

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

June 22, 2011

A meeting of the Personnel Commission was held in the Community Room in the Board of Education. 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 5:38 p.m. Mr. Barabani led the pledge of allegiance.

II. APPROVAL OF AGENDA

Mr. Barabani: Item II, Approval of the Agenda, any changes? Second?

Ms. Early: I will second.

Mr. Barabani: Call for the vote.

Ms. Early: Discussion?

Mr. Barabani: Oh yes.

Ms. Early: We have omitted the approval of minutes from our agenda and we have several sets of minutes that need to be approved so I want to make sure that that item is always placed on our agenda.

Mr. Barabani: Thank you. They will be, I will be sending out copies, Nersi has provided me with the copies for the last six and in my email and I will be forwarding that. Hopefully it will be on the, well there is no reason not for them to be on the 14th, and I'd like to because we are dealing with these Rules like I did last time the whole time set aside for that, get those issues (inaudible). Alright any other discussion? Any changes? Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I will abstain.

III. PUBLIC COMMENTS

Mr. Barabani: Item number III, Public Comments, comments of the public on action items IV will only made when that matter is been called and chair asks on the public comments. Public comment on any matter not on the agenda or any matter on the agenda other than item IV action items will be made this time. I would like for you to step forward and give your name and speak into the microphone.

Gladys Byrd, Human Resources Classified: My name is Gladys Byrd and once again I stand before you commissioners to request the results of the test that I took over a year ago for Personnel Commission Director and I would like to know when I would be able to see the results of that test. I believe Mr. Barabani you indicated several months ago that the material had come and still today I have not received it.

Mr. Barabani: Ok I am trying to set up an appointment with someone other than me to do that with for you to see it.

Gladys Byrd, Human Resources Classified: Ok to review.

Mr. Barabani: (inaudible) the part you had not reviewed it.

Gladys Byrd, Human Resources Classified: Yeah to review, but I would also like to have my results my score thank you.

IV. ACTION ITEMS

Mr. Barabani: Any other comments? Ok we will move to Action Item IV, start off with Action Item IV (A), *the district will discuss with counsel to the governing board counsel's pattern and practice of waiting until shortly before the start of a meeting to communicate objections to the commission and the tendency to misquote law or [causes] or to claim a violation of law or Rules without referencing the specific authority being claimed that is being violated.* Do I have a second?

Ms. Early: I am sorry, your motion is to have that discussion take place right now?

Mr. Barabani: That's correct.

Ms. Early: I second.

Mr. Barabani: Alright opening up for discussion.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: There has been a motion and a second no vote but I would point out to the commission just for your information this says *the district will discuss with counsel to the governing board* and then continues. I see no members of the district here to engage in that activity, I think there may be a problem with your agenda item.

Mr. Barabani: Are you not representing the district Ms. Byrd, I'm sorry, sorry. The part of the discussion that I would like to have is that we receive these items at the last minute and like this one here came from your office and how are we supposed to act on them when we only had a few minutes of time.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: In order to facilitate moving this along, if I may, we have previously indicated that we are having a problem with the turnaround time. Your agenda for instance, for this meeting was made available to our office late

Friday afternoon, we have been working feverishly on this material I know you all have a copy of it too, on this material to provide a meaningful and cogent response. If our response could have been available Monday or Tuesday, I'm sorry it couldn't, not in due the adequate job that I need to do on behalf of my client. We have made that clear to you in the past, perhaps, one way of facilitating to get past your concern but to work with our needs too. If there was a longer period of time, I know your agendas aren't required to be posted until 72 hours, that unfortunate reality means that in all likely hood when we first get things is when we get them from the agenda we won't be able to give much lead time. I have been as helpful as I can by providing the; any written back-up materials rather than just standing before you and making my comments, I put them in writing to be of assistance; and I have done it in three ways, by emailing you as early as we can so that at least you have that much time if you happen to be near emailing can do that, then I bring a copy with me, and additionally I mail a copy so that you would have the hard copy, and yes that won't happen until after your meeting, but we are doing everything we can given the time constraints part of which may be created by the requirement that you only give 72-hours notice. If we could get more lead time we could promise to try and get to you a more timely response. Absent more time, gentlemen and lady, do not have any way to do that and adequately complete the job to represent my client to the fullest extent possible.

Mr. Barabani: When you talk about this big piece of paper (inaudible) at the last meeting on the 8th there was some objections to the subpoenas and we got those at the last minute even though you know they were issued, they were sent out (inaudible) I cannot remember when they were mailed out; if there was a problem with it being mailed, we didn't find out until the very last minute again; that is something that could have spiraled soon could have notified us a little earlier, there was plenty of time on that issue.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I don't know who drafted the agenda back-up item that list several concerns, but it makes assumptions of what our firm knew, or didn't know and when they knew it and without divulging attorney client privileged information I can't respond and I wouldn't respond to you. I understand your concern please understand that the timing of our written work being submitted to you is not part of some it said it's *devised scheme* are the words that are used by this anonymous writer. We are not required to give any advance notice if I appeared to and orally give the district's position or objections then we fulfill the requirements. We are trying we are bending over backwards to not just come here and make legal objections and expect you to be able to respond, we are giving you that written back-up with this much lead time that we can, and we are giving it to you, we don't have to give it to you; so we are trying to facilitate moving this process along.

Mr. Barabani: Well Ms. Gordon I know that you have an efficient firm because I was sitting right up here, it has been almost, a while back when we voted on these Rules the first time and then we were taken to court I mean I was; and the very next day your firm was so efficient they were able to complete all the necessary paperwork and everything the very next day and people were knocking on our doors, that weekend handing out our subpoenas. I mean so I know that you can do the work quickly but this last minute stuff, how are we supposed; this thing I just counted it is 15-pages and I just got here and I'm starting to read it, I am going to assume that it is in my mail box, correct? I don't know but I will look. It is pretty hard for us to do our job correctly as you are doing yours correctly we have to wait until the very last minute.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Then perhaps by a cooperative effort to putting our heads together we can come up with some plan to meet the needs of both the commission and the district.

Mr. Barabani: Well, I am just trying, I am a lay person, I am just trying to meet the legal obligations and give the 72-hours, the special meeting the 24 you know and then sometimes that's just stuff. The trouble is I don't have a lot of resources every person on this commission works in another job this is a voluntary position and when stuff comes in we can't go to ask somebody directly we don't have the resources we don't have a big firm, we don't have anybody that can answer this in a short period of time; and but we still get bombarded, and it makes it very tough to the point where it makes me question; and then some things like they don't seem to be correct after I do the research, once again I am a lay person you know, we can't; I read the law and sometimes is parts of the law that are stated in the letter that it is not all there in the letter, I mean is that kind of the way we do things or is it the correct way to do things?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Without a specific sir it is difficult for me to know how to respond to you. Please understand, you have counsel here this evening.

Mr. Barabani: Today yes.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: We, our firms have been engaged in litigation together and the firm representing you, you may have had legal opinions and arguments and the district had legal opinions and arguments and those didn't necessarily always coincide although we done thorough research that doesn't mean that Ms. Kwong or her firm were engaged in some nefarious plot or that our firm was. Reasonable minds can disagree on legal issues and they do all the time, that's what creates the back log and clog in the courts of the United States. The fact that someone disagrees with our legal opinions or conclusions does not mean that we are misquoting or misstating the law, and I stand by our firm's work product 100%, we did not become known as the #1 preeminent law firm representing school public districts by doing sloppy work or by misquoting statutes or misquoting anything. We are aggressive advocates on our client's behalf and our job is to advocate what our client's position is within constraints of the law and we do a good job of that. I think that if you will compare our legal writing and our oral presentations to, let's pick something, maybe to anonymous writings of back-up material considering the tone, considering the legal research, considering the professionalism, I will stand our work up anywhere at any time and be very proud of it.

Mr. Barabani: Well part of the what you are saying about an example was stuff on the June 8th meeting, you wrote to the commission that they had Ed Code, on my broken note here, section 45256 (b) allows the governing board to hire persons as a professional expert, but does not confer the same authority to the Personnel Commission, well doesn't the Ed Code section 45256 (b) 51, give the commission authority to hire professional experts?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: For certain limited purposes, yes.

Mr. Barabani: For positions established for the employment of professional experts on the 10th grade basis for specific projects by the governing board or by the commission when so designated by the commission. I felt like we were being misled or the commission was misled by stating that section 45256 (b) did not allow the commission to hire professional experts when the section clearly confers the authority to the commission after we read it that day we started going to this thing right here. That's the kind of stuff, I mean, it is annoying, I mean.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I have nothing further I am not going to debate the issue with you sir.

Mr. Barabani: Well, don't you have a professional duty not to mislead us of facts?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I have never knowingly misled this commission or any other client or any other tribunal that I am in front of. If I misstate something I will own up to it, if I make a mistake as I did there were typos in the document I correct them as soon as I can.

Mr. Barabani: Ok thank you very much. Move on to Action Item IV (B), we opened up for discussion, call for the vote.

Ms. Early: I'm sorry I don't understand what we are voting on.

Mr. Barabani: Ok I'm on five; we opened it up for discussion, we're discussed it in; I'd like to make a motion that we originally intended.

Mr. Salazar: Excuse me, I think where we are is we had a motion and second on Action Item (A) as stated and we have had a discussion on Action Item (A), to fix that, but I think that we're going to have a discussion on Action Item (A), and now it is time to call for the vote on Action Item (A) if I am not mistaken.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Excuse me but Action Item (A) is to have a discussion you have held the discussion, there is nothing further to be done, not under this agenda. Even assuming that it said the commission was going to hold a discussion with district's counsel, which it does and it's says the district was going to hold such a discussion; to go any further than that you are violating the Brown Act.

Mr. Barabani: Move on to Action Item IV, item B, we get the *second reading and public comments on proposed revisions to chapter 2. Comment from or on behalf of the governing board, the California Schools Association Chapter 183, San Bernardino School Police Officers Association and the public will be heard at this time.* We are going to talk for a second.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Oh I am sorry I thought you were laughing at me sir.

Mr. Barabani: Oh no.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I have as previously indicated taken the liberty of putting my oral comments on behalf of our client the San Bernardino Unified School District in writing. This was done in the most timely fashion that we could accomplish given the time constraints. I would note that although the agenda was available, strike that. These comments are made to a document that is entitled the commission's responses to district's objections to proposed rules. I would hope that these are not the commission's responses, I am not aware that the commission has met to develop responses to the district's objections. If it did meet it met in an unnoticed meeting which would have been in violation of the Brown Act. If this was developed by someone else there is no indication as to who might have been the writer of these proposed Rules. They come to you as proposals; they come to you advocating a position, we have no idea who wrote those, but I hope that they are not your opinions, that is what it says on the document because if these are the commission's responses given the tone and the content of this document I am seriously concerned that this commission has already decided how it is going to vote.

Mr. Salazar: Excuse me Ms. Gordon?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Yes.

Mr. Salazar: The document that you are referring to is which

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: The document I am referring to is found in your agenda item, there is a back-up saying item IV (B) and IV (C) and the first page after that says commission's response

Mr. Salazar: IV (B) IV(C)

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: To district's objection

Mr. Salazar: Thank you.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Are you there?

Mr. Salazar: I'm there thank you.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: This starts out with some general objections and then it goes into more specific some form of a matrix. My concern is that if as entitled these are your objections or your responses to the district's objections I'm wasting my time to go through the balance of what I need to say on behalf of my client. I would urge to consider the comments that are here and that I will be making to you. In the (inaudible) in which they are provided you are being asked by someone to consider changing commission rules they are purporting to be giving your response already when you haven't heard what I had to say this evening; and then you were going to be giving some very limited choices on your agenda as to, what you are going to do it is kind of all or nothing approach when you look at how the motions are worded for you. Please understand you are not limited to those motions.

Mr. Salazar: Excuse me Ms. Gordon I would like to make a comment at this time to let the public know that although those documents says commission's response to district's objections in no way shape or form have I had any dialogue whatsoever with respect to this response so I just want to make sure that that is in the public record that this is not my response as a responsible commissioner on this commission. I don't know where this document came from either I certainly understand, I think I understand what you are saying that if we were to develop a document like this we as a commission that would have to be done in a public forum and as such I do understand. This document I have not seen it until I looked at this agenda so this is not a document that I had any part of formulating, thank you, I just want to add that into the record.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Hearing nothing from either other commissioners I will move on then, thank you for clarifying your part at least in this.

Mr. Barabani: You were sent a copy of this on Friday.

Mr. Salazar: I had no part in putting this document together.

Mr. Barabani: Oh ok. You said you hadn't seen it.

Mr. Salazar: No I didn't say that, I said I hadn't; I'm not going to debate I know what I said.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: It is important to moving on from that to address several points that were raised throughout the responses to our objections. First the drafter of that commission response, and I'll call it that because that is what it calls itself, alleges in the cover letter and that is in your agenda pages 6-10, that district for the counsel has misrepresented the Court's ruling in violation of California Rules of Professional Conduct, that is a very serious allegation one that we do not take lightly. Specifically the document states the district's objections the Rules from at least four previous chapters are present in the currently proposed Rules misrepresents Judge Fawke's of the decision and the Judgment and the Writ. The district maintains that it's position that presenting that now proposed Rules as including at least four previous chapters does not comport with the spirit of the Court's ruling and I have a copy of our previous correspondence with you which says specifically, the inclusion of the additional materials violates the spirit if not the specific terms of the court's agreement. The district maintains that this stubborn insistence on including items from other prior chapters that were proposed by whoever it was to the commission is in direct contravention of the spirit of Judge Fawke's decision. That decision envisioned that the Personnel Commission and the District would engage in a process proposed by then commission director Jeffrey Jossierand, to present rules in groups of two or three at a time. It is undeniable that the Rules now proposed are very similar, if not identical, from at least four previously proposed chapters and it is clear that the spirit of the Judge's rulings has been compromised. Such an observation doesn't violate the Professional Rules of Conduct, but instead it's reflected with the district's position that the Personnel Commission appears to be aggressively introducing Rules in a manner inconsistent with the Court's intent. We would respectfully request that any future Rules introduced for consideration be presented with this observation in mind it will help, not only counsel but the district, but counsel for the commission and the counsel itself, in processing these in a timely and orderly manner consistent with the spirit and the intent of the Court's decision. Second, the

district must impress and restate its position that a number of the proposed Rules concerning discipline impermissibly intrude on the exclusive bargaining relationship between the district and its bargaining unit. It has been reserved to the district in both District's Rights clauses in the existing collective bargaining agreement with both CSEA and SBSPOA and they are both very respectable Article III. The proposed chapter 13 grants rights that never been granted at the bargaining table and in fact in some cases were specifically rejected by the district. The legislature that never have intended by its enactment of Education Code sections 45220 and the following that bargaining units could look to a Personnel Commission to provide benefits or right within the scope of representation after failing to obtain them at the bargaining table. Where this may be an issue that ultimately the district will have to pursue either through litigation it may end up being an issue that should be addressed with the legislature we are well of that but want to caution you that things that are within the scope of bargaining should be left to the bargaining parties rather than being assumed by the commission, you have a large enough mandate under the Education Code without undertaking to intrude on the areas that are mandated areas of negotiations between the parties. Finally, the commission's response reiterated at many points that the district did not provide or suggest alternative language for many of the Rules to which it objected. The proposed chapters 2, 6 and 13 comprise approximately one-hundred pages they were initially given to us on May 10 and we appeared on May 25th with a full response to the fullest extent that we could, number one, we weren't required to give you alternative language, number two, we were unable we barely finished what we needed to do within the time allotted given the fact that we were dealing with not three but what it formally been seven articles or chapters that have been proposed for changes to you. We agree that in some cases providing proposed contract language or suggested language might have been beneficial to the parties and may in fact be so in the future. To that end we propose that a different procedure be utilized for future Rules to allow such discussion to allow the parties to perhaps be able to come to you on some Rules with stipulated changes, changes that all the interested parties might agree to. It may be in the interest to the Rules to be presented to the district in smaller volumes and with greater amount of time for review. Additionally, the district proposes that the parties meet and confer in person to raise objections and try to mutually craft language that would address the concerns to all involved. Taking the time to work together might better facilitate the collaborative process envisioned by the Court. The district, therefore, would invite the Personnel Commission to discuss such a possibility with a goal of cooperation in mind. However, we are here this evening and we are where we are, if we have given you as much as we can give you for the time being the fact remains that the Personnel Commission is presently considering proposed changes to chapters 2, 6 and 13. I would now like to make comments regarding chapter 2 and when we get to the subsequent chapters I will not repeat our general objections that I just gone through. On proposed Rule 2.2.2 this Rules in internally inconsistent. I don't think I touched anything. It's the battery? Alright it appears to be a battery problem Nersi, thanks. This Rules is internally inconsistent. The Rule states that regular meetings are set in December for the next calendar year. However, later in the Rule it states that additional regular meetings can be set on ten days' notice. The district does not deny that the Commission may notice and hold additional meetings. Specifically, both special and emergency meetings are authorized under the Brown Act. However, regular meetings are just that, they are set for a specific, recurring time and place determined by the commission. Members of the public and employees of the district can anticipate such meetings are going to be coming up and will reoccur as set, and they can save those days if they want to be here for regular business. If there were no difference in between

regular meetings and special meetings; here we go I will just talk louder; then the code if there were no difference between regular and emergency and special meetings the code wouldn't differentiate between them, they just say upon proper notice you can have a meeting any all time. The importance in this distinction is that by statute several specific actions are required to be taken at regular meetings.

Mr. Barabani: Ms. Gordon I don't want to interrupt you but these mikes seem to work would you like to come here?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I can do that I would be happy to, do you want me to bring this with me or no?

Mr. Barabani: Yeah Nersi; well no I think you can hear once over the microphone system here.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Whatever works best. Thank you, maybe that will make it easier for you to hear what I am saying. As I was saying there are several things that must occur at regular meetings they must occur at those meetings so that the public has the opportunity to attend and can anticipate that you are going to hold, for instance, if it says you have to adopt a budget during a regular meeting in May they can look on their calendars and they know when they should show up. If they want to participate in that process the commission can't ignore plain language or statutory requirements by having an additional meeting that wasn't set in December and say 'oh by the way this is regular' it is not regular it is special if its coming out of order. I have provided for you *Webster's Ninth New Collegiate Dictionary* provides in part because there are many meetings per regular, that one meeting is "recurring, attending or functioning at a fixed or uniform intervals." As to Rule 2.3.3 as well as proposed Rule 2.4.1.1, these Rules create an incompatibility of offices, and there is a question about that an opinion about that. In the commission's responses to the proposed Rules, the doctrine of "incompatibility of offices" is a common law conflict of interest rule, that means it comes through the Courts not through statutes. Under the common law, a person may not simultaneously hold two public offices that are incompatible. The Attorney General gives us guidance in this area, the Attorney General says "Offices are incompatible, in the absence of contrary statutory authority, if," and the bold one is the important one "if either office exercises supervisory, auditory or removal power over the other." For instance, if one person were to be a member of the governing board and the superintendent of the school district at the same time we have a problem, and the problem at hand the problem is these proposed Rules proposed to either have, there will be more coming in play in the other series 13 and up not make the same comment I will just refer back, the proposed Rules would either say that a commissioner can perform the duties of the director or a commissioner can be a hearing officer or investigator in either case its our position that by performing the duties of a position which is overseeing or evaluated by the Personnel Commission. A member is acting, a member acting as a Personnel Commission Director is temporarily in possession of that incompatible office, the two incompatible offices are commissioner and director, or commissioner and appointer hearing officer, you can't hold, in our opinion, those two positions at the same time. We know that both the Personnel Commissioners and the personnel directors are pre-aided under the authority of the Education Code section 45240 and I say to emphasize the point that one of the prerequisites for evaluating whether incompatibility of office applies or not is whether these positions were either

alleged created by statutes and in your case they are created by statutes, you are not elected neither is the director. These Rules that are being proposed are also created an impermissible bias. Assigned member of the Personnel Commission to perform the duties of the Personnel Commission Director which the Personnel Commission effectively oversees allows the Personnel Commission member to act in any manner that they see fit; they would have to be self-policing. Let's engage in a supposal, let's suppose that whoever was acting as the temporary, for lack of a better word, dueling duties assuming duties of the Personnel Director and they did something inappropriate or something the rest of you didn't approve of. That sets you up as having to perhaps discipline one of your own members that would be an extraordinary difficult position to put the other two members in and it creates an appearance of the impropriety because of the shared influence that you commissioners have on each other. If I may move on to; no I will stop there, the next comments I have are on chapter 6 so I will stop there. Would you like me to step down until we move to the next? Thank you.

Mr. Barabani: Steve you are welcome to come up here and speak.

Steven Holt, CSEA Vice President: I will just stand up here, right here? Ok here we go. It is a short brief, Steven Holt first Vice President California School Employee Association Chapter 183. Good evening commissioners, I just wanted to make sure from the commission that you did receive the input from our staff attorney and for our input to the Rules and Regulations and our problems.

Mr. Barabani: I received a letter.

Steven Holt, CSEA Vice President: Ok thank you I appreciate. I just want to say my comment, I would hope that you would look at our questions of the Rules and Regulations as well as the districts puzzles. What I am hearing tonight, I think the same comment again, is I would encourage the commission to look into the club for bargaining laws there is nothing that precludes the district or any labor organization from entering into negotiations or any set of Rules on the commission and the club of bargaining process does take precedence for the commission Rules as does Ed Code over the contract and there is a process so I want to be quiet specific on where we are coming from. Does that (inaudible) at any time either CSEA or the district could engage in that if they don't believe there is a conflict in that area we have heard some sound discussion on some problematic issues on both sides and we hope that the commission does take those into consideration, we thank you for hearing our input as well, thank you.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I have some comments, I don't know if this is working, testing, testing, testing.

Mr. Barabani: You have to press the button.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Testing. Kristine Kwong special counsel for the commission. The writ of mandate in compliance with the writ of mandate the writ specifically says that the proposed amendment shall be delivered to the Superintendent and the Associate Superintendent and counsel 14-calendar days before the first reading and the

incompliance, thereof, it is important that the commission comply to the terms of the writ it is implying that, to the degree that counsel would like to work in a cooperative manner to amend the procedures, and although it is a very cooperative gesture and I appreciate those gestures it would be a violation of the writ of mandamus and I would not recommend that. Second, the writ of mandate indicates that the proposal shall be at three chapters at a time or these at the very maximum three chapters at a time; and a chapter is that, three chapters. Any other interpretation I believe would not appropriate the interpretation of chapter should be given its ordinary dictionary definition and any other interpretation that requires a convoluted interpretation to me is not an ordinary definition and I recommend that it should be proposed that no more than three chapters. In the first reading the proposal was for chapters 2, 6 and 13 and they were presented as chapters. It is my opinion that that complies with the terms of the writ of mandate of Judge Fawke, the district's counsel disagrees and I respect that disagreement. District's opinion is not binding and in the plain interpretation of the writ is appropriate to the degree that additional time is being proposed for review would violate the terms of the writ of mandate to the degree that counsel is proposing a meet and confer process that is already in the terms in the writ of mandate and the district has already been out of compliance. The writ of mandate specifically says quote, "all interested parties then present shall discuss the fiscal impact of the proposed Rule together with the proposed Rules compliance with aft able collective bargaining agreements as well as any state and federal law" the parties are ordered to be here for that discussion. Compliance with that writ is mandatory it is not discretionary. At the first reading the district as a party and was not present, CSEA was present, no one from the police association was present. I recommend that all parties participate fully in the writ of mandate. The writ of mandate also indicates that any proposed amendment would be distributed with a matrix and what was distributed was a matrix pursuant to the terms of the writ. And at that first reading comments were made, and at the second reading in response to those comments revisions to the proposed Rules were also made, and those revisions were made in consideration of the objections that were articulated by Ms. Gordon and those objections were taken whole heartedly with the integrity and genuiness that the objections were made to the degree that those objections had merit. To the degree that the objections were not tenable the response to that is also indicated in the matrix and each of these Rules were read in its entirety in light of the comments made by the counsel for the interested parties. In response to this letter that is dated June 22nd, I never received a copy of it and as counsel for the commission in this current writ proceeding, I request that a letter would also be sent to me so that I may review it at the commission meeting. In response to section, page 4 of the objections, the definition of the public office was not defined in the chart and there was no authority cited that a personnel director is a public office so I would like some clarity on that, and I would like a case citation with respect to the common law doctrine of offices that are incompatible and more in particular you have a case authority or an Attorney General opinion that relates to these similar circumstances that will be very helpful as well. My opinion is that a common law citation to the doctrine incompatible offices is insufficient to negate this proposed Rule. Therefore, if there is a any other Attorney General opinion which is merely an opinion and not binding to case precedent that would be appreciated and that would be considered as well with the full force of that case precedent to the degree that it will applicable.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: May I respond.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: That is all I have to say.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: May I respond. As far as the district's proposal on a collaboration and more lead time, I see in that that would be no way violate the terms if I was suggesting that we take less time. If you gave us the proposals 16-days or 17-days or 20-days instead of on the 15th day I don't think you were intending to be so literal as to say that you must get that into our possession on the 15th day prior, we try to work within both the letter and the spirit of the Judge's order. You indicated that district, that the parties the district was not present for the first reading, I recall standing before this commission for quite some time representing the district, in fact, there a comment from the commission that there were two attorneys here present as well as the district's normal representative who sits here and is sitting here this evening; I don't agree with the commented, perhaps, Ms. Kwong has forgotten that we were here and actively participated and by the way commented on fiscal implication where we thought they were appropriate I would know that there were some other parties that either chose not to comment on the Rules or who were not present. We would be happy to supply counsel with a copy of written documents as they become available, as far as the request for authorities on the issue of incompatibility those are provided to you at page 4, there are case citations there is (inaudible) the opinion there is a subsequent citation to the first case cited which discusses one of the prerequisites meaning that the office be created by constitution or statute I did reference that both, the commission and the director positions, are created by a statute that specifically being cited as 45240, if you haven't had time to read that I understand, but I said it orally, so your request has been complied with already.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I agree with Ms. Gordon that she was present at the first reading and that the Mr. Diedrich was present at the first reading and that is not in compliance with the writ, the writ uses the term interested parties not interested parties' attorneys. With respect to the cases that you cited some which appear on page 7, I read those cases and they speak for themselves.

Mr. Barabani: Before I get to your comment you mentioned that Ms. Byrd is representative of the district here that she; I have asked her in many occasions she told me that she is not, maybe she can clarify that for you.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I will have a discussion with her on that thank you.

Patrick Maher: This mike up here?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: This is so much fun.

Patrick Maher: This working, ok. My name is Patrick Maher I want to say that I recognize or surprised by the ability of Ms. Gordon to both define the spirit of the court and the intent of the legislature and in order to base up on that because she has a special ability to do so and at the same time come back and say if you don't pay attention to what she is talking, then perhaps she will go back to the legislature and get them to change the law. If and when she accomplishes that then the commission should pay attention to what that new law is. Until such time changes and advocates representation of the spirit of the law or the spirit of the order or what the legislative intent was shouldn't be disregarded, she has no more authority or ability to define that

information than any of us have to make the same kind of a situation. The other issue some of the things she is bringing up now for the very first time as part of the letter of objections to what a future procedure should have been should have been on a separate letter should have been unrelated to the process for these provisions of these Rules, it should have been done at a different time in a different setting at least is in a separate communication to the commission not bundling it with all the other objections, it is just one more thing one more reason to raise objections to and find a way to delay obstruct stop new Rules from coming into effect and that seems to be what the district's intent is. The district has not indicated a desire to work cooperatively with this commission at any time in the past. The district appointed a person, hire a person in direct violation of the law in direct violation of the Rules in direct violation of the law in direct violation of Rules put that person in the Personnel Commission office and designate that person to be a Personnel Commission Director and perform all the duties there are up, where is the cooperation in that? Where was the spirit of cooperation in that? What has the district done so far to comply with the Rules or the law as it pertains to the merit system. The district hires on a regular basis people illegal in direct violation of the law and the Rules. The district is contracting out illegally in direct violation of the Rules and the laws. Claiming that because the district refuses to comply with the Rules and law that they can declare an emergency or should declare an emergency and they need to be able to do certain things outside the merit system, where is the spirit of cooperation? That is where the spirit of cooperation should start with is the adherence to the law the adherence to the Rules the implementation of the merit system and perhaps a lot of the controversy and a lot of the conflict that exists right now would not be happening and the important thing is to get these Rules in place because the existing Rules are pure nonsense, they were minimal Rules written at least 20-years ago they are very similar to the Rules of many commissions that have not updated the Rules since about 1880 or '85. They were minimal they provided just barely enough to comply with the minimal statutory requirements and nothing else and that was at the time when the commission and the director and the Classified HR system was under the direct control of the district and not in any kind of merit system and that is why they have those Rules in effect and they work so well because they hold the district accountable to virtually nothing because they are so minimal in the process and that is why they are objecting to these new Rules coming in place because the first time the district is accountable to a merit system and a true merit system and all they want to do is delay and obstruct them as much as possible, thank you.

Mr. Salazar: Mr. Maher? Are you, you're an expert on the Rules?

Patrick Maher: I don't if I am an expert or not.

Mr. Salazar: Did you help write the response to the district's objection?

Patrick Maher: I provided assistance to Mr. Gino.

Mr. Salazar: You did help write that?

Patrick Maher: Yes.

Mr. Salazar: Thank you sir.

Steven Holt, CSEA Vice President: Steven Holt first Vice President CSEA. As aside to echo some of the comments for public record I would like to state that I was not aware that the district had any representative here. I have heard the commission several times ask and was stated that they were not, quote, not representatives of the district under the (inaudible) attorneys. I also would like to echo that I find a little offensive that the district is trying to tell us what the spirit of the Judges decision was and defining that and yet I also as a representative representing my constituents have a problem with the district continually violating the law and blames the spirit of the merit system illegally contracting out, illegal hiring including the director who was mentioned at the (inaudible) appointed by the district who is now sitting in HR-Certificated receiving close to 450 dollars, excuse me, a day never taken a test hasn't come off of any eligibility list and sitting there and collecting money and the district will not define what that person does. A prime example if you want to put one on record what illegally is going on in this district and I find very offensive that we are here and I do agree in the district's attorney's (inaudible) there are some good points and there are some questionable things with the Rules you nit pick Rules and find problematic areas anywhere and we ourselves have found some problem areas and we hope that the commission consider both side the district and CSEA's objections to those Rules in given their considerable do and we are confident that the commissioners will in fact do that. But we believe that we have gone through this numerous times over and over and over we have delayed meetings and the Rules are antiquated, they are old Rules and they need to be updated and for us to sit here and have a debate on how the commission should effectively create their own Rules I think it is ludicrous. And I think that all parties should have the opportunity to comment to the commissioners and the commissioners will give their due input into it and the public should have the opportunity to come up and put their input into it, but I do not think we should be lectured on morality or what the spirit of the law is or what the court's or judge's spirit of decision and to some legal decision means I think that is nonsense, thank you.

Mr. Salazar: I have a question for you.

Steven Holt, CSEA Vice President: Sure.

Mr. Salazar: You had mentioned that you have provided a

Steven Holt, CSEA Vice President: Yes sir.

Mr. Salazar: some objections?

Steven Holt, CSEA Vice President: Our staff attorney had said to the commission some questionable things as much as Ms. Gordon

Mr. Salazar: In what format?

Steven Holt, CSEA Vice President: Does that format I cannot tell you that is why I asked the commission if they had received that.

Mr. Salazar: The reason I am asking is because I don't see how that

Steven Holt, CSEA Vice President: I apologize if you don't that is why I was asking if you had received that.

Mr. Salazar: No I don't think I have it and it could have been sent electronically or something but...

Steven Holt, CSEA Vice President: I know I have it (inaudible) our labor representative was away and will be back tomorrow I could find that information out for you. I do know we did some concerns and that was sent to the commissioner review as well and I just want his concern to make sure that he looked at our objections as well.

Mr. Salazar: Ok and it could be in here I apologize, I have not seen that.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I have a couple of questions I need to ask based on comments that they made. Number one, if CSEA has provided a copy and objections then that is something that you are going to be considering as part of your deliberations this evening? Or your deliberation at any time, let me be clear? We would request a copy of that letter. Next there has been a response to a question, the statement by Mr. Maher that he helped Mr. Barabani prepare the commission's response to the district's objections, at least now we know the author. I am very concerned, I am concerned because Mr. Barabani has once again asserted himself in preparing a document without acknowledging when I asked the question when I brought up the issue he didn't say, 'ma'am I wrote this with Mr. Maher's assistance', one commissioner said that they had nothing to do with it and I said hearing no comments from the others I will proceed. We would have gone forward this evening, Mr. Barabani, I can guarantee, intends to participate in any votes on this issue given the tone and the content of the comments the responses to our objections he has already decided on what he is going to do. That is why I commented that I hoped I wasn't wasting everyone's time by appearing here on behalf of our

Mr. Barabani: [Hold on]

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: May I finish?

Mr. Barabani: Well wait a minute, wait a minute, I thought you were an attorney now you are claiming a mind reader, you are claiming that you know I'm on a role. Go on.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: There is an undeniable and clear conflict here, there is a bias that has now been established and the district would hope that Mr. Barabani will refrain from any participation in action on these proposed three chapters and that in the future he will remember that his role as a commissioner not as an advocate for change on either side.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I read the concerns by the CSEA staff attorney and I reviewed the Rules and took her comments with serious consideration and looked at the revisions in light of her comments.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I would make a public records request and I request under the Brown Act this material has been provided to all members of the commission they have it in front of them this evening extensively for use and review, commission's counsel has seen those and we have not, and I would ask for a copy under oath the Brown Act.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I find that CSEA's attorney in providing them as untimely they did not comport with the procedures under the writ of mandate. To the degree that they were untimely and were sent from one attorney to the next attorney it was taken with do consideration.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: And it was provided to the commissioners.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: That I do not know.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I see three copies.

Mr. Barabani: They were sent here inside the booklets, didn't even know they were here to tell you the truth.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I don't have a copy of the agenda I don't know what is on the agenda packet, I have no idea who else has copies of those letters, but counsel for CSEA sent me a letter which

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Are you saying

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: For any attorney to do in litigation they send letters very similar to the same letter you sent to the commission, my client, without sending it to me, very similar except this is the converse it was sent to me.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Except that I am required under the terms of the writ to file the district's objections which I did. Now

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: The terms of the writ require all interested parties to discuss the fiscal impact of the proposed Rules. Whether your communication would like to be in writing whether or not it would like to be filed whatever that means as to what it means to file something it's your discretion as to how you would like to communicate that.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Are you going to

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Those are my comments right now.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Is the commission going to refuse the district's request?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Those are my comments right now.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Is the commission going to refuse the district's request?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: You might have to address that to their general counsel Mr. Neufeld because I am only appointed as special counsel.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I will certainly do that. I am not limiting to us to that as our only remedy, however, for this problem.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: And what problem is that?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: The problem that I have made a request under the Public Records Act and the Brown Act for a copy of something in possession of the Board Members and the Public Records Act may allow a lagged time the Brown Act does not so

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Once again you need to address to their general counsel.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I have indicated I will take that and any other available appropriate remedies. For the record, assuming we are going to proceed this evening I would call upon Commissioner Barabani to recuse himself from further participation in this process.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: The three commissioners that are representative here today represent their respective interests, they have been appointed by respective entities and they are going to make their decisions based on their appointment.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: The fact that they have been appointed by either the district, or CSEA, or the person appointed by those two representatives, does not give them license to engage in the kind of activity that is now on the record.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: What type of activity?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Again for the second time, Mr. Maher has testified and Mr. Barabani agreed that Mr. Maher helped Mr. Barabani write the commission's response. That response, number one, is not the commission's response, number two, in tone and content proves a bias, a prejudice, a pre-judging of this issue and in phase of his refusal to recuse himself the district will take all appropriate legal remedies.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: What is the statutory authority that leads you to conclude that assistance in preparing proposed Rules and the matrix that its director in the writ of mandamus equates to recusal, where is the case law in that?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: It is replete in the documents that we have already provided

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: The Attorney General opinion letter that doesn't relay to commission offices, cite an applicable case.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Right here right now I am not going to debate this with you, counsel. What I am telling you is that there is a clear indication of bias that has been built in record this evening we are challenging Mr. Barabani's ability to even handedly assess, deliberate and consider the proposed changes. If he does not recuse himself we will take all appropriate legal remedies and at that point there will be all necessary legal citations included in our moving papers.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I think every appointed person whatever their perspective is on proposed Rules and amendments everyone has an inherent own opinion as to what they mean, so long as the Rules are valid under the law do not violate the constitution do not violate the collective bargaining agreement are in comport with the Education Code and all other statutory federal and state statutory authority, the Rules will be legally valid. The perception or the opinions or interpretation of those Rules or who authored those Rules is of no moment, but your comments are noted for the record.

Steven Holt, CSEA Vice President: Steven Holt, CSEA. I would also like to state something for the record, CSEA will take any and all legal actions in defense of our appointed Personnel Commission Director and will go to any extreme to also meet the district the legal challenges. I find very offensive the threats that are going back and forth I believe input should have been provided, if Ms. Gordon would care to answer is it your desire that you wanted a copy of our objections to the Rules we would have been more happy provide that, however

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I didn't know they existed, sir, until this evening

Steven Holt, CSEA Vice President: I apologize

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I am (inaudible) for them now.

Steven Holt, CSEA Vice President: I did not know I would have provided those myself if I had known that, but we have not received a copy of the district's objections, to my notification. No body's told me that we received anything that you guys have written on the district's side and to be fair I want to make a public request that I also receive those objections in writing and I think that would be fair and adequate.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Absolutely, you are also here this evening and hearing everything that is the written form, I would be more than happy to provide you with a copy.

Steven Holt, CSEA Vice President: I thank you for that, thank you commissioners.

Mr. Barabani: Is there any more comments on Action Item B? Ok, this has going on for; I would like to propose something real quick I would like to take a break for about 5-10 minutes, you guys tell me.

Ms. Early: I second.

The commission recessed and reconvened at 7:18 p.m.

Mr. Barabani: The commission in session we are returning back to break at 7:18 p.m. During the time we were off for a few minutes the letter that Ms. Gordon requested a copy was given to her and Ms. Gordon provided a copy to CSEA that they requested. Is there any more comments on section two, I mean I am sorry on section B? Ok, we just called back in session.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: We just called back into session?

Mr. Barabani: Yeah.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Let the record reflect that during the break a copy of the letter from CSEA attorney dated June 16, 2011 has been distributed to the district's counsel as well as myself, I didn't realize that it was in your agenda packet, but I now have a copy of the letter, and I now received Ms. Gordon's June 22, 2011 correspondence.

Mr. Barabani: Ok.

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

Mr. Barabani: We will now move on to Action Item C, *the commission will consider taking action to adopt the proposed additions or revisions to Chapter 2 as submitted for a second reading. Proposed motions are: 1. It is moved that the commission revise Rules 2.1.3.2.3, 2.1.4, 2.2.1, 2.3.1, 2.3.2, 2.3.2.1 as submitted.* The second motion I will read them both now and we will return back to them, the second part of that is *it is moved that the commission adopt Rule 2.3.3 as submitted.* That is now on the record

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Is, for clarification, did you just make the motion?

Mr. Barabani: No I am just reading, reading it now I am going back now; there are so many dots here, I want to make sure. Ok now *it is moved that the commission revise Rules 2.1.3.2.3, 2.1.4, 2.2.1, 2.3.1, 2.3.2, and 2.3.2.1 as submitted,* do I have a second?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Did you just make this motion?

Mr. Barabani: Yes.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: May I make a recommendation?

Mr. Barabani: Sure.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I just want to make sure that all comments regarding these sections of the Rules are on the record and I would like to make a recommendation that you not make a motion to vote on these until; I would like to give Ms. Gordon an opportunity to submit additional legal authority in support of her position regarding all the objections that she raised, so that we can clarify the legality of at least these sections of the Rules.

Mr. Barabani: Ok since I have already put the motion out there I will just wait for a second.

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

Mr. Barabani: No second, ok.

Ms. Early: Commissioner Barabani, I know that concerns from Ms. Gordon on 2.2.1 and 2.3.3 which she verbalized today, I think she said 2.2.2 but I think she was referring to 2.2.1 regular meetings

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I will have to double check. The proposed Rules on regular meetings are indeed 2.2.1, thank you very much commissioner

Mr. Barabani: 2.2.1 Ok.

Ms. Early: Commissioner Barabani, I move to adopt the revisions to Chapter 2 as submitted for the second reading with the exception of 2.2.1 which is to remain as is and with the exception of 2.3.3 with the recommendation that 2.3.3 be reagendaized for us to reconsider.

Mr. Barabani: Ok that is your motion?

Ms. Early: Yes.

Mr. Barabani: I will second that. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Mike?

Mr. Salazar: Nay.

Mr. Barabani: Aye. And just on record Action Item C item number 2 which I read it in the record is been taken into motion to be reagendaized, so we will move on. Action Item IV again part D the *second reading and public comments on proposed revisions to the current Chapter 5 and proposed as Chapter 6. Comment from on behalf of the governing board, the California Schools Employee's Association, San Bernardino School Police Officers Association and the public will be heard at this time.* It is now open any public comments?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: The district would like to make a comment on Chapter 6. I will not repeat the preliminary objections that I have provided to you both orally and in writing on pages 1 through the top of page 3, the document we are looking at I also renew our demand that commissioner Barabani not to participate in the discussion or action on this item it is evident that even in spite of counsel giving advise to the commission this evening it is commissioner Barabani's intent in the phase of the clear bias that has been established. We will proceed in making our other comments but I want to renew now and I will again when we get to the next chapter, the district's strong objection to commissioner Barabani's participation based upon his involvement in the development of the commission's response, if you want to call it that, to the district's initial objections. With that having been said I will continue, as to Rule 6.2.2 the Personnel Commission did not address the district's original objection to Rule 6.2.2 and that it conflicts with Rule 6.1.7 which provides for the filling of vacancies in a different order, that there needs to be some clarification so that the commission, the district and the employees can have some confidence in how to move forward with filling the vacancies. 6.2.2.2 this does in fact intrude upon the traditional the bargaining relationship between the district and CSEA, I have made more full and complete comments on this same issue as to Chapter 2 in this specific case Articles XIII and XVII of the collective bargaining agreement between the district and the CSEA covers the same topic but in different ways. Understand that we may have to resort to other remedies if this commission does not see fit to step aside and to allow the appropriate parties to deal with these issues, but we are (inaudible) as the right to do so. 6.2.11.5 the comment was that the word "telegram" would be taken out and it is still there so that is an issue that needs to be dealt with. 6.2.14 again this intrudes on the reservation of rights specifically provided in the CSEA and the SBSPOA agreements and this involves the principles of merit. The principles of merit cover many, many topics, but seat time more seniority certainly not one of them. As anyone who has followed the debate over teacher tenure laws is readily away, seat time does not necessarily equate to merit. This proposal attempts to grant increased hours based on seat time alone, with no consideration of skills, performance or training. This is an issue for the collective bargaining agreement this is not an issue for this commission. This commission is charged with the responsibility of determining merit and seniority in many cases is the exact antithesis of merit. While some people may profit from a lengthy employment in a district, others just serve their seat time and you have to differentiate between the two if you want to make valid decisions based on principles of merit. On 6.3.3.3 the commission's proposal still does not address the district's original objection that it impermissibly intrudes upon Article XIII of the collective bargaining agreement between CSEA and the district. It impermissibly expands the definition of transfer under the terms of Article XIII. Additionally, this provision has nothing to do with merit or any determination made by the commission as to merit. It attempts to provide a rule that anyone in any classification in the bargaining unit requesting a transfer has to be used to fill any provisional emergency or limited term position in the classification in the classified service before the district may appoint any other personal in such a position. Remember provisional emergency or limited term positions are by definition not permanent. They are temporary in nature. Application of this rule would be extremely disruptive. A regular employee would have the priority right to be placed in a temporary position that would leave his position empty, now we have an empty position we need to fill with a provisional, emergency, or limited-term person possibly to hold that position for the employee so that person moves, now we have another vacancy that would require the same thing. It could be endless, it could be totally destructive to getting the (inaudible) work done in

the classified service. Section 6.3.5.6 the miss-numbering issue remains this should have been 6.3.5.5 and this still has not been corrected.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: May I be heard?

Mr. Barabani: Yes.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Rule 6.1.7.1 in the first reading the district submitted written objections to that and the revised Rules of 6.1.7.1 were revised as suggested by the district. I finally had a chance to read the June 16th letter by Sonja Woodward who is the attorney for CSEA and basically the letter in summary she states that she has read these new proposed Rules numbers 2, 6 and 13, and CSEA's attorney compared these proposed Rules with the CSEA collective bargaining agreement and more specifically Article III, and the conclusion that she opines in this letter it says that she does not believe that there is a conflict.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: The letter you are speaking of is the letter you determined was not responsive and untimely?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: No, this is a..

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: This is a different letter?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Yes, this is a letter that was submitted in the agenda packet. I am reading it now and based on the letter she concludes that she compared the proposed Rules with Article III of the collective bargaining agreement and she finds that

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: is the letter that you have opined was..

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: "The inclusion of these Rules did not run afoul of the court's interpretation 45261 that if there is a rule of CBA, there cannot be a similar rule in the Personnel Commission's rules." So commissioners, to the degree that the district's counsel is asserting that there is a violation I'm merely bringing to your attention that CSEA's attorney is looking at the same rules and it is her opinion that there is no violation.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: On a different topic.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: No, no, no, no, no I'm only reading the letter that she wrote here and it says, "we have reviewed the proposed Personnel Commission rules 2, 6 and 13." So I am summarizing what Ms. Woodward is saying, so to the degree that there is an assertion that it intrudes on the collective bargaining rights, the CSEA attorney has rendered an opinion, and that is all it is, it is an opinion to the same degree that Ms. Gordon's opinion has and my opinion that there is no violation. So moving forward to 6.2.11.5 Ms. Gordon is correct the word "telegram" is still there; with respect to 6.2.14 the district's original objection was that this was an intrusion into the bargaining right that was the original objection, so their respective attorneys have their opinions as to whether or not there is an intrusion; the

same with 6.3.3.3 the attorneys for their respective parties have their opinion as to that; Ms. Gordon is correct with 6.3.5.6

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: There is an additional; if you are summarizing our argument there is whole additional argument to each of those sections

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I am sorry I am speaking right now. She is correct on 6.3.5.6 it is a numerical out of order chronology so it should be .5. I rest.

Ms. Early: Just a comment Commissioner Barabani, the referenced letter from CSEA was not part of our agenda package it was placed in each of our binders so I have not had a chance to review it, it wasn't part of our packet that we received before this evening.

Mr. Barabani: It is some letter we got from Ms. Gordon's firm when this came in, I guess, I don't know when this came we just saw it today. Any other Public Comments on Chapter 6? We will move on to item E under Action Items IV, I am just going to read them into the record right now, item E, *the commission will consider taking action to adopt the proposed deletions additions or revisions to current Chapter 5 as submitted for a second reading. Proposed motions, reading only into the record at this moment, it is moved that the commission adopt proposed Chapter 6 in its entirety as submitted, part 2, it is moved that the commission delete current Chapter 5 in its entirety.* Ok further, Ms. Kwong last time, on Action Item E before I move forward do you have any

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Any further comments?

Mr. Barabani: Yeah advise, comments.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: My original recommendation is to afford Ms. Gordon to provide further case citation precedent or statutory authority in support to the allegation or additional facts that there is bias and that refusal as member of law is mandated and that it should be taken into consideration.

Mr. Salazar: May I make a comment?

Mr. Barabani: Yes.

Mr. Salazar: I recommend that the commission follow the advise of counsel with respect to this Action Item, you know, we have counsel here for our benefit and if she is making such a recommendation I would like to follow on with that recommendation.

Ms. Early: I second.

Mr. Barabani: That was the motion, call for the vote?

Ms. Early: Aye.

Mr. Salazar: Aye.

Mr. Barabani: I will abstain. We will now move to Action Item F under number IV; Action Item IV sorry section F, *first reading and public comments on proposed revisions to current Chapter 6, current Rules 6.25-6.28 proposed as Chapter 13. Comment from or on behalf of the governing board, the California Schools Employee's Association Chapter 183, San Bernardino School Police Officers Association and the public will be heard at this time.*

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: May I be recognized?

Mr. Barabani: Yes.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I would renew the objections I previously made the general objections at pages 1-3 of the written document I have provided, I would also renew the district's objection to commissioner Barabani's participation in the discussion and deliberations and decision making as to this chapter. With that I will move into specific comments on Chapter 13 proposals, 13.1.2.1 again it impermissibly intrudes on Article IX, Section 1 of the CBA between CSEA and the district in that the district reserves the right to a unit member's regular daily schedule, reserves to change that schedule, based on business needs of the district. Such changes could involve changing from the night shift to the day shift, which does a loss of differential pay. Rule 13.1.2.1 would make this change disciplinary even though the district is allowed to make such a change under the Collective Bargaining Agreement. This Rule must be rewritten to avoid such a scenario. I would note that this same issue of change of shift it is currently under litigation in the form of an unfair practice charge which is being moved forward before the Public Employment Relations Board, was brought by CSEA. It would be sometime in all likelihood before there is a decision in that matter but I feel that it is my responsibility to bring you that information. On 13.1.5, in general, discipline of employees has been reserved to the district at Article III of the Collective Bargaining Agreements between the District, CSEA and SBSPOA. Discipline is also a subject within the scope of bargaining under the Educational Employment Relations Act. To the extent this section of Rules attempts to intrude on those principles, they are objectionable to the District. Merit relates to testing, promotions, and the employment of persons based on their individual merit; these Rules touch on none of those principles. As to the proposed Rule change for 13.1.5.15, requiring the District to seek employment for an employee who has failed to maintain a license or is uninsurable based on their own misconduct runs contrary to a number of proposed Rules, including Rules 13.1.5.1, 13.1.5.2, and 13.1.5.3. As to 13.1.6 in general, again, discipline of employees has been reserved to the District at Article III of the Collective Bargaining Agreements and I discussed that more thoroughly several times this evening. On 13.1.7, 13.1.8 and 13.1.9 I would repeat that same objection as to 13.4.1, 13.4.2 and 13.4.3 there is still the numbering problem this Rules should be as set forth here in 13441, 13442, 13446, 134.5 and 135.1 the term "Notice of Disciplinary" should actually I believe be "Post-Skelly Notice". As to 13.5.2.2 and 13.5.2.3, 13.7.1.4 and 13.8.1.3, also 13.8.3 I would reassert the objection that these Rules create an impermissible bias we have set forth a number of cases that stand for that proposition while it is true as pointed out none of these case came directly through fax involving a merit system, that doesn't mean they don't stand for the proposition of how it accrues up a bias. There are rarely under the law cases that are exactly on all force we look for cases as similar as possible in order to illustrate the

application of the legal principle and that is what we have done in this case. For 13.5.7.4 this Rules impermissibly requires the District to serve subpoenas on its employees on behalf of the respondent in a disciplinary action. In a disciplinary appeals process, it is improper for one party to subpoena, have to subpoena a witness who would be potentially adverse to itself. This may also have the effect of creating an undue burden on the District. Since the employee is entitled to representation in these matters. It is generally accepted practice for the employee's representative to make arrangements to have such subpoenas served. Moving next to 13.5.7.5 and 13.5.7.6 the commission's response states that William Diedrich informed the Personnel Commission that the Code of Civil Procedure and/or Administrative Procedures Act could govern the appellate process. If you will review the correspondence you received from Mr. Diedrich it will be clear that he didn't in fact make any such statement rather in its March 23rd letter he referenced the Code of Civil Procedure and the Administrative Procedures Act as an example to demonstrate that the subpoena that the commission was attempting to serve would not have been served properly under either of those examples or standards. Such reference was demonstrative only he made no representation that either or both of these statutory references apply to Personnel Commission appellate procedures. The Administrative Procedures Act is in fact found in Government Code sections 11340-11529. It applies to certain specified state agencies. I have provided some appendix to this letter that is an attachment to this letter, the appendix of an often used practice guide used by attorneys that practice, god it is called the California Administrative Hearing Practice guide that it contains or summarizes the state agencies that come under the purview of the Administrative Procedures Act. I provided a full copy of that appendix just so that you could see for yourselves that neither school districts nor Personnel Commissions are listed because specifically for the commission you are not a state agency, these are requirements for the agencies that are listed in that appendix. Moving on to 13.7.2, 13.7.2.2, 13.8.6 this Rule does, in fact, impermissibly circumvent the requirements of 45313. 45313 clearly states that "legal counsel to the governing board shall aid and represent the commission in all legal matters..." Allowing the commission to circumvent the process delineated in Education Code section 45313 is clearly improper in light of that language. Furthermore, declaring a conflict is exclusively within the purview of District's legal counsel not the Personnel Commission. This is explicitly set forth in 45313. Therefore, Rule 13.7.2.2 impermissibly restricts the District's legal counsel from determining whether or not a conflict exists in a specific case. In any event Rule 13.7.2.3 which directs the commission director to seek a written declaration of conflict is contrary to 13.7.2.2 in and of itself. Additionally, proposed Rule 13.8.6 contemplates the hiring of professional experts as to extent that this includes hiring legal counsel in direct violation of 45313, and to the extent that it talks about the hiring of fewer than under 45313 of legal experts to act as hearing officers or investigative officers there is that narrow provision there. We discussed another section earlier this evening that is not addressed here and I don't have it salient in front of me in order to comment further to you given the fact that we will be, I anticipate, that we will readdressing these issues in the future I will reserve the right to respond to that one section 45256 I will before final action. An moving on to the next, the next 13.7.3 and 13.8.2 where the district reasserts its objections based on incompatibility of offices and creation of an impermissible bias, we have fully explained, I believe, our position in that matter earlier this evening and I will repeat that argument.

Mr. Barabani: Alright, anymore public comments?

Steven Holt, CSEA Vice President: Steven Holt, first Vice President CSEA Chapter 183. I believe the commission has our input on these Rules but I want to make one comment 13.1.2.1. I would like to make a note in my opinion I do not think the district totally grasps the extent the Collective Bargaining Laws. PERB, Public Employee Relations Board, clearly defines the power of labor organizations as particular CSEA to negotiate wages and benefits as it pertains to shift differentials anything affecting including in that differential always subject to the collective bargaining agreement. It does not give the exclusive power of the district to make changes to the shift unless it is not effective. Now there have been changes in shifts as long as it does not impact pay. We have had a different variety of opinions and I would like the commission to be aware of that as long as CSEA input on that is no pay is affected. If such cases reside on that employee is going to days which has been a practice there have been argument between the district and CSEA where as long as that did not impact physically (inaudible) the needs of the district we are here too in those particular cases; and I believe that is specially been the case with positions such as custodial staff and maintenance people who worked at particularly at high schools and junior high schools. But anything following to pay, hours, job duties as far performance those duties have been defined under PERB and I would like the commission to look under that section of PERB is the (inaudible) of bargaining rights and what is currently negotiable and what is not negotiable and wages does fall under that category, thank you.

Patrick Maher: Patrick Maher. I find it amazing that the district maintains the fact that anything that is subject to Collective Bargaining is excluded by that mere fact from being subject to commission Rule. They made the same argument to the court and the court in its opinion finds the fact inclusion of law (inaudible) rejected that argument specifically found that that was not the case that the court did in a footnote expressed concerns and possible (inaudible) with that idea but have found clearly that the law says that as long as it is not in a Collective Bargaining Agreement then its subject to commission Rules regardless of what the rights of negotiating; it is true the district and the Collective Bargaining unit can then negotiate something that would nullify or change or contravene a Rule if that was the case, but as long as it is not in the Collective Bargaining Agreement then it is not prohibited, and for Ms. Gordon to come up here and tell you that repeatedly without telling that the court specifically rejected that argument, I think, shows the misrepresentation of what the facts are and what the laws is and I don't think this commission should continue to allow this kind of misrepresentation on these kinds of matters.

Mr. Barabani: Any other public comments?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: On page 6, with reference to 13.1.5, it is Kristine Kwong counsel for the commission. This section deals with the causes for discipline and my opinion the standard grounds for cause for discipline traditionally that are in personnel Rules are reflected in this Rule in all personnel that I have read, revised and given counsel to the causes for discipline are stated in the personnel Rules and this is very standard language. With respect to page 7, page 7 cites several California cases in support of the argument by counsel that the Rules create impermissible bias, I read each one of these cases and I do not find those cases persuasive I do not agree with the holding by district counsel that it creates impermissible bias; I interpret those cases very differently. 13.5.7.4 I am sorry next one, page 8 regarding of hiring of professional experts district counsel was in reference to Education Code 45313 regarding

appointments of attorneys, professional experts is a very broad term it may include attorneys it may not include attorneys. Page 9 once again with respect to these Rules in the first reading Ms. Gordon submitted a written objection and cited several California cases in support of the position that the Rule creates incompatibility, I read each one of those cases I disagree with the holding of those cases that were cited by district counsel.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: For clarity might ask a question, you say you disagree with the holding, you mean you don't agree with what the court concluded?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I will take questions from the commission.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: May I respond? We look at the case law not just the California but in the United States. For guidance in how to deal with each other in society make a predictable case law becomes precedent in this finding on courts and on citizens in their dealings with each other, unless and until those cases are changed just as statutes so that why I ask for clarification. If counsel was saying she doesn't think, she doesn't agree with the holdings the intent of her words, in my mind, strike me as saying 'I don't agree with what the court decided' to the extent that I correct what she has said. We don't get to tell someone 'go ahead and do what you want to do because I don't agree with the holding of that case' to make sure I am making my point we may say 'I had a better case or case more on point let me give you my case', but to argue to a court 'oh there is a supreme court case but I don't agree with the holding in that case' wouldn't get very far in court. That is why I ask for an explanation.

Mr. Barabani: I am going to read this in the record, Action IV part G, *commission will consider taking action to adopt the proposed deletions additions or revisions to current Chapter 6, current Rules 6.25-6.28 proposed as Chapter 13 as submitted for a second reading. Proposed motions are: reading into the record, 1.It is moved that he commission adopt proposed Chapter 13 in its entirety as submitted. 2. It is moved that the commission delete current Rules 6.25-6.28 in current Chapter 6 in their entirety.* That is in the record and now I call once again Ms. Kristine Kwong any comments on that before I move on?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Yes, I make a recommendation that we afford the district additional time to provide the legal authority in support of its accusation of bias by the commissioner Chair and to take that into consideration and to review it and to make a decision. My only request is that any type of legal authority be provided at least 7-calendar days before the next commission meeting so that a well thought out opinion and analysis can be made before the next commission meeting.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Would that be the next regular meeting?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Excuse me?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Would that be the next regular meeting?

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

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: And the next regular meeting is?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I don't know. In addition to that, the failure to provide the authority within 7-calendar days will not afford us the sufficient amount of time to review the authority and I make a recommendation that that would be provided if it is not provided in a timely fashion then the concerns of the district may not be given do consideration. I guess I would make the same request from the CSEA attorney as well.

Steven Holt, CSEA Vice President: That would be July 27, but don't hold me up to that until I verify that (inaudible), that is the fourth Wednesday. 7-days before that, that would be fine.

Mr. Barabani: That would be the 20th.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Does the 20th happen to be a Saturday or Sunday?

Mr. Barabani: No it is a Wednesday.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Are you having a Special Meeting on the 14th?

Mr. Barabani: Yes.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Ok so these will not be?

Mr. Barabani: No it is not a Regular Meeting. You two attorneys want to discuss that on what we can do.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Whether or not you want to..

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: If the topic matters; is the topic going to be further proposed Rules changes?

Mr. Barabani: On the 14th we have other issues. You know the court did say Regular Meetings.

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

Mr. Barabani: I personally believe our hands are tied. Once again you guys making the meetings Mondays and Thursdays.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I understand that there is not motion pending yet.

Mr. Barabani: Yes.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I would inquire as we are going through this process, the commission did take action on Chapter 2, the advice was given that action was taken. I might suggest the district would request that the commission entertains reconsideration of that action in light of the renewed counsel from your attorney. Perhaps and this is in the spirit of reconciliation, perhaps we can avoid a problem if the commission would reconsider and rescind its action in regard to item IV (C) so that it would be, they be running on parallel tracks.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: I think that might be something they can place on the agenda for next month. It depends on what these legal authority is, we don't know what the legal authority is, but if it is an option that you want to leave open for the next regular meeting then you certainly have that available to you.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: In the interim period is it the intention of the commission to begin enforcing those new Rules?

Ms. Early: Commissioner Barabani, I move that the adoption of the revisions for Chapter 2 as submitted from the second reading not be enforced until after we receive further legal counsel at next regularly scheduled commission meeting.

Mr. Barabani: Is there a second?

Mr. Salazar: I will second.

Mr. Barabani: Call for the vote.

Ms. Early: Aye.

Mr. Salazar: Aye.

Mr. Barabani: I will abstain.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: I appreciate you work toward the district on this. I think our intent is to someday be able to say we have gotten through this and that we have done it by using a process that avoids major decisions. I understand during that process there maybe times where Ms. Kwong and I can agree on legal authorities and then have different opinions but I think we should take the time necessary, whatever that is, to allow each other the opportunity to proceed in that way. This is difficult on all, it is difficult on the district it is difficult on the commission and the (inaudible) on the employees of the district and that is very unfortunate, thank you for what you have done this evening.

Mr. Barabani: Well a comment to add beyond that is someday can be along time away and the employees have suffered for quite sometime and the commission; it has been a long time and the commission has been I don't know for not, as you say (inaudible) not proper wording, they have

been under attack for a long time here. That many, many different commissioners many different chairs many different commissions in the last decade and there seems to be a process that the district is using to keep it non-functional it appears. So you know I like what you say, but someday I would like it to be sooner than later. Alright let's go back, on item G I make a motion that we follow counsel's recommendation and to allow more time for, and that we get a response within 7-days and this was and should have kept right here.

Ms. Early: 7 calendar days.

Mr. Barabani: 7 calendar days, by July 20, 2011 based on our meeting being July 27, 2011. That is my motion, do I have a second?

Mr. Early: I second.

Mr. Barabani: Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I will abstain.

Patrick Maher: Can I just make a comment about your deadline? Your agenda is due by the 22nd and if you have stuff by the close of business on the 20th it gives you basically one day to put together your agenda and get it organized and everything else, I just wanted to point that out.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: Maybe we should change that deadline.

Mr. Barabani: I thought it said before the 20th, but was I right?

Patrick Maher: The 20th is the deadline so.

Mr. Barabani: No for the 20th I thought it said, which it gives us 19, 20 ok.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: How about the 18th that would be the Monday?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Reminding we have, let me back up and straighten it, an agenda deadline is an artificial deadline set just that you know you got a target so that you can move documents out; your agenda for that meeting doesn't have to go out until Friday. So

Mr. Barabani: Which?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Right. Your Wednesday is the day that you have decided that you want to do things by so that stuff gets included. Counsel was

asking for that 7-day so that she has time to analyze what is submitted on behalf of the district and do the legal research. All that would be required of the commission it is putting it in your packet getting copied.

Mr. Barabani: No, no, no there is a lot more work to that it is reading it, getting it out to the commissioners we are trying to you know, put it in the packet, you know we are rushing to get things done. Ms. Kwong the idea the 18th is that just not possible it is almost a month from now?

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: It is almost a month from now the date just happens to be the date that responses initial responses are due in the pending litigation against the commission and the district and I am sure counsel will have things to do for that also as we do.

Mr. Barabani: I am sure they haven't approved anything yet. I am going to trying to be accommodating here, Ms. Kwong.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: Is the 19th workable for the commission that will give me...

Mr. Barabani: Tuesday.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: One more day it is Tuesday, if I got it to you by Tuesday for your agenda purposes.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: No briefing is required you can cite the cases and I can look at them myself.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: We prefer briefing to just hand in cases.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: It is actually an administrative deadline, I am trying to be sensitive to the commission staff it is under staff at the moment and I want to make sure that they have ample time to comply with the Brown Act in getting the agenda out. To the degree that that is sufficient time for the staff then it is not an issue with me.

Mr. Barabani: Well the problem is this last thing they already have paper at home right? We ran into a lot of problems.

Sherry Gordon, from Atkinson, Andelson, Loya, Ruud & Romo: That is an internal problem.

Mr. Barabani: I know, I don't want to wait until the last minute. Nersi was on vacation, ok, and she took the time to come in and put the thing on the web and stuff like that, by the way thank you publicly for that; but that is a lot work, right?

Mr. Salazar: If I may, Nersi can you and the staff have that done by the 19th?

Nersidalia Garcia, Personnel Commission Secretary III: Yes.

Mr. Salazar: Ok.

Mr. Barabani: Oh no, we won't have that, see, no we have to have that done; we will gather, produce the agenda, and then we want to have...

Mr. Salazar: I think we are just trying to agree on a date at this point and if staff can get it done by the 19th we are sort of going in between; we had the 18th the 20th seems like a compromising date. Everybody's in the 19th and it seems

Mr. Barabani: They don't prepare the agenda they are just.

Mr. Salazar: I understand but we have to have a date.

Mr. Barabani: That is what we are talking about we are looking at any changes that we have to make

Mr. Salazar: But staff can get it done on the 19th; Kristine, our counsel, has agreed with the 19th, the board's counsel 19th, I don't know what the issue is with us here, everyone is willing to do it on the 19th

Mr. Barabani: Well counsel will not get it on the 19th they got to it when I look at it.

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: That is fine with me.

Mr. Barabani: The 19th?

Kristine E. Kwong, of Musick, Peeler & Garrett LLP: The 19th is fine.

Mr. Barabani: So I would like to ammend the previous motion, said counsel of the district will provide to our counsel by the 19th the requested documents. Do I have a second?

Ms. Early: I second.

Mr. Barabani: Call for the vote

Ms. Early: Aye.

Mr. Barabani: Aye.

Mr. Salazar: I will abstain.

V. COMMISSIONER REMARKS

Mr. Barabani: Alright, commission remarks?

Mr. Salazar: None here thank you for the opportunity.

VI. CLOSED SESSION

Mr. Barabani: I had some but I don't even want to hear myself talk anymore, going into closed session the time is 8:25pm.

The commission reconvened into open session at 8:55 p.m. and announced the following action taken in closes session: No action was made.

VII. ADJOURNMENT

The commission adjourned the meeting at 8:55 p.m.