

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

June 8, 2011

A meeting of the Personnel Commission was held in the Personnel Commission Office. Present were Mr. Gino Barabani, Chairperson; Ms. Rhonda Early, Vice Chairperson; Mr. Michael Salazar, Member.

I. CALL TO ORDER

Mr. Barabani called the meeting to order at 5:39 p.m. Mr. Barabani led the pledge of allegiance.

II. APPROVAL OF AGENDA

Mr. Barabani: Item II, Approval of the Agenda; I'd like to ask the other commissioners if they got anything?

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

Mr. Barabani: I'd like to make a change item C be removed for today. Ok Approval of the Agenda with Item C removed, motioned, do I have a second? Did I mess up?

Ms. Early: We have a motion to approve tonight's agenda with the omission of Action Item IV (C)?

Mr. Barabani: Yeah just removing; yeah item IV (C), sorry I forgot.

Ms. Early: So did I make the motion?

Mr. Salazar: No, you made the motion to approve the agenda as is.

Mr. Barabani: Ok, sorry, motion on the table to approve as is, do I have a second? Then I'd like to make motion to approve the agenda with item C removed.

Ms. Early: I second.

Mr. Barabani: I'd have a vote on that.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

III. PUBLIC COMMENTS

Mr. Barabani: We are in the Public Comments section. Comments from the public on any agenda item may only be made at this time. Public comments during the commission's discussion of any agenda item will not be permitted. Public comments on anything other than an agenda item may not be made during this Special Meeting. So open the floor to the public.

Keven Jahr, Classified Employee: Are we proceeding with the recruitments for the district?

Mr. Barabani: I do not want to make you uncomfortable; we have two tape recorders up here, could I ask you to come up here a little closer so we do not miss anything? Please state who you are.

Nersidalia Garcia, Secretary III: And your department.

Keven Jahr, Classified Employee: Keven Jahr from the Smart Building Research. I'd like to know if the district is moving forward with recruitment.

Mr. Barabani: You're with who?

Kevin Jahr, District Employee: Research.

Mr. Barabani: Oh ok. The best way for me; I will answer that question, the best way to answer, that's our intention, yes.

Kevin Jahr, District Employee: Great thank you.

Gladys Byrd, Human Resources Classified: I have public comments.

Mr. Barabani: Oh sure, I think they should be able to hear you.

Gladys Byrd, Human Resources Classified: Probably not sometimes. I have a comment I think it's regarding Item F. There is an agenda item to extend an eligibility list; I am sure because I have been here before and you all know that I took the test before and I appealed that and gave me your results, but once again it's almost a year and I do not have my results of that test. On that item it's coded an Ed Code and a PC code that basically you can extend eligibility. I looked at the Ed Code and I am not sure, I may be wrong but, it does not look like it pertains to the item to me. One thing on Ed Code and the PC code does say that an applicant should receive the results notices within a reasonable amount of time. I think almost a year is way out of reason. So I am asking for my results as I did almost a year ago, and I am also still asking to see what the rater's results were for my test. Thank you. Oh, I am sorry I did have one other comment on there. My assumption is you are using the Personnel Commission Rules that are, I guess court said to use, there were two tests, so if you have one test with the eligibility date and another test with another eligibility date that is merged, I am not sure but you know I am

not the expert, but I am not sure if you can extend that list for another year, there is probably two different dates so you may want to consider that.

IV. ACTION ITEMS

Mr. Barabani: Is there any other comments at this time? Alright, we will move on to Action Item IV, item A, *the commission will make a decision and take action on whether or not Mel Albiso was appointed or assigned as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) in accord with the Education Code Article 6 commencing with section 45240 on the merit system and the commission Rules pertaining to examination procedures and whether or not the commission should order that not further pay warrant be issued.* I can make a motion that the commission find that the governing board appointment assignment of Mel Albiso to the position of Associate Superintendent/Associate Superintendent Chief Administrator was not in compliance with the commission Rules 3.06, 4.01, 4.08, and 5.01, and Ed Code sections 45256, 45261, 45272, 45273, 45276, 45278, and 45300 as they pertain to the examination procedures in the classified service.

Ms. Early: I second.

Mr. Barabani: Open for discussion.

Mr. Salazar: Ok I'm going to, we just received a basic correspondence from the district's attorneys today and I want to read into the record what the objection to this agenda item that attorney has. Here is what it says:

The District hereby notifies the Personnel Commission of its objection to Agenda Item IV (A). The District has stated on numerous occasions (May 10, 2011; May 17, 2011; May 31, 2011) that the Investigation Report generated by Commissioner Barabani regarding the employment of Mel Albiso is irreparably tainted by bias. The Investigation Report, while containing statements of fact concerning Mel Albiso's employment contains repeated subjective criticisms and attacks that reflect evidence of bias. Accordingly, the Investigation Report should not be considered in the Personnel Commission's decision with regard to Agenda Item IV (A).

*Furthermore, even if the Investigation Report is not considered, Commissioner Barabani must refrain from voting on Agenda Item IV (A) as he has demonstrated that he is impermissibly biased. The findings and conclusions contained in the Investigation Report reflect Commissioner Barabani's prejudgment on this issue, and voting on Agenda Item IV (A) would be inappropriate as a result. (See *Burrell v City of Los Angeles* (1989) 209 Cal.App.3d 568, 578-79 [2576 Cal.Rptr.427]; *Pacific Conference of United Methodist Church v. Superior Court* (1978) 82 Cal.App.3d 72, 87 [147 Cal.Rptr.44].) Accordingly, any vote taken on Agenda Item IV (A) must not include Commissioner Barabani.*

So I wanted to read that for the record, because I have a concern about this process we have seen this here at the commission its being a concern of mine. What we have the investigator voting on his own investigation, and you know what I do not want is for there to be any impression out there that there is any such bias or that you know I would think that if it's your report, quite frankly, how would you vote against it it's your report, so that is a concern of mine, so anyway I want to read that in for the public record, so that everybody is aware of where we are where we stand with respect to Action Item IV (A). Thank you.

Mr. Barabani: Well, assume Ms. Gordon is not here, or is she here? I don't see her here. Let the record show that she is not here, but from this letter dated June 8, 201, I do recall that we tried to hire an investigator, I do recall asking the Superintendent if he would cooperate in this so we can do it, we received no action, we weren't allowed for some reason not to hire; the district decided no we are not going to hire somebody to investigate this, then they did not want to meet with us to see if we can deal with this, we gave ample opportunity for someone to come and say no that these items are not factual, that what you found here public records is not correct, no one came here do any of that. To do anything else, me not doing my duty, not only commissioners a lot of people, a lot of city councils appoint people to do investigations.

Mr. Salazar: I understand that people appoint people to do investigations, but typically they do not appoint anybody from the body, and if they do they do not vote on that issue.

Mr. Barabani: They do, I did look into that.

Mr. Salazar: I would love to see what you are talking about because I do not know what you are talking about specifically, so until that point and time until I see what it is that you are talking about then Mr. Barabani, I would strongly suggest and urge you to recuse yourself from this vote.

Mr. Barabani: I wrote to Ms. Gordon that could she point out any facts here that were not factual that I had pointed out and that she thought that weren't factual or items of that, I never received a response other than the fax, that claiming the biased, claiming that I was incorrect, but nothing ever said that no this isn't factual, I noticed that is not in here, I noticed she did not attach that to the letter.

Mr. Salazar: The fact of the matter is despite all of what you are talking about, you issued an investigative report and now you are voting on that report which you issued, I do not see how you can vote on this item on this action item and be unbiased and that is the issue at hand right here.

Mr. Barabani: Well the big question is

Mr. Salazar: That is the big questions, can you do that?

Mr. Barabani: Is the question are the items in the report factual?

Mr. Salazar: No that is not the question I continued to ask the question. Can you vote on this Action Item that you created unbiased?

Mr. Barabani: I believe I can.

Mr. Salazar: Ok, well no matter what I say the fact of the matter is for the benefit of the public here, the fact of the matter is no matter what I say clearly will not have any impact on what you are going to do, but I want to state that for the record, thank you very much, I appreciate you allowing me the time.

Mr. Barabani: No, that is not true what you're stating. I am listening what you say, I am trying to, what would you have done?

Mr. Salazar: I would have hired somebody independently to do the investigation so that I could in an unbiased fashion, so that we do not have this discussion, and I can vote on that issue.

Mr. Barabani: Did we not try?

Mr. Salazar: Well it didn't happen and that needed to happen,

Mr. Barabani: Did we try?

Mr. Salazar: As I recall you appointed yourself commissioner, you appointed yourself as the investigative officer on this, which at that time we had a discussion about, we can go back into the minutes if you'd like? We had a discussion about that and that discussion at that time was from my side of the street is, again I do not think you should do this. First of all what expertise do you have as investigative reporting? I mean I'd like to see your resume on your investigating reporting accomplishments that is the issue, you know, we have that going on, I did not think that with all due respect, I think that is a uniquely qualified position to be an investigator, and I don't think anybody here

Mr. Barabani: We did try to hire one and now you seem to have forgotten that.

Mr. Salazar: What I do remember is you appointed yourself as an investigator, those are the facts.

Mr. Barabani: Did you recall we trying to also hire one and set up an appointment with the Superintendent Mr. Delgado that we can come to some agreement to do this independently and you recall what happened?

Mr. Salazar: Yeah I recall that you were very aggressive at making sure that you got an appointment with Mr. Delgado and you know I think

Mr. Barabani: What do you mean by aggressive?

Mr. Salazar: Well I think that you really worked hard to get that appointment and you really worked hard to have that kind of a dialogue with Dr. Delgado, and who ever else it was

Mr. Barabani: Did I send him a letter?

Mr. Salazar: I think you work really hard on that.

Mr. Barabani: Did I send him a letter? Yes or no? Your received a copy of that letter.

Mr. Salazar: Then, I think you know the answer to that question.

Mr. Barabani: I sent him a letter.

Mr. Salazar: That's real aggressive.

Mr. Barabani: Well is that customary to send someone a letter and demanding that position.

Mr. Salazar: I don't know, maybe it is, and may you go knock on the guys' door.

Mr. Barabani: Just walk in there without an appointment?

Mr. Salazar: You are in charge of this commission I think you have some cloud.

Mr. Barabani: I would have made an appointment to see, and I tried that too.

Mr. Salazar: Did it ever occur to you that maybe

Mr. Barabani: I got no response to the letter.

Mr. Salazar: that he might be busy running a 52 thousand student district?

Mr. Barabani: I realize that, time on that letter

Mr. Salazar: Here is the fact

Mr. Barabani: I gave an opportunity to respond to a letter that I sent and it would not have taken very long to respond back to set up an appointment, it never happened. Could he even respond and say, I do not want to do this, it didn't happen. Could have responded, yeah let's get together to see if we can figure something out, it did not happen.

Mr. Salazar: Ok I do not want to get side tracked I do not think you should be voting on this issue. But you do what you want.

Mr. Barabani: Give me a few seconds to consider what you said. We have a motion and a second. I listened to what you had to say. I think we are going to have to; this is a tough decision but I am going to listen on what you have to say on this, ok and I am going to bring you some more facts, so first let's vote on that. I have a motion, we have a second. Call for the vote.

Ms. Early: Aye.

Mr. Salazar: Nay.

Mr. Barabani: I am going to abstain on that and disregard on the same thing. I would like to present another motion to bring this back and I will further bring back some clarification.

Mr. Salazar: Very nice.

Mr. Barabani: So the motion is that I would like to reagendaize this to the first possible meeting. Do I have a second? No second? Move on. Action Item B, *the commission will conduct a hearing testimony from Yolanda Ortega, Assistant Superintendent Human Resources Classified and from Bryan Astrachan concerning the examination for Cafeteria Worker*. I believe that that is also in this letter. Part of the problem; I would like to ask first is Yolanda Ortega here? Records shows no. Is Bryan Astrachan here? No, appears not to be here. Excuse me for a second here. We received a letter here from Atkinson, Andelson, Loya, Ruud, and Romo signed by Sheri G. Gordon with her opinion on whether this subpoenas that were issued so Yolanda Ortega and Bryan Astrachan can come before this commission. Once again this is, we actually had this on the agenda last meeting always the last minute, 24 hours we don't have legal counsel here to help us to even interpret whether this is correct or not. So, I move on to motion that we reagendaize this item, so we reagendaize after we have further; after we can take into consideration what Ms. Sheri Gordon in her letter of July 8, 2011 has stated on Action Item B.

Mr. Salazar: I will second.

Mr. Barabani: Call for a vote.

Mr. Salazar: Aye.

Mr. Barabani: Aye.

Ms. Early: Did you open that up for discussion?

Mr. Barabani: I did not and I will; all these legal documents drive me crazy. Ok, we are going back up to discussion is that all right with you?

Mr. Salazar: Sure, absolutely.

Mr. Barabani: Sorry my mistake.

Ms. Early: My concern is that we are meeting often only to reagendaize items that have been placed on this agenda, and so you have moved that the first two items and omitting the third items for a future meeting. But if we take for example Action Item I that has been an agenda item for almost a year. We had the same discussion back in December and the discussion was we have made attempts to bring in a neutral third party to investigate and our request has fallen on deaf ears. You volunteered to present the information to the commissioners because we could not get an approval for a third party, for a third party to come in to perform the investigation, it was at my request at the December meeting that you go back to the district and make another request for a third party to go and let them know that if we do not have, I will say permission for a lack of better word I will say approval, that you will be performing the investigation so six months later we are still talking about whether or not you should vote because you provided the information. Two months ago you presented us a report and we received correspondence from the same law firm that you should not vote because your report appeared to be biased; and it was at my request that you go back and say, was there any information that the commissioners should receive? Is there anything else out there that we should be considering? And is there any inaccuracy in the information that you provided to us? We did not get any information back saying that the information you presented was not factual, we did not get any other information back saying well you did not consider x y and z. What we get is another letter saying well since you did the investigation you should not be voting. So it is of concern to me that we keep going back and forth and back and forth and we receive information right before the meeting and we say, ok we are going to agendaize this because we just got this information and we do not have legal counsel. So once again, I have to express my concern about our unwillingness to go forth and make progress after much repeated conversation in this forum about items that are placed on the agenda.

Mr. Salazar: I have a question Mr. Chair, are we talking about action item B right now?

Ms. Early: We are on Action Item B right now, another Action Item that it is recommended that we reagendaize for a future meeting.

Mr. Salazar: I just want to make sure that is where we are at, on item B; we are not talking about A.

Mr. Barabani: We are on B.

Mr. Salazar: I have no comments.

Ms. Early: Those are my comments on Action Item B.

Mr. Barabani: Ms. Early I understand your comments and I understand they pertain to Action Item B, any other items?

Ms. Early: So my vote is aye. If that is where you are?

Mr. Barabani: We are still in the discussion thing, but, alright, I recall for the vote again just for the record, aye.

Mr. Salazar: Aye.

Mr. Barabani: And Ms. Early?

Ms. Early: Aye.

Mr. Barabani: Thank you. We will go to Action Item D, *the commission will conduct a hearing and testimony from Mohammad Islam, Chief Business and, regarding the reasons Bryan Astrachan continues to have pay warrant issued to him following the order to no longer issue pay warrants to Bryan Astrachan after February 24, 2011 and why the commission budget continues to be used to pay the illegal pay warrants issued to Bryan Astrachan.* I will ask is Mr. Mohammed Islam here? He appears not to be. Is Bryan Astrachan here now for this item? He appears not to be. I'd like to make a motion on item D that the commission; there was a subpoena issued to these individuals, that we move forward and seek legal advice on how to enforce the subpoenas or the consequences for not showing up for the subpoena. I am asking for a second and I will open it up for discussion.

Ms. Early: I will second.

Mr. Barabani: I have a second, opened up for discussion.

Mr. Salazar: I think that for the benefit of the public and this body here, for the same reasons as discussed on Action Item IV (B), I will strongly suggest that this item B not only reagendaize, but modified as we all know up here Bryan Astrachan is no longer in that position, and so that is a change to the actual Action Item itself which there would be no cause for us to ask for a discontinuance of pay warrants since we are not paying him. He is not here as the provisional or Interim Personnel Commission Director; so that is the first thing, I think that it needs to be reagendaize and revised. Also, with respect to, I want to add this into the record, with respect to this agenda item we again have a letter from counsel from the district and reads as follows:

The District hereby notifies the Personnel Commission that, as to Agenda Items IV (B) and IV (D), a hearing cannot be conducted as to those matters stated therein as a valid subpoena has not been issued to either Yolanda Ortega or Mohammad Islam.

Our office recently became aware of subpoenas issued by Commissioner Barabani attempting compel the personal attendance of Ms. Ortega and Mr. Islam at the June 8, 2011, Special Personnel Commission meeting. It appears that one of the subpoenas requires that Ms. Ortega appear and testify as to "the

selection process for cafeteria worker (0427).” The other subpoena demands that Mr. Islam appear and testify as to the issuance of pay warrants to Bryan Astrachan. Language contained in both subpoenas indicates they have been issued pursuant to Education Code section 45311 and the California Code of Civil Procedure, sections 1985, 1985.1 and 1985.2.

However, the subpoenas issued to Ms. Ortega and Mr. Islam do not comply with the California Code of Civil Procedure. Code for Civil Procedure section [code] 1987(a), concerning service of subpoena, requires personal service on [that] person whose testimony is sought; service of a subpoena by mail is therefore deficient. The subpoenas issued to Ms. Ortega and Mr. Islam both include a proof of service indicating that they were served by mail. Accordingly, service of the subpoenas has not been properly made and the subpoenas are ineffectual to compel attendance and testimony.

Because Ms. Ortega and Mr. Islam were not properly served with a subpoena compelling their attendance at the June 8, 2011, Special Personnel Commission meeting, neither will appear to testify as to Agenda Items IV (B) and IV (D).

For that reason and I just want to again put that into the record, I have a concern with the vote on this, it should be reagendaized and actually reformatted again, we all know that Bryan is not in that position any longer so. Thank you.

Mr. Barabani: My problem with this and my problem with your statement that Bryan was here and he was here for a limited time; he was here for a long time sorry until just a few days ago, actually, I don't even know where he is at this moment in time. I don't know if he is going to return here, I don't know what he was doing here; you said he was interim or provisional appointment here. I don't know; he was not interim or he was not provisional when he was working since February here. So some of the questions that we were going to ask him regarding to this item is about the eligibility list. Commission, and this goes back to what Ms. Early was saying, we took action because the food service worker, there was stuff on the food service worker that was not done properly why he did it, under what authority he did it, that is what we needed him to answer. Even though he is not here anymore, we need to hear from him.

Mr. Salazar: But Mr. Barabani, this item has no reference to what you are talking about right now.

Mr. Barabani: The commission conducted a hearing to hear testimony from Mohammad Islam regarding the reason Bryan continues to pay warrant. Neither did the part that he is not here.

Mr. Salazar: He is not talking about lists.

Mr. Barabani: Even the parties; I am trying to answer your questions about it being interim, provisional he was here, he was getting paid, yeah ok let's go right to the; money

was taken out of our budget, and more important than all of that, I asked Mr. Islam to come here and then we received a letter from the attorney once again and stalling. They are saying that once again, I hear you Ms. Early, they said 'oh unless you issue a subpoena they are not coming', so I issued a subpoena, guess what? They don't come.

Mr. Salazar: I know sir, but they have to be properly served, you can't just

Mr. Barabani: The law says, the way I read it originally; but, here once again though, I get a legal opinion here, do you know this to be a correct legal opinion?

Mr. Salazar: I don't, and that is why I would strongly urge that if we have a question about that that we talk to counsel about that, so I do not know that there is reason.

Mr. Barabani: And once again at the last minute, at the last minute. What is the date today?

Mr. Salazar: Today is June 8th of 2011.

Mr. Barabani: And look at that this letter is June 8, 2011. Another last minute thing to hold us up from doing what we are supposed to do.

Mr. Salazar: I am grateful that we got this because we might be making a mistake. I am more interested in getting it right than having a last minute.

Mr. Barabani: I received some letters that didn't appear to be correct, but we will see.

Mr. Salazar: So any ways I just want to enter that into the record. I see that Mr. Maher is raising his hand and I know that you have a rule about Public Comments and we already passed that, but you know

Mr. Barabani: That's fine, sorry.

Mr. Salazar: But we already passed that Mr. Maher.

Patrick Maher: But except this information that was not made available to the public, I did not know I had to comment because for the first time you are reading information before the commission that the public is not aware of, so I don't know

Mr. Salazar: I am reading something into the record and the public is now aware of that. I don't run this meeting, but I am just saying that according to our agenda Public Comments is already passed.

Patrick Maher: And if you tell us what you are going to consider after the fact we can make public comments.

Mr. Salazar: I am not here to debate with you.

Patrick Maher: I am just making my point.

Mr. Salazar: Thank you for making your point.

Mr. Barabani: I am going to call on that because this was given to us at the last minute, I was not going to consider it because I made it, but since you read it into the record.

Mr. Salazar: I read it into the record, because I think it is important.

Mr. Barabani: Mr. Maher?

Patrick Maher: I'd like to comment on just that letter nothing else. This is becoming pattern practice of the district counsel to flood you with legal arguments at the last minute to try to stop you from acting as a commission. They knew about this agenda, they knew about these subpoenas a long time ago, and they waited as you pointed apparently to some time today to object to them. If they were honestly and really concerned about that, they would have followed the day they received it they would have sent you a letter telling you that so you would not have wasted your time putting in on the agenda and maybe not even having a meeting, So this is the way that this district operates and I think it's getting tiresome. My recommendation to you is that you have a motion to seek legal assistance to issue and enforce subpoenas because that is the only way they are going to show up apparently, the issuance for subpoenas I guess to these individuals and then you get the legal assistance you need to do that. Putting this matter back on agenda won't do any good because they are not going to show up. So why put it back on the agenda when you are going to have another agenda item they are not going to show up.

Mr. Barabani: I believe that was my motion to proceed. Alright thank you for that comment.

Mr. Salazar: Did we take care of this item here?

Ms. Early: Can you restate your motion?

Mr. Barabani: My motion was that subpoenas were issued for them to appear and that we need to seek legal counsel to try to enforce actions on those subpoenas.

Ms. Early: My concern is that the purpose of issuing these subpoenas was to acquire information on why pay warrants were still being issued to Mr. Astrachan, an employee who you have made clear no longer works for the commission, however, we still have money being withdrawn from our budget to pay him. So my concern is that we are spending a lot of energy now on the process of whether or not subpoenas were issued properly. So, now we are spending energy on a subpoena process as opposed to spending the energy on getting the information and the clarification and the justification of why an individual continues to receive money from this district, but performs no clear duties. So, my concern is that you have made a motion to seek legal counsel on enforcement of a

subpoena which is a process as opposed to seeking legal counsel to get the information that we have been asking for for six months, that is my concern. My other concern is that, we have to issue subpoenas to get a couple of questions answered to me that is a process you should be able to pick up the phone and get the information. So it is becoming very very convoluted as far as a person that is holding a position, has a real title, and is getting real money from a public entity, picks and chooses what questions they are going to answer so instead of putting a lot of emphasis on whether or not the process is being followed to issue a subpoena I believe the legal counsel should seek the information that we have been trying to get for several several months and provide us with the answer as to whether or not we really should have to subpoena somebody to get answers that we are entitled to.

Mr. Barabani: What I am hearing you say is this is becoming a confrontational item and every item? Yes.

Ms. Early: What I see is that there is an effort to have us chase smoke as opposed to put out fires, and we seem to be losing that direction by getting caught up in questions about process and you start losing focus as to this was the question that is on the table, and you got us presenting our energy's now on getting a subpoena as opposed to getting the answers to the questions that we've laid out many months ago. My other comment is

Mr. Barabani: Sure.

Ms. Early: and I hope you can provide some clarification because the last time we met Mr. Astrachan had an office here, what are the events that led up to his not seating, not being seated in that office; and just because he is not physically present in that office, does not mean that he is not sitting in another office around the corner, and if he is sitting in the office around the corner is he still being paid out of commission funds? Out of sight is not necessarily not present.

Mr. Salazar: Well, I have a question that can piggy somewhat you are talking about there Ms. Early. The real question that I have is, is he still supervising Personnel Commission staff? That is the question I have, because I don't really care where, to be frank with you, I don't really care where he sits. The issue that we had with him is that he was supervising and conducting functions of the Personnel Commission and I know we have a lot of ways that we say it whether it's interim director, temporary director whatever it is, but that seat that that office occupied, so that is my bigger question, if he is not doing that as far as I am concern the district can hire him to do for whatever they want to, it's not a concern of mine at this point in time. I would also agree with you on this, sometimes and I don't know how payroll works here, but sometimes it does take time to catch that up and I would definitely be concerned if he would get paid out of our budget, absolutely, I am with you on that. But I think that that kind of takes us of course of D a little bit, but I understand what you're talking about over there with respect with those couple of items there. My question back to the Chair is where are we with this item D? Do we need to move on this as is? Do we need to strike it? Do we need to reagentize it? What do we do with D? Before we go on to the other things that you are talking about

with respect to the proper subpoenas and legal counsel and all of that, we still have this item on the agenda to address, am I right about that?

Mr. Barabani: That is correct.

Mr. Salazar: Ok, thank you.

Ms. Early: I would like to humbly recommend that the motion that is currently before us to seek legal counsel to enforce action on subpoenas would be voted down with the substitute motion to seek legal counsel to obtain the information that we really are after as outlined on item D.

Mr. Barabani: Ok I got that down. I'd like to make one statement a couple statements, that is regarding to where Mr. Astrachan, I personally have heard stories but do not know where he is at right now, I heard he is in HR, I heard that he is in workman's comp office, I heard that he is working on the certificated side, but I personally have not seen him, but that does not mean he is not there I don't have that information, like you to know. We have somebody here from HR, Ms. Byrd do you know if he's working over there in HR?

Gladys Byrd, Human Resources Classified: I have no idea.

Mr. Barabani: Since we are; last question, and then regards to your question what the District does with him you don't care, I do, I care, as a tax payer I care, you know as a commissioner I care, I mean the guy is getting paid, he got paid to sit hear, and still I haven't figured out what he was doing? I care.

Mr. Salazar: He is gone now, he is not in there.

Mr. Barabani: Almost \$50,000 later he is gone.

Steven Holt, CSEA Vice President: I could tell you guys where he is at.

Mr. Salazar: Where?

Steven Holt, CSEA Vice President: He is over at Harold Vollkommer, I talked with him this morning he has confirmed and we saw him he is in the office if you go in the certificated side of HR, three doors in, sitting in the office, they gave him an office set up there and he is doing a little bit of this and a little bit of that according to him.

Mr. Salazar: What does that mean?

Steven Holt, CSEA Vice President: Harold said he didn't authorize the move he is just taking up housing, but he is there he does not know how long, we do not know what that means.

Mr. Salazar: This and that; a little of this a little of that means

Steven Holt, CSEA Vice President: That is what came from Bryan's mouth because we asked him how he got a job, he said he is working permanency and we asked if he, our labor rep, if he came off an eligibility list tested, he said no you know the way the district is, and we said yes we do, and we are going to do what we need to do and then our labor rep has talked to the press since then.

Mr. Salazar: There you go; Ok well I am sure he will be removed.

Mr. Barabani: What is the qualification for this and that?

Steven Holt, CSEA Vice President: He wouldn't define that he just said we knew the way they operate.

Mr. Barabani: Alright, well, now you know where he is at. I guess what he was doing here, he was doing this and that here too I guess, but once again

Mr. Salazar: Alright, well, I am just happy that he is not supervising our staff if that is what we intending him not to do.

Mr. Barabani: Yeah, way back in February that's what we intended him not to do.

Mr. Salazar: Unfortunately, it took a lot longer than what we wanted it to, but it has happened.

Mr. Barabani: The whole thing didn't follow the merit rules did not follow any of the laws, but it continued and now

Mr. Salazar: Good he is gone.

Mr. Barabani: No he is not.

Mr. Salazar: Well he is not supervising our staff.

Mr. Barabani: We do not know as of right now, we are still on this item, and you asked a very good question, is he still getting paid out of our budget?

Mr. Salazar: I would like to know that too, and if he is I think it should be stopped.

Mr. Barabani: He got paid out of our budget for a long time, even after we asked it be stopped back in February, and one of the reasons Mr. Islam was supposed to come here was to answer why he continued paying him out of our budget, and Ms. Early you are 100% right, we are not getting any answers. You are right, fire management; chasing fires instead of preventing them.

Mr. Salazar: Maybe we will get that money back.

Mr. Barabani: From him? He was paid.

Mr. Salazar: No, back to our budget.

Mr. Barabani: No, the tax payers need that money back if he took a position he was not supposed to be in. It is my opinion. I mean I live in this town, so do you live in this district, we pay taxes and if they weren't properly given I think they should be given back.

Mr. Salazar: Ok well that is a whole other issue for the district to pursue with him or if they want their money back, as long as we get ours back in our budget from that would make I think all of us a little bit happier maybe not 100%

Mr. Barabani: I will ammend my motion asking first we will take a vote on the first motion, and we have gone through so much, Nersi do you have that, that you could read back to us?

Nersidalia Garcia, Personnel Commission Secretary III: Your first motion was to ask the counsel to give subpoenas herself and have her do the job herself.

Mr. Barabani: Herself? Sorry.

Nersidalia Garcia, Personnel Commission Secretary III: The first motion was to ask the counsel to give subpoenas herself and to get the information herself and then give you guys the answers.

Mr. Barabani: Well, there was a second on that, it was open for discussion, I call for the vote, I vote no on that.

Mr. Salazar: Can you restate that motion one more time. I am sorry can you reinstate the motion one more time, is that ok?

Mr. Barabani: Yes.

Mr. Salazar: Reinstate that motion one more time Nersi.

Nersidalia Garcia, Personnel Commission Secretary III: To ask counsel to provide the subpoenas herself.

Mr. Salazar: To provide the subpoenas, for counsel to provide subpoenas?

Nersidalia Garcia, Personnel Commission Secretary III: Herself, and come and give you guys the answers of what it should be done.

Mr. Salazar: Ok proper subpoenas.

Nersidalia Garcia, Personnel Commission Secretary III: Proper subpoenas or proper what the answer should be for this; because too many subpoenas have been enforced, you have enforced them, but now counsel should.

Mr. Salazar: Nay.

Ms. Early: Nay.

Mr. Barbani: Alright I would like to propose the motion that we seek legal counsel to obtain the information that is on item D. Do I have a second?

Ms. Early: I Second.

Mr. Salazar: And I will abstain, oops I am sorry we didn't vote, my apologies, I jumped the gun,

Mr. Barabani: No that's all right, that's all right.

Mr. Salazar: whenever you are ready for discussion, I apologize, I think we have discussed it.

Mr. Barabani: I believe you are right we discussed it, call for the vote. Aye.

Ms. Early: Aye.

Mr. Salazar: Abstain.

Mr. Barabani: We will move to item E, *the commission will consider employing Patrick Maher as a professional expert to assist the commission in recruitment, conducting selection procedures, and producing eligibility lists in response to a request by the Superintendent. A proposed motion is: It is moved that the commission employ Patrick Maher as a professional expert to assist the commission in filling numerous vacancies in the classified service at a rate of \$50.00 per hour to terminate no later than August 31, 2011.* Do I have a second?

Ms. Early: I second.

Mr. Barabani: Open for discussion.

Mr. Salazar: I just want to for the record, I don't want to read this all into the record, we have a letter dated June 8th 2011 and it is referring to the objection of some agenda items, it is addressed to the commissioners from Atkinson, Andelson, Loya, Ruud, and Romo and on page 2 toward the bottom of that letter it has the objection to agenda item IV (E) and again I will just that reference that in the letter, I do not want to read everything in there so I just want to make sure that everyone is aware of the content of the objection prior to any (inaudible) that is it.

Mr. Barabani: Well part of discussion since you referenced the letter here I believe that it should go onto record.

Mr. Salazar: Do you want me to read it in Mr. Barabani? I would be happy to do that.

Mr. Barabani: Yeah I think so.

Mr. Salazar: Ok so again I reference the letter June 8, 2011 from the district's legal counsel Sherry Gordon.

Agenda IV(E): The District hereby notifies the Personnel Commission of its objection to Agenda Item IV(E). Agenda Item IV(E) calls for the "consideration" of employment of Patrick Maher as a "professional expert" to "assist the commission in recruitments, conducting of selection procedures, and producing eligibility lists." The Agenda Item also provides a "proposed" motion to actually employ Patrick Maher.

First, the Agenda Item is impermissibly vague, which is a violation of the Brown Act (Government Code section 54950, et seq.) With regard to open session action items, the description must reasonably apprise the public of the matters to be considered in sufficient detail to allow the public to determine whether to participate at the meeting. (Carlson v. Paradise Unified School District (1971 18 Cal.App.3d 196, 200.) Agenda Item IV(E) states that the Personnel Commission will consider employing Patrick Maher, but at the same states that it may hire him at the same meeting. Without stating whether or not Patrick Maher will be hired at the July 8 meeting, the public is not adequately apprised of the action the Personnel Commission is considering taking.

Notwithstanding the confusion surrounding Agenda Item IV (E), the Personnel Commission is without authority to hire Patrick Maher as a "professional expert" under its own rules. Personnel Commission Rule 3.05 grants the Governing Board the authority to establish positions for the employment of professional experts, but does not grant the Personnel Commission the same authority. Furthermore, Rule 3.05(A) delineates a limited class of professional experts that may be hired; the description of duties Patrick Maher would perform is not included in the class. Accordingly, the statement contained in the supporting materials that "the employment, as opposed to the appointment, rests with the commission" is patently false.

There is also no authority contained in the Education Code to allow the Personnel Commission to hire Patrick Maher as a professional expert. Education Code section 45256(b) allows the Governing Board to hire persons as professional experts, but does not confer the same authority to the Personnel Commission. The only professional expert a Personnel Commission may hire directly is a hearing officer pursuant to Education Code section 45312. As described in Agenda Item IV(E), Patrick Maher's professional expert duties

would not include those related to serving as a hearing officer. Therefore, the reference to Education Code section 45312 contained in the supporting materials is inapposite and does not, in fact, stand for the proposition that the Personnel Commission can hire any professional experts it desires.

For all of these reasons, Agenda Item IV(E) should be pulled from the Personnel Commission's Agenda.

Mr. Barabani: As to the first part when it references the Brown Act, I think that by us giving the time and dates of the meeting and was notified reagendaized we provided according to this we provided a brief general description of all matters to be discussed or considered at the meeting, this is more than brief so almost directly to the point. That is out of the Brown Act book I was reading. As to 4556 *the commission shall classify all employees in positions within the jurisdiction of the governing board or of the commission except those that are exempt from the classified service.* There is a little thing here or of the commission. I am a lay person, I am not an expert but it seems not to be in here; I mean that is a, that's where I am.

Patrick Maher: Look at 45256 subsections B

Mr. Barabani: I'm reading it hold on.

Patrick Maher: Subsection 5

Mr. Barabani: All positions

Patrick Maher: By the governing board or by the commission. Very clearly the law allows the commission to hire professional experts.

Ms. Early: Also, in that same section 45256, number 5, *positions established for the employment of professional experts on a temporary basis for specific project by the governing board or by the commission when so designated by the commission.* So I don't

Mr. Barabani: It's or by the commission. Alright, we have a motion and a second, if there is no further discussion. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

Mr. Barabani: Item F, *the commission will consider extending the eligibility list for Personnel Commission Director. A proposed motion is: The commission moves to extend the eligibility list for Personnel Commission Director by one year as authorized by the Education Code section 45265 and Personnel Commission Rule 5.01C.*

Mr. Maher: Ms Byrd brought out that thing the incorrect section, the correct section is 45300.

Gladys Byrd, Human Resources Classified: Actually, I pointed the point that was in the; that you wrote or he wrote.

Mr. Salazar: What section is it?

Mr. Maher: 45300.

Mr. Salazar: 45265 is, that is not correct? I am asking?

Mr. Barabani: Duration of eligibility list 45300. The motion the commission moves to extend the eligibility list for Personnel Commission Director by one year as authorized by Educational Code section 45300 and Personnel Commission Rule 5.01C.

Ms. Early: I second.

Mr. Barabani: Call for discussion, call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: Nay.

V. ADJOURNMENT

The commission adjourned the meeting at 6:51 p.m.