

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

February 23, 2011

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

I. CALL TO ORDER

Ms. Early called the meeting to order at 5:35 p.m. Mr. Barabani led the pledge of allegiance.

II. APPROVAL OF AGENDA

Mr. Barabani: Agenda Item II, approval of the agenda.

Ms. Early: Commissioner Barabani I move to approve tonight's agenda.

Mr. Barabani: All right, I will second. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

III. APPROVAL OF MINUTES

Mr. Barabani: Third item Approval of the Minutes. I for one did not have an opportunity to completely read through both sets of minutes. Mr. Salazar? We're on the second item, Approval of Minutes. I'd like an opportunity to set them aside until the next meeting.

Ms Early: Ok.

IV. PUBLIC COMMENTS

Mr. Barabani: Ok, thank you. And this is where we come to the Public Comments. You guys have something you would like to speak about that's on the agenda please come up to the microphone in front, and state your name, and your position in the district if you have one.

William Diedrich, of Atkinson, Andelson, Loya, Ruud, & Romo: Good evening members of the commission, my name William Didriech I'm not an employee of the district but, I do represent San Bernardino City Unified School District. I was looking at the agenda, we prefer that we address the public hearing section later, is that how I understand it?

Mr. Salazar: I think looking at this agenda, everything that needs to be addressed should be addressed now. Is that right?

William Diedrich, of Atkinson, Andelson, Loya, Ruud, & Romo: Ok.

Mr. Barabani: Yes.

William Diedrich, of Atkinson, Andelson, Loya, Ruud, & Romo: I wanted to just raise a couple of questions not necessarily comments on the public hearing section which I believe it's item A. I'll be referencing specifically the back up materials. Looking at page 4 of 31 of the back up materials and paragraph three, we were requesting, asking if the commission could consider as part of its public hearing whether or not Education Code section 45287 permits the appointment, the provisional appointment, of non-employee. It didn't seem clear one way or the other in the back up materials. And in referencing page 4 of 31 again paragraph four, we request that the commission take a look at whether rule 5.22 would've applied, which is emergency appointments.

Mr. Barabani: What was that again 55?

William Dietrick, of Atkinson, Andelson, Loya, Ruud, & Romo: 5.22 I believe. Again page 4 paragraph five. The district would request some clarifications to whether there's any legal significance to that paragraph that was included in the back up materials. That is the one, are you guys following me ok? I am sorry, I'm doing it blindly, ok.

Mr. Salazar: Which one were you referring to right now?

William Dietrick, of Atkinson, Andelson, Loya, Ruud, & Romo: Yeah let me go to it real quick. It is the paragraph that begins "The Personnel Report for the meeting of December 7th made no mention" ok, and in the same page paragraph seven, there is a use of the term "substitute"; we would ask if there were some clarification as to where the definition of the term "substitute" came from. There is, I believe as an aside, I think there is a definition for the non-merit districts. Ok and the last point for the hearing was on page 5 paragraph two, we were hoping that the commission would consider what barring the district's classification of an employee as a management substitute, what barring that has on the Personnel Commission's classification if the employee is provisional. Is that clear, I'm sorry.

Mr. Barabani: No, can you repeat?

William Diedrich, of Atkinson, Andelson, Loya, Ruud & Romo: It appears that there is two conflicting, based on just reading the back up materials, it appears that there is two conflicting classifications the Personnel Commission as a provisional and from the back-up materials it appears that you're saying that the district; classified (inaudible) is substitute management and the question was is there any, does one have a barring of the other; in other words who's classification would trump in that case?

Mr. Salazar: I'm going to go back for just a second I got a little bit lost. Where were you?

William Diedrich, of Atkinson, Andelson, Loya, Ruud & Romo: Page 5 paragraph two.

Mr. Salazar: Page 5 paragraph 2, by hiring Astrachan that's how it starts?

William Dietrich, of Atkinson, Andelson, Loya, Ruud, & Romo: In addition; and actually paragraph six fits as well, and again this is just seeking clarification. The last point goes actually to the regular Agenda Item B, the last part talks about dismissing the employee. The question is if you're relying on the Education Code provision for the authority to dismiss, we just ask if you could to clarify where that Ed Code provision is, if there is not one just clarify that as well.

Mr. Barabani: Where is this at?

William Dietrich, of Atkinson, Andelson, Loya, Ruud, & Romo: That's on your regular Agenda Item B.

Mr. Barabani: "Commission Rules whether or not the Commission should order that he be dismissed" is that the one we are talking about?

William Dietrich, of Atkinson, Andelson, Loya, Ruud, & Romo: Correct. With that I thank you oh I am sorry you have a question?

Ms. Early: What was your comment on this item?

William Dietrich, of Atkinson Andelson, Loya, Ruud, & Romo: It was a question as to whether the commission was deriving it's authority from any particular Ed Code or if it's deriving it from inherent authority just any, where ever you're deriving your authority.

Ms. Early: Thank you.

William Dietrich, of Atkinson, Andelson, Loya, Ruud, & Romo: Thank you guys very much. I appreciate your time.

Patrick Maher: My name is Patrick Maher. I am not quite sure what the issues are that Mr. Dietrich just raised. 45287 is the section that deals with provisional appointments and a provisional appointment could be made only when there is no list, if there is a list there cannot by definition a provisional appointment under the statues of the code and at the same time the Rules also say the same thing, that a provisional appointment is made when there is not eligibility list; that's where 45287 becomes and issue. The commission followed 45287 when they appointed Mr. Astrachan as a provisional in compliance with the Rules. Now whether or not the person has to be or must have been a past employee (inaudible) legal interpretation, but I don't think this commission should be trying to answer an attorney's question about what the law really says; without legal advise that's been available to you in answering. That's obvious from the record that at one point Ms. Ortega claimed that Mr. Astrachan could not be hired as a provisional because he has not been previously employed at the district or is not currently one; she said the same thing about me, she sent a letter with the identical issue, the difference was is I had been an employee of the district and legally I may still be an employee of the district. I don't

understand again the confusion over this thing, but she gave her personal opinion she did not have an attorney or provide a legal opinion she gave her personal opinion so that's an issue that may be still be up in the air as to whether or not Mr. Astrachan could have legally been appointed by the commission and the first place as a provisional; but that's separate from whether or not the district hired him as a substitute management. 45286, if you read 45286 very carefully, 45286 does that use the term substitute? What 45286 talks about is replacing or filling in for an absent employee in the merit systems in the school districts that when a person fills in for an absent employee that is commonly referred to as a substitute; is the district that used the term substitute, substitute management in the appointment or hiring of Mr. Astrachan not the commission used the; but the district used (inaudible) in their personnel report, and that's how they hired him and that's how they appointed him. The reference to 5.22, Rule 5.22, emergency appointment by statute is only permitted for a maximum of 15 calendar days. Assuming that Mr. Astrachan started his work sometime back around November, his 15 days as an emergency appointment was up long ago and he never should've continued passed that date somewhere around the middle of December or perhaps earlier; his 15 days was up and that's calendar days not working days or anything else so his time was well up so to make an emergency appointment for somebody when the time limit is very specific and very limited. In addition to which there's never been a statement or a complaint about what an emergency is; the district has created a number of situations that has created for vacancies and lack of hiring and examinations only because they have chosen to disregard a number of statutes and a number of rules one of which is the manner in which they appointed Mr. Astrachan as a substitute manager instead of a Provisional Personnel Commission Director. There's no emergency because an emergency is something that's beyond your control or it's unforeseen and the district's actions calculate it persistent and so on are not an emergency; you can't turn around and say I ran the red light on purpose, so therefore it was an accident. The same thing with an emergency you can't create a situation; you can't set the house on fire and say I've got an emergency beyond my control because I purposely set the house on fire, these are the kinds of actions that are taken place by the district. The reference to substitutes I think here on the paragraph that substitutes are governed by a different statute 45286. I think Mr. Dietrich is right that the term substitute is used for non-merit districts under 45103, I believe, the section is. But the equivalent without defining it as such as I mentioned is stated on 45286 by specifically defining filling in for an absent employee and as I mentioned that's common terminology in merit districts and school districts throughout the state, but also in merit districts; sometimes they are clarified as limited term substitutes because 45286 talks about two types, two completely different types of limited term appointment for limited term employees. Both types must be on an eligibility list and must be appointed or offered the appointment as a limited term employee on rank order on that eligibility list, that hasn't changed the factors any. Going back to the issue of who can appoint the personnel director, again that's very relevant because the district hired someone as a substitute manager this commission has taken several different actions to terminate that provisional appointment under the statute and under the specific rules and the district apparently through the Assistant Superintendent of classified services has consistently and persistently put that person back to work and is supervising and directing his activities for the work that he is performing that is reserved by law and by classification to the Personnel Commission

Director. The district is trying to have it both ways, we're don't recognize the provisional appointment but we're going to create a substitute position we're going to control what that person does even though that person is not working as a Personnel Commission Director, but we're going to allow to commit personnel director duties under the Education Code and under the Rules, but we're going to control that person and the commission has no control over that person, that's what the real issue that's going on here. With this matter is obviously intend to address. Again the issue of classification, the district can't create it's own classifications you just can't make them up and say I'm going to make up this classification and I'm going to make that classification, I'm going to do what I want to. Only the commission can classify so when the district creates a classification that has not been approved by the commission and appoints people into that classification, one, they cannot have an examination as required by the law simply because you have to have minimum qualifications established you got to have what the specific duties are identified you got to have standards for employment selection and so on and that's done through the classification specification. The district delegates for non-commission staff sets forth the duties, for commission staff only the commission sets forth the duties and that's done; but either way it's done through a classification specification that only the commission has the authority in a merit system to establish and only the commission has the authority to approve and then establish and so that's for the authority the make of classification because apparently the district said we're going to make a substitute management. The other thing is that this district as is the commission is under a court order initiated by the district to comply with the rules and the district is disregarding the rules right and left as you can see just by this one matter not by the other matters and you have the attorney representing the district in that court action coming here raising questions; I understand he is asking questions not making any statements, but the issue is when does the district comply with the Rules, only the commission is attempting to comply with the Rules, the district doesn't care about the Rules except when they can think they can use them for something that they want to accomplish or something they want stopped, then they worry about the Rules until then they don't pay any attention to the Rules. There were ample examples before this commission over the least past year in which this has been an issue and has been brought up time and time again. Again I don't what the real issue under the questions that are being raised other than maybe to throw you into some kind of concern or doubt to discourage you from taking the action you're allowed to do under section 45310 of the Education Code and I think; and again it's obvious from reading the agenda that both items A and B are covered by the same back up material, starting on page 4 and going all the way through all the way to page 22, so it's 18 pages of back up material and explanations and the specific statutes, the actual specific statutes there, and everything else. I don't quiet understand why there is a request for information that's plainly contained in the back up materials; Mr. Dietrich wants to propose a specific change to the motion that he thinks should be made to clarify whatever point he is trying to clarify. Thank you.

V. ACTION ITEMS

Mr. Barabani: Any more public comments? *We will move on to action item V. Action Item V (A), the commission will conduct a public hearing on whether or not a classified substitute manager was hired in accords with the Education Code article 6 on the merit*

system and the commission Rules and whether or not the commission should order that no further pay warrant be issued. Note, the only issue is whether or not the classified manager was hired as a substitute manager in accord with the law and the rules of the commission. No other issue, including work performance or any perceived need is at issue and may not be commented during public hearing. Members of the public are encouraged to read the supporting material on this item and to understand the issue before the commission. Public comments are closed also. Do I have a motion and do I have a second?

Ms. Early: I second.

Mr. Barabani: Call for a vote. Aye.

Ms. Early: Aye.

Mr. Salazar: Nay.

Mr. Barabani: Action Item B, the commission will make a decision and take action as it deems appropriate as to whether or not classified substitute manager was lawfully hired under the Ed Code Article 6 on the merit system and the Commission Rules and whether or not the Commission should order that he be dismissed and no further pay warrant be issued. I would like to take the time take action on this to make a motion. I move that the commission find that the governing board appointed Brian Astrachan as a substitute management in violation of the examination procedures of the merit system provisions of the Ed Code and Rules of the commission by 1, making the appointment on Mr. Astrachan when he is not on any eligibility list as a result of any examination or other list that a limited term substitute that is required Ed Code section 45286. Commission Rules: 5.03, 5.06, 5.09A, 5.13, 5.23 (B), 5.23 (B) (1), and 5.23 (B) (2). 2, Make an appointment to classification that has not been approved by the commission in violation of Ed Code section 45256a and the commission Rules 3.06 (A) and 3.06 (B). When the commission has never established the classification of substitute management and therefore could not conduct an examination in conformance with the requirements for conducting an examination under Education Code section covering the nature of the examination and the minimum qualifications for our classification. In doing so, that will be my first motion on it.

Mr. Salazar: I just have a question we're voting on item B here, is that right?

Mr. Barabani: That's correct.

Mr. Salazar: Was it just your comments with respect to item B?

Mr. Barabani: No, that's my motion.

Mr. Salazar: Well I mean the motion is the thing that we are voting on is item B can you;

I'm just asking the question, because I don't really know the answer to this is that this agenda that is posted, my understanding is we're suppose to cover items that are on the agenda. It just seems like that's something that is not on the agenda and so nobody really had the time to really think about that.

Mr. Barabani: No, this is exactly what's on the agenda with all supporting documents.

Mr. Salazar: Ok alright.

Mr. Barabani: What I'm doing is making a motion and which is regard to the item.

Mr. Salazar: Yeah I understand, you're saying item V (B), here is B.

Mr. Barabani: We are taking action on item B.

Mr. Salazar: V (B); taking action on that and you have all the other information that supports that action. I understand, is that right I'm trying to understand that correctly. Because I am not the smartest guy I just want to make sure it makes sense. Ok thank you, appreciate it.

Ms. Early: I second.

Mr. Barabani: Call for a vote on that motion.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I'll abstain thank you.

Mr. Barabani: That motion passed, motion passes. I also move that the commission order the district no longer issue any pay warrant to Bryan Astrachan for his employment status as a substitute manager after February 11, 2011 and that the County Superintendent be notified of this decision and that he enforce this order. I will second.

Mr. Salazar: Is that more supporting information back there?

Barabani: That's the action substantiated on item B.

Mr. Salazar: We already voted on B, right?

Mr. Barabani: We voted on.

Mr. Salazar: B.

Mr. Barabani: Yes, I made the first motion whether the district violated making substitute manager in that past, now we are voting on asking that the pay will no longer be issued to an individual that shouldn't have.

Mr. Salazar: Is that item C or, I mean we already voted, right?

Mr. Barabani: No, we are still on item B.

Mr. Salazar: We voted on B though did we not?

Mr. Barabani: One motion we can have another motion.

Mr. Salazar: I thought we just voted on the item that's on B here

Mr. Barabani: No we voted on the motion that I made concerning the item and I have another motion.

Mr. Salazar: So you have another B?

Mr. Barabani: Another motion.

Mr. Salazar: Ok. I'm just trying to get this clear.

Mr. Barabani: Ok I understand.

Mr. Salazar: I'm not quiet understanding. There is no part 2 on the agenda. We voted on the whole motion.

Ms. Early: I have a question.

Mr. Salazar: I am just confused.

Ms. Early: I have a question Mr. Chair, we had actually voted at a prior meeting to have no further pay warrant be issued, and we gave an effective date, so my question is you're saying as of February, what date did you make in your motion?

Mr. Barabani: February 11, 2011.

Ms. Early: So, my question is where did that date come from? Because we actually voted

Mr. Salazar: Before that day.

Ms. Early: Before; we voted for pay to stop at our prior meeting with a effective date that was prior to February 11th. So my question is why are we changing the date?

Mr. Barabani: That was because the district was claiming; that was when he was supposed to be a provisional employee and then the district never appointed a provisional employee but made a substitute manager appointment and then claiming he is working as a substitute. There's an individual as a position called substitute manager, there is no classification for that so we're now asking not to be paid for that for not having that classification.

Ms. Early: I am confused we are talking about an individual getting paid. We're saying that he should have stopped getting paid as a provisional director a long time ago and now we are saying, well because they didn't hire him as provisional director he was hired in a substitute management position, then he can get paid a few more days, but we know we appointed him specifically as provisional Personnel Commission Director; if you look at minutes from December the 16th he was specifically asked what position he would hold and his response was as a provisional director. So, it was no confusion in his part as to where he would be seated as far as classification he even stated to me when he received his cards from the district that they made an error on my business cards, they have me listed as an interim director it should be provisional director, so there was no confusion within him as to what he was appointed as and we know that he is familiar with the merit system. My question again is do we really need to change the date to make it effective February the 11th or can we keep the original date that we voted that he should no longer be paid by the district? And my second question is whose budget is his salary coming from?

Mr. Barabani: They are both very good questions and when we voted to place a personnel provisional appointee as you know, we did that and we all believed that to be so, until we found out by; I can't recall when these things happened so quickly and at the same time whether the agenda item from the board was brought up or we were at a meeting one day and he, the individual mentioned the substitute manager. At that point we had to get clarification so we then made the motion we, let's see, we also had hired someone for the position which under the Rules if we wanted to follow which gives us the original date the 29th it says they can continue for 15 more days, we allowed provisional even though we found out later he wasn't provisional, the district never sent letters to the board, yes, very confusing, bottom line is they never ever hired this person as a provisional employee. When I asked person to vacate the position of provisional I was told that they're not provisional they were a substitute manager. There is no classification for substitute manager so now we are in a position to make a decision on that. I'll try to explain myself any better (inaudible).

Ms. Early: So, I am sorry I didn't follow you, where did we get the date February 11th from?

Mr. Barabani: I believe that the; if we look on the calendar here, that was Friday and after I had the next meeting was we moved at the last meeting to as you said make some motions here.

Ms. Early: And we know we don't have those minutes so that makes it difficult.

Mr. Barabani: Hold on.

Ms. Early: Was our last meeting on February the 10th is that where the 11th came from?

Mr. Barabani: Because we met on (inaudible) I have to look into it.

Ms. Early: Is that, I'm sorry.

Mr. Barabani: No we met; we met on the 10th.

Ms. Early: Ok, I get it now.

Mr. Barabani: And then we took action then and then the 11th. Whether he's continued to work since then I don't know.

Ms. Early: I second.

Mr. Barabani: Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I'll abstain.

Mr. Barabani: Abstain, ok. *Item C, It is moved that the commission employ Kristine Kwong, Musick, Peeler & Garrett LLP as counsel to the commission pertinent to Education Code Section 45313 for all matters in response to a complaint from the district concerning the selection process, the selection decision, and the commission's actions concerning a provisional appointee and to assist the commission in responding to this complaint and in taking necessary legal actions to uphold the commission's authority under the Rules and Ed Code statutes concerning the merit system due to the legal counsel to the governing board declaring a conflict in this matter.*

Ms. Early: I second.

Mr. Barabani: Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Abstain.

Mr. Barabani: *Item D, it is moved that the file formal charges with the State Bar against Richard Marca and Bradley Neufeld for: 1. persistently violating the right of the*

commission's privileged attorney client communications by sharing such communications with the district. 2. Issuing legal opinions or taking actions that constitute a conflict of interest between the governing board and the commission or that constitutes a conflict of interest between the attorneys and the commission instead of declaring a conflict of interest.

Ms. Early: I second.

Mr. Barabani: Call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I have a question?

Mr. Barabani: Vote called.

Mr. Salazar: Can I ask a question before I vote? Right can we do that? This doesn't read right it says, it is moved that the file formal charges, it must be a word that's missing there, right?

Mr. Barabani: It is moved that the...

Ms. Early: Commission.

Mr. Barabani: Commission.

Mr. Salazar: Ok I'll abstain, thank you.

Mr. Barabani: *Item E, it is moved that the commission direct its staff that by February 25, 2011 to: 1. Notify all applicants to the recruitment for Cafeteria Worker, job code 0427, that were rejected due to not having a high school diploma or it's equivalent to complete the testing process no later than March 4, 2011. 2. Post a new promotional only recruitment for Cafeteria Worker, job code 427, and to complete all testing for this new recruitment no later than March 31, 2011. 3. To provide status reports to all commissioners no later than March 4, 2011 and March 31 of the status of both actions.* Do I have a second?

Ms. Early: I second.

Mr. Barabani: Any discussion?

Mr. Salazar: Where did we come up with the dates on item 1, testing process no later than March 4th? The reason I ask that in particular, it's because that's really fast it's coming up really really quick.

Mr. Barabani: You are correct it will be, the 4th is a Friday.

Mr. Salazar: It's next Friday, isn't it, is it next Friday?

Mr. Barabani: Yes because is for a month.

Mr. Salazar: My concern with that is that it's awfully short, so where did we come up with that date?

Mr. Barabani: Figured just giving approximately ten days, just ten days from today. Because I wanted to move this through quickly because we had moved on the action on the high school diploma, whether it was necessary or not, so what we are talking about is we have employees in this district that (inaudible); I think 10 days will be enough for them to come down here, this is just to start the actions.

Mr. Salazar: My suggestion would be, and I don't know if this is legal or not legal or where it stands, but my suggestion would be that we give that just a little bit more time and it would be that we extend that out one more week to March 11, it's just a suggestion that'd give us a little bit more time.

Mr. Barabani: You are talking about making it until the 11th?

Mr. Salazar: Instead of the 4th because that really, I mean it seem like that comes awfully fast. Again I'm just throwing that out there. I like to move that we revise the date indicated on item E (1) and item E (3) in the first line where it says March 4th to March 11.

Mr. Barabani: Ok Mike, this is where I get confused, let me think do we pass the original motion first or...

Charlie LaChance, Labor Representative for CSEA: A friendly amendment.

Mr. Barabani: Pardon?

Charlie LaChance, Labor Representative for CSEA: Make a friendly amendment.

Mr. Barabani: Yes, so we are going to; ok we are modifying it to read, the process no later than March 11th, correct?

Mr. Salazar: That's what I'm asking for. Where it says March 4th in that particular agenda item, and there's only 2 places.

Mr. Barabani: The 11th is the following Friday?

Mr. Salazar: Seven days yeah.

Mr. Barabani: We have a motion, and a second on the original motion, so I have to call for a vote on that. I'm sorry I'm willing to (inaudible).

Charlie LaChance, Labor Representative for CSEA: Do you need help with Robert's rules of order? Because what it would be is if you pass this one then you can't pass the next one, he could do a friendly amendment to that motion and say I vote for this friendly amendment that is the 11th instead of the 4th, but you still have one vote; otherwise you have to fail this vote and then pass another one that has the 11th.

Mr. Barabani: I will second if we take a vote on that and fail that and re-introduce his motion that was my thing. Pardon?

Charlie LaChance, Labor Representative for CSEA: Nothing.

Mr. Barabani: So let me call for a vote on the original motion. Which would've been...

Mr. Salazar: I will, if I may, what I would like to do is vote yes on item E with the following amendment, let's strike March 4th where it says March 4th which is in two places item E (1) and item E (3) instead of reading March 4th have that read March 11th.

Mr. Barabani: I'll second that motion. Call for a vote. Aye.

Mr. Salazar: Aye.

Ms. Early: I abstain.

Mr. Barabani: *Item F, it is moved that the commission direct its staff to provide data previously requested by the Chair on current classified recruitments to the Commission Chair no later than close of business day February 24, and that would be tomorrow they should have that date available. Oh sorry, item F, it is moved that the commission direct its staff to provide the data previously requested by the Chair on current classification recruitments to the commission Chair no later than close of business day February 24, 2011. That's the motion do I have a second on that?*

Ms. Early: I second.

Mr. Barabani: Any discussion?

Mr. Salazar: I just want to say for the record I know that this has been requested in the past and I'm looking at the back up here and I know that this information has been requested before I have no idea where staff is on completing that assignment, but to say that tonight and ask that it be done tomorrow is, again, just seems like a very short string for me, that's just my comment, thank you.

Mr. Barabani: My comment, this motion has a staff and sometimes that's, we have to say staff, but sometimes people out there sometimes have make a distinguish between our

supporting and the staff as a whole, but right now I've used staff and there's a reason and that's the way it reads. I think sometimes you have to look who works for us sometimes; our supporting staff and then just staff in general which will encompass more people. This will probably be generated by our supportive staff which I have full confidence that they will get it done tomorrow. Call for a vote.

Ms. Early: I am not sure I understood the statement over that comment. It might be that when you say staff is too broad of term, so I'm thinking you might want specifically give individual assignments that way everyone knows what is expected of them. For instance, if I say I want this done and we have a body of people no one really knows, no body well you didn't tell me to do it, you know, so it might be that you need to be more clear and make your request specific and you might a more favorable outcome. I know you've requested this information and I'm supporting your request. Did you ask for a motion?

Mr. Barabani: A vote.

Ms. Early: A vote, aye.

Mr. Barabani: Aye.

Mr. Salazar: Abstain.

VI. COMMISSIONER REMARKS

Mr. Barabani: This is part of the Commission Remarks.

Mr. Salazar: If I may? I have no remarks this evening, thank you.

Ms. Early: I would like to thank everybody for coming. I would like to see on an agenda in the very near future the status of the investigation on the alleged Brown Act violation by two commissioners, we need to find out where we are at with that investigation. I also would like to see some kind of follow up; Mr. Chairman you use your discretion on how you would place it on the agenda, I don't know if you want it in the public session or in closed session but I want to see some follow up on a concern that was brought to our attention by Gladys Byrd. In December she stated issues during the public during the public session that I thought had already been dealt with back during the summer of 2010 because I know I set up a meeting myself between Ms. Byrd and CODESP, now she alleges that didn't receive several things; I would like to see some kind of comment and you agendize the way you want to, but some kind of dialogue needs to take place between you and CODESP as far as if they provided her with her test results on what day did they give them to her, if they didn't provide them to her she has requested them when what's the problem, did they provide her with xyz if they said yes we need to know the dates so we can bring some closure to that, if they said no we need to find out why and she needs to get the information. I'm hoping that these are; and we got some other open ended things that we've discussed in other meetings, but those two I would like to see on the agenda real soon.

Mr. Barabani: I should have something to report back to you on that, working on that is just taking me tremendous amount of time to get contacted.

Ms. Early: One other thing, I would like to know what the procedure and the policy is within this district for an employee to be a volunteer, specifically in the commission office.

Mr. Barabani: Ok.

Ms. Early: Thank you.

Mr. Barabani: Commission will now go into closed session.

Ms. Early: You've got to read that.

Mr. Barabani: Don't know yet.

VII. CLOSED SESSION

Mr. Barabani: I am sorry, got to read; we will adjourn into closed session at 6:29, ok, item A, conference with legal counsel Kristine Kwong, she's not going to be here so we will won't have that item; we will be going back pertinent to Government Code section 54957 to discuss: Public Employee Appointment of: Personnel Commission Director.

REPORT OUT OF CLOSED SESSION

The commission reconvened its meeting at 8:02 p.m.

Mr. Barabani: The commission reconvened into open session at 8:02 p.m. and announced the following action taken in closed session. Gino Barabani made a motion, I move that the commission appoint Patrick Maher to the position of Personnel Commission Director with the understanding by Pat Maher that if Abe Flory prevails in his appeal and returns to work as a Personnel Commission Director that Maher will be subject to lay off and re-hire based on the provisions of the Ed Code and Rules of the commission. And some background on that and the vote was 2 aye, one abstention, the motion was made by me and second by Rhonda Early. The district, some background on this, the district through attorney Richard Marca is claimed that the commission's actions on December 22, 2010 meeting, I believe I missed something I am sorry. For the record, I am going to read the motion again. I move that the commission appoint Patrick Maher to the position of Personnel Commission Director with the effective December 22, 2010 with the understanding by Pat Maher that if Abe Flory prevails in his appeal and returns to work as Personnel Commission Director that Maher will be subject to layoff and rehired based on provisions of the Ed Code and the Rules of the commission. The votes are still the same 2 in favor and 1 nay, the motion was made.

Mr. Salazar: Abstention.

Mr. Barabani: Abstention sorry, abstention correction one abstention and the motion was made by me and Rhonda Early second it. Ok, now once again start with the back on the district through attorney Richard Marca has claimed that the commission's action on December 22, 2010 meeting appointed Pat Maher as Personnel Commission Director was defective because the motion the commission was that Pat Maher was being appointed contingent, with quotes, on the outcome of the appeal hearing of Abe Flory. The district maintains that the commission was in effect appointing Pat Maher to a status that does not exist under the Education Code. And Pat Maher was hired as a regular employee and subject to the rules of the commission and the Education Code in the event that Abe Flory prevailed in his appeal. There was never any intention to make a contingent employee appointment as claimed by Richard Marca. And then we move into adjournment and the commission adjournment leaving at 8:06.

VIII. ADJOURNMENT

The commission adjourned the meeting at 8:06 p.m.