

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

May 11, 2011

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

I. CALL TO ORDER

Mr. Barabani called the meeting to order at 5:54 P.M. Mr. Barabani led the pledge of allegiance.

II. APPROVAL OF AGENDA

Mr. Barabani: Next agenda item is Approval of Agenda.

Ms. Early: I make a motion to approve the agenda.

Mr. Barabani: It's been moved and seconded. Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

III. PUBLIC COMMENTS

Mr. Barabani: Section number III, Public Comments. *Because this is a special meeting, public comments may be made only on items on the agenda. Comments from the public on any agenda item may only be made at this time. Public comments during the commission's discussion of an agenda item will not be permitted. Public comment on the public hearing will be heard during the public hearing and not at this time.* If you have something to discuss about the public hearing we'll discuss it at that time instead of right now, but anything else anybody wants to speak about? Please state your name your and position for the recording.

Steven Holt, 1st Vice President, CSEA: My name is Steven Holt, 1st Vice President of the California School Employees Association Chapter 183, I'd like to comment about Bryan Astrachan and I want to put on record that once again CSEA Chapter 183 believes that he is here improperly and needs to leave and for the record for the district purposes, that they are trying to force their hiree, their director, upon the commission and we would once again state for the record, that we are adamantly against this and we believe it is illegal and CSEA hopes that the district will come to its senses so we can move on and hire our classified employees and let the commission do their job in which they were charged to do. Thank you.

Mr. Barabani: Is there any other comments?

IV. ACTION ITEMS

Mr. Barabani: Alright, we will move on to Item IV, Action Items. The first one is (A), *it is moved that the commission rescind the adoptions of Chapter 3 through 22 of the Personnel Commission Rules as adopted on October 27, 2009 and November 4, 2009.*

Ms. Early: I second.

Mr. Barabani: Call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye. Under Action Items IV, Item B, *the Commission will consider approving a new closing date for the examination for Cafeteria Worker (Job Code 0427). A proposed motion is: It is moved that the commission approved the attached recruitment bulletin for a promotional only examination for Cafeteria Worker (Job Code 0427) with a closing date extended to May 25, 2011.* Do I have a second?

Ms. Early: I second.

Mr. Barabani: Motion has been seconded, call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye. Action Item IV, Item C, *the commission will take action to address the situation involving Bryan Astrachan continuing to be employed by the governing board and take appropriate action. A proposed motion is: (1) it is moved that the commission request that the governing board place on its agenda at the earliest possible time a discussion with the commission concerning the continued employment of Bryan Astrachan which may (2) Constitute a gift of public fund (3) Constitute criminal trespass by Bryan Astrachan by continually occupying the offices of the Personnel Commission (4) Constitute a criminal violation of Education Code section 45117 of the governing board, district administrators, and Bryan Astrachan through culpable negligence or by willfully violating the Rules of the Commission Education Code statutes governing the merit system.* Open for discussion.

Ms. Early: You made a motion correct?

Mr. Barabani: Yes, that is correct.

Ms. Early: I second.

Mr. Barabani: You second? Sorry. Open for discussion. Alright, call for the vote.

Ms. Early: Aye.

Mr. Barabani: Aye. Action Item IV, Item D, *the commission will receive a report from Richard Marca or other attorneys with Gresham & Savage concerning the non-payment of legal fees to Kristine Kwong.* Is Mr. Richard Marca here? Is anybody from his office here? I'll make a motion that we will ask this be re-agendized and ask Mr. Marca, Richard Marca, to show back up on the same subject at our next meeting. Do I have a second?

Ms. Early: I second.

Mr. Barabani: Any discussion? Call for a vote. Yes.

Ms. Early: Aye.

Press Enterprise News Reporter: Did you say here? I am sorry.

Mr. Barabani: Pardon? I said aye.

Press Enterprise News Reporter: You did, ok.

Mr. Barabani: Action Item IV, Item E, *the commission will conduct a public hearing on whether or not Mel Albiso was appointed or assigned as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) in accord with the Education Code Article 6 on the merit system and the Commission Rules pertaining to examination procedures and whether or not the Commission should order that no further pay warrant be issued. NOTE: The only issue is whether or not the classified manager was hired as a substitute manager in accord with the law and the rules of the commission. No other issue including work performance or other perceived need is at issue and may not be commented on during the public hearing. Members of the public are encouraged to read the supporting material on this item to understand the issue before the commission. We are opening this time the public hearing.*

Patrick Maher: My name is Patrick Maher, may I make a suggestion that I think there is an error in the narrative portion it should be 'Associate Superintendent/Associate Superintendent' thing instead of *substitute manager*. Just a note about what the thing is about; it's just a typographical error. Where it says *Note...*

Mr. Barabani: Oh yeah, I got you.

Patrick Maher: Note; it should be 'Associate Superintendent' or 'Superintendent' everything else in agenda makes it clear as to what the item is about. This is just a warning I think for the people that might want; sometimes I know when these things come up people want to talk about how bad or good a person is which is not a relevant issue so, I don't that think that's...

Mr. Barabani: No, this word was...

Patrick Maher: ...you should correct it to 'Associate Superintendent/Associate Superintendent/Classified' or 'Administrative' or whatever that other title that he is....

Unknown Speaker: ...Chief Administrative Officer.

Mr. Barabani: Chief Administrative Officer.

Patrick Maher: ...'Chief Administrative', that should be corrected to that.

Mr. Barabani: We are going to make a correction here, where it says *the only issue is whether or not the classified manager was hired as a substitute manager*; this is what happens when you cut and paste, it should read 'Associate Superintendent/Chief Administrator Officer' where it says *Substitute Manager*. Then so, I'll read it completely again, *Note: the only issue is whether or not the classified manager was hired as a 'Associate Superintendent (Associate Superintendent/Chief Administrative Officer)' in accord with the law and the rules off the commission. No other issue including work performance or any perceived need is at issue and may not be commented on during the public hearing. Members of the public are encouraged to read the supporting material on this item to understand the issue before the commission.* Public meeting is open.

Patrick Maher: Can I speak?

Mr. Barabani: Yes you can.

Patrick Maher: The comments I just wanted to make is once again, nobody from the district shows up, nobody on behalf of Mr. Mel Albiso shows up, Mr. Mel Albiso doesn't show up to take it there. They've had ample opportunities as the commission has continued and given them time and time again to show up and make a case as to why he thinks he was legally hired. So far as I know, there is nothing in the record that shows that he's ever presented any information of any kind that would contradict or anything in the report that's attached here so, basically the fact is the fact that they are not here willing to try to challenge or refute any of the facts or the documentation or the evidence or the findings and the conclusion to me comes only to one other possible result, they know that he was hired illegally, they know that he was taken care of by his friends of the governing board and by the Superintendent, they know that he didn't go through a process because they haven't challenged or tried to present any evidence that they did, they know that he is not legally hired, they know that he was hired as an Assistant Superintendent of Human Resources many years ago in violation of the law, they basically know that they have nothing to stand on in terms of any challenge of the facts that are there or the law that's there and that's why they're not here. I think it's time now for the commission to take action on this matter, he's had ample opportunities time and time and time again and he simply apparently has nothing to defend himself with, nothing to say, nothing to refute, nothing to support any contention, he doesn't even contend that he was lawfully hired, and even that's not before the commission in terms of anything so, I think you have

to go ahead now and finally take action and put it to rest, thank you. Oh my name is Patrick Maher in case I didn't put it on the recorder.

Steven Holt, 1st Vice President, CSEA: Steven Holt, CSEA, I just want to echo on those sentiments that I am very disappointed that we do not have an official or representative from the district at any of these meetings in anything that is coming from the commission pertaining to the district, I would think somebody would be here to answer any questions the commission had, any claims made against them and yet, look around and surprisingly there's a lack of district officials again. CSEA Chapter 183 finds this very alarming that the district wouldn't even set aside the time far as important of a thing as this issue is to come in here and talk about this and I'm disappointed Mr. Mel Albiso did not show up tonight. Thank you.

Mr. Barabani: Is there any other comments that pertain to the public hearing at this time? It appears to be no other comments, no one else to step up so, I will close the public hearing portion of this meeting. We will move on to Item F under Action Item IV, *the Commission will make a decision and take action on whether or not Mel Albiso was appointed or assigned as an Associate Superintendent (Associate Superintendent/Chief Administrative Officer) in accord with the Education Code Article 6 on the merit system and the Commission Rules pertaining to examination procedures and whether or not the Commission should order that no further pay warrant be issued.* Do I have a second?

Patrick Maher: You don't have a motion?

Mr. Barabani: I am sorry.

Patrick Maher: You just read the topic.

Mr. Barabani: I'm going to break this down into two motions. I'll make a motion, for the record I think its best that I read Action Item IV (E) and IV (F) which I did and then the proposed support in the back since this is a very pressing matter, I wasn't going to read all of it, but I think I should now. *At the March 30, 2011 meeting, the commission voted to conduct a public hearing to determine if Mel Albiso has been appointed/assigned as the Associate Superintendent (Associate Superintendent/Chief Administrative Officer) in accord with the Rules of the Commission and Education Code statutes of the merit system. The action was based on the report of the Chair (copy attached). Following the hearing, the commission can take the following actions: (1) It can do nothing, letting the appointment/assignment stand with no action on the behalf of the commission, (2) It can make a finding that the appointment/assignment was made in accord with the statutes and the Rules, in effect affirmatively finding that the action of the governing board was in full compliance with the examination procedures. A possible motion is:; I'll read that now, it is moved that the commission find that the governing board's appointment/assignment of Mel Albiso to the position of Associate Superintendent (Associate Superintendent/Chief Administrative Officer) was in full accord with all Rules of the Commission and Education Code Title 2, Division 3, Part 25, Chapter 5, Article 6 commencing with section 45240 or (3) it can make a finding that the*

appointment/assignment was made in violation of the Rules of the Commission and the merit system statutes of the Education Code. A proposed motion is: It is moved that the commission find that the governing board's appointment/assignment of Mel Albiso to the position of Associate Superintendent (Associate Superintendent/Chief Administrative Officer) personnel commission Rules 3.06, 4.01, 4.08, and 5.01 and Education Code sections 45256, 45261, 45272, 45273, 45276, 45278 and 45300 as they pertain to examination procedures in the classified service. There's a second part to this and I will read that after because we have to deal with the first part here.

Patrick Maher: Excuse me, I think there is a typo here in that motion.

Mr. Barabani: I read it wrong?

Patrick Maher: After *Administrative Officer personnel commission* it should say in 'violation of' or 'not in conformance with' or some description, but (inaudible) violation...

Mr. Barabani: 'Was in violation ', yes.

Patrick Maher: 'or not in conformance' or some other motion that you think is appropriate.

Mr. Barabani: We will re-read Item (3) motion, *it is moved that the commission find that the governing board's appointment assignment of Mel Albiso to the position of Associate Superintendent (Associate Superintendent/Chief Administrator Officer) 'was in violation of' personnel commission rules 3.06, 4.01, 4.08, and 5.01 in the Education Code sections 45256, 45261, 45272, 45273, 45276, 45278, and 45300 as they pertain to the examination procedures in the classified service. That's been read in public record and once again, the second part will be read in a little bit. I've read the documentation, I've received letters, I saw nothing has come forth to dispute the facts of the report. I was hoping that someone would bring a detail possibly some type of legal analysis to show if there was any conclusions were incorrect, no one has appeared to do so. So, I would like to propose that Item (3), I'll make the motion that the commission find that the governing board's appointment assignment of Mel Albiso to the position Associate Superintendent (Associate Superintendent/Chief Administrator Officer) 'was in violation of' personnel commission Rules 3.06, 4.01, 4.08, 5.01 and the Education Code section 45256, 45261, 45272, 45273, 45276, 45278, and 45300 as they pertain to the examination procedures in the classified service. I will ask for a second for discussion.*

Ms. Early: I am confused by your motion however, I will second it for discussion and then you call for the vote.

Mr. Barabani: Ok, let's open it up for discussion and clarify anything.

Ms. Early: I am in receipt of a document dated May the 10th by Sherry Gordon and I feel obligated to speak to it in the absence of our third Commissioner and her position as far

as I'm concerned is she's stating that the manner in which the data or the report, investigative report, was presented was subjective and so, she's requesting that you not vote on this issue since you were the investigator on behalf of the commission. I am of the opinion that someone can do an investigation and present it in a unbiased manner. As an equal employment opportunity counselor that is what I do all the time, it's an informal fact finding service so to speak however, when I would write up my reports I was very careful to provide the data as I gathered it. If I interviewed someone, I presented the questions and I presented the answers with no interjection from my own. So everything that I presented was simply data with no opinions. Way at the end of my informal fact finding session I got a chance to write up a conclusion however, that was at the end. So I do believe that someone can do an investigation and present the information that was obtained during that investigation and present that the information that was obtained in that investigation in a nonbiased proposal or written document. I can give you an example, if you are going to investigate if the commission is to sit here in decide whether or not a group of numerals add up to 10 and you are our investigator, and you come back and say, "I found the following numbers one, two and three" and then we sit here and we render an opinion as to whether or not those three digits add up to 100 because that's our charge. That is an unbiased presentation of facts that you have gathered. Once you say, "I found the following numbers one, two, three" and clearly those three numbers do not add up to 100, you've kind of interjected something of yourself that can show that you've rendered an opinion prior to sharing information with the other two that are supposed to weigh your data. So, it could be that I can't add so, if I'm here and I'm supposed to determine whether or not the numbers add up to 100 and I say, "one, two, thre" I can't add, yeah, I think that's 100", I can be so wrong, but I've rendered an opinion based on my data, it's so wrong, it's so incorrect, but based on the information that I've been given I've rendered an opinion however, if you say "one two three clearly that doesn't add up to 100", I can say well, not sure, but it's been told that clearly it doesn't add up to 100 so, it does not add up to 100. So, the reason I am confused by your motion is that I think that we were given information that is true and correct in a subjective manner and so, in reference to the correspondence that we have received and just to make sure everything is done correct, I would prefer that we respond to this document and that the verbiage utilized is listing the information that you have presented to us with the question on whether or not this information is substantiated by actual fact and evidence so, an example would be was there an eligibility list created that was associated with the position of blah blah blah Associate Superintendent duhduhdhda, was there; and list them like that. For me, and realize I agree that I can make a decision and disagree with whatever you presented here, but because that has been questioned on whether or not we can I would like to see a legal opinion with a deadline to reply on whether or not there's something wrong with the actual facts that have been presented to us in this document. If there is information for instance, that she is saying you should have presented and I didn't read that in this document, she didn't say that, but if she's saying that there is something else we should have considered then she needs to bring it. I didn't read that she said that, but since she is raising the question, she needs to present it.

Mr. Barabani: Ok.

Ms. Early: And she needs to tell us whether or not there was an eligibility list created, whether or not the procedure followed was in conformity to the Ed Code and with the Personnel Commission. Basically you are going to site the information that you've given to us, but you are going to take all the extra verbiage out of that so, she is going to tell us basically in writing whether or not the facts were the facts. And based on the facts, we are rendering a decision. So before we vote tonight, I would think that would take the ambiguity out of the decision, but I don't want it to become a long drawn out process, I do believe that you have requested a legal opinion regarding this issue in the past, is that correct?

Mr. Barabani: Yeah, remember the law firm we asked Mr. Marca if we can have him give us some legal opinion and he said we could not have legal counsel, if I recall, can't hold me to that exactly, but I remember that letter, we can bring that back and then we also asked the Superintendent to cooperate and hire someone remember? And we heard nothing back from that and that's why we had to be in a position to do the investigation which there's nothing that says we can't and then part of this thing was broken down in two subject matters for a reason, we had the public hearing so if; we want people to come forward to dispute anything that they thought was not factual on this report and present it so we could hear and like I said I sent the letter, we tried to be open on this, their not actually disputing anything that's legal, they didn't render any legal analysis or come to any conclusion that anything was incorrect, they just didn't like some of the wording, I guess I didn't talk pretty enough when I wrote this so, but I do hear what you're saying, and I don't have any problems with any of it so, we do have a motion on the table, I'll call for a vote and then I'll make another motion or you can make another motion. I'll call for the vote.

Ms. Early: Nay.

Mr. Barabani: I will vote nay too. Would you like to make a motion or would you like...?

Ms. Early: I will. I move that this item, even though I voted it down today, I want it to be revisited and I am voting it down simply for clarity.

Mr. Barabani: Ok, and by clarity are you asking that we should get a legal opinion?

Ms. Early: I'm saying that you should respond to this letter in writing, and ask for her to determine for her written response as to whether or not the items presented in this had evidence or were they based on fact and I am asking that you take out all of the other verbiage and just simply concentrate on the information that you've uncovered as part of the investigation so, it's a presentation issue for me.

Mr. Barabani: Ok.

Ms. Early: Ok, concentrate on the facts, ask her if there's anything in here that is in error and if so, she needs to tell us the error and again, she's not stating that; well, I don't think she states; she has not disputed any of the actual facts that you have presented. I believe that her question is, she is questioning the manner in which the evidence was presented and I believe she's stating that it might have been presented in a manner that could be biased and realize this is she that is saying this. She has not said that anything was incorrect however, if you have a person doing the investigation and other people are reviewing the information, we need to make sure, we need to assure that it's presented in a manner that is clear, clean and unbiased.

Mr. Barabani: Alright.

Ms. Early: If she disputes any of the facts, and she hasn't done that, we need to know that, but I want it to be clear that Commissioners that are seated are independent thinkers and are able to form opinions based on actual facts as opposed to based on someone else's decision and we're just following behind rubberstamping someone else's conclusion. Again, let me state that I do believe that someone can do an investigation and remain unbiased, or no, present information in an unbiased fashion, I do believe that. I want to make sure that everyone is aware that we are considering just the facts and if something in here is unsubstantiated, we need to know that.

Mr. Barabani: Alright.

Ms. Early: I would like to see; I don't remember if I started speaking in the middle of my motion so if I did, I'll strike the motion and restate another one.

Mr. Barabani: Well, I took notes, you said you want to revisit, that you will make a motion for clarity.

Ms. Early: Let me restate my motion. I move to have this item re-agendized at our next commission meeting and to have a written response to Sherry Gordon asking, which would identify the facts that were apart of the investigation all of the issues that have been outlined, and ask her whether or not there is evidence supporting each one of the items that you have identified in your investigative report.

Mr. Barabani: Ok.

Ms. Early: And have that agenized for our next commission meeting.

Mr. Barabani: We have a motion, I will second that. I will call for a vote.

Ms. Early: Aye.

Mr. Barabani: Aye.

V. CLOSED SESSION

Mr. Barabani: The Commission goes to Action Item V now we are going to go into Closed Session. Closed Session will start at; let's say 6:40 p.m. because it takes time to get in there.

The commission reconvened into open session at 8:14 p.m. and announced the following action taken in Closed Session: there was no report announced.

VI. ADJOURNMENT

Meeting was adjourned the meeting at 8:14 p.m.