I see a hand.

Ken Holt, CSEA President: I just have a question.

Mr. Barabani: I'm being held hostage.

Ken Holt, CSEA President: If you can't come to an agreement on the procedure, can't you appoint someone on your own; without the battle?

Mr. Barabani: I don't believe so; here on the Ed Code.

Ms. Salazar: You can nominate someone on your own, to answer your question. Each of us could if we can't agree on between now and the deadline.

Ken Holt, CSEA President: It's not going to be an agreement in my opinion; it might be easier to do it that way.

Mr. Salazar: But we have until September 1<sup>st</sup> so, there is plenty of time, I think we can get this done, but there is plenty of time.

Ken Holt, CSEA President: So essentially if you did it on your own you could run the recruitment on your own?

Mr. Barabani: We are running out of time, we got to put an ad (inaudible).

Ken Holt, CSEA President: But I am saying, if you did it on your own, you could run your own recruitment?

Mr. Barabani: Yes.

Ken Holt, CSEA President: Ok, question answered.

Ms. Early: So what is your consensus; what is your recommendation?

Mr. Salazar: You are asking me?

Ms. Early: This is your discussion, the two of you, what are you recommending? At our last meeting this was an agenda item and the consensus was that it would be re-agendize for today, you were going to have a week to individually come up with some recommendations and present them at this meeting and it looks like we have not done that so far, so what is the recommendation? Are you recommending that this be placed on the agenda for our July regularly schedule meeting?

Mr. Salazar: I would recommend that, sure.

Ms. Early: Ok.

Mr. Salazar: For the record Madame Chair, I feel that I did fulfill my part of the obligation which I went and asked about the Ed Code and I found a procedure so, just for the record, I'd like to point that out, but I did my part of the deal, I have yet to see Mr. Barabani's recommendation.

Mr. Barabani: Well, I did not meet with anybody in the district to find out what I was supposed to do (inaudible); I did my own research.

Mr. Salazar: Where is it?

Mr. Barabani: I told you, I did it before, last agenda. One of the other methods was to open it up to the public and you didn't like it.

Mr. Salazar: I haven't sent it, it is not written, and mine is written in the Ed Code. So I just want to make sure that the record is understood that I did what I said I was going to do.

Mr. Barabani: You met with the district, getting back with the Ed. Code that is what I understand.

Mr. Salazar: No I didn't meet with the district.

Mr. Barabani: You said you went and asked the people in the district and then you came back (inaudible).

Mr. Salazar: No, you said I met with the district and I am telling you I didn't. I said I got information from the district and they helped me to research the Ed Code.

Mr. Barabani: Oh I believe that.

Mr. Salazar: That was very kind of them. You had the same opportunity. Don't think the opportunity was denied.

Mr. Barabani: I did not want to meet with CSEA and ask them their opinion.

Mr. Salazar: You had an opportunity to meet with whoever you wanted it to. There were not restrictions as to who you could and could not meet on the planet earth.

Ken Holt, CSEA President: I am confused. I believe that the commission is supposed to be an independent body, separate from the district. I would see a big conflict if you guys would all meet with the district to all get your opinions.

Mr. Salazar: No, I asked for help researching the Ed Code.

Ken Holt, CSEA President: No, but I mean the assumption that you all can go to ask for that from the district I find it as a conflict of interest because you're going to the district when you're suppose to be an independent body doing it.

Mr. Salazar: Yes, the Ed Code is public. Anybody can do it; the truth of the matter is, I needed help researching it.

Ken Holt, CSEA President: I would have a concern if our other commissioner's were to go; that is my concern.

Mr. Salazar: Yeah, yeah, but everybody has the same opportunity if they ask anybody if they want for help.

Ms. Early: Ok, we are done with that discussion. This will be an agenda item at the next commission meeting. Is there a representative here from Gresham Savage Nolan & Tilden?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, Ms. Early. My name is Brad Neufeld, I'm a shareholder with Gresham Savage Nolan & Tilden; it's nice to put some faces to the names of the commissioners. I am here to introduce myself to the commission and to be able to give representation in legal matters.

Ms. Early: Thank you for coming. Do you have a copy of the agenda?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I do, thank you, the district e-mailed me a copy this morning. To address the first item; I am sorry, you are the Chair of the meeting I will respond to questions as best as I can.

Ms. Early: We are actually on Action Item IV (B): The Personnel Commission will confer with your firm to discuss and the items are as numbered. So, feel free to address them in order.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: As to item 1, it is my understanding through reviewing a purchase that the governing board of the school district approved the agreement with my firm on March 2<sup>nd</sup>, 2010. As to items 2 and 3, I do not believe these are legal matters within the scope of Personnel Commission's jurisdiction and it is up to the board to disclose that information if they choose to do so and frankly, I honestly don't know; the dealings were with another partner in my firm in terms of the retention of my firm so, I couldn't provide you that information; I do believe that it is up to the governing board to determine how much they wish to disclose in that regards. As to item 4, unfortunately the information that I've received from the other law firm that assisted the commission in the past has been very limited, very limited; they sent a couple of letters which they copied Ms. Early on and provided me with one or two letters that Ms. Early had written to them and then they just referred it back to me; I believe that I sent responses in to the Chair in regards to those unfortunately, communication has not been all that I'd hoped that it would be and that's part of my reason for coming here today, I want to establish a better line of communication. I think we can get more done if we talk in person rather than simply write letters back and forth to each other because why I am here; I am not here to have a fight with anyone. I am here to provide legal services and resolve legal issues. That is my goal. I find that the best way to do that, the most efficient way for my clients is if we have a dialogue, we talk about concerns and try to move forward. In terms of item 5, the experience and qualifications of my firm were sufficient enough that the governing board chose to retain our firm; that's what I have on item 5.

Ms. Early: Specifically, what experience do you have working with districts in a K12 merit system here in California?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well again, I would point out that the governing board found that our qualifications and experience are sufficient to retain us.

Ms. Early: Can you give us some references as far as districts that you have worked within the merit system?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: In the past, I worked with Barstow Unified School District; that is the only one that comes to mind that is merit system district, for me personally. Again, I can't speak to every attorney in my firm; there are over 50 of us there. As I indicated in my letter to you, I've worked for many school districts and many of the issues are not unique to merit system districts; legal rules apply equally to merit and non merit system districts as well as, classified employees and as well as Brown Act and Public Records Act etcetera, etcetera.

Mr. Barabani: Going back to the 1<sup>st</sup> of March 2<sup>nd</sup> 2010 date, what date was it that your firm first told to aide and represent Personnel Commission in our legal matters under 45313?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't know the direct answer to that question, but let me give you what I have seen by reviewing file; that there was a contract entered into between the district and our firm January 20<sup>th</sup> of 2010 and ran to June 30<sup>th</sup> of 2010, but that the purchase order indicates that the contract runs from February 3<sup>rd</sup> to June 30<sup>th</sup> of 2010. So the board only approved apparently; our firm provided services beginning on February 3<sup>rd</sup> 2010, but those services I do not believe were limited strictly for Personnel Commission. We are the governing board's attorney's, we are here to provide you aide and legal representation in legal matters pursuant to that Ed Code Section you just cited 45313.

Mr. Barabani: Who in your firm gave you the assignment to do?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My partner Richard Marca.

Mr. Barabani: How was this assignment given? By mail, phone e-mail, fax?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I believe he walked into my office and asked for my help.

Mr. Barabani: Ok. Anybody else present?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't recall.

Ms. Early: Would you give any kind of explanation as to why you would be retained to help the Personnel Commission? Or, do you know why you're here with us tonight?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: It is my understanding that several prior firms had used themselves for representation for the Personnel Commission and that you guys had a need for legal representation.

Ms. Early: Are you aware of any existing litigation?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, I am aware that the district has sued the Personnel Commission and retained separate counsel for that litigation. I am not familiar with intricacies of that lawsuit; I am aware that the allegations are that the rules were put through and were so complex (inaudible).

Mr. Barabani: Prior from your firm or yourself getting this assignment, have you done any other work for the district?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, not me personally.

Mr. Barabani: Your firm?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I believe so.

Mr. Barabani: Do you know what that work was by the way?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No.

Mr. Salazar: I don't have questions for you sir, thank you for being here.

Mr. Barabani: What other work have you done for the district since beginning this assignment to aide us in the Personnel Commission?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My work has been limited primarily to responding to letters, which I received from Ms. Early.

Ms. Early: Have you ever worked with any districts where there was a conflict between commission and district over (inaudible)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Personally, I don't recall having that issue come up, but again, I want to emphasize that the school district hired my firm, they did not go out and say "I hired Brad Neufeld", they hired Gresham Savage which has been here in San Bernardino for over 100 years, we have over 50 attorneys; I am confident that we can provide whatever services that the district or Personnel Commission requests. I see the Personnel Commission as a part of the district. I understand that you guys have a few issues, but again, I think that you are part of the district and provide services to the district just like my firm does. That is my personal respect, and I understand there are times when conflicts will arise and that is the time when I will write you a letter indicating that you should retain separate counsel.

Mr. Barabani: Well the reason we are talking to you is we got that nice letter from you with your picture on it and it basically said that you were the man.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I am going to be the lead in terms of helping you, but I certainly have the access to any of the other attorneys or paralegals within that firm; someone has to be the figure head and I said that to you.

Mr. Barabani: And you guys signed an agreement with the district January 15<sup>th</sup> right?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My partner signed it January 15<sup>th</sup> and the district representative signed January 20<sup>th</sup>. Again, my understanding is that it went to the board for approval based on the purchase order I received on March 2<sup>nd</sup>.

Mr. Barabani: Had your firm had an agreement for legal services with the district before that day?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Not that I am aware of.

Ms. Early: Are you familiar with the Hardwick case; is that something you can give us your opinion on?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: That case does not ring a bell, but I'm not very good with names. If you describe the factual situation maybe I can help you. Unfortunately, being an attorney isn't a closed book test and we always have our (inaudible) available for us if need be.

Ms. Early: I understand that your firm entered into an agreement with the district but not necessarily their selves. Can you tell me whether or not you have been involved in any type of litigation matters here with the district in which you represented the district and if so, who your contacts were?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I have not.

Ms. Early: You have not?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I have not.

Ms. Early: This is your first opportunity?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: This is my first opportunity to interact with your district.

Mr. Barabani: When you were told to become our legal counsel on the 45313.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well again, let me back up, sorry to interrupt; you're the governing board's counsel and under the Education Code the board has asked us to assist the Personnel Commission.

Mr. Barabani: For what reason?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: When you have me for legal aide and representation and legal matters.

Mr. Barabani: So you are *the* counsel for the board?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My understanding is they have other attorneys as well; school districts have several firms that represent them in various matters.

Mr. Barabani: So you're just one of many?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: That is my understanding.

Mr. Barabani: Did they, when they asked you to help us; number 45313, did they mention that two other law firms before had been given this assignment by the district?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: You know, I am aware of that, but I am not certain whether they mentioned it or whether I became aware of that in reviewing documents that they provided.

Mr. Barabani: So the law firms; they sent us a lot of stuff, they had a lot of documents, correspondence, did they give you all those?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I couldn't say they gave me *all* of those as I said, I received limited amounts of documents in this period; I've made request for documents and some of them are still pending.

Ms. Early: You made your request with me?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Some through you and you've responded and I take to heart what you said and again, I wasn't trying to do that to be instructive, I just minded sometimes if I ask it directly from the person that I am dealing with, I can get it a lot faster.

Mr. Barabani: So you haven't read all these documents from these other firms. I have a reason for asking, I am concerned so, they haven't given you all these documents?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Again, I receive limited amounts of documents from prior firms, mostly the ones that I recall right now are ones basically responding as a request for legal services from the Chair saying Gresham Savage now is handling these things and we have given them your request. So that's about the extent of the documents that I received from the prior firms.

Mr. Barabani: Well, has the district or the governing board told you that these firms they declared a conflict on certain matters or have recused themselves for the representation of the commission after having had considerable correspondence back and forth for those in the commission, legal representative under 45313 and the reason I say that (inaudible).

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I think I understand the point of your question and will try to respond to it. I read my partner's letter to the commission about representing the commission in all legal matters and it was not as intent to say that if a prior district counsel had declared a conflict, now Gresham Savage is going to come and handle those matters. Do you understand the distinction that I am making? It's things going forward, if you already got an established relationship with an attorney where the board has approved the agreement because there was a declared conflict, we are not saying that we are stepping into that rather, its things going forward in the future that's where we're going to help you unless there is a conflict or we fail to respond within the statue of working together. Again, for example, we are not saying we are going to



represent you on the litigation against the district, not at all, that is clearly something that is a conflict that attorney already made a determination on that so that is how you have to go forward with whatever counsel has been (inaudible) by the governing board.

Mr. Barabani: So they did not tell you some of these legal firms were representing the district in legal action; the superior court against the commission? One was making activities and joins the commission's revised rules. As a matter of fact, we have the problem right now because we're having to look over old rules, new rules were read, and there seems to be a mistake about (inaudible).

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My partner Mr. Marca apprised me of that situation. Again, to be clear, if prior attorney in the district declared a conflict we are not at all saying Gresham Savage is stepping forward, that is a matter of past and use whatever counsel that you have selected.

Mr. Barabani: Through them, did you try to find out how much the commission; I'm sorry, did the board tell you that the commission; we have made a lot of efforts to meet the with governing board to attempt to resolve these matters, but the governing board has not been willing to meet with us. Has any of that come up?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Not in conversations, but I read some correspondence to that affect from Ms. Early and I am disappointed to hear that and I hope we can perhaps a new face in town and we can revisit some of those efforts and again, you will find my track record is one of resolving issues and consensus and bringing parties with sometimes of apparently conflicting issues, but yet focusing on the shared interest of parties again, I look forward to negotiating agreements with CSEA with all of the different chapters of CTA and many other agencies as well. I'm hopeful that maybe we can build some bridges because it sounds like, from what I've read, there's been some bridges that are lost.

Mr. Barabani: When you are building these bridges, who would you be representing, the governing board or us?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, I would think that I am representing both because unless there is a conflict of interest again, I am the governing board's attorney.

Mr. Barabani: Well they are suing us over our rules.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: And I am not going to provide you any advice on that. I am not going to discuss that matter.

Mr. Barabani: I see. And the reason for that is because?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: There has been a declared conflict of interest.

Mr. Barabani: And you are representing the district on that one?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No I am not. My understanding is Atkinson Andelson is representing the district on that lawsuit.

Mr. Barabani: Well, I do not understand how that would make a conflict (inaudible) from you helping counsel for that. If you are not representing the district could you not help us with anything?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, I don't see (inaudible); I am referring to one team; other matters that have not ripened into a lawsuit. It's my goal to keep my clients out of court and that comes through dialogue and working to try to find shared interests.

(Pause to switch tape)

Ms. Early: Your firm might have, but not you personally?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct.

Ms. Early: One of concerns that I had, and I put it in a letter, was we have two firms who had been performing services for the commission who have not been paid and I've asked you to review that; in fact it's the next, if we move on.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, let's move on to see if (inaudible).

Ms. Early: Oh, you have a couple more questions?

Mr. Barabani: Yes, I have a couple more questions (inaudible). Is there any discussion with the district about representing commission? The reason I ask is because Atkinson Andelson firm declared a conflict in virtually every situation we had between the district and the commission and this was (inaudible). So by hiring you, is this like a means to give the commission an ultimate counsel that would not require declaration of counsel?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I am not sure what the motives were with regards to why the district hired (inaudible). Again, I haven't spoken to the any of the board members. I can speculate that Atkinson Andelson didn't feel comfortable with continuing to represent you and at the same time, they are suing you in superior court over those rules issues (inaudible). That is how I would feel if I were in their shoes, but again that's speculation.

Mr. Barabani: I can't seem to get a handle on who exactly hired you?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, the governing board.

Mr. Barabani: The board they took and they met? I can't find anything in the minutes that said they hired you (inaudible). So you were hired by the governing board, and they specifically said that you are going to help the Personnel Commission? And they hired you without speaking to them or without them speaking to you or you speaking to them?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Without me speaking personally.

Mr. Barabani: How about anybody in your firm?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, again, I don't know the answer to that.

Mr. Barabani: Could you find out?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: It would generally be the issue of how someone chooses their lawyer; it's a matter of attorney client privilege.

Mr. Barabani: Well I am not asking for any kind of communication between them, I just want to know if they hired you legally, did they go through the board process.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: If they approved our agreement at our open meeting, that's hiring us legally.

Mr. Barabani: It was done then in public?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I would imagine that it's on the consent calendar and our second meeting; that might not be something that is reflected in the minutes. But I think if you've got an agenda for the March 2<sup>nd</sup> 2010 it should be something in there about approval of legal services between Gresham and Savage.

Mr. Barabani: Now we are going to assume that you asked all these other firms that we've made communication with to provide with all the documents that you have concerning us, the Personnel Commission.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, because I wanted to talk to you to determine what matters are ongoing that need for continued representation because I don't want to spend a lot of the districts money in terms of going over things that are just the district. If you have ongoing need for representation on legal matters, that's what I want to focus on.

Mr. Barabani: Ok. So you haven't contacted? That's ok.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Again, my normal course of action is to talk to the client first and then after their perspective, I determine, "ok, now I have to circle back to Atkinson, Andelson" or whatever firm it is and say, "You guys

were working on x, its still an ongoing matter, please provide me with your file on matters". From the limited amount of correspondence I saw, I didn't see anything indicating there was an ongoing matter and that they had recused themselves from; rather, it was Ms. Early's June 1<sup>st</sup> 2010 letter regarding (inaudible).

Mr. Barabani: Some of these letters go back farther than that.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I have not seen any correspondence prior to that.

Mr. Barabani: Prior to June 1<sup>st</sup>?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct.

Mr. Barabani: (inaudible).

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correspondence from Personnel Commission, I want to be precise as I can here. I saw in an earlier letter from M.M.K.E.R by Alan Jablin dated May 28<sup>th</sup>.

Mr. Barabani: And you requested from them all the documentation (inaudible)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, because that letter addressed an issue that Ms. Early has subsequently written a letter on that I wanted to speak with her about, get her perspective on and then, move forward to determine what other documents they have. The specific letter I am referring to is in regards to some of your conflict firms that (inaudible). So, first order of business is to provide you all with one of my cards so you know when to call.

Mr. Barabani: Since you haven't gotten all of the documents from the other attorney's concerning the Personnel Commission, has the district, since you said you represent the client, have they provided you with all the documents concerning the Personnel Commission?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, as I alluded to earlier, I have several outstanding document requests.

Mr. Barabani: How long is that going to take?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't know the answer to the question. My recommendation going forward is for me to sit down with Ms. Early and go over all of the issues that are outstanding that you need a little help on to move forward in acquiring the documents that the district or the attorney's who previously handled those matters (inaudible).

Mr. Barabani: I'm just curious, if the district hired you, wouldn't it have been nice for them to hand all of those documents to you?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I wouldn't have objected to that.

Mr. Barabani: Oh, ok. Why didn't you ask them for them? If you wouldn't object to it, why didn't you ask them for them?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: As I indicated earlier, my normal practice is to sit down with the clients and discuss certain matters.

Mr. Barabani: That is why I am getting confused. You're claiming the district is your client so, you'd sit down with them and ask them for all the documents, but you haven't done that, now you want to sit down with us.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I wanted to add the Personnel Commission's perspective on the issue before I began spending a lot of time collecting documents.

Mr. Barabani: What you described is an option. I am just curious, how do you know it wouldn't be a conflict if you don't already have their documents?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, I think without that dialogue to determine if there is a conflict.

Mr. Barabani: Ok. So your firm, have they had any discussions with anyone from the governing board, superintendent, assistant superintendent, deputy superintendent, or any other firms providing legal services to the district to discuss what services you are going to provide to the commission?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I haven't had any discussions with any of the other firms. As mentioned earlier, I received some correspondence; I assume that my partner has had discussions with the governing board or the cabinet regarding services that are being provided to the district.

Mr. Barabani: You believe they discussed what services you're going to provide? Not you personally?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct.

Ms. Early: When were we notified of the services that your firm would provide?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My understanding is that the district retained us to provide all services, legal services that the Personnel Commission requires. I believe the letter that references was included in the agenda packet; Mr. Marca's letter, May 27<sup>th</sup>.

Mr. Barabani: You were saying that you worked with the Barstow School District merit system? Did you work for the merit system or for the school district?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: For the Personnel Commission, it was years ago; for a Personnel Commission.

Mr. Barabani: So in your professional legal opinion, of the laws that govern the K12 public schools that result in significant legal differences between a merit and non merit school as it pertains to classified employees.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well there some significant; there is a whole chapter that outlines some differences between K12 non merit and merit.

Mr. Barabani: And did you? How long ago was it?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't recall. Again, I have to emphasize that the district didn't hire me personally, they hired my firm.

Mr. Barabani: I kind of got my questions ready because once again, you were the guy clipped to the back with a sheet and they said you were the one that had all of the answers; it kind of appeared that way.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, if I don't have the answers I can get them for you. How about that?

Ms. Early: We have several outstanding document requests.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes.

Ms. Early: Can I ask what documents you've requested?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, I'm sorry should have made a list.

Ms. Early: How long has it been since you've requested them and what kind of turnaround (inaudible)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Within the last few weeks.

Ms. Early: You've received nothing?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, I've received some things. For example, today, not today, but I received the R.E.A.F to engage Musick Peeler & Garrett.

Mr. Barabani: Now, were you personally; for the school districts you've worked for on matters involving selection, recruiting, discipline, layoff, seniority, classifications, reclassifications, eligibility lists, administrative appeals and hearings for employees including disciplinary action for Personnel Commission, which of these school districts were K12 merit systems (inaudible) Barstow? Did you directly service a legal representative for the Personnel Commission on all those type of matters?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My partner at times was the lead assisting me on working (inaudible).

Mr. Barabani: I have a question about the; I've never seen a place that tried to kill a tree more than this one; on your letter December 23<sup>rd</sup> your response to the request.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I'm sorry, December 23<sup>rd</sup>?

Mr. Barabani: Sorry, June 23<sup>rd</sup>. You responded (inaudible); in your letter June 23<sup>rd</sup>, your response to our requests for you to describe your experience with the merit system, your reply that over the last 24 years, I've represented numerous school districts. Of these numerous school districts; one of my questions, I've guess you answered, were how many were K12 merit systems.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, I've answered that question.

Mr. Barabani: Yes, Barstow, ok. How many times have you represented the Personnel Commission in the K12 merit system, or any merit?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: It's limited to Barstow.

Mr. Barabani: Was there that time in Barstow, performing those duties, where there was a disagreement between the district and the commission over how the merit system should operate?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I believe there was. It was number of years ago.

Mr. Barabani: Is that a matter of public records?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't know.

Mr. Barabani: Overlooking your agreement for service, it says you entered into an agreement January 19<sup>th</sup> explain that; but it was signed by a representative of your firm on the 15<sup>th</sup>. One of the questions that I have, what was the reason for (inaudible)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well, you sign a document, put it in the mail, you send it over to the district, the district representative, whenever they get around to it (inaudible); no mystery.

Mr. Barabani: You told us on the 23<sup>rd</sup> that it was your understanding that the board took action to hire you firm on March 2<sup>nd</sup>; do you know why it took six weeks from that date for that agreement (inaudible)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No.

Mr. Barabani: Does anybody know at your firm?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: We deal with some bureaucracy sometimes (inaudible).

Mr. Barabani: Is that (inaudible) find that a reasonable amount of time?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No.

Mr. Barabani: Well then, why wasn't; if the board took the time or made the action to hire you, they hired you March 2<sup>nd</sup> right? Why isn't the effective date of the agreement March 7<sup>th</sup>?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: You would have to speak to the board about that. The board has power to retract the firm contract.

Mr. Barabani: Any chance you can find out that answer?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Again, I don't see how that's a legal matter that I should be spending my time on; the board approved the agreement.

Mr. Barabani: Well, we get a lot of questions here about these expenditures (inaudible) and everything; and then here is a contract March 2<sup>nd</sup> and then it goes back two months; something must have been done during those 2 months; was any work being done, no work being done, pay for no work; I'm just curious?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't know.

Mr. Barabani: Did your firm invoice the district for any legal service before that March 2<sup>nd</sup> date?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I do not know. I am not familiar with attorney fees and all of that.

Mr. Barabani: But you could find out, about that one, I mean that is kind of important as to people bring up the fact that we might be wasting money?



Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, but again, the purchase order indicates the effective date is February 1<sup>st</sup>, according to contract.

Mr. Barabani: Yes, and March 2<sup>nd</sup> was the effective date of the agreement.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, March 2<sup>nd</sup> was the date the board took actions to approve the agreement.

Mr. Barabani: So your understanding is the board took action to hire your firm on March 2<sup>nd</sup>?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct.

Ms. Early: Since we are talking about billing, as you know, we are having trouble having two of our firms. Has your firm ever being 30 days late in receiving payment for services rendered?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Way more than I'd wish was true.

Ms. Early: From this district?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: From this district? I don't know the answer to that, but for clients generally, from school district clients? Yes.

Ms. Early: Not sure about billing with this district?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, I'm not the billing attorney for this client so, I can't speak to specifics about that, but unfortunately, I can tell you that I've had school districts be much (inaudible) than 30 days late on payment for services that are not even disputes. So, I wish I could tell you something different, but that's not the case.

Ms. Early: And I would like to, in the interest of time, move on in the agenda to item C; and the things that are listed in the rest of the agenda I think you have received correspondence from me as ongoing issues that we have been unsuccessful in working out. One of them was failure to pay for legal bills associated with the commission so, on the agenda, we are now on item C (1). I want to see if you have; can you share with us information that you have obtained regarding the next two items on the agenda, the districts failure to pay legal bills and to grant approval of an agreement for legal services for council employed by the district pursuant to Ed Code Section 45313. We can deal with these separately.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, my partner recently received a large stack of bills that I think are in reference to what you are talking about here and he is reviewing that and the lawyers will be contacted regarding questions on those bills; that's the extent of what I know on that matter.

Ms. Early: Now when you say your partner is that Richard Marca?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct.

Ms. Early: Who is going to get back to the district? I understand he will be contacting us?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Mr. Marca.

Ms. Early: When I said district, I should have said the commission.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Oh. Well, that would be Mr. Marca as well.

Mr. Early: So, Mr. Marca is going to get back with the commission as far as the findings for item C (1)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes.

Ms. Early: Ok.

Mr. Barabani: M A R C A?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct.

Ms. Early: Moving on to C (2), the timeline the actions taken or not taken and so on to see if the district has been acting diligently with cause at all times in processing these invoices and agreements or if it has acted in a dilatory and obstructive manner.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Mr. Marca will be addressing that issue as well.

Ms. Early: So is Mr. Marca simply looking at invoices associated with the commission or is he comparing those invoices with other invoices that are being processed by the district?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't know the answer to that question.

Ms. Early: We would need to know that. We want to make sure invoices associated with the Personnel Commission are being processed in the same matter as other invoices so, I'm hoping he's including that as part as his investigation.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I see your concern, I think I understand your point, you want to make sure that the ones that are at issue in terms of

the lawyers not getting paid in a timely manner, are being processed similar to any other district invoices. Is that correct?

Ms. Early: Correct. Moving on in the agenda to Action Item IV (D). Move that the commission request legal counsel to assist the commission by conducting a hearing and investigation pursuant to the commission's authority in Education Code 45311 and 45312 into the following matters: (1) Determine if the authority of the omission to employ its own counsel under Section 45313 was abridged by the district by appointing the firm of Gresham Savage Nolan & Tilden and/or to serve as legal counsel to the commission for all matters when there is a known or reasonable belief by several counsel for the governing board that an ongoing conflict exists or will exist and the intent or the effect of these appointment is to deprive the commission of its authority to employ its own counsel. I so move.

Mr. Barabani: I will second.

Ms. Early: Any discussion on this item? I sent you correspondence regarding this. Any discussion on this item? Number two, whether district staff intruded into the legal.

Mr. Barabani: Are we going to vote on that?

Ms. Early: Oh, I'm sorry. All in favor of motion signify with voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Nay.

Ms. Early: Motion carries. (Action Item IV. (D) (2)) Number two: Whether district staff intruded into the legal authority of the commission and exceeded their authority by: (a) Taking acts that amounted to supervision of commission staff by summoning them to the offices of various administrators to question them about their work for the commission, issuing written directives to staff and to commissioners directing them on how to treat the public and an appointee of the commission. I so move.

Mr. Barabani: I'll second that; 2 (a).

Ms. Early: We have a motion and a second, any abstentions?

Mr. Salazar: What is the concern here? I guess, I think I need to read this again. Can you allow me a moment?

Ms. Early: Sure.

Mr. Salazar: Ok. What we are voting on here is whether or not the district exceeded their authority in each of these areas?

Ms. Early: And we are asking someone else, other than us to look into it. We are asking the counsel on all of the items.

Mr. Salazar: So we are asking; we are basically going to ask an attorney to look at, one at a time, each of these items?

Ms. Early: We are voting on them one at a time; correct.

Mr. Salazar: Yes, that is what I mean. Ok. Alright.

Mr. Salazar: I don't think I have any other questions, but we are talking legal bills earlier and the escalation of those legal bills? For the record, I just want to say that I hope we are very diligent in our own efforts to make decisions before engaging counsel.

Ms. Early: I (inaudible).

Mr. Salazar: Thank you.

Ms. Early: We have a motion; we have a second all in favor of motion signify with a voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye

Mr. Salazar: Nay. I think we can handle that one on our own.

Ms. Early: Motion carries.

Ms. Early: And again, all of the things on the agenda you will see the correspondence from this so, this is not your first time seeing this.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: No, I can't, I can't say that's true because.

Ms. Early: But these were identified in the letter format.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Some of these things; some of these certainly were, but I can't attest to you that everything on here is something that I've received a request.

Ms. Early: They were put in writing.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I am not arguing with you, I'm just saying, there are a lot of balls in the air right now.

Ms. Early: I understand, I understand, I understand. 2 (b): Entering into an agreement with the former Executive Director that prohibited interaction between him and the commission on commission related business while district administrators continued to have contact with on commission related business. I so move.

Mr. Barabani: I will second item 2 (b) of sub category D.

Ms. Early: Any discussion?

Mr. Salazar: Which Executive Director are we talking about?

Ms. Early: Our former director.

Mr. Salazar: Is that?

Ms. Early: He was told that he could have no contact with commissioners or commission staff.

Mr. Salazar: What was his name?

Ms. Early: Our former director; I hate to give out personal names, but he was the director who was in position right before you came on so, he is the only one that you would remember. Since he left we have had no director and we all received a copy of that contract so, we have it in writing. We received a copy of it and was told that it was confidential so for that reason, I don't want to bring a name out on the public forum however, if you need another copy of that correspondence we can make sure we get that to you.

Mr. Salazar: It's public record that our previous Executive Director was, right? It's not a breach of confidentiality to mention his name here? I don't think, but I'm just saying that. Ok.

Ms. Early: So, we have a motion, we have a second, any further discussion?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: This would be an example of something I don't recall us exchanging correspondence on.

Ms. Early: Ok. I will make sure that Ms. Garcia gets a copy of that for you.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Ok.

Ms. Early: Next agenda item 2 (c).

Mr. Salazar: You needed a vote?

Ms. Early: I'm sorry. All in favor signify with a voting sign of aye. Aye.

Mr. Barabani: Aye.

Mr. Salazar: I will abstain from voting, I don't really know all of the facts on this one.

Ms. Early: Ok. Motion carries.

Ms. Early: Rejecting the expenditure of funds from the commission.

Mr. Barabani: C.

Ms. Early: I'm sorry. 2 (c): Entering into an agreement with the former Executive Director to state that he was recommending a particular person to replace him and then using that agreement to place that person without the appointment by the commission, and using that "recommendation" as justification to make the appointment without the involvement of the commission. I so move.

Mr. Barabani: I will second motion 2 (c) under section D.

Ms. Early: Any discussion on item 2 (c).

Mr. Salazar: Did we ever appoint that recommended person?

Ms. Early: No.

Mr. Salazar: Ok so, we need legal counsel to tell us that we did not do that? I think it is a waste of money, for the record.

Ms. Early: We need legal counsel to tell us whether or not it was ethical to enter into that kind of agreement with a former Executive Director and whether or not it was legal to do so.

Mr. Salazar: Oh, ok so we are not questioning the appointment or the recommendation? We are questioning the document, whether or not the district could enter into the agreement?

Ms. Early: And then exercise the agreement.

Mr. Salazar: We never exercised the agreement, right?

Ms. Early: The district did, we didn't. It was, it was.

Mr. Salazar: We don't have that person appointed do we?

Ms. Early: We never appointed that person.

Mr. Salazar: Ok, so they did not exercise the agreement?

Ms. Early: They did come into the commission office and took on the responsibilities as the director without us having any knowledge of it.

Mr. Salazar: But, they are not doing the Executive Director job now are they?

Ms. Early: They are not.

Mr. Salazar: Ok. Thank you, I just wanted to make sure.

Ms. Early: Any more discussion on the motion? All in favor of the motion that is before us signify with a motion sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Nay. Let's not waste tax payer's money.

Ms. Early: Motion carries.

Ms. Early: Next item 2 (d): Rejecting the expenditure of funds from the commission without justification and using pretext, unilateral self-appointed authority to control the budget, making erroneous claims of waste of public funds, setting standards and requirements not required of other district budget expenditures, and otherwise interfering with the budgeting authority of the commission.

Mr. Barabani: I make the motion on letter D; 2 (d).

Ms. Early: I second. Any discussion on this item? All in favor of the motion signify with a voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: I will abstain.

Ms. Early: Motion carries.

Ms. Early: Next item 2 (e): Making appointments that violate the time limits for provisional appointments and by creating new higher classifications and appointing classified staff to them without first having the commission classify the positions and

without benefit if a competitive job related examination that was open to all qualified applicants. I so move.

Mr. Barabani: I will second.

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

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Nay.

Ms. Early: Motion carries.

Ms. Early: Action Item 2 (f): Usurping the appointing authority of the commission to appoint its own staff, especially of that of the personnel director by unnecessarily delaying the processing for hire, applying hiring processes and standards specifically to that appointee that are different than those contained in the written procedures of the district, rejecting the appointee in by violating his rights under the commission rules, refusing to allow the commission to inspect the records that served as a basis for that rejection, and refusing to consult with the commission on the rationale for that rejection.

Ms. Early: I so move.

Mr. Barabani: I second 2 (f) under D.

Ms. Early: We have a motion and a second. Any discussion?

Mr. Salazar: I don't know if I'm even allowed to ask this question, but who put this on the agenda? Can I ask that?

Ms. Early: You can ask that. It's been on several agendas.

Mr. Salazar: No, but my question is, who put it on the agenda? Is that the Chair or Mr. Barabani, because I know I didn't?

Ms. Early: This is put on the agenda, I've met with Dr. Delgado twice, I also with Ms. Ortega and I've been told that there were reasons that our appointee could not be processed but those reasons could not be shared with us. So we don't know. And if we knew, that would help us move forward, we could understand and we could decide that; we could move forward but, right now not knowing, it puts us in a pickle because we have a person sitting out here that we've appointed, but he's not being processed, but we're told that we can't know why because of pending litigations.

Mr. Salazar: So, who put it on the agenda?



Ms. Early: So, I have it on the agenda.

Mr. Salazar: Ok. Thank you.

Ms. Early: I have it on the agenda and the reason that it is on the agenda is we would like legal counsel for us to now look into this, and that it's an item on tonight's agenda.

Mr. Salazar: Ok. I didn't even know I could ask that question so, I'd thought I'd ask if I could ask.

Ms. Early: Ok.

Mr. Salazar: Thank you for sharing.

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

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: I will abstain from voting for that, thank you.

Ms. Early: Ok. Motion carries.

Ms. Early: Item 2 (g): Usurping the authority of the commission in recruiting, conducting selection processes and establishing eligibility lists for limited term appointees, hiring them into broad job families of the district's creation rather than hiring them into classifications established by the commission, and using non-job related selection criteria of their own making. I so move.

Mr. Barabani: Second.

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

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Abstain.

Ms. Early: Motion carries.

Ms. Early: Item 2 (h): The district and or any counsel for the district usurping the authority of the commission to employ its own counsel under Section 45313 by hiring other counsels with the sole purpose and intent of them representing the commission to

avoid the primary counsel for the governing board from declaring a conflict of interest and by treating counsel employed by the commission different than counsel employed by the district by failing to timely process agreements for legal services, refusing to pay invoices for services rendered within reasonable time after submission of the invoices for payment, and whether efforts to control the services of counsel employed by the commission constitutes interference with the legal representation of the commission. I so move.

Mr. Barabani: Second.

Ms. Early: Any discussion?

Mr. Salazar: Yes. I can't really go with all of that. That is a mouthful, there is a bunch of different (inaudible) parts there, but I think in light of Mr. Neufeld's perspective tonight, he cleared up a lot of, for me at least, a lot of what's contained in this paragraph here so, again for the record, I don't know that we should be spending district money, PC money on purposes of having an opinion; in this matter, I think this is something we should as competent commissioners be able to keep an eye on that one. Thanks for letting me speak.

Ms. Early: Basically, what was stated earlier was that invoices had been requested, received, but we don't have a result of the review of those invoices so, we haven't gotten any results; this is our request for results. This is just basically reiterating what we talked about earlier on the agenda.

Mr. Barabani: In that regards (inaudible) with the discussion (inaudible).

Ms. Early: All in favor of item 2 (h) signify with a voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Nay.

Ms. Early: Motion carries.

Ms. Early: (Reading Item E) Move that all counsel that render services for and on behalf of the commission pursuant to Section 45313 submit them to the commission Chair or review and approval and that no invoices be paid until the commission chair has accepted the invoices as being a reasonable expenditure of funds on behalf of the commission. I so move.

Mr. Barabani: I second.

Ms. Early: Any discussion?

Mr. Salazar: That doesn't (inaudible); does the commission Chair have the authority to do that or should that be a commission function?

Ms. Early: That is a commission function, it is usually the director that signs off on the invoices as related to the commission and right now we don't have a director sitting in that so, every time someone renders those services, Nerci brings me something to sign off on. Right now, I'm not sure if the counsel that has been provided us is working exclusively for the commission or for the commission and the district; we just need to know what they are doing so that we can make sure that expenditures associated with the commission are actually reasonable and actually for the commission.

Mr. Salazar: Let me tell you what my concern is here Madame Chair, actually my concern is for you and your exposure to liability in this issue. I have a genuine concern there that you may be opening yourself up as the sole authority and final say on that don't get me wrong, not that I want to necessarily share liability, but I guess I am concerned there. Again for the record, I just want to express that.

Ms. Early: And I appreciate your concern. Realize that I am not the sole authority or final say, ok? There is a whole other process that place after they leave the commission office.

Mr. Salazar: Ok.

Ms. Early: That's why.

Mr. Salazar: Ok. So that goes to that over there?

Ms. Early: Correct. Correct.

Mr. Barabani: The discussion on that; the Chair has accepted (inaudible); speaking of receiving invoices, I do have a question, I looked over the agreement that (inaudible) was signed and I was wondering, board never took any action to approve your agreement. Can you legally serve and send us the invoices and all that?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Again, I've indicated that the board approved the agreement on March the 2<sup>nd</sup>. I have documentation from the district supporting that.

Mr. Barabani: The other concern is the agreement that I have, with copies provided by me, it terminates on June 30, 2010.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes, my understanding from speaking with my partner Mr. Marca today is that it has been extended through June 30<sup>th</sup> 2011.

Mr. Barabani: When?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: June 30<sup>th</sup> 2011.

Mr. Barabani: I appreciate that. I'm not trying to give you a hard time.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I don't have any documentation on that, he told that to me as I was walking out of the office.

Mr. Barabani: You've got more information that we've got. I got this agreement on paper and you are here today and I'm trying to tell you, it ended, and nobody is telling us anything; I'm not trying to give you a hard time here, I'm just trying to get the facts. So, its your understanding that we are extended until 2011?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Yes.

Mr. Barabani: Ok, great. Since its been extended for the whole year, can you say, give us assurance, that when you are representing us, the Commission, and you don't declare conflict, you will place the commission's interest in the subject matter; everything, we need that; as our primary interest, even if they start interfering with the governing board?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: My client is the governing board of the district; you are a sub part of that district.

Mr. Barabani: So, if there is a conflict you won't?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: If there is a conflict I will declare the necessary (inaudible).

Mr. Barabani: But, if you don't declare it, there is still going to; the governing board going to try to (inaudible)?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Its part of the whole. Is the number on the bottom of your letterhead the best number to get a hold of you because I understand you have a full-time job?

Mr. Barabani: All of us do.

Ms. Early: All of us do.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: All of you do, but again, what I would like to do is sit down with you and get some facts to help me in investigating these matters for you because obviously, because this is public and there are some very general allegations here; I need some who, what, when, where, as best as you can. I understand that it is my job to go out there and look into and determine (inaudible), but we need to setup a meeting to talk.

Ms. Early: I will have Ms. Garcia send you, I think its one thing you are missing, and it covers (b) and (c).

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Correct. I don't recall those; those are the only two that didn't. All of the others rang a little bit of a bell but, (b) and (c), I'm not as familiar.

Ms. Early: I'll make sure that she gets that correspondence to you. She is not here tonight, but I will talk with her tomorrow.

(Pause to switch tape)

Bradley Neufeld, of Gresham Savage Tilden & Nolan: (inaudible) that would just further delay the process in terms of me getting started. My preference would be to at least get an introductory with you so I can get a better understanding of the facts and then, we turn (inaudible) the focus of Closed Session is to meet with the Personnel Commission so.

Ms. Early: We would have to put it on the agenda; make sure that it is agendized properly.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Right, but again, most of our discussions, I'm going to anticipate are going to be in Closed Session in the future. Again, it has to be us, by ourselves, to protect the attorney/client privilege. If I can get a handle from you about some of the specifics, then I can advise you and say ok, these are the appropriate Closed Session exceptions and we can go in and discuss with the full commission what these issues are and how we are going to get them resolved.

Ms. Early: (inaudible) it is going to very important that the attorney/client privilege is not divulged to other district officials because of current litigations.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Again, let's discuss that one on one. I understand the concern (inaudible).

Ms. Early: (inaudible) we don't have any secrets; everyone is aware; everyone in the room is aware of what's going on.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Please accept our recommendation on that and if you choose to divulge in a subsequent public meeting (inaudible) steps in the future.

Ms. Early: Any comments on that?

Mr. Salazar: I recommend that we follow counsels (inaudible). I was opening it up later, if that's what you wish.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Right, exactly that is my point; you can't retract it once it's been said.

Mr. Salazar: Right.

Mr. Barabani: You want to put on the agenda to meet with him (inaudible)? I do agree with Mike there, that is why he is here; we should follow (inaudible).

Mr. Salazar: Are we, did we finish E or are we still on E? I just kind of want to make sure that I know where I'm at. We are not to Commissioner's Remarks?

Ms. Early: No.

Mr. Barabani: No, we are still discussing E and that's part of E.

Mr. Salazar: And that's part of E? Ok.

Ms. Early: Your discussion (inaudible) vote.

Mr. Salazar: So, its part of that then could allowed to; I don't even know if this works, but am I allowed to ask that we agendize Mr. Neufeld for our next meeting in Closed Session provided he's able to make that meeting on July 20<sup>th</sup>? I don't know what his calendar looks like, but can I ask to do that? I would like to do that?

Patrick Maher: The next meeting, I think, is the 26<sup>th</sup> of July.

Ms. Early: Sorry, I don't have a calendar. Is that that Wednesday?

Patrick Maher: That's that first Wednesday, that's the first Wednesday of the month.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Actually, the fourth Wednesday of the month of July is.

Mr. Barabani: 21<sup>st</sup>. Oh, the fourth.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Because earlier someone spoke and said that it was on July 20<sup>th</sup>.

Patrick Maher: Right. That was the date that was given for them to turn in applications; the meeting is on Wednesday, July 26<sup>th</sup> or something.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: 28<sup>th</sup>.

Mr. Barabani: 28<sup>th</sup>. Wednesday's are set (inaudible). The 28<sup>th</sup> is the regular, the last week of (inaudible).

Mr. Salazar: So it's the 28<sup>th</sup>, is that correct?

Ms. Early: I don't have a calendar, I am taking you at your word, July 28<sup>th</sup> is our next regularly schedule meeting.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: It is the fourth Wednesday.

Ms. Early: Ok. And we will have; that was a Closed Session item?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Well again, based on my discussion, we can fit it in with one of the exceptions of the Brown Act (inaudible).

Ms. Early: Yes?

Lorena: The meeting is actually going to be held in the (inaudible).

Bradley Neufeld, of Gresham Savage Tilden & Nolan: I can try to work with you; I will get back to you.

Ken Holt, CSEA President: Well, I just had a question on the old commission rules, is it the 4<sup>th</sup> Wednesday of the month or the 3<sup>rd</sup> Wednesday of the month?

Bradley Neufeld, of Gresham Savage Tilden & Nolan: In correspondence from Ms. Early that I received on July the 2<sup>nd</sup>, it is the 4<sup>th</sup> Wednesday.

Ken Holt, CSEA President: So the meeting's going to be?

Mr. Barabani: Whatever works best for everybody, if that's fine with you guys.

Mr. Salazar: 5:30 on the 28<sup>th</sup>?

Ms. Early: Ok 5:30 on the 28<sup>th</sup>. We have it down. We also have a motion on the table.

Mr. Barabani: Item E?

Ms. Early: Item E.

Mr. Barabani: I second that motion.

Ms. Early: We have a motion and a second. We've had discussion and are ready for the vote. All in favor of the motion signify with the voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: I will abstain.

Ms. Early: One abstention, motion carries. It is my hope that we can reconvene on July 28<sup>th</sup>; when we come back together on that 28<sup>th</sup> that you will be able to provide us with information (inaudible).

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Right, again, you will have your assistant send me a number where I can get a hold of you so that I can get some details on these issues and get started on them.

Ms. Early: Any other comments?

#### LCOMMISSIONER'S REMARKS

Ms. Early: Moving on with the agenda Commissioner's Remarks.

Mr. Salazar: I don't even know how to really address this claim; we had this complaint from Ms. Byrd and maybe we already did address this; is that something we have agendized for the next regular meeting? Because I recall that we were supposed to agendize that and revisit it; we want to make sure we get the right candidate for the director. So, that wasn't scheduled to be agendized for today was it?

Ms. Early: No, the only thing on today's agenda was the items that did not get addressed on our last meeting. That was the purpose (inaudible).

Mr. Salazar: May I request that we agendize that for the next meeting on the 28<sup>th</sup>?

Mr. Barabani: (inaudible).

Mr. Salazar: I have just one other question. We have Closed Session and every Closed Session we have counsel present, no disrespect, but we have counsel present; is that something and again we are trying to contain curtail our costs to a certain extent; is that something that is necessary for every Closed Session? Or is that something that we should, in light of everyone's time and the current economic situation, that we should maybe not have; I guess my question is do we need counsel for every Closed Session? Because I don't know the answer to that and I am asking.

Mr. Barabani: Personally, I don't know until they talk to us. Its like a catch 22, but we have to be updated on our case and until they update us, even if there is no update; I don't know. I don't talk with the counsel until we are at the meeting or it's been agendized. How are we going to know if they don't come and tell us? I get your point about saving money, I'm with you there but, we need to know too.

Mr. Salazar: I am just kind of curious.

Mr. Barabani: I am too.



Mr. Salazar: I would think that at major miles stones and when something is going on that they would want to come out and let us know.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Madame Chair, if I can respond to that. Brown Act requires that counsel be present when you are going to discuss anticipated litigation or current litigation. That can be done either in person or it can be on the phone, counsel can call in to you on the phone. If costs are a concern, that is one way to reduce the cost. Sometimes if you don't have good speakerphone capability it can be difficult to get a dialogue, but that is not one that I have utilized in the past with some of my clients, telephoning in. As to your broader question, the Brown Act does not require that legal counsel be present in all Closed Sessions, but certainly ones dealing with anticipated or existing litigation, yes, they do need to. So for example, I see on your Closed Session, Public Employee Appointment, that is not one, by law, legal counsel must be present. It is the commission's discretion whether to have counsel present in that type of Closed Session.

Mr. Salazar: Ok.

Ms. Early: Thank you.

Ms. Early: Any other questions or comments? Thank you for coming.

Bradley Neufeld, of Gresham Savage Tilden & Nolan: Nice to meet you all, I look forward to working with you in the future.

#### VI. CLOSED SESSION.

Ms. Early: The commission will now adjourn into Closed Session. Conference with legal counsel, Kristine E. Kwong, Musick, Peeler, and Garrett LLP existing litigation (section 54956.9a): San Bernardino City Unified School District; Dr. Arturo Delgado V Personnel Commission of the San Bernardino City Unified School District Case no: CIVDS 916709. Anticipated litigation (Section 54956.9b): 1 case: anticipated litigation regarding District Appointment of Executive Director. Pursuant to Government Code Section 54956 to discuss: Public Employee appointment titled Personnel Commission Director. We do not anticipate any report coming out of Closed Session so we will not adjourn into Closed Session. Thank you for coming.

#### VIII. ADJOURNMENT

Meeting was adjourned at 6:34 p.m.