

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

MINUTES

May 15, 2012

5:00 p.m.

I. CALL TO ORDER

A. The meeting was called to order at 5:04 p.m.

B. Roll call.

1. Commissioner Gino Barabani, Chair
2. Commissioner Rhonda Early, Vice-Chair
3. Commissioner Michael Salazar, Member
4. Abram Flory, Personnel Commission Director
5. Steve Williams, Ph.D., Personnel Analyst
6. Nersidalia Garcia, Secretary III

C. Pledge of Allegiance

II. APPROVAL OF THE AGENDA

Ms. Early Commissioner Barabani, I move to approve today's agenda.

Mr. Barabani I'll second that. Any discussions, corrections? Call for the vote.

Moved: Ms. Early

Seconded: Mr. Barabani

Vote: Mr. Barabani Aye

Ms. Early Aye

Mr. Salazar Nay

III. PUBLIC COMMENTS

NOTE:

- Because this is a special meeting public comment is limited only to agenda items.
- Comments from the public on any agenda item may only be made at this time.
- Public comment during the commission's discussion of an agenda item will not be permitted.

IV. ACTION ITEMS

The commission will consider a resolution finding that Patrick Maher has successfully completed probation as Personnel Commission Director. A proposed resolution is:

A. BE IT RESOLVED BY THE Personnel Commission finds as follows:

1. That Education Code section 45301 states that a person who has “served in a class” for the specified period of time “shall be deemed to be permanent.”
2. That Patrick Maher was appointed by the Personnel Commission to be the Personnel Commission Director effective December 22, 2010.
3. That the only reason that Patrick Maher was not hired into that position was the deliberate decision of the SBCUSD (District) to fail to carry out its ministerial duty under Education Code section 45264 to hire the Personnel Commission’s appointee.
4. The during the period of December 22, 2010 and October 24, 2011 when the District finally carried out its ministerial duty and hired Mr. Maher, Mr. Maher performed duties of the Personnel Commission Director.
5. That during this period, Mr. Maher performed the duties of a Personnel Commission Director in a competent manner.
6. THEREFORE, BE IT FURTHER RESOLVED THAT THE COMMISSION FINDS that Patrick Maher has met the requirements of Education Code section 45301 and successfully completed one-year of probation on December 21, 2011.

Mr. Barabani Resolution, motion on the table, do I have a second?

Ms. Early I’ll second it.

Mr. Barabani Open for discussion.

Mr. Salazar For the record, I don’t want my fingerprints on anymore of this meeting this evening and so I am going to leave, thank you.

Mr. Barabani Thank you for your time. I have comments and I would like to discuss, first off the Ed Code section 45301 conditions on a person not an employee, the commission appointed Mr. Maher from a certified eligibility list effective December 22, 2010. Mr. Maher was not hired solely due to the district not recognizing the statutory duties reserved solely to the Personnel Commission to appoint supervise an employee under Ed Code section 45264. Mr. Maher performed work for the commission that would normally be performed by and under the direction of Personnel Director between December 22, 2010 and October 24, 2011, this work included and is not limited to preparing draft agendas to all Personnel Commission meetings, prepare draft correspondence for the commission Chair, providing expertise and advise to the commission Chair and to the commissioners on various technical matters and commission needs, prepare drafts of all revised Personnel Commission Rules, draft responses to objections and other responses of various proposed draft Rules that were finally adopted by the commission or considered at various meetings in 2011. Had the district followed its statutory duty to hire Mr. Maher as a probationary employee on and about December 22, 2010 he would have clearly completed probation by December 2011. Instead the district (inaudible) the authority of the commission to appoint and supervise its staff in particular the Personnel Director. The district also illegally appointed Bryan Astrachan to serve as a Personnel Director for the periods of January

2012 to May 2012. Had it not been for this clearly illegal appointment, commissioner Astrachan, Mr. Maher would have been working as a district employee and would have completed probation. The district believes Mr. Maher as a probationary employee when the only reason he did not complete a full one year of probation was the district illegally and without authority not only prevented Mr. Maher from being hired but that the district also placed its own employee in the position without any authority to do so. The district solely and as result of its own misconduct and illegal actions has caused Mr. Maher to work without being paid without a status of being an employee with all that would have occurred all while Mr. Maher performed the work of a Personnel Director. Mr. Astrachan did not perform, even though he was paid to perform the work. Mr. Maher's dedication, efficiency and expertise, and ability and overall performance since at least March of 2009 demonstrates that he would have completed probation had the district not interfere with the commission's statutory authority to appoint its staff in particular its own director.

Ms. Early Is there someone here taking fingerprints tonight?

Mr. Barabani Why?

Ms. Early I thought I heard Mr. Salazar say that he did not want his fingerprints to be on this meeting.

Mr. Barabani Yea I heard that.

Ms. Early I just want to find out what does that mean?

Mr. Barabani That means, it's hard to say with Mr. Salazar.

Ms. Early I just wanted clarification; I wanted to know if there was a fingerprint taker in here tonight.

Mr. Barabani Ok. Ms. Early, I'm going to be honest with you I'm not going to even try to get into that man's mind.

Ms. Early Ok.

Mr. Barabani Any more comments?

Ms. Early None.

Mr. Barabani Ok. Call for the vote. I will vote yes.

Moved: Mr. Barabani Seconded: Ms. Early

Vote: Mr. Barabani Aye Ms. Early Aye Mr. Salazar Absent

Mr. Barabani This is a unique position right now as Mr. Salazar, he's not present, he left the meeting and so no vote there. We will go on to item B.

B. It is moved that the commission approve the minutes of the meeting of May 13, 2012 as submitted.

Mr. Barabani Motion, do I have a second?

Ms. Early I have a question.

Mr. Barabani Yes.

Ms. Early I noticed that the vote is recorded and not in the order that was taken during the discussion.

Mr. Barabani Ok, let's correct it.

Ms. Early So there is discussion on whether or not we need to actually make a motion since a resolution was rendered to the record and then prior to that discussion it says *moved* and *seconded* by. I'm just questioning the order of the vote that's recorded. The verbiage is correct as stated except for under either Item IV it says *Moved: Barabani* and *Seconded: Early* and then it says *I read the resolution, it does not need a motion but I will state I agree with all four items*, so that discussion took place and then we went ahead and made the motion, so my question is the order that it is recorded on the minutes.

Mr. Barabani Ok. That's right, and then you stated that we needed a motion and I didn't believe so, but you were correct. Then I called for the vote on that motion and then we got two yesses and the motion passed and then we called adjournment. And then the last part of this where it says Mr. Barabani was actually outside of adjournment but it's ok I'm going to leave it there; because see *we will now call for adjournment*, up here do we move the motion down here?

Ms. Early That's my question, it has it could be just the technicality and formatting.

Nersidalia Garcia, Secretary III That's the order you said it, that was the order it was said, when you said 'and we will now adjourn the meeting' and that's when you asked 'but don't we need a motion?' and then that's when you said, *I don't believe so but because it is a resolution but let's be on the safe side let's make a motion that we accept item A, section 1, 2, 3, and 4.*

Ms. Early And so my question again, is prior to that verbiage there is a vote recorded and seconded, is this just a formatting question? Because above that under item IV it says *moved* and *seconded* it and then after that it said and then the vote is recorded, is this our new formatting where we recorded it above?

Nersidalia Garcia, Secretary III Yes, that is just the format that is been done to all the other minutes the way that Mr. Maher

Ms. Early Correct, this is the first time we receive an agenda where it was put in a resolution form as opposed to a motion form. I'm just raising the question is this a formatting issue? And if it is, I am fine with it I just, when I read it it's not the order that it occurred in the minutes. But I understand if we're formatting the motion above the discussion and the discussion was don't we have to put this in a motion form to act on it and then we took the vote, but if we are just saying that we are going to format votes prior to discussion I'm fine with it; because the verbiage actually is in order, my question was the formatting of the motion that carried.

Mr. Barabani What happened was as you know, Ms. Early's correction and I stated, *let's make a motion that we accept item A sections 1, 2, 3 and 4 as read and printed here. I will make that motion.* Ms. Early seconded it, should we keep that one there or bring it down to here as I see it which would be alright, or should we leave that one there and then put another one here? But since we really didn't do that here because I didn't think so, I would agree that should go down here. You're saying that we spoke there was no motion made down there.

Ms. Early Correct.

Mr. Barabani Because if we do it the other way it would show that we made two motions.

Ms. Early Correct.

Mr. Barabani I believe that's the way it went down, right? Ok then, so I didn't get a second so the motion is now do we approve the minutes with the corrections stated?

Ms. Early I second.

Mr. Barabani That's seconded, ok. Any more discussion other than the fact that the motion needs to be moved, just for clarification, between the; I'll make a motion and then right here it says *Ms. Early, I second* I would believe that would be the most appropriate place for that format. Ok so that was the discussion, call for the vote.

Moved: Mr. Barabani Seconded: Ms. Early

Vote: Mr. Barabani Aye Ms. Early Aye Mr. Salazar Absent

C. The commission will consider recessing its meeting so that the commissioner can address the governing board. A proposed motion is:

It is moved that the commission recess its meeting at 5:22 p.m. in order for the commissioners to speak to the governing board on commission related business.

Mr. Barabani Commission and; I will move on that motion, do I have a second?

Ms. Early I second.

Mr. Barabani Any discussion on that? Call for the vote.

Moved: Mr. Barabani Seconded: Ms. Early

Vote: Mr. Barabani Aye Ms. Early Aye Mr. Salazar Absent

V. ADJOURNMENT

The commission adjourned the meeting at 5:22 p.m.