

SPECIAL PERSONNEL COMMISSION MEETING
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION OFFICE

MINUTES

October 13, 2011

5:30 P.M.

I. CALL TO ORDER

- A. The meeting was called to order at 5:43 p.m. by Commissioner Barabani.
- B. Roll-Call
 - 1. Commissioner Gino Barabani, Chair (Present)
 - 2. Commissioner Rhonda Early, Vice-Chair (Present)
 - 3. Commissioner Michael Salazar, Member (Present)
- C. Pledge of Allegiance

II. APPROVAL OF AGENDA

Moved	<u>Ms. Early</u>	Seconded	<u>Mr. Barabani</u>
Vote: Barabani	<u>Aye</u>	Early	<u>Aye</u>
		Salazar	<u>Aye</u>

III. PUBLIC COMMENTS

Mr. Barabani Just for clarification, we have no podium, Nerci is right there the closer you get the better it is. This is the time for Public comment only. Thank you for your cooperation.

Teresa Parra-Craig, Board Member Good evening, my name is Theresa Craig-Board member for San Bernardino City School District, because I think I was the one who carried the lead to extend the olive branch, I want to continue that.

My colleague Dr. Valdez was the one that I spoke to when we brought forward last Tuesday, the approval for Personnel Director. So I just want to share with you, Mr. Barabani and Mr. Maher.

Mr. Maher I think some of this environment needs to change a little bit. I would be very open to if it's a legal issue, I know that there is things we can't talk about, but future issues I would love to just have a phone call and see if there is a way to remedy those things. So thank you very much.

Dr. Elsa Valdez, Board Member I am Dr. Valdez and I wanted to come here and you know just meet everyone. I haven't met all of you and I do hope that we can move forward with you know, hopefully put everything

behind us and we can you know come together as a district, and as a personnel commission to get those positions filled and ready and go into work with everyone together, and you know we just wanted to come here and extend that to all of the members of the personnel commission. Thank you.

Steven Holt, 1st
Vice President for
CSEA Chapter
183

I just like to first of all thank the commission for all the hard work you have been doing on behalf of our members of Chapter183 appreciate it.

Number two, I like to make an announcement, last night at our chapter meeting we had a special guest including endorsement, and went through our process. Gino you have been reappointed as CSEA's choice for personnel commissioner, and we would be sending the communication promptly back to the district to that effect I like to put that on record. Thank you.

Dr. Harold
Vollkommer,
Assistant
Superintendent
for Human
Resources

Good evening commissioners, I am Harold Vollkommer from school district office human resources. First of all, I want to say congratulations to Mr. Maher, he is not completely officially yet, but he was in to do his clearance this morning, and we are looking forward to getting him started.

I wanted to say that the district is very excited about getting a Personnel Commissioner Director on board so that we can resume hiring which will provide much needed services to students, much needed jobs for our community members, and much needed revenue for our city. We will be requesting just so you know to give you heads up, we will be requesting ratifications several existing lists that we have so that we can begin the hiring process.

We will also be requesting extension for two list that just expired, so that we can proceed without delay, and no need to go out to recruit again. We will be coming to you to open various recruitments that are critical to the operations of the district. Particularly those in the areas of special education where we can run the risk of having to provide compensatory services at a later date.

We hope and know that we can count on you and the commission to move as quickly as possible on this request. I expressed to the classified HR staff that we will work around the clock. You have our commitment to being there when the work needs to be done, to facilitate the process from our end. Staff is very exciting about the process about getting back to do what they do best so we are looking forward. Thank you to our board members that let the charge to get this moving again, we are really excited about the opportunity to fill those

positions. Thank you very much.

Mr. Barabani

Any other public comments? We usually don't make a comment at this time but I like to thank everybody for the cooperation we've seen, and I am very happy to see the board members. Thank you. Now we will move on to section Action Item IV (A).

IV. ACTION ITEMS

- A. Second 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.

William Dietrich,
Attorney for
Atkinson,
Andelson, Loya,
Ruud and Romo

Good evening commissioners my name is William Dietrich, I have appeared here before, and I appear before you today on behalf of the district governing board.

I am speaking on IV (A) and I would like to begin by reiterating the district's previous objections to the proposed action today deleting sections of chapter 6 and adopting new proposed chapter 13.

I am not going to read through every pending objection I noted that you are adopting minutes today that included a number of objections that some of my colleagues have made, but what I will do is go over just a couple again just to radiate concerns on behalf of the district.

First, I would like to lodge a general objection. One of the concerns of the district is Chapter 13 as presently proposed is cumbersome, onerous, is and unworkable. The materials here along are over 80 pages. Now I don't know that they read that much when they are actually in the rules but certainly this can be an extensive document.

We are concern that is going to lead to a confusion discord intention between the commission, the classified employees, and the district administration.

The second general objection is the overwriting concern was that really there is nothing wrong with the old rules and perhaps a fix rather than a wholesale adoption of new rules we could have kind of fixed the spot problems if we noted any by working with in the current set of rules.

Again, as a general objection we note that a number of these proposed rules are similar to proposed those that were

rejected by the district in negotiations with at least one of the classified unions.

Now I like to go on to some specific objections. What I am going to try to do commissioners where I can be a little more specific in give you direct things to reference.

Our first, and again I remind you we are also reiterating our previous objections this are ones I want to focus your attention on, particularly today.

Proposed rule 13.1.2.1 the concern with this rule is it has a potential to intrude on the districts rights to change the shifts of its members because essentially what is saying is any sort of reassignment with a loss of pay will cause you discipline. Now you may ask when can there be a reassignment that constitutes a loss of pay? One example that we like to note to you is this district has a night shift differential for employees whose hours fall within a certain part of the day. Now what the Ed Code says if you move them temporarily, I believe it is for 20 days, they continue to receive that night shift differential so it doesn't let you just move them around. If it's more than 20 days then they would miss the night shift differential. Under this rule it could be interpreted that rule 13.1.2.1 would make that action on behalf of the district to constitute discipline so that is the concern the district like to raise.

With regard with 13.1.5 which has general causes for discipline we just like to note that in the collective bargaining agreement at article 3 at least on the CSEA and the CSEA agreement, the district and the CSEA have agreed to match with rights of articles and the reserves right to discipline employees to the district. Now we are not saying that the personnel commission does not have any rules on the process. Please don't think that is what I am saying; however to the extent of this rules are going to intrude on that assessment of right to the district we have concerns that is going to intrude on an agreement.

With regard to 13.1.5.15 that is the rule guys where there is an employee who lost their license or they become insurable. The process that is now here requires the district to find another location before acting to discipline. The concern here is that that is going to intrude on other causes of discipline for example 13.1.5.1 deals with in competency and inefficiency. 13.1.5.2 Deals with insubordination, and 13.1.5.3 deals with persistent violation of commission rules or I believe it is also policies of the district. The problem here is when the employee loses their license and becomes uninsurable there is often multiple causes of actions when the district pursues

discipline including this that we mention here, and the concern is that 13.1.5.15 it creates a considerable ambiguity whether or not the district could pursue this other actions or whether 13.1.5.15 would carry the day.

Let me give you a couple of them here. 13.1.6, 13.1.7, 13.1.8 and 13.1.9. The district has essentially a general objection that these are intruding into the bargaining relationship. The parties have been negotiating language, are attempting to negotiate language, similar language for years, but more importantly the concern on the part of the district is that this could lead to, it could dissuade righteous disciplinary actions because this are fairly cumbersome provisions.

And this one in particular I like to raise, which is 13.1.6.1.5 I will take a second to let you all get there. You guys there? Ok, that is the one year provision I believe, now you are correct in your statement that there is no law on your merit district that limits disciplinary action two years; that is a non-merit law, however; it serves as a good guide and it is commonly accepted with non-merit district as well as many merit districts that I represent. The two year period it seems to provide a fair balance between the rights of the employees for not being charged with stale claims, and the rights of the district to enforce their rules. So we like you to consider going to a two year period as opposed to one year.

With regard, now I need to tell you this, I need to talk about 13.4.1, 13.4.2, and 13.4.3 and you may ask me which one? Because there is two sets, and so I am referring to the second set, and those should be numbered. We believe 13.4.3.1, 13.4.3.2 and 13.4.3.3 it's just a numbering issue. I will wait for you to stop writing before I continue. Commissioners are you ready for me to continue?

Now I am going to read a number of rules to you 13.4.4.1, 13.4.4.2, 13.4.4.6, 13.4.5, 13.5.1 we believe we are using the term notice of disciplinary action the document that the district has used for many years. As far as the title of Post Skelly Notice it delineates where there is a pre-skelly notice it notes that there is a skelly hearing and the post hearing would be the operative document.

With regard to rules 13.7.1.4, 13.8.1.3 and 13.8.3 we raise this concern a number of times, and the concern is that it could lead to an impermissible bias, and commissioner Barabani you noted I believe two meeting ago you were delineating between when you are acting in a clause of legislative mode and more of fact finding mode, and I believe that this rules if you look were referred to in a commissions acting and a fact finding

mode.

Mr. Salazar Can you repeat those?

Mr. Dietrich Certainly commissioner 13.7.1.4, 13.8.1.3, and 13.8.3.

The next rule Commissioner's is 13.5.7.4 the concern from the district standpoint is this requires the district to serve subpoenas on its employees and its potential employees that are adverse of the interest of the district in the situation where the actual subpoenas may be filed by somebody who is not adverse to the employee, not only is there grounds for confusion there this would also create undo burden on the district.

With regard and Commissioners I am almost done, with regard to 13.7.2 and 13.7.2.2 the concern of the district is that the rules will circumvent the Education Code requirements with section 45313 and that Education Code provision indicated that legal counsel for district serves as attorneys for the commission unless legal counsel declares a conflict.

Now I read 13.7.2 about five times and I am not 100% sure of what you are saying so I am hopeful today that we can clarify this. 13.7.2.2 essentially it says there is always a conflict when counsel for the district would service counsel for the commission in the disciplinary action now when you read the sub sections it seems to imply that you are still going to ask for counsel to declare a conflict, but I just want to note the section 45313 would vest that right whether or not there is a conflict on counsel for the district.

Commissioners I really appreciate you taken the time to listen to me and that is the specific objections I wanted to bring to your attention today as well lodging and re-lodging your previous objection, thank you very much for your time.

Steve Holt 1st vice president chapter 183. Just a general statement for the commissioners we have no objections for rules at this time; we have been trying for a long time of some form of type of rules for discipline, the district has been with a length to put those in record in any shape or form even with current rules they are using.

It's been many years and there is no rules, and whether this rules seemed to be a little encompassing not quite at par I would say in our rule versus no rules are better than anything.

The district does have a power to collective bargaining process; it is a two way street. The District can mandate any

time and negotiate from CSEA or any of its labor organization. If they feel they would need to make additional correctional; for rules and policy, they do have the right to negotiations process, and does not limit the collective bargaining rights as far as CSEA is concerned on either the district's part or CSEA, and we would encourage for this rules to go forward and we have no objections at this time for the record. Thank you.

Mr. Barabani Any more public comments?

B. Mr. Barabani: Acton Item IV section B. The 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:

1. It is moved that the commission adopt proposed Chapter 13 in its entirety as submitted.

Moved	<u>Mr. Barabani</u>	Seconded	<u>Ms. Early</u>
Vote: Barabani	<u>Aye</u>	Early	<u>Nay</u>
		Salazar	<u>Nay</u>

Mr. Salazar I think that a lot of recent changes through this commission you know, now we have an expert and Mr. Maher is here to help us along with this kinds of dealing with this rules, and complicated and complex issues.

I would prefer to see us have his input and I would like to see us put this motion on the side for now until our next meeting. By that time he should be approved by the district, and he certainly would be employed by the district and I certainly since he is going to be mandating this office we should note that.

Ms. Early We have this to be noted as a number of concerns from Mr. Dietrich have you provided any alternative language to us for the items hat were of concern?

Mr. Maher The ones that were just delivered no; this is the first time I heard of them. The ones before, there is something before with the objection. This the first time I heard them. I can provide an alternative.

Mr. Barabani She was asking Mr. Dietrich.

Mr. Maher Oh, I am sorry.

Mr. Dietrich Commissioner we have not. Certainly commissioner we would absolutely be able to. Commissioner we would make that a priority. We would get right on that.

Mr. Barabani Our regular meeting is?

Ms. Early Well we have some new areas that have been identified tonight as a concern of the district. I am not opposed to reagentize this chapter till the 26th if we will receive alternative language from the district for review prior to that meeting.

Mr. Barabani Part of the thing we gone through these rules many times and I didn't make notes but looking at 13.7.22 where it declares a conflict, history shows that it has been backed up by that rule seem to be appropriate. The numbering issue that is just clerical.

If they can proposed those motions nothing here is written in stone, even though we should pass it tonight they can come back with their language and make their case. I tried to look into it. I was reading through this I read through many times I didn't see anything that stood out, but it is a hard issue for the district to file, but we do have a motion on the table and I will call for a vote. I will call for the vote and on the proposed motion. Would you like to propose your motion?

Ms. Early Ms. Early: When will you be able to submit your alternative language to the commissioners?

Mr. Dietrich Commissioners your deadline for agenda items would be Friday the 21st, correct? Would the Wednesday prior to that give a sufficient time? So the 19th.

Mr. Barabani Our meeting is October 26th ok, and you would submitted by when?

Mr. Dietrich We will submitted by October 19th commissioner. That will give us at least a full day and half for you to review for your agenda deadlines.

Mr. Barabani We would like to have agenda out by Friday. We always shoot for Thursday. We do make it within this deadline having it someone in the office it would be easier.

Mr. Dietrich If you appear the executive directors appointment we would be happy to submit directly to him or work directly with them Mr. Maher.

Mr. Barabani We are going to I don't want to re visit this whole chapter, we thought about this I mean you made some specifics 13.3.1.2, 13.7 they are on the record we are going to look at that, that is fine, I don't want to look at all of them.

Mr. Dietrich Understood commissioner.

Ms. Early I move to reauthorize the proposed for current rules 6.25-6.28 proposed as chapter 13 for the October 26 personnel commission with alternative language being supplied for commission by October 19th by Mr. Dietrich's firm.

Mr. Dietrich Thank you commissioner.

Mr. Salazar I second.

Mr. Barabani Call for the vote.

Ms. Early Aye.

Mr. Barabani Aye.

Mr. Salazar Aye.

2. It is moved that the commission delete current Rules 6.25-6.28 in current Chapter 6 in their entirety.

Mr. Barabani: On number 2 we can't deal with this right now because we don't have any rules.

C. It is moved that the commission oppose the motion by Kristine Kwong, Musick Peeler to withdraw as counsel, to seek legal assistance in that opposition, and to appear in *pro per* if assistance is denied or not responded to by October 17, 2011.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Abstain

Mr. Barabani: We have a second. Open for discussion. Any discussion? Call for a vote.

D. It is moved that the commission obtain a legal opinion and legal assistance responding to the court ordered date for hearing on the return on writ of mandate to determine if litigation has been concluded as previously opined by Bradley Neufeld.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Nay
Mr. Barabani Call for discussion; call for the vote.

E. It is moved that the commission request legal assistance in seeking District compliance with the public records request of September 19, 2011, in determining if the response of October 4, 2011 was responsive to the request and in compliance with the California Public Records Act, in responding to the position of the District that costs of \$10,000 are required in order to comply with the requested documents, and to seek compliance as provided by law.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Nay
Mr. Barabani Discussion?

Mr. Salazar: I would again say that in light of our new director have him take a look at this and have a discussion of legal assistance.

Mr. Barabani Call for the vote.

F. It is moved that the commission authorizes up to \$500.00 from its budget to pay the copying costs of the requested invoices/billing documents, purchase orders, contract logs, documents concerning the issuance of pay warrants for Bryan Astrachan, all personnel commission related documents approved by Bryan Astrachan while employed by the District.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Nay
Mr. Salazar Again, I think we now have an expert on our team, I suggest you have Pat Maher look into this matter.

Mr. Barabani: I think we can do that, we just requested \$500.00 and I like to see that a limit when they reach \$500.00 when we send the letter to them and told them. We are not going to pay more than that. But that is the cost for copying than the other services the other \$10,000 from the previous we would have to see on that. I don't see any problem to vote for this now. We can start working on this issue once he has time, there is other pressing matter. Call for the vote.

G. It is moved that the commission authorize its counsel, Kristine Kwong, to accept services on behalf of the commission and the commissioners in all matters pertaining to Case No: CIVDS 1106215.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Nay
Mr. Barabani Call for discussion.

Mr. Salazar Again, we now have director I think we should have the new director work on this issues.

Mr. Barabani Call for a vote.

H. It is moved that the commission approve payment in the amount of \$1795.00 for CODESP membership in FY2011-2012.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Aye
Mr. Barabani Open for discussion.

Mr. Salazar As I recall this was on our last agenda and said we are not going to do this until we need it.

Mr. Barabani Yes, things have taken a real turn, the only thing for better.

Mr. Maher is going to come on, one of the things we want to start is the right process right away, I being informed last time that our staff uses it for going to seminars, they would use them for webinars, they find them helpful, it keeps them in training so yes we are going to need this. Call for a vote.

- I. Public hearing pursuant to Education Code section 45310 concerning the pattern and practice of the governing board hiring classified employees without the certification of the personnel director as required by section 45310.

Public comments on this matter will be taken at this time.

Dr. Harold Vollkommer, Assistant Superintendent

Good evening again, commissioners Harold Vollkommer from the human resources office, we understand some of your concerns on this issue, but we would respectfully ask the commissioners to delay action on item at this time.

Now that we will have functioning personnel commission with a personnel commission director some of the problems associated with this item should solve themselves as we move forward with hiring and filling classified positions meaning fewer subs, fewer out of class, contract employees being eliminated etc.

“The presence of 400 vacancies creates a significant amount of disruption as we tried to keep this ship of float.” In my initial conversation with Mr. Maher, when we made the employment I expressed the desire to work corporately in order to build the system that is above approve approached, and one that we can mutually be proud of.

I would respectfully ask the commission to afford us the chance to do that, and get this people hired so that we can take care of some of the other issues that we know are there. Thank you very much for your consideration.

Mr. Barabani:

Any other comments? I'd like to propose a motion that we reagendaize this item to the next meeting if necessary.

Ms. Early

I second.

Mr. Barabani

Call for the vote.

Ms. Early

Aye.

Mr. Barabani

Aye.

Mr. Salazar

Aye.

- J. The commission will consider taking action in accord with the information received in Action Item IV.G, and consider ordering that no further pay warrants be issued to any classified employee hired without the certification of the personnel director as required by Education Code section 45310.

Moved Ms. Early Seconded Mr. Barabani
Vote: Barabani Aye Early Aye Salazar Aye

Mr. Barabani The first motion would be I move that the commission find that all classified employees who were hired without certification the personnel director with Ed Code 45310 have been hired in violation of section 45310. Call for a second.

Mr. Maher First of all there is a typo it should be section IV (I) but you just suspended I so for IV (J) you can't take action until you conduct IV (I) first. IV (J) is predicated on IV (I).

Ms. Early Commissioner Barabani I moved that item IV (J) be reagendaized along with item IV (I) for our next commission meeting.

Mr. Barabani Let's call for the vote on the first. Nobody seconded. I will second that to be reagendaize. Call for the vote.

- K. The commission will consider approving the following meeting minutes:
1. It is moved that the commission approve the minutes for the meeting of May 31, 2011

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Abstain

Mr. Barabani I did not look at the first set; I did not have a chance to look at them. It's moved that the commission approve minutes of meeting May 31, 2011. Open for discussion and any changes, corrections.

Ms. Early I have noted a few corrections, page 3 second paragraph from the bottom last sentence on the second line *ones* should be *warrant*. 4th line same paragraph official add *ly* officially and again that once consideration should be *warrants*.

The last one on page 31I was not sure what that was supposed to be? The last three words ass object 5600. It should be need to assess object 5600.

On page 38, 8 paragraphs up from bottom strike *those* from that first sentence instead of saying I move it should read I move that the changes and paragraph under that where it says Mr. Salazar last line last sentence of that paragraph delete *of*.

Page 39 typo second line up from the bottom 5 words over should be *the*.

Page 41 first line strike *problem* and insert *column* so it would

read this is page 41 right at the top for the proposed column total instead of problem.

Page 44, 3 paragraphs up strike *submit* and insert *spent* and typo on here just typo there and insert just change here to *hear* and last line 4 words over *strike and to*.

Page 45 it says closed section item at the bottom item but it doesn't say that we went into closed session so I am not sure what happened there. Where it says on that same paragraph where it says Mr. Barabani 209 should be the year 2009. So I wasn't sure where it says we adjourned at 7:25 that meant we adjourned into closed session. So if we went to closed session at that time it needs to state the time of closed session.

Mr. Barabani We adjourned a meeting at 7:25 p.m. we took a 5 minute break. Nerci can you listen to that part of the tape? Do we want to approve those minutes with those corrections. I will find my agenda I always write the time and I will call Nerci on it. All right call for the vote on approval of those minutes with those corrections. Call for a vote.

- 2. It is moved that the commission approve the minutes for the meeting of June 8, 2011. On items 2, 3, 4, and 5, I did not have an opportunity to go through those.

I would like to make a motion to reagendaize the minutes for June 8, 2011, June 22, 2011, July 14, 2011 and August 24, 2011 until next meeting. I would like a second. Call for a vote.

Moved Mr. Barabani Seconded Ms. Early
Vote: Barabani Aye Early Aye Salazar Aye
Ms. Early

On the minutes for June 22nd I think we didn't receive the complete set of minutes. It stops in mid sentence and then it says commissioner's remarks closed session adjournment but nothing is under those items. Since they have been reagendaized can we check and see if we have a full set of minutes there it ends on page 11 of June 22nd?

Mr. Barabani Nerci can you check your files and I will check mine? Thank you. Call for a vote on that.

V. CLOSED SESSION

Mr. Barabani: The commission adjourned into closed session at 6:38 p.m. for:

Mr. Maher: You need to read the closed session item.

Mr. Barabani: Conference with legal counsel, Kristine E. Kwong, Musick, Peeler & Garrett LLP

EXISTING LITIGATION (Section 54956.9a): California School Employees Association And Its San Bernardino City Chapter No. 183, v. San Bernardino City Unified School District; Governing Board Of The San Bernardino City Unified School District; Superintendent Arturo Delgado; Personnel Commission Of The San Bernardino City Unified School; And Does 1 To 10, Inclusive, Case No: CIVDS 1106215

Pursuant to Government Code Section 54957 to discuss:
PUBLIC EMPLOYEE APPOINTMENT
Title: Personnel Commission Director

The commission reconvened into open session at 7:58 p.m. and announced the following action taken in closed session:

Mr. Barabani: We are reporting out we voted first motion was to place Pat Maher on top step, and you are right call back to order at 7:58 p.m. Place Mr. Maher on the top step the vote was two yes's and one abstain.

Mr. Maher: Just for the Brown Act you've got to state who made the motion, who made the second, and how each person voted.

Mr. Barabani: Commissioner Barabani made the motion and was second by Rhonda Early. I voted yes, Ms. Early voted yes and, Mr. Salazar abstained.

Mr. Barabani: Number two, Pat Maher will be placed on immediate layoff status if former personnel commissioner Abe Flory is reinstated as Personnel Commissioner Director. The vote was unanimous. Mr. Barabani-Yes, Ms. Early – yes, and Mr. Salazar- yes. I made the motion, Mike Salazar seconded.

VI. ADJOURNMENT

The commission adjourned the meeting at 8:10 p.m.