

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

October 27, 2010

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

I. CALL TO ORDER

Ms. Early called the meeting to order at 5:40 p.m. Ms. Early led the pledge of allegiance.

II. APPROVAL OF AGENDA

Ms. Early: Approval of tonight's agenda. I move to approve tonight's agenda.

Mr. Barabani: I will second.

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

Mr. Salazar: Aye.

Mr. Barabani: Ok, aye.

Ms. Early: Agenda approved.

III. APPROVAL OF MINUTES

Ms. Early: Approval of minutes from October 14th. I move to approve minutes dated October 14th 2010.

Mr. Barabani: I will second and I would like to open it up for discussion on two items.

Ms. Early: Ok, what are the items?

Mr. Barabani: The item; meeting October 18th, I don't have those meeting minutes.

Ms. Early: My understanding from Commission staff is that those minutes are not ready for approval; they will be placed on our next meeting agenda.

Mr. Barabani: Ok, and then there were some matters of concern on the way the minutes were; some of the parts were verbatim, on an email that I received; is that correct; some of the things were missing?

Ms. Early: Yes.

Mr. Barabani: Well, I'd like to motion that they be reviewed once more to make sure that everything is correct because we usually look for grammatical errors and things like that,

like stated in the email and without listening to the tape or the file completely, it would be hard to remember what was missing. I do have a question for the staff, do we know how big that file is, the voice file that is on the recorder?

Nersidalia Garcia, Secretary III: No.

Mr. Barabani: No? Can it be emailed or is it too big to be emailed.

Nersidalia Garcia, Secretary III: It can be emailed and copied on a CD.

Mr. Barabani: Is it small enough that it could be or be able to...?

Nersidalia Garcia, Secretary III: A copy; yes a copy on a CD, I can make a copy on a CD.

Mr. Barabani: Well I know; if you just emailed the; do you know what type of format it comes out as? Is it an mpeg?

Nersidalia Garcia, Secretary III: MP3 player.

Mr. Barabani: MP3 player format? Well, I would like a copy of that since there's some items missing and I'll have the other Commissioner's speak for themselves on that.

Ms. Early: So, would you like to re-agendize the minutes for October the 14th?

Mr. Barabani: Yes and also correct the agenda stating that the meeting or remove the meeting minutes for October 18th since we didn't receive them.

Ms. Early: We're not able to approve the minutes for October the 18th because we don't have them right?

Mr. Barabani: Right. So, a motion to re-agendize that.

Ms. Early: Ok.

Mr. Barabani: And the 14th also; I'd like to make that motion.

Ms. Early: Ok, I second. All in favor signify with a voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye.

Mr. Salazar: Aye.

Nersidalia Garcia, Secretary III: So do you also want the copy of the November, I mean October 18th?

Mr. Barbani: If there is in email, yep, I don't mind. But if for some reason it bounces back and says undeliverable or anything, just let me know because there might; I can accept large files, but sometime you can't send it out. Thank you.

Ms. Early: Ok, so my understanding is we will receive the audio version for October 14th and 18th and both meeting minutes will be placed back on agenda for approval at our next meeting, is that correct? Is that; that was the motion?

Mr. Barabani: Yes.

Ms. Early: Ok. Any further discussion? Ok.

IV. PUBLIC COMMENTS

Ms. Early: Next agenda item, we are down to Public Comments. Seeing none.

V. ACTION ITEMS

Ms. Early: Next agenda item Action Items V. It is moved that the Commission request legal assistance to obtain a comprehensive legal analysis based on specific factual analysis as to whether or not Bradley Neufeld and/or Richard Marca violated Rules of Professional Conduct and the California Business & Professions Code, or otherwise committed misconduct by (1) failing to maintain the Commission's privilege of confidential communication by sharing legal opinions requested by the Commission with district administrators after being repeatedly directed by the Commission to not waive the client confidential privilege, (2) engaged in conflicts of interest by providing legal advice to the Commission in matters in which he or his firm had an economic interest on the outcome of that advice or otherwise rendered legal assistance when a conflict or potential conflict existed between the Commission and the governing board, (3) failing to provide legal assistance and opinions with the Commission as his primary client, or in the alternative, declaring a conflict, after repeatedly declaring that the Commission was a subsidiary client to the governing board and the interests of the governing board were always superior to those of the Commission, (4) failing to communicate with the Commission on legal issues and matters, including failing to deliver promised communications until or unless pressured by the Commission or its Chair to do so, (5) failing to represent the Commission zealously and use all lawful and ethical means to present or defend our legal positions and authority, (6) failing to allow the Commission or its conflict counsel to make the final decisions regarding how our legal issues will be handled, and (7) failing to perform legal services with competence.

Mr. Barabani: I make a motion to approve.

Ms. Early: I second. Open for discussion. All in favor of the motion signify with a voting sign of aye.

Mr. Barabani: Aye.

Ms. Early: Aye. Any abstentions? Any opposition?

Mr. Salazar: I'll oppose.

Ms. Early: Motion carries. Action Item V (B), it is moved that the Commission reject in its totality the August 23, 2010 investigative findings and report of the *Investigation of Personnel Commission Agenda Item D(2)(a)* concerning whether or not district staff intruded into the authority of the Commission as consisting of conclusions by the investigator rather than containing findings of fact and for providing a report of the investigation that does not meet industry standards for such investigation and hearing reports. I so move.

Mr. Barbani: I'll second it.

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

Mr. Barabani: Aye.

Ms. Early: Aye. Any abstentions? Any opposition?

Mr. Salazar: I'll abstain.

Ms. Early: Motion carries. It is moved that the Commission reject in its totality the August 24th investigative findings and report of the Investigation of Personnel Commission Agenda Item D(2)(b) and (c) concerning whether or not district staff intruded into the authority of the Commission or exceeded their authority in entering into a contract with and continued having contact with the Executive Director as consisting of conclusions by the investigator rather than containing findings of fact and for providing a report of the investigation that does not meet industry standards. I so move.

Mr. Barabani: For such investigation and hearing reports.

Ms. Early: I'm sorry. For such investigation and hearing reports. I so move.

Mr. Barabani: I'll second.

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

Mr. Barbani: Aye.

Ms. Early: Aye. Any abstentions?

Mr. Salazar: I'll abstain.

Ms. Early: Motion carries. Item D, the Commission will discuss accusations of misconduct made by Commissioner Salazar, against other Commissioners and take action as it deems appropriate. Open for discussion.

Mr. Barabani: I want to make a motion.

Ms. Early: I second. Open for discussion.

Mr. Barabani: Thank you. We received a letter that is in the packet here; let me make sure I get the right letter; I think it's item IV(D); ok, it doesn't have an item number, but its between item IV(D) and IV(E); so I made some notes to myself after I read this; these are serious accusations, but before I proceed; the original letter from Mr. Salazar, I kindly would ask do you want to withdraw or correct any of your statements at this time?

Mr. Salazar: What statements are you referring to? I haven't made any statements this evening.

Mr. Barabani: No, the one that's in the letter.

Mr. Salazar: Ok, the letter is already in our packet and so, I think that's what you want to refer to, is that correct?

Mr. Barabani: We'll refer to the letter; is there anything wrong with the letter, anything you'd like to withdraw or correct any of the statements at this time?

Mr. Salazar: It's probably not a perfect letter, but its best of my recollection is contained in that letter.

Mr. Barabani: Ok. In this letter you stated that you saw us, is that correct?

Mr. Salazar: You know what I'd like to do is; you can tear this letter apart all you want Mr. Barabani and I fully expect you to do that. I'm not here to stand on trial by you or hopefully none of my peers. Again, we are in the business of trying to work together, I hope, to make sure that we carryout the mission of the merit system. You know, you can spend as much time as you like this evening tearing me apart, tearing the letter apart; you know, I'm just going to do, I'm going to reserve that time for you to go ahead and to do what you feel you need to do. The letter is written; it's out here, you've made it public, I'm just going to go ahead and just sit back and basically listen to your remarks sir.

Mr. Barabani: So I gather from that that you refuse to tell us what you saw.

Mr. Salazar: You know, what I'm not going to do is get into a shouting match with you. Again, this is not a trial; we are a Personnel Commission and our function and purpose is to work together for the merit system so, the letter says about all I have to say about this subject sir.

Ms. Early: I want to; I actually brought up my concerns after receiving this letter during Commissioner's Remarks at our last meeting and I am specifically concerned about paragraph five where it says *I was leaving the Personnel Commission meeting last night* and this memorandum is written to me and it says *I observed you and Mr. Barabani*

engaged in a parking lot meeting. This observation coupled with the sudden and surprising special meeting that was scheduled for Monday raises concerns regarding the Brown Act. As you know, a meeting subject to the requirement of the Brown Act includes any congregation of a majority of the members of the Personnel Commission to discuss or deliberate upon any item that is within the subject matter or jurisdiction of the Commission and I specifically have a question as to why you wrote this paragraph because I know that I walked to my car alone and left alone and have not engaged in any kind of meeting with Mr. Barabani. So, I want to find out what was the purpose of this correspondence and why is the truth being falsified, especially with my name associated with it? That's a question.

Mr. Salazar: And again, my response is that this is my observation, it's in this letter, it's contained there.

Ms. Early: Ok, and my response is you have misrepresented the truth, I have witnesses that saw me go to the car and so, I have concerns about a letter that falsely accuses two Personnel Commissioners here and I still; I'm sure there was a reason and purpose for this letter, I'm not sure what the purpose was, but it is definitely a misrepresentation of the truth. That's my statement regarding this correspondence and I will repeat the statement that I made at our last Commission meeting, it was not on the agenda then, but I did raise it as a concern during Commissioner's Remarks; any other discussion on this item?

Mr. Barabani: Yes, I mean, I'm trying to make this as simple; could be, I don't know, somebody saw something they thought they saw, I'd just like you to describe in your own words when this happened, maybe where it happened, how long you supposedly thought we were talking out there, where you were, where we were, I mean, throw some facts in here. You've leveled some serious charges here. If there is any truth to them, they need to be investigated. So, since you don't want to respond to it and we gave you an opportunity to change it, I'd like to move that we request that the attorney's provide a legal assessment in determining first, the facts and the evidence supported by the facts alleged by Mr. Salazar and render a legal opinion as to whether or not Rhonda and I violated the Brown Act.

Ms. Early: Can you repeat that please?

Mr. Barabani: Certainly. I move that we request that the attorney's provide a legal assistance by determining the facts and evidence supportive of the facts alleged by Mr. Salazar and render a legal opinion as to whether or not Rhonda and I violated the Brown Act that he so states in this letter.

Ms. Early: So, are you asking for an investigation?

Mr. Barabani: Yes I am.

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

Mr. Barabani: Aye.

Ms. Early: Any abstentions? Any opposition?

Mr. Salazar: Yeah, I'll oppose.

Mr. Barabani: How? You're going to oppose something you supported.

Ms. Early: Motion carries.

Mr. Barabani: Ok.

Ms. Early: Next item E, the Commission will discuss the status of the hiring process for Brian Astrachan, provisional Personnel Commission Director. Do we have a representative from HR, do we have an update on his status?

Gladys Byrd, Acting Assistant Director, HR Classified: There's no representative from HR.

Ms. Early: No representative from HR?

Gladys Byrd, Acting Assistant Director, HR Classified: There isn't a representative from HR.

Ms. Early: There is not?

Gladys Byrd, Acting Assistant Director, HR Classified: Not that I know of, no.

Mr. Barabani: Don't you work in there Ms. Byrd?

Gladys Byrd, Acting Assistant Director, HR Classified: I am not a representative from HR.

Mr. Barabani: Is there anything that you could tell us that could give us any idea because we have a lot of people here, not today, but we had some people that were very concerned about us hiring a Personnel Commissioner, do you know of any update that you could help us with?

Gladys Byrd, Acting Assistant Director, HR Classified: Once again, there isn't a representative from HR.

Mr. Barabani: You do work there correct?

Gladys Byrd, Acting Assistant Director, HR Classified: Oh Mr. Barabani, come on.

Mr. Barabani: I mean I'm curious; I'm trying to kind some kind of; these people are coming to us...

Gladys Byrd, Acting Assistant Director, HR Classified: You do this to Mike and now you're doing the same thing to me. Once again, there is...

Mr. Barabani: No, I'm asking you because you work there.

Gladys Byrd, Acting Assistant Director, HR Classified: You know where I work so why did you ask the question?

Mr. Barabani: Well, I'm curious if you know anything...

Gladys Byrd, Acting Assistant Director, HR Classified: Once again, there isn't a representative from HR.

Ms. Early: Ms. Byrd can you provide us with the status?

Gladys Byrd, Acting Assistant Director, HR Classified: No I cannot.

Ms. Early: You cannot? From what I have been told, Mr. Astrachan has spoken to Ms. Yolanda Ortega, Superintendent Arturo Delgado, secretary for Gladys Byrd, and again, with Yolanda Ortega as my last update was yesterday. Yesterday he says that, well Monday, he says that; and each time he was making the phone call; Monday, he states that Gladys Byrd's secretary told him that he would receive a call before the end of by close of business Monday. On Tuesday, after receiving no call, he spoke with Ms. Ortega directly, he says he was told that she was given his paperwork, but had not had a chance to review it, she was in negotiations all last week, and as of late yesterday evening, that was my last status update, I was hoping there would be something new as of today. Do you have any information?

Nersidalia Garcia, Secretary III: We received a letter that's in your folder.

Mr. Salazar: There's a letter in this packet.

Ms. Early: Ok, I have not read any letters that were just given to us today; I have not?

Alexis Jenks, Human Resources Specialist (PC): It was emailed out to you yesterday afternoon as soon as it came so, it probably was over 24 hours ago; it was emailed to you; it came from the district office.

Ms. Early: Let me again state, I have not read any emails nor have I read any letters that were given to us this evening.

Alexis Jenks, Human Resources Specialist (PC): Right.

Mr. Barabani: Was that mailed or emailed, I heard the word?

Alexis Jenks, Human Resources Specialist (PC): It was sent via electronic email to all Commissioners' yesterday afternoon.

Mr. Barabani: Thank you.

Ms. Early: I have not been online since Monday around noon so anything that was sent to me after that I haven't had a chance to review it. Any further discussion on this item?

Mr. Salazar: Just for your benefit Madame Chair, there is a hard copy that's right here in the packet if you'd like to take time to just peek at it, you can use your discretion on that, but I haven't had email either, I've had some email glitches that have been going on and so this is really the first; it's only about a page and a half so if you feel like looking at it...

Ms. Early: We can read it and respond after this meeting.

Mr. Salazar: Ok, alright.

Ms. Early: Item F, move that the Commission approve membership dues for 2010 through, that should be 2011 for (1) Personnel Commission Association Southern California in the amount of \$40.00. I so move.

Mr. Barabani: I will second that.

Ms. Early: Any discussion? Any abstentions? I'm sorry, all in favor of the motion signify with a voting sign of aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries. Action Item F (2), California School Personnel Commissioner's Association in the amount of \$1,118.00; we are moving to approve membership dues for the California School Personnel Commissioner's Association. I so move.

Mr. Barabani: I'll second.

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

Mr. Barabani: Aye.

Mr. Salazar: Aye.

Ms. Early: Aye. Motion carries. Item G, the Commission will discuss its regular meeting scheduled for the remainder of the year and modify those scheduled as it deems necessary or appropriate. This was discussed at our last meeting so, our next we were; there was some discussion and concern about our Commission meeting conflicting with CSEA meetings. Did we solidify meeting dates for November?

Mr. Salazar: Madame Chair if I may? There's a Action Item IV.G, which I think it's probably mis-numbered, but that's a minor detail, but its back here and it has some dates on there, with your permission, I'd like to; because I don't want people to think I'm playing with my phone, that's where my calendar is; I'd just like to look at that, if you don't mind, I don't know if these were the dates, but maybe we can just peek at that, that seems like that was a good starting point. Let's see we have...

Ms. Early: I think we uh...

Mr. Salazar: I got the ninth (inaudible).

Ms. Early: I'm sure it was captured in the minutes and we don't have the minutes so, I'm not sure of the days.

Mr. Barabani: Yeah, the 10th is the day that CSEA has their meetings.

Mr. Salazar: So, we originally had the 9th because I have the 9th on my calendar.

Mr. Barabani: Steve? Since it was requested by CSEA can we; if you don't mind.

Mr. Salazar: Ok, so, the 10th meeting would be changed then? Ok, I got it.

Nersidalia Garcia, Secretary III: Yes the 10th.

Mr. Barabani: Is your normal meetings on Wednesday; is that correct?

Steven Holt, CSEA Vice President: Second Wednesday of the month.

Mr. Barabani: Was the 10th; yes, we had it scheduled for the 10th and we would like to move it to the 9th, the Commission meeting.

Ms. Early: Ok.

Mr. Salazar: That is fine with me.

Steven Holt, CSEA Vice President: Thank you.

Ms. Early: Ok, so our next meeting will be on November 9th. I would like to see, based on recent correspondence, if both of you are able to have a Special Call meeting which would be a Closed Session meeting for Monday, November the 1st to review; well, there

will be an agenda posted, but it's to discuss recent correspondence? The items will be properly agendaized, but it will be a Closed Session meeting, I just wanted to check your availability.

Mr. Salazar: With respect, can we first finish these dates right here, I just want to make sure I have them down, I don't want to mess up.

Ms. Early: Sure, sure. We have November 9th.

Mr. Salazar: The 15th right, was the last one; so the 9th?

Mr. Barabani: No, the 23rd...

Mr. Salazar: We have the 9th, the 23rd and the 15th?

Mr. Barabani: Right. The 23rd was moved from the 24th because it's right next to the holiday.

Mr. Salazar: Is the 15th the date that we were looking for because it says *PCSAC meeting will be held on the 15th*?

Mr. Barabani: Let's see, the meeting on the 18th, yes, the 15th.

Mr. Salazar: So it says *is therefore recommended that the Commission move this meeting to either the 14th or 16th*; is that what we are trying to do, right, move to the 14th or 16th?

Mr. Barabani: No.

Mr. Salazar: Ok, I need to make sure I know what we are talking about.

Ms. Early: Ok, and if you need to check calendars we still have a couple meetings before then where we can solidify the final December date if you prefer?

Mr. Salazar: Well for me Madame Chair, I would prefer to, if we can, nail that down now, it would just be better for me because it's far out there in the future and we can just put it down and then it's done and I'll make sure I won't have any conflicts, at least there's a lesser likelihood.

Mr. Barabani: The 14th through the 16th; whatever meeting you prefer.

Mr. Salazar: Either one of those is ok?

Mr. Barabani: Whatever you prefer, yes.

Ms. Early: I would prefer the 16th over the 14th.

Mr. Salazar: Ok, ok, let me put that in. That's fine with me, December 16th is fine.
Ms. Early: Ok.

VI.COMISSIONER'S REMARKS

Ms. Early: Commissioner's Remarks.

Mr. Barabani: (inaudible).

Mr. Salazar: No remarks here.

Ms. Early: Are you available for a Closed Session meeting for Monday, November 1st?

Mr. Salazar: Just one moment please. Let's see that's next week. I apologize; I'm not as good technologically as I'd like to be. Yes, that should be fine.

Ms. Early: Ok, we'll further agendize it.

Mr. Barabani: Ok, can we kind of go over those all those dates now?

Ms. Early: We have November 1st as Closed Session...

Mr. Salazar: What time, Madame Chair, I'm sorry, that's 5:30?

Ms. Early: 5:30.

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

Ms. Early: November the 9th, 5:30, November 23rd...

Mr. Salazar: The 9th also?

Mr. Barabani: Yes, 5:30.

Ms. Early: November 23rd, 5:30 and December 16th, 5:30.

Mr. Barabani: Ok. December 16th correct?

Ms. Early: Yes.

Mr. Barabani: 5:30, ok. November 23rd, close to Thanksgiving, who's bringing all of the turkeys?

Mr. Salazar: It looks good; if I could just make one recommendation and that would be to ask staff to please just send out a quick email or something with all of those dates one more time. Is that ok? I have them all down, but you never know.

Ms. Early: Any other remarks? Any other remarks?

VII. CLOSED SESSION

Ms. Early: Agenda item VII, Closed Session; conference with legal counsel, Kristine E. Kwong, Musick, Peeler & Garrett; 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; pursuant to the Government Code Section 54957 to discuss: Public Employee Appointment Title: Personnel Commission Director (Provisional) Personnel Commission Director. Personnel Commission will now adjourn into Closed Session. We will not be reporting out of Closed Session.

VIII. ADJOURNMENT

Meeting was adjourned at 6:18 p.m.