

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

July 28, 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. Gino Barabani, Vice Chairperson; and Mr. Michael Salazar, Member.

I. CALL TO ORDER

Ms. Early called the meeting to order at 5:38 p.m. Ms. Early led the Pledge of Allegiance.

II. APPROVAL OF AGENDA

Ms. Early: Our next agenda item is approval of tonight's agenda.

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

Mr. Salazar: Is this something for discussion?

Ms. Early: (Inaudible).

Mr. Salazar: I just want to make a; I had requested an item be added to this evening's agenda and the item was not added to the agenda. I did so with the request of staff who had asked us to, the Commission, meet in Closed Session for purposes of discussion on Personnel Commission staff concerns. I believe, in accordance with the Brown Act, they have a right to meet with us in Closed Session at their request and the request was made in a timely fashion. I just wanted to, for the record, say that if possible might add that to tonight's agenda.

Ms. Early: Since that was a request for Closed Session item I'm going to ask you to come under Commissioner's comments; and just for the record the agenda for this meeting had to be posted on Friday, I received the request on Friday; After the agenda had been finished and submitted for posting. We can come back to this under Commissioner's [comments] if you would like to discuss it. Right now we have a motion on the table to approve tonight's agenda as written, I second that motion. All in favor signify with a voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Nay.

III. APPROVAL OF MINUTES

Ms. Early: Motion carries. Next agenda item Approval of Minutes. We have four sets of minutes: July 6, July 30, July 23, and May 26. If you'd like, they are not presented in our packet in the order in which they are listed on the agenda, if you want to start with the first set that's in our packet which is June the 30th.

Mr. Barabani: Madam Chair I found; I've been going through the minutes, didn't go through all four sets, but the two that I've gone through I found some mistakes here that need correction. Can I take these mistakes to the staff in written form? instead of going through them one by one. To save us some time today because I have a problem with each one.

Ms. Early: So are you suggesting we re-agendize all four sets of meeting minutes for our next meeting?

Mr. Barabani: Well I see that's going to be an issue because you probably, or Mike, might also have some issues too and I don't know how we would correlate this. If we went through these step by step right now we'd be spending a lot of time. I think it'd be easier to just give them to the staff have them corrected and bring them back, I do have the corrections.

Ms. Early: Any comments Commissioner Salazar?

Mr. Salazar: No, I read the minutes and I agree with Commissioner Barabani there were a lot of inconsistencies in the way that they were written, so I would go along with that.

Ms. Early: Ok.

Mr. Barabani: Make a motion?

Ms. Early: Please do.

Mr. Barabani: I'd like to make a motion that we re-agendize the minutes and have the staff make corrections.

Ms. Early: I second. All in favor of re-agendizing the minutes from July the 6, June 30, June 23, and May 26, signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

IV. PUBLIC COMMENTS

Ms. Early: Aye. Motion carries. Next agenda item, Public Comments.

Gladys Byrd, Acting Director for Human Resources Classified: Good Afternoon, my name is Gladys Byrd and I just want to thank the Commission for the paperwork I received as I requested, as stated in the Public Records Act. But I do also want to state that I still have not received test results and I have not received the paperwork (inaudible). Thank you.

Ms. Early: Excuse me, before you leave Ms. Byrd, did you meet with CODESP?

Gladys Byrd, Acting Director for Human Resources Classified: Yes. I had an appointment with Marianne and the only thing (inaudible).

Ms. Early: Ok, thank you.

Charlie LeChance, Labor Representative for CSEA: My name is Charlie LeChance, I'm a Labor Rep. for CSEA. I'd like to thank all three of you I think you don't, any of you, get enough times get a thank you for the work that you're doing. We know that you are volunteers, you have other lives and families, thank you on behalf of all the Classified to all three of you for doing the work that you're doing we appreciate it. I also wanted to thank Mike, thank you for the email that you sent, I was in the loop; asking for something to be put into Closed Session that the employees asked and I did look up the Brown Act, and I'll give this copy to you. Closed meetings may be held for Personnel for only these following things, and well actually it's better to say closed sessions are not allowed for discussing general employment, independent contractors not functioning, employee salaries, and performance of any elected official or member of the Board, or the local agencies, available funds, finding priorities for the budget. I did ask the girls if it was disciplinary, it's not, I didn't know what it was. I think I asked you if you knew what it was. Is not disciplinary because that would mean we need a labor rep, if they ask for it, to be present. But if it's a matter of functioning or process or duties in their work place, it is not appropriate for Closed Session. I asked them if it was an issue that they want me to carry up here in Public Comments because it could possibly be discussed in Public Comments and they said that there wasn't. In terms of that I wasn't real clear on the Brown Act, you don't often are challenged by that, if you'd like, I only have only one copy but I can give it to you guys and you could make three copies of it, would you like that?

Speaker Unknown: Sure.

Charlie LeChance, Labor Representative for CSEA: I think that it was appropriate for it not to be on the agenda, I don't want to see you violate the Brown Act, if there's an issue with the staff then we'll maybe we can collectively work on that see what they need, we do need to take care of them, they are kind of in a tough spot right now with everything that's going on, they are between a rock and hard place. I'll give this to you; it's on the website, I just print it off the website. And so that the staff will also know why it wasn't put on the agenda, that's because it is in violation of the Brown Act to do that. Ok, do you have any questions, anyone?

Ms. Early: I don't.

Charlie LeChance, Labor Representative for CSEA: Going once going twice, I'm out of here.

Ms. Early: Thank you.

Kathy Kendrick, Retired Classified Employee: Hello my name is Kathy Kendrick and I just recently retired as of June 30. I was told that as soon as the Board approved it I could sub, they failed to say that it was the Personnel Commission Director that had to approve it, they said the Board. I'm in a similar situation as, if you refer to the minutes of June 30, Mr. Robert Lozano brought up the fact that he pays over 600 hundred dollars a month in medical and he really was promised that he could sub too. I pay over 700 hundred, my husband has a heart condition, he has a pacemaker with a defibrillators, diabetes, needs insulin and I didn't know if I needed to be with him. I need to have this extra (inaudible) to sub. I realize you don't have a Personnel Director. I want to know if there is any way around this or if there is not. Is there any way that we can help your committees speed up; Personnel Director, if there is anything to get to the District to voice our concerns there, how can we offer to do that?

Mr. Barabani: It's at the point where it's costing people personally, it's becoming meats and potatoes issue.

Kathy Kendrick, Retired Classified Employee: I know it's very frustrating for this issue.

Mr. Barabani: We tried to appoint an interim, the District our governing board has decided not to hire. We've gone through the process of trying to hire someone full-time, there are some issues with that right now at the moment, we are also on law-suit on our Rules and Regulations they don't allow us. Maybe if you go talk to the School Board; I mean management has chosen from (inaudible) to do this, I don't know where they got the mandate. We are the Personnel Commission, we are here to fulfill the role; legislative designed this and doesn't seem, we are getting stopped at all times as you can see they're coming at us, looks like we are on our second law firm here now. As member on this Commission we are answering letters almost daily, we spend more time answering to attorneys than we do try to take care of Personnel, because the District has chosen to, I guess they want their view in it, I'm not real sure. (inaudible) Commissions in California they represent 60 percent of the classified employees and this one seems to be under constant scrutiny, constant sub direction, you know? Right now, it's just only my opinion, I think the law is been violated in not allowing us to fulfill our mandate, maybe the Board should be asked that question.

Kathy Kendrick, Retired Classified Employee: What steps are you taking as far as

Mr. Barabani: We are in the process of trying to hire a full-time director right now, part of that is on the agenda today.

Kathy Kendrick, Retired Classified Employee: So if you approve somebody the District also has to approve it, is that it?

Mr. Barabani: It appears they see it that way, yes. They have stated that they won't hire the person we have chosen, they said. As far as I know, personally, we were given no reason.

Kathy Kendrick, Retired Classified Employee: (inaudible) frustration too.

Mr. Barabani: You know, I discussed the problem there with Charlie and she's talking to me about it and CSEA. Like I said what we're dealing with is issues probably political and your dealing with issues about putting some bread on the table. Maybe they need to know that.

Kathy Kendrick, Retired Employee: All right, thank you.

Mr. Barabani: But we are going to try out best and keep working on that.

Robert P. Lozano, Retired Employee: Good evening Commissioners, my name is Robert P. Lozano. I came here for the same purpose that this lady did. I also brought you copies of my medical.

Mr. Barabani: Can you give them to the staff over there?

Robert P. Lozano, Retired Employee: Like I stated before I'm having to pay over 400 dollars a month for my wife's medical along with the; it's going to cost me my additional 110 for me to go with the Medicare plan B, that's over 500 a month that is coming out of our pockets. My wife takes six different types of medications, she's diabetic she has to have special shoes, she still works because we are having to pay these medical benefits for her, she's 60 years old, she can't get Medicare like I can and so I'm having to pay additional Health Net payment. Besides that the co-payments for the Doctors, and the prescriptions is not included in all that, it is causing a hardship. When I was told; I was applying for retirement, that's one of the first things I asked was could I sub, because I needed to supply her with her medical benefits. I was re-assured that I could and would be able to, that's the only reason why I retired otherwise I would still be a classified employee of the District instead of a retiree. I've been married to this little lady for 38 years and I am obligated and it's in my heart to try and provide her with the best I can for her, that was a promise I made to her 39 years ago and I'm trying to fulfill that promise. If I have to go in front of the school board I'd be more that glad to do that also. Thank you very much.

Mr. Barabani: Robert, can I ask you a question?

Robert P. Lozano, Retired Employee: Yes.

Mr. Barabani: Who was it that promised you that?

Robert P. Lozano, Retired Employee: When I filled out for the SERP the early retirement, they stated it in the meeting here that they had. I was re-assured when I filled out the paper work, the person says 'you cannot substitute if you are 55 or under for at least 6 months' and he looked at my birthday he says 'you can sub right away because you're 69 you could sub right away, there shouldn't be no problem'.

Mr. Barabani: Was that a District person?

Robert P. Lozano, Retired Employee: It was someone that the District had help do the paperwork, they were from the SERP.

Mr. Barabani: You were told that even though they knew they had restricted us with a law-suit in our Rules and Regulations.

Robert P. Lozano, Retired Employee: That's what they told me. Like I said otherwise I wouldn't have retired I would've still kept right on working. Thank you very much.

Mr. Salazar: Robert hold on, Mr. Lozano.

Robert P. Lozano, Retired Employee: Yes sir.

Mr. Salazar: Make a comment, what I want you to know is that I hear what you're saying and I heard you the last time. I would like to think that the main priority of this Commission is to get a permanent Personnel Commission Director in place so that we can the ball rolling to get folks like you out there working and folks like you out there working and folks like you out there working all the other folks, for each of you that are here there are probably a hundred people out there that we have the opportunity to employ. What we are talking about here is the Merit System fair and equitability. My concern right now is that we are having a heck of tug of war for whatever reason and that tug of war is affecting folks like you. It's time for, and I'll say this publicly, it's time for us to put whatever those differences are aside, whatever politics there are aside and handle the business for the purpose of folks like you. We've got this fat Ed Code, we have all of these Rules and there is another set I think, like them because these apply they don't apply. Sometimes you have to, in my humble opinion, sometimes you have to step outside of the box take a calculated risk and that risk is for the benefit of folks like you so that they can get to work and provide for their families. I understand your commitment to your family and the promise that you made to your wife and I feel that, and I hear when you say that, I know that you are a man of integrity. Our role is to be a Commission of integrity get somebody here permanent. I have a stack of paperwork that's about this thick about all of these things and what I want to say to you is that I don't want to fail you and I hear what you are saying and I think that we need to work really hard to get permanent Personnel Commission Director in place. I wasn't here when this appointment was made for Mr. Maher. The facts are the Governing Board has not approved him, he's not a Personnel Commissioner; we need to get some permanency in place for the benefit

of folks like you. I probably taken care of my Commissioner's Remarks on that, but I hope that we can all get together, all of us, and work for the benefit of folks like you sir.

Robert P. Lozano, Retired Employee: Thank you, I appreciate it very much.

Charlie LeChance, Labor Representative for CSEA: I appreciate you remarks, Mike, and I believe you're a man of integrity and that you mean what you say. If I am right and you are a man of integrity and you mean what you say, you will carry that exact message back to the District as a representative. Whether you were here or not here when they selected a Director there were three of you, there were a District, a CSEA and a neutral that made that selection. Our members that like this woman and that man back there are dying financially and their families are doing without; because as you said someone can't put the politics aside, I don't know who that is, I think it's may be a little bit on both sides. One thing for sure this Commission met their responsibility when they selected someone, whether I agree with that person, whether the District agrees with that person, the Commissioners selected that. By the way, I believe it was unanimous, or was it not? Was it unanimous, do you recall? It was two to one. But a majority rules, just like when you vote for the President of the United States, not all of us voted for Bush but we were stuck with him, not all of us voted for Obama but some of us are stuck with him. In saying that, the one simple thing to acknowledge and accept that this Commission selected someone the District is obligated, I believe, to hire him and if they don't like him work on getting somebody else, but we can't; if we're going to put our political differences aside it can't be that I get what I want, you don't get what you want, it has to be a majority. I believe you guys have done that, I don't always agree with what you do and you know that, because I've come and told you that several times I don't agree. For these, you're right, for every one person that writes a letter or speaks there's a hundred that won't come forward. You just had 200 people speak today with those two individuals. I'm speaking for about 8 people who have called me in the last week and said 'I'm loosing everything I have because I can't sub' and they are not retirees, they're people who were reduced for months and hours, let's say 12 months 8 hours to 9 months 6 hours; now they have no medical benefits, they have to pay that 500 dollars for medical plus they are not getting paid for three months, right? If they could sub they could at least make up that difference to help pay for their medical that they had, one woman for 28 years, and now she doesn't have it and she can't sub. To me it is unconscionable, that this District and this Board isn't doing something about it; and would say to you, I'm sorry I didn't hear your name you were so quiet.

Kathy Kendrick, Retired Employee: Kathy Kendrick.

Charlie LeChance, Labor Representative for CSEA: Kathy and Robert, you do need to go to the Board of Education building. You do need to go to the Board, just like Michael and Rhonda and Gino saw your face and they put a name with the face they need to see you and hear you because when they hear and see you, not only does it bring it to life, but you vote here you live here, now you don't vote these individuals in, but you do vote the Board members in and, I think, they need to hear and see your plight. If I need to beg them to hire someone, I'll beg them, I don't care; I don't have that kind of pride because

it hurts me that you're being hurt, so I would implore this body this Commission to carry that message back to the Board, carry that message however you can do it, I don't know how it's done technically or legally. Please carry your message, the one that you gave Michael, back to the District and back to the Board. We need to put those politics aside and we need to hire somebody because it is killing the classified employees and beyond that student's needs are not being met. You talk about contracting out, I want you to go to the San Bernardino Sun and get an article from about 2 months ago when one of those people that we're contracted out doing work raped a student on campus. You don't want to contract out work that our people can do and have gone through the right process to do, so I'll leave that. The other thing, and I'm going to charge you all three with this, because I've worked in other Districts that are Merit and we've done this but I didn't know the technicalities. There is a way for retirees to bypass, what is normally expected, to be subs and there is a way to do that, I would ask you to ask other Commissioners or another Commission how to do that, so at least our retirees who are now paying three four five six seven hundred dollars out of their pocket can sub until all the legal issues are resolved, so I charge you to do that; I don't know by letter by verbal one of you can go to the Board meeting and I'll be at the Board meeting, and I'll tell them that this is what I heard from the Commission, that they want the District to put their politics aside and do what's right; and I hope that you carry the message too. Any questions, thank you.

Patrick Maher: My name is Patrick Maher, I'm a candidate for the final position for the final appointment and I've been the provisional appointee since March the 24th. During that meeting at which Mr. Salazar was present when the Commission appointed me and re-appointed me, I believe, April the 7th when Mr. Salazar was in fact present at that meeting and both times he voted no, he was present when that decision was made he was heard he had a chance to speak his mind. The other issue is I also have, as a candidate as the other candidates, certain rights in a Merit system, certain rights to be treated fairly, certain rights to be treated objectively, certain rights not to be demeaned, not to be humiliated, not to be attacked, not to have my rights taken away from me and so on; which certain members of this District have tried to do so, take my rights as a citizen, take my rights as an employee. I too have lost lots and lots and lots of money because I've been here ready to go to work and the District won't appoint me. The other issue is that the District is playing a shell game on the employees; nothing prevents the District from hiring these people as substitute employees, they don't want to, they want to use us as a political football to use the Commission in the Merit System as a political football by saying we can't hire you because the Commission won't let us, but they're hiring all kinds of other people all other kinds of provisional; they have provisionals that work more than 90 working days a year, in a school year, and they work and they work and they work and they renew them every single year they have no problem doing that if they want to. The District alone is making the decision not to hire the retired employees which, Charlie LeChance said, can be done in a Merit System without the big hubaloo and put them to work because they want to stir the employees up against the Merit System against the Commission and they're using and victimizing the classified employees to do that, and that's the political football that's going on; is the fact that the District is unwilling to follow the law, the District jumped to this Commission, jump to this Commission for any procedures, procedures that could solve any problems that they have you can't do that

right now because that District has a court that says you cant do that. The District alone is in control of this whole process right now and the District alone is the ones that are preventing these employees and not hiring these employees to come back to work and nobody else. Thank you.

V. ACTION ITEMS

Ms. Early: We'll move on to agenda item V, Action Items, Action Item A: The appointee of the governing board and the appointee of the classified employees will publicly name the person that they intend to appoint for the joint appointee to the commission for a three year term commencing December 1, 2010. I am not a part of this discussion.

Mr. Barabani: Would you like to go first Mr. Salazar?

Mr. Salazar: No, go ahead please.

Mr. Barabani: As a representative of the classified employees, my choice will be Rhonda Early, lady that sits right left of me right now. I thought about writing a short paragraph and a speech, and I did so, and I thought that there is nothing more that I can say about her than she's a person of Merit, she believes in this system, she's fought for this system, and that's what the whole Commission is about, and I think I can leave it at that.

Mr. Salazar: I think I've tried to narrow this down and it's really; I'm sort of in a difficult spot, and at this time I don't have a recommendation for an appointment.

Mr. Barabani: I guess we'll move on to the next agenda item, I'll turn this back to you Madam Chair.

Ms. Early: Is there a representative from the firm of Gresham Savage Noland and Tilden present? Seeing none, I would like to move to re-agendize Action Item V (B) to our next scheduled Commission meeting.

Mr. Barabani: I'll second that motion.

Ms. Early: Any discussion? We have a motion and a second before us, all in favor of the motion signify with the voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Aye.

Ms. Early: Motion carries. Next agenda item, item V (C); the Commission will discuss a request from the district concerning a reclassification request of a classified employee, and take action as it deems appropriate. Is there a District representative here tonight to address this item?

Charlie LeChance, Labor Representative for CSEA: Does the CSEA have an opportunity to speak on it, or no?

Ms. Early: Come forward if you want to render comments.

Charlie LeChance, Labor Representative for CSEA: I need to know more information who it is, what classification it is, where they're moving in from, what the possible reasons set, and so forth, there's no information at all.

Mr. Salazar: I'd like, I hear what you're saying Charlie, I'd like to move that we re-agendize this item as well.

Ms. Early: I second the motion. Open for discussion.

Mr. Barabani: My only discussion on this is this is one of those items that we sent many letters, we spoken to the District, we've tried to communicate with the District, we've offered the best; we've offered (inaudible) an open solution of this, trying to get somebody to solve this problem. I don't see anyone from the District here and this is getting very very frustrating that no one is here to help this person even though we've open all the channels of communication that we can.

Mr. Salazar: I think, to just take back on that comment, what we have is just a late last minute letter from the District talking about this; whatever is worth I haven't had time to digest that, that's why suggest that we re-agendize the item.

Mr. Barabani: I will second that motion.

Ms. Early: We have a motion before us with a second, to re-agendize Action Item V (C) to our next scheduled Commission meeting. All in favor of the motion signify with the voting sign of aye.

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries. Next agenda item, Action Item V (D): move that the Commission direct the firm of Gresham Savage Nolan and Tilden to immediately seize providing any communication by or on behalf of the Commission to any member of the District or any firm or counsel that represents the District and to take appropriate legal action when this directive is not complied with concerning, one, any communication whether privileged or not between the Commission and the firm when the Commission has to declared the communication to be privileged communication and has so advised the firm of that determination, two, any communication whether privileged or not or any confidential communication concerning legal services for the Commission in any investigation or hearing conducted on behalf of the Commission or by the Commission

under Education Code sections 45311 or 45312, when the Commission has declared the communication to be privileged communication and has so advised the firm of that determination.

Mr. Barabani: I make a motion that we approve item V subsection D.

Ms. Early: I second. Any discussion?

Mr. Salazar: I don't really like that wording on that, I mean, it sounds that what we're trying to do is shut down communication with the District, when it seems like what we should be trying to do is open communication with the District to be able to get some of these problems resolved. My concern here is that if we try to alienate or isolate them that they become close and then we just have this ongoing battle with us not communicating with them, their not communicating with us, and then we're back to tug of war again. I have a real concern with the way that this is laid out; I think we should be working more towards, not only communicating with the District but with everybody involved, all the functions that we have that makes this Commission go. I don't know if I can support that there.

Mr. Barabani: My concern with this was that you've read the same letters that I've read, we received from the same attorney. These letters seem to be informing us, the Personnel Commission, that the firm's confidentiality transpired between two individuals the Personnel Commission and the District managers, which individuals you think is the primary client?

Mr. Salazar: Mr. Neufeld was here at our last meeting, he clearly stated that the primary client is the governing board, is the school District.

Mr. Barabani: Then he can offer us no confidentiality in our matters then, right?

Mr. Salazar: I don't know about that, Mr. Barabani, I have confidence in counsel, I think that they have integrity and will do the right thing. I don't know what your level of confidence is with that, but I have that kind of confidence. It was clearly stated that they work for the governing board.

Mr. Barabani: When they act in our behalf are they acting as a business advisor or as an attorney?

Mr. Salazar: I don't know you'll have to ask them.

Mr. Barabani: Well, I'd like to get that answer and it's my concern that we don't have confidentiality between attorney and a client, then we have no privilege of confidentiality. I think we don't have attorney client privilege going on here at all.

Mr. Salazar: I don't know that that's exactly right; these were attorneys they know what they're doing.

Mr. Barabani: They said the reason, I read the letter, it said that we must disclose confidential information to receive Ms. Ortega's approval for payment of the legal services, and that concerns me; this implies an obligation on their part to disclose any information with no discretion; since the District has not paid many of the attorneys as of this date I can understand their concern for not getting payment, but I don't think this quo pro quo going back here the need for payment should overcome confidential attorney client communication.

Mr. Salazar: I think, since we're in this discussion, I would love to say that the Personnel Commission has cart launched over attorneys and can call attorneys at any time for discovery otherwise interpretation of Merit Systems, Education Code and what have you. I think the reality is, we've all looked at our budget and we don't have a budget that indicates that we have cart launched over legal services. I think we have to use very careful discretion when we are calling attorneys in for services and things in that nature. For us to sit here and think that we have cart launch for legal services, I think we need to re-examine that; that is simply not the case. Our budget is very very small and at the same time here we are seemingly every time we need to make some sort of decision we need to have legal interpretation of something and then that gets convoluted back into the legal system. It is a big big concern of mine how much money we are spending on legal fees, I'm talking as a Commissioner of the Personnel Commission, we have enormous legal bills, I don't see any end in sight quite frankly. I think that those attorneys when they come here and they stand up and they work for us, I think they work for us, I have the confidence that that's what they're doing; I don't know maybe I put a little bit too much trust and faith in their profession. I don't know what it is that we're trying to get out of this I personally would, no offense to the attorneys in here, but I personally would like to see fewer attorneys and more action.

Mr. Barabani: I don't think that too many people disagree with that last statement. My problem is that we're not discussing the cost of this, I too am concerned about the cost, but you got to remember that we didn't sue them they sued us. What I'm discussing here is confidentiality, you know the Personnel Commission, we deal all many matters, we deal recommend salary adjustments, we deal whether a person is going to get dismissed, we interpret Rules and Regulations and sometimes some of these rules come in direct conflict with the District. So, how can we have a lawyer that's not going to give us confidentiality when we have a direct conflict with District; they are determining what's direct conflict. I got attorneys, I'm sure you have yourself, and I have attorney client privilege; and I don't expect my attorney, he claims that they are our attorney, I don't expect them to give confidential information to the District because they cannot guarantee that anything that they give them past, present, or future will not become litigation. They could open the barred door and then work in turn and prove themselves and say I'm sorry we gave some confidential information away. All we're asking, and we asked them before, why does Ms. Ortega need to have these confidential letters to pay them?

Mr. Salazar: Let me ask you something, who's going to make the determination on what's confidential and what's not?

Mr. Barabani: That's us, they're our attorneys we decide whether we're going to release the information whether it's confidential, that's how it works with every other attorney I've ever dealt with.

Mr. Salazar: Who's going to decide whether or not it's a conflict?

Mr. Barabani: I guess I'm going to get some legal interpretation.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Good evening Commissioners, Kristine Kwong, the mike is not working. I think maybe it'll be helpful if I explain to you what the attorney client confidentiality is. The attorney client confidentiality is based on the fiduciary duty between the attorney and the client. If I can make an analogy, the relationship between the attorney and the client is similar to the relationship between a psychologist and a patient, or a doctor and a patient; in as much as a doctor cannot release your confidential medical information and medical records without your consent that is the degree that the attorney cannot release confidential information about its client without your consent. In as much as you would not want your doctor, your dentist, your priest, your therapist to tell the world what you have told them, that is the same degree as the attorney client privilege; those are called privileges. Under the law these are statutory privileges. When an attorney, or a doctor, or a priest, or a psychiatrist, or a dentist releases these confidential information and document, it is an ethical violation; attorneys are subject to the rules of ethics, when an attorney violates the confidentiality that it has with the client it is an ethical violation, it can subject an attorney to discipline, it can subject and attorney to suspension, it can be the basis of disbaring an attorney because they're violating the rules of ethics; just as if a medical doctor gave away your private medical information without your consent. This is called the attorney client privilege and the reason why they set it as a privilege is so that the client, which is the Commission, can be truthful and can be honest with its attorney. If the client has no confidence that what they're telling the attorney is going to remain private, if you are not confident that what you say to your attorney will remain private then you will not be truthful and frank with your attorney, if you have no confidence that what you say to your doctor will remain private, if you will not share with physician your conditions so that we could help you. It's the reason why an attorney, a physician, a priest, has what's called a fiduciary duty to keep that information confidential; that's called the attorney client privilege, this is what makes the system work. Right now I am representing the Commission in current litigation and I've given you advice, I've been giving you my strategy on that current litigation. If I were to disclose the advice that I gave you, and to disclose the strategy I gave you to my opposing party, which would be the District, I could get subject to discipline under the state bar for violating the attorney client communication. The issue is what is exactly confidential, the confidentiality is the very communication itself; and that communication can be in the form of a telephone call, an email, a voicemail, a letter, a code, any medium of communication between the attorney and the client is confidential. The only entity that can waive that confidentiality is the client. Only the client can say,

yes, I will waive confidentiality go ahead tell the opposing party what you just said to us; you are the client, only you can waive it, the attorney cannot waive it for you, the attorney does not hold the privilege, the client holds the privilege.

Mr. Salazar: I have a question then, if I may.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Ok, yes.

Mr. Salazar: So when we're looking at this item D and it's saying all these things; what I'm hearing you say and maybe I'm wrong, I'm sure you'll help me with this, that is redundant for us to ask for this because this should already be in place.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: It is an ethical obligation for the attorney to maintain confidentiality.

Mr. Salazar: Confidentiality.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: However, reinforcement is not such a bad idea.

Mr. Salazar: Ok.

Mr. Barabani: The reason we're asking for it because is not happening.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I'm just here to clarify; I was just getting the sense that there was a lack of understanding as to what it really means to have an attorney client privilege.

Mr. Salazar: I thank you for that, I appreciate that because I understand, at least I think I understand, confidentiality is confidentiality it is exactly what it implies.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: You're right.

Mr. Salazar: Your attorney client privilege is like a doctor patient.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Right.

Mr. Salazar: Confidentiality issue as well. It is, it just is, that's what it is.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: It is what it is.

Mr. Salazar: That is what it is. Like I was saying, to me, I'm looking at this and I'm going like this is redundant; if we have some instances where that confidentiality is breached, we need to get that out in the open.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Oh no, you don't want to open it.

Mr. Salazar: No I mean, among the Commissioners, maybe it's a Closed Session item whatever that is; those concerns needs to be addressed because that's a bigger issue to me, if we have a breach in confidentiality than saying, look we already know we have this client advisor confidentiality thing, now we need to go ahead and go and say, as you said, reinforce this privilege; a good attorney, I'm optimistic, I think we have good attorneys, I hope that Gresham Savage Nolan is a good ethical law firm, their reputation seems to indicate that they are. I would have a concern and would like to know a little bit more about where this confidentiality breach is like. I understand that they are also the attorneys for the District as well.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Sure.

Mr. Salazar: I don't know how that works and maybe you can help clarify that.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: An attorney can have several clients; I have several clients and the clients with which I represent cannot conflict with each other. Every single client that I have I will not accept another client if that one client has a conflict with another one of my clients, I will deny representation because I have a very high ethical bar it's not higher than our current ethics; but all attorneys have an ethical bar to not represent parties or entities that have an inherent conflict because two parties that have a conflict with each other cannot be represented by one attorney.

Mr. Salazar: The Board is represented by Gresham Savage Nolan and Tilden, Nolan and Tilden, and when we seek legal advice they send them to us.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: As far as I can tell.

Mr. Salazar: Ok and then when they send them to us, at that point in time, Gresham Savage Nolan and Tilden needs to determine whether or not there is a conflict.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: That's correct.

Mr. Salazar: If a conflict exists then other counsel will be called in to address the conflict to avoid this issue of this confidentiality breach.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: It relates; it's more than just a confidentiality breach, it relates to the professional rules of conduct under that state bar that one attorney cannot simultaneously represent any parties that are in conflict with each other; the attorney doesn't have a conflict, the clients with which they represent have a conflict and they can't serve two masters at the same time because then they will be arguing against themselves.

Mr. Salazar: Let me ask you a question, this may sound kind of silly, I probably should know this.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: They're not; legal ethics is very complicated, it's a specialty in itself.

Mr. Salazar: When do they determine, how do they determine; when do they, a couple of examples of when a conflict would exist, does that make sense? How do they determine it's a conflict? To put it in layman's language, do they say it's a conflict when we turn around and fight against them?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: A dispute would actually be a good hint that there's a conflict. What you look at are the interest of the parties, what are the parties interested in; if the interest of each of the respective parties conflict with each other then that's called an adverse interest and that's where the conflict is. For example, I can't represent a property owner that is in a dispute with a buyer over the sale of a piece of property and then at the same time represent the buyer that's in dispute with the seller of the piece of property because they are disputing whether or not the square footage is accurate; that puts me in a conflict because they seller and the buyer are disputing the square footage or the accuracy of the piece of parcel. I can only represent one side because then I will arguing with myself and it will make it difficult is I would get confidential information from the seller, I would get confidential information from the buyer, and so I can use that against both parties.

Mr. Salazar: Right.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I can only pick one side, unless one party waives that confidentiality; and if the other party knew that I was also representing the buyer, then that seller wouldn't trust anything that they would say to me because I would breach that confidentiality to that person's disadvantage; and I have a fiduciary duty to my client, my highest duty of loyalty is to the client.

Mr. Salazar: Thank you for helping to educate me, I really do appreciate that. I understand that; this sounds like it's reinforcement to something that should already be, that is already in place.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: This issue is actually quite complex.

Mr. Salazar: Ok, thank you.

Mr. Barabani: May I?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Yes.

Mr. Barabani: We're talking about conflicts in the client, right?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Correct.

Mr. Barabani: Just because someone hasn't declared a conflict does not mean that we lose our right to confidentiality, does it?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: No, it doesn't.

Mr. Barabani: From listening to you, and I'm trying to learn here, when Gresham is dealing with Personnel Commission, even though they represent the Governing Board, we should have legal professional privilege, don't we expect that from them?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Yes.

Mr. Barabani: Because they are acting as our attorney.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Yes. Actually, the privilege belongs to you.

Mr. Barabani: That's right. Without that confidentiality, as a condition, am I making the wrong assumption that we have no such privilege then?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: No, you always had the privilege, they violated the privilege. If I release confidential information I've violated your privilege and that would subject me to discipline with the state bar.

Mr. Barabani: If they're investigating something for us, or we send them a letter, and we verbally stated it's confidential, if we write it right there on the top, I would assume that would be enough to say they shouldn't release it.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: First of all, the first issue is always going to be is there communication because the privilege applies through communications and your mode of communication was through correspondence; therefore, that is a privileged communication it is not subject to disclosure unless you agree to waive the privilege. You can send a message through smoke signals and that would be privileged.

Mr. Barabani: Yea, because what I've seen from the emails, Mr. Salazar seen the same thing as he's cc there at the bottom, to a manager in this District, and those letters, I consider them between us and our attorney, had there not been this privilege and things; we don't ever receive anything they send, I haven't received anything from this attorney that's from the District's side coming back to us, is only our letters that are being opened up to the managers, how about the letters that the managers discuss with the attorney. If what you're saying is correct, wouldn't we be receiving those letters?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Are you asking me?

Mr. Barabani: No, I'm asking Mike.

Mr. Salazar: I don't know.

Mr. Barabani: We're embracing this law firm is great, I don't know personally.

Mr. Salazar: Come on Gino, I didn't embrace anybody, I said that these guys have been in business for a long time and they seem to be upstanding good law firm.

Mr. Barabani: That sounds like embrace to me.

Mr. Salazar: All right, I would hope that we hired good law firms.

Mr. Barabani: I didn't hire them the District hired them.

Mr. Salazar: Yea I know, don't put words into my mouth please.

Ms. Early: Ok, Ms. Kwong would you like to share something else with us this evening?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: No, I was just here to clarify.

Mr. Salazar: I have a question for you though, if I may?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Is this a pop quiz?

Mr. Salazar: This is related, if a correspondence is sent out.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: From whom?

Mr. Salazar: Let's say it sent out from the Personnel Commission

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Ok.

Mr. Salazar: Ok, and it's sent to the attorney

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Ok.

Mr. Salazar: And that correspondence cc's the District

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: All right.

Mr. Salazar: Does that open up that; does it dissolve that privilege part, is that the part where we're kind of inviting them to be a part of that?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: If you send a letter to your lawyer and you cc the District and assuming that you're two separate entities, then the Commissioner who sent out the letter has decided to waive the privilege in by carbon

copying an outside entity.

Mr. Salazar: Whoever, it could be the District, it could be the ice cream man for all we know, they're basically welcoming them into that dialogue.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: And the reason why is because you hold the privilege the attorneys never hold the privilege.

Mr. Salazar: Ok.

Ms. Early: That example is not reflective of what's currently going on, what is currently going on is that we're sending the attorney correspondence; he's replying to our correspondence sending a copy of what we've sent to him to the District and then copying the District on his reply, that's our (inaudible). Even though this is something fiduciary responsibility is something that should be in place right now it is not being practiced. Right now the item that we're discussing on this agenda, the reason it's agendaized is because we have a problem and we feel the attorney client privilege is not being extended to us, that's the whole purpose of this item. We currently have a motion and a second and I think if there's no further discussion we're ready for the vote.

Kristine Kwong: I just have one comment just as a caveat, I'm not aware of the specific circumstances of your situation and my specialty is not in legal ethics, there are attorneys who solely specialize in legal ethics; I am not a specialist in legal ethics. If you wanted to get an opinion on that you will need to retain an attorney who's sole specialty is legal ethics for clarity. I'm only explaining to you the very basics of the attorney client privilege.

Mr. Salazar: What I'm hearing is, for my fellow Commissioners, this is a bigger issue than that, this confidentiality privilege; if there's evidence that this is going on and it's being violated, then we certainly need to do something to work that out, to stop that, versus saying let's reinforce that you can't do this. I mean, if they're going to do it, they're doing it then we need to do something to stop it.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I'll defer to the Commission on that, thank you.

Ms. Early: We have a motion and a second, are we ready for the vote? All in favor of the motion before us signify with the voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: I'm going to say nay on that, thank you.

Ms. Early: Motion carries. Next agenda item, item E, the Commission will review the appeal of Gladys Byrd concerning the examination for Personnel Commission Director, Job Code 0115, and take action as it deems appropriate. We all have a copy of that appeal before us today? I can read the appeal to the record, if it makes it easier for us to start.

Mr. Barabani: I have some concerns.

Ms. Early: From what I gather, the appeal is regarding the recruitment process for the Commission Director; it says it was conducted improperly as per Personnel Commission Rules 4.08 (B) (K), (B) (C) and (K) which refers to the flyer must have an opening day, the type of recruitment must be on the flyer, and the notice of examination must have references to the weights of the examination. It's those three issues that we are covering in the appeal for tonight. You said you have some concerns?

Mr. Barabani: Yes, (inaudible).

Ms. Early: Attached for review were copies of the flyer that was utilized for the recruitment for this particular position. I can share some background; CODESP who ran the recruitment called the Commission office and requested a copy of the flyer that had been utilized to recruit for this position in the past. They were provided with the flyer that had been utilized for our prior Commission Director, that flyer was prepared by our District, Human Resources, the flyer are part of the packet that were sent out; and if you look at the flyer that HR was utilizing it didn't have the three things that Ms. Byrd is saying were missing from the flyer that was utilized to recruit for the current position. Also, part of your packet is a flyer that was prepared by our current Commission staff and if you compare the flyers, the flyer that our current Commission staff have been preparing actually has all of the information that is being referred to that was missing from the flyer utilized by CODESP. What we have here is CODESP using the standard that had been set by Human Resources prior to Commission taking over the recruitment process. If you look at their flyer it contains the information that had been utilized during the prior recruitment process and you can compare it to another flyer that had been prepared by our current Commission staff; I'm just adding that as background information.

Mr. Barabani: Thank you, that was also one of my concerns, one of the concerns was Ms. Byrd has not asked for any specific action of remedy concerning any of her complaints. Another one I had was her issue of the selection of, and I'm going to use the whole name because most people won't know, Cooperative Organization for the Development of Employee Selection Procedures, CODESP, to conduct the exam; and she also made, she had some concerns about a provisional employee in the position; then on how that affected the process of the exam. These aren't exactly facts, there hasn't been shown any form of an appropriate comment by a person that named, or by CODESP, or by the Commission, or any other fact a relevant fact; would appear there's no appeal and you're concerned about the templates that didn't deny her the opportunity to place any of those things that were missing on the templates did not deny her opportunity to put in for the job; or she was given the opportunity she even went through the testing process. It was

even tougher for me on that was that she didn't even complain about any of these, she works in the HR department and she didn't even complain about any these before the process; I mean they existed before, she knew they were there, didn't seem to complain. There's going to be a lot of issues and matters that are occurring at meetings, where she was present, she raised no objection at that time nor did she had an objection at the time afterward she knew her exam results. She hasn't raised any challenges in this, to re-interview scores or retrieve. If the Commission now, will somehow allow these minor technical matters on the bulleting to serve as the basis for appeal; how will that, in any way, help her get a different score. But I would like to make a motion after saying that I'll let the other Commissioners.

Mr. Salazar: We are the Merit system aren't we, and we talking about the fair and equitable hiring and hiring practices for everyone including people like Ms. Byrd. I don't know what she seeks as remedy, I don't know if that's been clearly defined I just read over that, but the fact is that there are certain things that should be on this flyer, whether we as Commissioners like it or not, that are not on there, personally, I think that we need to run the entire recruitment and I hate to say that; we've taken this long, maybe we just need to just get it right, re-run the recruitment. My question really with respect to re-running the recruitment, you know CODESP was supposed to this a certain way they have a certain standard they should've known to do that, in my opinion, they should've known to do that that's their job, that's their vocation, and the fact that they didn't is somewhat moved because it's done, what's done is done, and I just wonder why we can't run the recruitment here ourselves and save the money that we would spend on CODESP and maybe it's because we don't have a PC Director, I don't know but I'm sure I'll get an opinion from somebody about that, I don't exactly know why. In my humble opinion, I think that CODESP messed this thing up.

Mr. Barabani: I think they, I don't want to be in the position to defend them, I think they did what they, they did the best they could with what was given to them; I mean the stuff came right out of HR and they didn't have problems and no one seemed to complain before in that regards, I hear what you had to say, and I want to make a motion. I think that'd be appropriate. Would you like to speak?

Patrick Maher: Yes sir. As I mentioned earlier I was a candidate for this exam I followed all the rules, I filled out the application, I took my time to drive out here, I took my time to participate in the process, I scored on that process, I have a standing on that list and the idea of throwing out an examination on two or three minor technical issues because of something wasn't on the bulletin takes away from me, my right and my standing on that list. If you talk about the principal of Merit you're not just granting something to a person who participated in the examination and didn't like the results you're taking away from at least three other people who were interviewed by you in a final process and all of us have standing on that list and you're taking that away from us. There was no problem with CODESP, in the outside I have my own consulting business since 1977; I go all over the country, I've gone all over the country the different organizations, Merit Systems, Civil Service Systems, for all kinds of state and city and county governments and I ask them for information, if they don't provide me the information then I can't do what I have to

do according to the rules if they don't give that to me, I rely up on them to provide that information for whatever reason that information was not provided to CODESP; CODESP did not make a mistake CODESP worked upon the information that it had and made a decision accordingly and they did nothing wrong in terms of this examination. The other part of it is who's going to develop this examination, who among you has the expertise to develop questions, to develop rating guides, to apply their criteria, to identify rating scales, who among you has that expertise? I don't think any of you do and this is not an accusation as Commissioners you're not supposed to have that expertise but somebody has to have that. So who's going to do it, are you going to let the District run it again like they did in the past because that last time I applied for this position my application was sent in, it was not handled it was not forward to the Commission, I never received a letter telling me why it was rejected, they just threw it out because they didn't want it that was run by the HR department. Are you going to let them run this again? And of course what's my status based on the way you treated me of having a fair option, so who's going to do it, you got to go back to somebody has the expertise in an organization that can do it, I don't have any idea if CODESP would do it again or not, they may not want to I don't know, but you have to find somebody and pay them to come in there and run the examination for you because it takes an expertise that actually, to be honest with you, no one else in the District has; there's nobody in this District that has that expertise that can run that examination for you so you have to go outside. I can say that as a person with 30 years of experience having qualified in (inaudible) court as an extra witness in these matters, of having published numerous documents in these matters, is a tactical area much more tactical than anything you've seen so far to conduct that examination; and if you do a new examination, you're going to do it all over from scratch? Why can't you use the same content that you used this time? The content of the examination is not the challenge the only thing on the challenge is three minor technical matters on the bulletin, that Ms. Byrd knew when she applied for the examination, that Ms. Byrd saw it when she saw it and she did not say a word about it until after she did not like her score, that's the first time she raised that issue and not before then. You're taking away from me and the other candidates our rights to give it to someone because she waited until she didn't like the results and then complain about it, that's part of the Merit System too protecting everyone just not one or two people, thank you.

Gladys Byrd, Acting Director for Human Resources Classified: Once again Gladys Byrd, I don't believe that

Mr. Salazar: Ms. Byrd, before you get started the microphone is not on, please speak up.

Gladys Byrd, Acting Director for Human Resources Classified: Ok. I don't believe that I waited until I got my results to write my letter because there were only a couple, a day or two after the test, I believe it was the next day that I got the call or email from Marianne. I haven't received my scores, I haven't received my ratings that I asked for; the other people that applied, including Mr. Maher, are highly qualified for this position in my beliefs, I don't know them but I know my experience working in a Personnel Commission office. I also know my ethics; if Mr. Barabani, if that's how he feels and the wordings kind of got me, some of the reasons that you stated. If I don't qualify, if I

wasn't picked for this job it's irrelevant to me, I applied because I met the minimum qualifications. It says you have so many days to appeal, but you would hope that you would receive your scores and miraculously I was told got a 68; you know what, if I got a 68 on that test and I really qualified to get a 68 I have no issues, but I would still like to see where my ratings were, you know what, it may not be for this job but maybe another job, let me know where I can strengthen those skills. Mr. Maher, or whomever the other two candidates are, they probably have a lot more experience working in a Personnel Commission office and I applaud and I commend anyone that can come in and do that job and fill almost 300 positions that the people including myself and Classified HR want to get filled. Whether my appeal is taken or whatever and I thank you Mr. Salazar, I thank you for fighting for me but you don't have to, I just want things to be honest that's the kind of person I am, that's what I told those three panel members because I feel that I would be the one, I know there will be struggles but the PC and District, but I feel that I would be the one working with that staff in the office that would be there to do the job that you tell me to do and do it correctly; Mr. Salazar you don't have to fight for me it's fine, thank you.

Mr. Barabani: Ms. Byrd, you might not like my statements but I'm up here fighting for you and I want to see a fair process and I know; let's continue this a little bit farther. It's just the factual things I looked at and what was brought in.

Gladys Byrd, Acting Director for Human Resources Classified: I think that's a conversation, I really do, my concerns with your statements I think that's a private conversation for you and I to have, thank you.

Mr. Barabani: I know that there's other persons in the audience that have a kind of interest vested in this that might've been on the list also, (inaudible) if they want to come up and speak right now they can. I'd like to, this is where it gets a little tricky, I'd like to go into Closed Session to discuss this and then come back out and have a vote or.

Ms. Early: This is not agendized as a Closed Session; it's on the agenda it can be taken care of in Open Session. Ms. Byrd?

Gladys Byrd, Acting Director for Human Resources Classified: Yes.

Ms. Early: You listed some concerns with the recruitment process. You didn't specifically say that you were harmed by the process or exactly what you wanted as a result of the appeal. Is the purpose of the appeal to bring attention to the process? Is that the purpose?

Gladys Byrd, Acting Director for Human Resources Classified: No the purpose; one thing, as I said I just want things to be fair, and this is what; I've been sitting through this for I don't know how many years, and I sit back here and I'm quiet, normally I stood before you before nor when I sat and try to write down what I put in my letters. I just, just as much as you, I want this stuff to end it's going on too long and it's started from a little minor thing and it's just blown out of proportion. I wrote the appeal, it's irrelevant to me,

keep it as it is I got a 68 on the test to me that's the end of it, scratch the appeal I have nothing else to say about that.

Ms. Early: So you're withdrawing the appeal?

Gladys Byrd, Acting Director for Human Resources Classified: Yes I am thank you.

Ms. Early: I will follow up with you on the information that you say you wanted and as far as your test results.

Gladys Byrd, Acting Director for Human Resources Classified: Thank you.

Ms. Early: Thank you. Next agenda item, we're on item V (F), move that Alexis Jenks be appointed as a provisional Senior Personnel Analyst for the purposes of exercising supervision over the staff of the commission for a period not to exceed 90 working days and to be compensated for her out of classification work pursuant to the CSEA contract and the Education Code.

Mr. Barabani: I'd like to make a motion to second that.

Ms. Early: You're making the motion is that correct?

Mr. Barabani: That's correct.

Ms. Early: We have a motion on the table, do we have a second? For discussion's sake I'm going to go ahead and second that motion.

Mr. Barabani: Ok I'm the person that put this on the agenda and the reason is I'd like to appoint a person to go to since we're having all these troubles I'd like one person in our office that could be the supervisor that we can go to, all three of us, somebody to make sure the minutes are done correctly, there's things like vacation staffs go to, somebody can approve that and basically be in charge to do the daily running for the office and maybe make things work, we can get information; I've come down there many times to get information, I just have to talk to this person that person I would just like to talk to one person and they can get that information and they can pass it on to us, to the Commissioners or ask that's where it comes from.

Mr. Salazar: I think, yes I always have a comment, right? I'm not trying to make this lively entertainment purposes. I just look at that I go, ok supervise what?

Mr. Barabani: The staff.

Mr. Salazar: We're not really doing much there we don't have an enormous staff there, they seem to get along just fine. To take somebody; I don't know if they get paid more money to do this or don't get paid more money, I'd rather I guess not really know that because it's not really important to me; although, if you do get paid more to supervise

then I get back to my original question, supervise what? As far as putting the agenda together, my experience is that we seem to have been doing just fine getting the agenda put together, that goes through Rhonda and then she gets that to Nersi, if am not mistaken, and it just gets done. I don't see any need to take and do that. If she was able to sign off and get people to work I probably will be all for that with you, but aside from that it doesn't seem to make a lot of sense to pay somebody more money to supervise something that's frankly dysfunctional right now, thank you.

Mr. Barabani: My whole issue with is trying to get the staff supervised, it's just like I said, just minimal plain who's approving their vacation, who's approving when they can leave and come and go that; when you come down there to get stuff I'd like to have someone there that's responsible to fulfill what I ask for and I have been getting; it becomes an issue if you ask for something and you don't want to go to four different people to ask, you want a central point.

Mr. Salazar: Just my experience is I have no problems when I request something from the staff they're all very good, they all seem to work together as a unit to get anything; I've never had a problem with that I don't know what your experience is.

Mr. Barabani: I didn't say (inaudible).

Mr. Salazar: It doesn't seem to be broken to me, I don't see any reason to pay somebody more money to fix something that's not broken.

Charlie LeChance, Labor Representative for CSEA: I'd like to speak on that issue, first I have a question, in that capacity will she be able to sign anything off?

Mr. Barabani: No.

Charlie LeChance, Labor Representative for CSEA: No, ok. The second piece of that is the staff works wonderfully; they're always polite professional, courteous, expedient all of those things. But they do need someone who quote on quote, is in charge, they're out there on the north forty by themselves and you may say they're doing nothing right now, but they are busy all the time. Who do they go to for the day to day tasks that most department's staff people go to. Because of the inadequacy of the Commission and how it's functioning right now and because it is unclear and because it's dysfunctional there needs to be something functional about it and I believe it would be in the best interest of everyone there that we had someone, who would be the go to person, who would, the person that could carry their message or their concerns or whatever it happens to be. There does happen to be a pay differential; but I want you, if you can, go online and look at the last Board meeting and how many people they're working out of classification for this very reason they're a lot of places where there needs to be someone who can carry a message and resolve the issues for the people in that department and you've been back there, they're by themselves and they're between a rock and a hard place, between what they should be doing and what they can't do, but they really don't have one person back there that's in charge. I think it would be in the best interest of the staff, the best

interest of the Commission so that when it is up and running, I hope it's very soon in an adequate way that things have been kept in place by one person and in one way. At this point they all do a great job and I know they work together, I see them working together; I didn't hear anything that they weren't working well together, I think it's in their best interest to have someone who is a supervisor to do all those day to day tasks, as you know Mike, in you have your business you have secretaries and clerks and mail people and they all need to go to somebody and they have nobody right now, I think it's in their best interest to have someone as a supervisor. I speak on behalf of that I thinks is a great idea.

Patrick Maher: Patrick Maher, there's a fundamental aspect of organizational structure; every employee needs to have a supervisor to whom they report to and whom they can go to, without that or leadership or something, every organization has this pyramid with somebody up there, reporting structures, military, private organizations, it doesn't matter if you don't have that then you have chaos in suing. It's not matter that the employees aren't good employees, aren't hard working employees or that they're doing anything wrong. Fundamentally, everybody has to have a supervisor to whom they can go and get decisions made and can coordinate their activities, especially when you have more than one person in office, to coordinate their activities to coordinate their time off. They've got three bosses right now and each of you, one goes to this person and one goes to this person and one goes to that person and your instructions or requests or something are contradictory, they got no one to go to. If you have one person that everyone goes to and says this is what I want done as if you would if you would have Personnel Director in there, then that one person could disperse the work makes sure it's all handled and make sure that if it's contradictory or confusing or something else that they can get it resolved with the other people; they have nobody in specifically in charge and three different people asking for information and getting involved in the office is a chaotic situation, it is unfair to the employees and organizationally it's the worst thing you could possibly do, somebody should be in charge there. Thank you.

Mr. Barabani: I hadn't thought about the three boss thing about what's happening here. One of the issues that had Mike here as I was reading the emails, that didn't make put that item on the agenda, had this issue here about you wanting something on the agenda and whether it worked now or had to be concerned whether it violates the Brown Act or not, that would be something that person would be in charge of looking into or finding out if it was appropriate, that's the kind of things that I was going for. I ended having to do; when I was reading all those emails, I had to read a bunch of stuff, if I had that information I just like to have a point person to go to.

Rhonda Early: Any more discussion on this item?

Mr. Salazar: I do have one more question, why did you pick Alexis Jenks?

Mr. Barabani: I had spoken to her earlier she had been working, trying to do this well it's personal information, she has the experience she has the education.

Mr. Salazar: You, basically, interviewed her and that's your recommendation to this group.

Mr. Barabani: You also thought she was good enough to be placed as temporary Personnel Commission Director previously, and I said ok, actually that's one of the reasons I spoke about it and I didn't I asked her if she thought that'd be something she'd be interested in. It wasn't really an interview, I don't know about you, I don't know a lot about the employees here when I go down there I can talk to them and find out; until recently I didn't know we had a bilingual employee I found that out the same day when I spoke in there so it's just one of the items. I try to talk to all of our personnel and find out a little bit about them and what kind of skills they have and education.

Mr. Salazar: So you thought she was the most skilled? How did you come up, I think we all agree we have wonderful talent in our staff over there, I'm just curious about your selection process here because here we are talking about the Merit System and putting people fairly in place in position and stuff like that, why don't we have a competition for that. I'm kind of curious thinking (inaudible) Mr. Barabani.

Mr. Barabani: It's a temporary position for 90 days.

Charlie LeChance, Labor Representative for CSEA: If I could, it's an out of class position, out of class positions don't normally go through that whole process of interviewing and Alexis did work in that out of class position and was paid for by the District in the past. That's why I believe, I didn't have anything to do with it, when you brought it up I thought great she's worked before, she was paid out of class before, that's why I believe she would be a good candidate not that these other women wouldn't be a good candidate, but Alexis did work out of class in that position or similar before and did an excellent job.

Patrick Maher: Again Patrick Maher, I just want to make a clarification there's a constant confusion in the District about a provisional appointment. A provisional appointment exists when there's no list; you don't have a list because you haven't been able to run the recruitment, so therefore you don't have a bunch of people to select from, when a provisional appointment is made you find a person that you believe meets the qualifications that can do the job and you appoint them pending the decision at a later time to open up the process and do an open recruitment. There's nothing in the provisional by definition, a provisional does not go through a recruitment or selection process that doesn't mean you do certain things you don't identify who you can have you may not put your feelings out depending on the circumstances, but there's no formal process and the Merit System specifically allows that as an exception to the recruitment process, it exist because you don't have a list and you have to go through the recruitment process to get the list. And again, I hear from the District all the time and so just to get that clarified you do not do a recruitment process for a provisional. Thank you.

Mr. Salazar: It's nothing personal against Alexis; I just asked a question I'm wondering how that works I'd be interested in learning about her qualifications before I would make such an appointment.

Mr. Barabani: Shouldn't you know that, you appointed her to try be a Personnel Commissioner interim, I thought maybe you had already done that.

Mr. Salazar: I think this is a different job we're talking about.

Mr. Barabani: I know but that was a much higher job on the scale.

Mr. Salazar: I'd like to have somebody sign, I would rather have somebody in there signing and getting people to work if you're asking me that question. I know you were not interested in having her do that; however if you want to go back, if I may have my time, if we want to go back I didn't put that item on the agenda at the last agenda I don't know how it got on the agenda, but somebody thought it was important enough for us to have a discussion, did you put it on the agenda?

Mr. Barabani: Which one?

Mr. Salazar: About the appointment for Director for Alexis.

Mr. Barabani: No, the one right now?

Mr. Salazar: No the last agenda.

Mr. Barabani: No, I thought you did? I thought you said you, never mind.

Mr. Salazar: Anyway, I would just like to, we're going to vote on it.

Ms. Early: Just for clarity for the June 30th meeting I believe it was Mr. Salazar that put on the agenda for Ms. Jenks to act as our Commission Director and it was Commissioner Barabani that motioned to pull that item from the agenda.

Mr. Salazar: So the item was pulled.

Ms. Early: It was pulled we didn't vote on it.

Mr. Salazar: You're right.

Mr. Barabani: I guess it was you that put that on the agenda.

Mr. Salazar: And I guess it was you who pulled it and didn't want to discuss it.

Mr. Barabani: No, it was because it didn't have the appropriate documentation like this one does.

Mr. Salazar: What's appropriate about this documentation?

Mr. Barabani: I gave reasons and why I wanted it.

Mr. Salazar: I don't want to bicker about this I think we can probably just vote and just kind of get on our way because my and your dialogue doesn't seem to be going anywhere.

Mr. Barabani: You don't (inaudible) an insult, am telling you.

Ms. Early: We have a motion and a second. I had preferred not to vote on this item and when I saw it placed on the agenda I had made up my mind that I would abstain; the reason I would be abstaining from this vote is because Ms. Jenks is a distant relative of mine who I did not know worked for the District until after I became a Commissioner and went to HR to meet the staff and she was sitting there, and at that time we both said 'what are you doing here?'. I was not the one who chose to transfer her to the Commission staff also, we inherited our staff we were not in on the selection and so for that reason I was not going to vote on this item. However, we have had so many, I'll call them hiccups, because I truly believe that everyone is doing the best that we can, however, our efforts no matter how great they are they are still very fragmented and at times we, even though we meet and discuss, we still don't know who's doing what; it wasn't until recently, in fact with this recruitment, that it became apparent that no one was (inaudible) the website. When I talked to Commission staff everybody played a part in the website but no one had noticed that the rules that were posted on the website were our newly approved rules that we are not to be operating on until we are out of current litigation. It wasn't until Gladys Byrd brought her appeal before us, and I want to thank you for bringing the things that you did to our attention, that it became apparent that no one had pulled the old rules off and reposted, or had pulled the new rules off I'm calling the new rules because we approved them in November, but we are not to be operating under them and so therefore our old rules should be posted on the website because those are the rules that we are actually operating on and right now I have one person who sends out correspondence; I'll send emails to the District office thinking that everything is fine until I find out that the person that I sent the letter to happened to be off so there's a delay from the time I write the correspondence to the time the correspondence is sent out; because we are not physically there we don't know who didn't come to work that day, I mean I know the three of us visit as much as we can and we call often, but we're not there and I truly believe that some of the challenges that we have faced which Ms. Byrd has brought to the fore front could've been avoided if we had one person, I'm saying a Personnel Commission Director and that's what I want there that would be ideal, but right now we don't have that, we need somebody who we can go to, to just kind of tie and solidify everything together. It was my hope once I saw this because you had recommended her as the Provisional Commission Director that the two of you would come to an agreement, and because we don't have a director, I'm hopeful that we will have one real soon, but because we don't and because we don't have anyone physically there just to supervise day to day operations who can make sure that the office is even manned like it's

supposed to. I truly believe that we do need someone in a temporary supervisory position until we can get a real director in that position and in absence of, no other suggestions tonight, I'm seconding the motion and I'm voting in favor of Alexis Jenks being a provisional, accepting this provisional appointment for a period not to exceed 90 days and hopefully by then we'll have something else in place. I vote in favor of the motion, any other votes? We are at the point where am just, I just wanted to disclose my discomfort involving, however I don't consider it a conflict, but I want everybody to know the position that I currently am in. I'm voting in favor of the motion.

Mr. Barabani: I'm voting in favor also, I'm voting also in favor.

Ms. Early: Any opposition?

Mr. Salazar: I'll oppose.

VI. COMMISSIONER'S REMARKS

Ms. Early: Two in favor, one oppose, motion carries. We are now at the section where the Commissioner's get to share their remarks. Commissioner Salazar we want to hear from you.

Mr. Salazar: I have no remarks.

Ms. Early: I just want to make sure we are covering everything because at the beginning of the meeting you had some concerns about an item that had not been placed on the agenda and I just want to make sure that all of your concerns were addressed.

Mr. Salazar: I think I've stated my position during this meeting, I don't want to waste any more of the Commission's time, thank you.

Ms. Early: Let me just add that the request that I received late afternoon, last Friday was to put a Closed item on the agenda and this request that I received was after the agenda had been submitted for posting. I did call Commission staff trying to figure out what the topic would be to properly list it as a Closed Session item and none of the Commission staff could reveal to me the reason for the meeting, the request that I received was that this item be placed in Closed Session to take place tonight; two of the staff members told me that they would not be available tonight to meet. That left us with two members present, two members absent and I see that today. I did reply to an email stating that two members will not be here and we need to make sure that we notice this properly because I too had the concerns, how do you put something in Closed Session if you don't know why we're going into Closed Session, I can't properly notice that. What our conversation was with Commission staff was provide me with dates where all of you will be available, one of them is even going to be on vacation until August the 10th, I was going to see how we can make that happen so that we're not violating any laws and we could accommodate the concerns for all. I received a reply back, when I stated that two of them aren't going to be there they're going to provide us with a list of dates we need to properly notice this, the reply that I got back I was a little bit offended by the email the

email that I received said, nonsense I requested this meeting and you wouldn't put it on the agenda, I was a little bit offended by the tone of that email because I feel that I've gone above and beyond the call of duty to accommodate everyone concerned through this difficult transition, I want that to go on record as an effort to accommodate but an effort to make sure that when we accommodate we do it correctly and that to reinforce this my desire to have a point person in position just make sure that as we move forward we move forward orderly and correctly so that we are not offending anybody or breaking any laws, that concludes my remarks for this evening.

Mr. Barabani: I don't have any.

VII. CLOSED SESSION

Ms. Early: No remarks. At this time we'll move on to item VII on the agenda, Closed Session, we'll have conference with legal counsel, Kristine E. Kwong from 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 re: District Appointment of Executive Director. Pursuant to Government Code Section 54957 to discuss: Public Employee Appointment, title: Personnel Commission Director. I'm not sure but we might have a report out of Closed Session. We appreciate you coming here to meet with us this evening. We will now adjourn into Closed Session.

VIII. ADJOURNMENT

Meeting was adjourned at 7:34 p.m.

ACTION REPORTED FROM CLOSED SESSION

Ms. Early: It's 8:40, Personnel Commission is reconvening for Closed Session during Closed Session it was unanimously voted that we would re-open recruitment for the Personnel Commission Director. Thank you, Ms. Byrd for bringing inconsistencies to our attention and we want to move forward correctly and we will be re-opening recruitment we will have a special call meeting next Tuesday hopefully after we verify that the facilities are available next Tuesday at 5:30, the information will be posted. That concludes our meeting, meeting adjourned at 8:42, thank you for coming have a good evening.