

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

March 23, 2011

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

I. CALL TO ORDER

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

II. APPROVAL OF AGENDA

Mr. Barabani: Thank you. On Approval of the Agenda, I am going to request some corrections; anybody else have anything before I approve? At the last minute today, kind of typical for the district and the attorneys, I received two formal objections from not one, but two attorneys on tonight's agenda. Mr. Marca admitted to an error on his part and failed to respond to a request for information concerning the report contained in the agenda package and it's for us to object at the last meeting; he misquotes the law the sanctions of the governing boards ill-conceived attempt to potentially violate the merit systems statutes and make the claim that the position in question to be senior management. The way I saw it was Mr. Marca failed to account for Ed Code section 45256.5 which makes senior management employees in the merit system a part of classified service. Also, Mr. Dietrich also sent a letter at the last minute, I already did point out an error on the agenda on Item V (D) that makes it advisable to remove that item from this agenda to be acted on at a later time. Mr. Dietrich claims that the Commission lacks legal authority to act on any matter that is delegated to the Personnel Director by the rules when there is no Personnel Director in place. By his legal position, he is saying that all work of the Commission must halt immediately until the Commission turns over to the district the authority to appoint a Personnel Director of their liking yet, Mr. Dietrich is unconcerned with the fact that a person who is not legally a Personnel Director who has been illegally hired by the district in violation of the rules and the law and who was appointed working directly and being supervised not by Commission, but by Assistant Superintendent of Human Resources Classified this violates every rule or every law that there is about the merit system. There is no reason though, not to continue Item V section C and the district can take appropriate legal action if it so wishes; I am more than happy; I am willing to bring this into court; illegal conduct of the District that led the Commission do this action. Mr. Deitrich also objects to Items V (A) and V (D) essentially because subpoenas were not issued; he quotes no law that requires that a subpoena be issued under section 45311 or 45312 in order to take action. Those sections permit the communication and issuing of subpoenas, but they are not required. His objection is not found, I believe, on any legal basis and Mr. Dietrich also objected to the Items on the agenda as impermissible because it's impermissibly vague under the Brown Act, but he didn't cite any specific sections of the Brown Act that supports his

contentions. He quotes a decision from 1971 some evidence of his position yet, in that matter, the court found and failed to properly give notice because the agenda item only had four word statement on the agenda. The current Brown Act under Government Code section 54954.2 only requires 20 words or less to describe what the matter is. On our agenda here, hopefully I didn't miscount, but it's Item V (A) it's 59 words and it makes clear the nature of the issue; our Agenda Item V (B) has 57 words; it makes clear as to the nature of the items, the public is given clear notice as to the matter before the Commission. Now Item V (C) makes clear that the Commission has the sole legal authority to set minimum entrance standards; the district and the union cannot negotiate away statutory language as Mr. Dietrich well knows. Now on the other matter, Kristine Kwong cannot be here tonight so, there cannot be conference with the counsel. So, after all said (inaudible) I move that we adopt the agenda with the deletion of Agenda Item V (D) and the deletion of the Closed Session item to confer with the counsel. Do I have a second?

Ms. Early: I have a question?

Mr. Barabani: Sure.

Ms. Early: Under Closed Session item *Public Employee Performance Evaluation*, we're not actually performing an evaluation; we're going to discuss this item, correct?

Mr. Barabani: That is correct.

Ms. Early: And just because I have not had a chance to read the correspondence that you received this afternoon in addition to pulling Action Item D, I would like to also pull Action Item C and E.

Mr. Barabani: You would like to pull item D?

Ms. Early: C, D, E, and as stated, the item under Closed Session, *Existing Litigation*.

Mr. Barabani: Is that your motion; looking for a second?

Ms. Early: (inaudible) we have your motion on the table already.

Mr. Barabani: I'm sorry; so we are amending.

Mr. Salazar: I also have a comment if this is the appropriate time with respect with the agenda items. I didn't get a chance to read the correspondence either, I saw it very late, just coincidentally I happened to go on the email and see that there was something from Mr. Dietrich, but he makes reference to some, what he believes, are Brown Act violations for all of basically Action Items A, B, C, D, I'm not sure about E, but I know that A and B were in there as well and so, what I would like to do as well is move that we take those items off of this agenda until we find out a little bit more about that.

Mr. Barabani: Ok, so, you want to take all the items off?

Mr. Salazar: Basically all of the items; with Ms. Early requesting C, D, and E, I would also like to suggest that we step back and take a look at A and B also because I think they are mentioned as well on that particular letter that you referred to Mr. Chair, and so, I think it will be prudent for us to take a look at that whole set which means that there will be Action on items under roman numeral B, all Action Items so, I am just adding as further deletion A and B.

Mr. Barabani: Ok, my motion on the table we will vote on first was to; I move to adopt the agenda with the deletion on agenda items V (D) and the deletion of Closed Session item to confer with the counsel. Do I have a second on that?

Ms. Early: I second.

Mr. Barabani: Alright; take a vote on that.

Ms. Early: Aye.

Mr. Salazar: Aye.

Mr. Barabani: Aye.

Mr. Barabani: Then you have an amended motion?

Ms. Early: No, I can (inaudible) separate motion if you want me to? I move to pull Action Items C and E.

Mr. Barabani: Alright, we have a motion to pull C and D.

Ms. Early: Under Action Items.

Mr. Barabani: Under Action Items C and D.

Mr. Salazar: I second.

Mr. Barabani: Any discussion? Do I have a vote on that?

Ms. Early: Aye.

Mr. Salazar: Aye.

Barabani: Aye.

Barabani: We pulled C and D and the (inaudible) *Existing Litigation*.

Mr. Salazar: My turn?

Mr. Barabani: Yes.

Mr. Salazar: Ok, I would like to make a motion that we additionally pull Action Items roman numeral V (A) and B for the reasons cited just a few moments ago.

Mr. Barabani: Do I have a second?

Ms. Early: I'll second.

Mr. Barabani: Call for a vote?

Ms. Early: Is it open for discussion?

Mr. Barabani: Oh yes, sorry, open for discussion.

Ms. Early: I have a question on Action Item D.

Mr. Barabani: On D?

Ms. Early: Conduct an investigation hearing? Who; was it the Commission that was going to be conducting the hearing?

Mr. Barabani: Yes; we were going to take testimony from the Assistant Superintendent of Human Resources, it says here, and Bryan Astrachan concerning the matters and the circumstances.

Ms. Early: Ok, thank you.

Mr. Salazar: When are you going to call for the vote?

Mr. Barabani: Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: Ok.

Ms. Early: Just for clarification on Action Item 1, did we receive a report from the Chief Business and Financial Officer?

Mr. Barabani: Yes, we received some paperwork attached.

Ms. Early: Was it in our packet?

Mr. Barabani: I don't know; I received some papers; I don't know; I think I seen it.

Ms. Early: And that's the only reason why; I don't remember seeing that and if it's in our packet I overlooked it..

Mr. Barabani: You're free to look in it; I don't know what's in everybody's packet.

Ms. Early: And that's why...

Mr. Barabani: I don't know what's in everybody's packet.

Ms. Early: That is why; I hope I didn't overlook it, but that's why I'm in favor of pulling the item, not that I don't think that its something should be acted on, it's just that I haven't had an opportunity to review the report if it was provided to us.

Mr. Salazar: Well I don't recall seeing that report either and my concern there was that, this is from the attorney, that he mentions something about the Brown Act.

Mr. Barabani: Well, on Action Item A he mentions that because we didn't issue subpoenas, he quotes it, but he didn't quote any law that required a subpoena.

Mr. Salazar: I think the point is I had not reviewed that (inaudible) and I would like do that.

Mr. Barabani: It would have been 2, 3, 4,5,6,7,8,9,10,11, 12, 13, 14; Ms. Early, if you look, it would have been 15 pages; that's what I received in my email.

Ms. Early: Oh, by email? I have not had an opportunity to review that. I am more than willing to review it and have it agendized to review the report. Sorry.

Mr. Barabani: Alright, so, we've pulled items; we have item E left. No, that wasn't part of the agenda.

Ms. Early: That wasn't part of my motion.

Mr. Salazar: That wasn't part of Ms. Early's motion.

Mr. Barabani: Ok.

Ms. Early: And you know, Commission Chair, it makes it difficult when we receive correspondence at the meeting for us to be in a position where we are voting on items without having reviewed the additional correspondence. I would just like to reiterate if we are to take correspondence into consideration as it pertains to Action Items, I would

like to see it provided to us at the time we received our packets otherwise, I'm assuming it doesn't need to be considered for this meeting. I'll make it an exception this time, but we've made that request on more than one opportunity. I am willing to meet as it relates to these Action Items, I just want to have an opportunity to review the related literature associated with the Action Items.

Mr. Barabani: I agree with you. One of them was sent last night at 10 o'clock, at 9:10, and the other one, I believe, that was the one, and then, I had an opportunity to read that and this afternoon, I read one during lunch period. I think we are going to have to do something about that because you are correct, they are sending these things at the last minute expecting us to act on it and Mr. Marca, his reasoning stated here if you didn't read it, is that he doesn't have a secretary so, hopefully this wasn't a malicious attack to try to stop the Commission from doing their job. So, let's move on to the next item, Approval of the Minutes.

III. APPROVAL OF MINUTES

Mr. Barabani: I don't think we're going to like this one; I received all this paperwork; I did not have time to read all of these minutes. Could we please note I asked to have these pulled for approval?

Ms. Early: So are you going to rule to table certain sets?

Mr. Barabani: I'd like to table all four of them and then re-agendize. I usually go over twice, and I haven't had that opportunity.

Ms. Early: Ok, well, there is one set of minutes that is only a page long, that's the one from December 22nd, would you want to table that one also?

Mr. Barabani: I'm sorry.

Ms. Early: We need to approve at least one.

Mr. Barabani: I guess I didn't; you are going to have to work with me on this; do I have a copy of it?

Ms. Early: Yes.

Mr. Barabani: Thank you, Ms Early. I'll make a motion that we approve the minutes of the Special Meeting of December 22, 2010.

Ms. Early: I second.

Mr. Barabani: I don't see anymore discussion. Ok. Vote. Aye.

Ms. Early: Aye.

Mr. Salazar: Aye.

Mr. Barabani: I make motion that we table items 1, 3, and 4.

Ms. Early: I second

Mr. Barabani: Vote. Aye.

Ms. Early: Aye.

Mr. Salazar: Aye.

IV. PUBLIC COMMENTS

Mr. Barabani: Alright, let's move on with the Public Comments section.

Patrick Maher: My name is Patrick Maher, I just have one brief comment about this fiasco tonight, I think it's a tragedy and a shame that the district is stopping this body from acting within its duties and responsibilities because of last minute some kind of legal issues that they throw at you; bias attorneys who represent the interest of the district only and not the interest of the merit system or the Commission and for them to pull this stuff at the last minute it's shameful and they should be embarrassed and they should stop this stuff immediately. If you give 72 hour notice, they have attorneys, they work over the weekend, it doesn't make any difference, they could have had that out to you by Monday morning at the earliest so you could have had a chance to read it and respond to it. The second issue I have is with the pulling of an item concerning the employees; classified employees are being denied their right, their absolute legal right, to take promotional examinations to advance in their career to be considered for advancement because the district or somebody is impeding the ability of the Commission to conduct examination which is under its purview and that's a tragedy. It's shameful that these employees are being denied that right. Its also a crime, in my opinion, for anyone who purposely obstructs or delays or resists or prevents people from filing an application or taking the examination that this Commission has previously order to be conducted and has yet to be conducted and apparently, the district is eager to go ahead and approve a list and hire people by denying those employees their rights, that's a criminal act also and I think they should be referred to the district attorney for criminal investigation. Thank you.

Steven Holt, First Vice President, CSEA: Commissioners, my name is Steven Holt, First Vice President, California School Employees Association Chapter 183. I wanted to put this on public record, there's been some alleged complaints coming from our members about district officials that are blaming the Commission and the classified union for the problems that are going on right now in the district. My understanding is that the Commission has chosen a director and the district fails to recognize that Commission director. We have an alleged complaint today of a certain manager from School Police who is telling our classified bargaining members past history of Commission Chair Mr. Barabani and slamming him to our members and telling them that their union is not doing

anything in preventing the district from hiring and my understanding is, for whatever reason, they do not want to recognize the Commission's selection for their choice of director. It is the district and solely the school district that has made that decision, the district nor the labor unions control the Commission, they are an independent body, they make their own decisions and I want that said on record. I am tired of the district going around and slamming and putting out information to our people that portrays Commissioners or the classified union in a negative light. For whatever reason they made their choice in not recognizing the chosen director, it was their choice and this goes out especially to Board President, Mr. Tillman, who had some interesting remarks last board meeting. We do not control the Commission, they control their own actions and decisions and they chose not to recognize them again, for whatever reason that is, that is the districts decision and I am very tired when I hear personal information coming back about one of our Commissioner's being told to several of our classified bargaining members who are in mandated training and information being put out during these classes. I think it's appalling, I think the district needs to correct that action. I did request a meeting with Chief Paulino and he has yet to contact me, get back to me about this situation, but I am very appalled, I want to put that on record and let the district know on the record that is solely their responsibility and decision and again, whatever reason they decided to do what they do, they need to take ownership for that decision stop blaming everyone else. Thank you.

Mr. Barabani: Mr. Holt?

Steven Holt, First Vice President, CSEA: Yes sir.

Mr. Barabani: Am I to understand, in your opinion, that we have district managers, since you said the Chair, and I'm the Chair, releasing what I would say, would be personnel file information about the time that I used to be employed here, is that what I'm hearing?

Steven Holt, First Vice President, CSEA: Do you want me to elaborate a little?

Mr. Barabani: Sure.

Steven Holt, First Vice President, CSEA: They are talking about how you previously worked in the district and had to be escorted out in handcuffs and you were no good from the beginning. My understanding is alleged reports that are coming back from members and then they went on to tell how the classified union is a disappointment to them because we are not taking action to correct the actions of the Commission as there is somehow some indication that we control the actions of the Commission, which is not the case, you are an independent body.

Mr. Barabani: Yeah, I've heard that before too, I guess they've never heard some of the heated discussions we've had huh?

Steven Holt, First Vice President, CSEA: Well, I know it has been stated by the Superintendent of this school district, San Bernardino City Unified, that he does read the

minutes so, I do want to put that on public record that I am offended by them blaming everyone for their decisions. Their decisions are their decisions and you can argue about who's decision was right and why the Commission or the district or whoever made a decision, but they need to claim ownership for that and they are the ones who decided not to recognize your choice for director and that's just plain facts. There is no disputing that they don't want to recognize that selection and now they are trying to have their team go out and say discouraging things to our members and point fingers and I found it really disgusting that they would bring up personal information about you, Mr. Barabani, and it had nothing to do with the Commission, your employment, past employment, has nothing to do with you chairing or sitting as a seat on this Commission currently. I do want to put that on record and I think that the district needs to take action and I have spoken with Brenda Leon who told me to go to Paulino, Chief Paulino, who has yet, again not contacted me and I find that very disturbing that they would have one of their management team, one of their sergeants, go out and put that information out to our employees. I am so heated right now by that and disgusted, I cannot even tell you the feelings that are coming through right now, with them putting that to our members and trying to incite them, in my opinion, to be enraged at both the Commission and at their union and I find that disgusting.

Mr. Barabani: Well just to put it on the record, what you heard was totally false, but I am deciding if what they're stating about me would be a badge of honor or not. This is not the first time false allegations about me have been said up here so now they are claiming they are actually going through my personnel file and pulling my stuff out huh? Interesting.

Steven Holt, First Vice President, CSEA: They didn't mention where they got the information from, but they said they did put it out to them.

Mr. Barabani: Alright, thank you very much.

Steven Holt, First Vice President, CSEA: Thank you.

V. ACTION ITEMS

Mr. Barabani: Any more public comments? We can skip the Action Items and go directly to Commissioner Remarks.

VI. COMMISSIONER REMARKS

Mr. Barabani: Mr. Salazar?

Mr. Salazar: I have no remarks this evening. Thank you.

Mr. Barabani: Ms. Early?

Ms. Early: None.

Mr. Barabani: Well, I don't normally have any, but now that I have been spoken so highly of

VII. CLOSED SESSION

Mr. Barabani: We will move into closed session now. We will adjourn into closed session at 6:15.

Charlie LaChance: CSEA Labor Representative: Are you going to be reporting out after?

Patrick Maher: Mr. Chair.

Mr. Barabani: Yes,

Mr. Maher: You need to read the items on the agenda for the closed session.

Mr. Barabani: You are right, thank you Mr. Maher. I would like to read for the record we are going into closed session pertinent to Government Code section 54957 to discuss: Public Employee Appointment of: Personnel Commission Director and the other item Public Employee Performance Evaluation Titled Training HR Specialist 2 positions. That is it for now.

REPORT OUT OF CLOSED SESSION

The commission reconvened its meeting at 7:35 p.m.

Announced the following actions taking in closed session, there was no action and we have nothing to report, adjourned the meeting at 7:36 p.m.

VIII. ADJOURNMENT

The commission adjourned the meeting at 7:36 p.m.