

PERSONNEL COMMISSION MEETING
SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION COMMUNITY ROOM

MINUTES

April 25, 2012

I. CALL TO ORDER

- A. The meeting was called to order at 5:38 p.m. by Commissioner Barabani.
- B. Roll-Call
 - 1. Commissioner Gino Barabani, Chair
 - 2. Commissioner Rhonda Early, Vice-Chair
 - 3. Commissioner Michael Salazar, Member
 - 4. Patrick Maher, Personnel Commission Director
 - 5. Steve Williams, Ph.D., Personnel Analyst
 - 6. Nersidalia Garcia, Secretary III
- C. Pledge of Allegiance

II. APPROVAL OF AGENDA

Moved	<u>Ms. Early</u>	Seconded	<u>Mr. Barabani</u>
Vote: Barabani	<u>Aye</u>	<u>Early</u>	<u>Salazar Aye</u>
Ms. Early	Commissioner Barabani I move that we pull Action Item IV. C from tonight's agenda until we receive a review a copy of the stipulating judgment with the state as reference in William Trejo's letter dated April 23d.		
Mr. Barabani	We have a motion, I will second that. Open for discussion. Item C on Action Item IV, we received a letter from Leo Trejo, attorney explaining that there is possibly might be exposed the district to some legal liabilities. Mr. Maher I know there was some conferencing about this decision we are placing on the agenda. I am curious as to why we are not concerned about this.		
Mr. Maher	Until we received the letter from Mr. Trejo we had no knowledge that it existed. We notified the district and the union both that are given 20 days noticed of what we are planning and doing and the certifying matter was taking out of the major category and no one contacted us or made any objections until we received the letter from Mr. Trejo. We still have not seeing the stipulated judgment the necessary to give us a copy or tell us about it so we don't even know what it says, and we don't know how it affects us or if it affects us at all we have no idea.		
Mr. Barabani	So we don't have a copy of this decision.		
Mr. Maher	I never received any copy as of this moment.		
Mr. Barabani	We need that to make an informal decision I would think. From your statement my understanding you worked with Mr.		

Vollkommer or a representative?

Mr. Maher I advised him, I send him a copy and email advising him of a copy of the class spec attached and explaining that we were planning on a salary recommendation and removing it from the classified from the management category and I received no feedback at all.

Mr. Barabani I am going to have, I do appreciate the extra time because this is an issue we had last time were submitted at the last minute and we didn't receive this with enough time for me to flip it over and highlight some items on it. I know this was public comment section. Dr. Vollkommer were you aware of this information?

Dr. Vollkommer Good evening commissioner's thank you for the opportunity I found out about this judgment Thursday evening I was not aware of it. It's back from 1996 or 97 and it came as a result of chemical spill or toxic waste issue that we had. I had not been involved in that decision at all. It was brought to my attention on Thursday evening. I actually have a copy and I came over to see Pat on Friday and he was not in the office, I mean Mr. Maher and I have been swamped. Mr. Maher has kept me real busy for the last couple of days. I have not had a chance to give him a copy but I will give him a copy first thing in the morning.

Mr. Barabani I want to tell you I do appreciate you doing that because it came to me early.

Dr. Vollkommer That was a conscious effort and I thank you for recognizing that. I did work with Mr. Trejo asking him to please, please send it as early as possible.

Mr. Barabani The only other thing I like to bring up, I know that the POA and CSEA, and yourself would come up here and we rescheduled, and we reagentized items. We withdrawn them when the need arises, if you just call up and let us know, and it won't be any problem coming here nothing against the attorneys but, it seems like it is a waste of money writing a letter, to me it is a unnecessary attorney fees. I know we have been getting a lot of them I expect a Christmas card from them.

Dr. Vollkommer I think It speaks to another number of issues, I will let it speak to itself, it's not just about stipulated judgment it goes back to areas forwarding and who can make a call and that type of thing so we are trying as best as we can to avoid those attorney fees, I know that is an issue and some of them we can bring but some of them I will leave up to attorney depending upon the issue and so we are absolutely confident on that on the issue and so we are absolutely compensated of that.

Mr. Barabani We are striving for a little bit more cooperation versus confrontation.

Dr. Vollkommer I think we are on the same page.

Mr. Barabani Ok, thank you. Any other discussion? Call for the vote. Call for

the vote.

Ms. Early Commission Barabani, I move to approve the agenda as revised.

Mr. Barabani I seconded. Discussion? Vote

Ms. Early Aye.

Mr. Barabani Aye.

Mr. Salazar Aye.

Ms. Early Mr. Barabani I moved to approved the agenda as revised.

Mr. Barabani I seconded. Discussion? Vote.

Ms. Early Aye.

Mr. Barabani Aye.

Mr. Salazar Aye.

III. PUBLIC COMMENTS

- NOTE:**
- Comments from the public on any item that is not on the agenda but is under the subject matter jurisdiction of the commission may only be made at this time.
 - 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.

**David Myers,
Attorney at law
for Abram Flory,
III**

Good evening chair people. My name is David Myers I am here on the Abe Flory matters. This isn't really about the truancy motion; I know both sides have reached an agreement as well. The matter is Mr. Kawabata and I would both like to recognize the commission staff, Ms. Garcia and the others that helped us through two years of hearings they were excellent, they got us what we needed and they provided for us. I just want to spend the minute to thank Ms. Garcia and your co-workers for their assistance.

With regards to the attorney’s fees motion it’s already well reached as to Mr. Flory’s entitlement to the motion. We think the amount been charged as an inheritance reasonable in light of the fact that the districts own attorney’s charge is actually substantially more than the amount we are interceding. The \$425.00 an hour for my hourly rate is resolved of us stream lighting the process. I don’t have to recreate a lot of documents, I don’t have to do a lot of new research, my staff knows the law, and because of that we are rewarded with a higher rate. The commission rules of the education code clearly provide that the commission has brought discretion in rewarding a resolution to make Mr. Flory whole. The discretion includes necessary for the legitimate expenses actually is the phrase that is used in the education code, is the legitimate expense that Mr. Flory incurred was his legal fees. That was the main expense that would be incurred to Mr. Flory as a result of his wrongful determination from the

district.

The other issue is the report of transcripts which is out. If we look at a remedy to make him whole it is that what dollar figure we can give him both reimbursement and cost and giving him the back pay to work so that he is in a position that he would have not been if he was terminated. And so logic goes that includes attorney's fees and cost. Counsel I am sure will argue that you need a specific statute that says he is entitled to attorney's fees. In fact when you look at the legislative history and the other similar lost statutes that are out there, you will see that the quote that the legislatures were referred to as necessary expenses or expenses incurred by the employee and that is historically to include attorney fees. I will say this if the commission rules against Mr. Flory on the attorney's fees motion it really we will never know the answer to whether or not the personnel commission can award the attorney fees because the court won't second guess your ruling because it is within your discretion. If you do award the attorney's fees and it goes up to the court of appeals then we will know whether or not you acted outside your values because they will interpret that statutes for us.

I ask that if the commission wonders if they have that authority, that they rule for Mr. Flory again in interpretation that is apparently brought that the three of you are given the power to make him whole. If you have any question I am more than welcome to answer questions, and I appreciate the commission's time.

**Kenneth S.
Kawabata,
Counsel for
District**

Good evening commissioners I want to thank you for allowing me the chance to speak on behalf of the district. My name is Kenneth Kawabata. I am the counsel that handled the Flory matter back in 2010 and 2011. I also would like to touch on Mr. Myers comments about the staff of the personnel commission in assisting us in getting the hearing done in a smooth fashion.

Mr. Myers has said that the issue has been well permuted and I would agree with him. I want to point out a few things, the issue the attorney speaks relates to applying principles of law. The law requires that in order to recover attorney's fees whether civil or an administrative hearing is that you need to have either a statute or contract that allows for recovery of that. Here we do not have a contract so the issue is whether or not there is a statute that allows the commission to do that and the district submits that there is not. If you look at the arbore and you site to a civil code procedure section 1021 it says that attorney fees if it is an order by statutes must be specifically stated in this statute. So in the problem of this particular case is that the Ed Code has that issue to 45307 makes no mention whatsoever about attorney fees being rewarded as part as some legitimate specs. I can give the commission an analogy there is a separate section in the Ed Code that deals with certificated employees bringing claims,

where there is a dismissal or suspension and there is a committee on top of that. So here is the matter on an impact statute 44944 specifically says that if the suspension for dismissal is unwarded and the employee wins part of the recovery includes attorney's fees and that is specifically written in the statute. Now what is interested is that the section dealing with the procedure of certificated employees was inactive in 1976 that was the same year that 45307 for merit classified employees was inactive as well. So the district submits that if the legislatures mind they know of two procedures but one side they allow for attorney's fees specifically on a classified employee side they did not they were silent. For that reason because it's not specifically reason there are no legal fees to award fees. The issue of whether or not someone can be made whole Mr. Meyers explained to all of you if you give Mr. Flory recovery for back wages and he wins he should somehow be made whole. While there are other court situations, where someone does not obtain the right to attorney's fees. I can give an example. If Mr. Flory has filed a civil court and file a tort action for wrongful termination, violation of policy and he won. He would not be able to recover attorney's fees as a matter of law because there is no statute advisement and there is no contract. Most of the attorneys and Mr. Meyers submitted a declaration of Mr. Kesing explained that in his situation he would take his cases on a continuously and that is how lawyers would get paid for that. So we are not submitting that Mr. Myers should not get paid for services, no what we are submitting is that he should be paid based on his contract with his own client and typically if you don't have a vehicle to recover for attorney fees if you would prevail then you must rely on that sort of arrangement in order to get paid. In the district submits on that.

The other issue is whether or not commission has the authority to consider what reasonable attorney fees would be in the certificated employee situation one of the panelist of the commission of competence would be an administrative logic that said officer who has the necessary insight in to reasonable attorney fees both under law and under practice. They have been under practice whether or not it has been reasonable whether the time was spent was reasonable, whether an hourly rate is reasonable. So for that reason the district submits that there is no authority from the district issue to proceed on this matter. It should of being dealt with back when Mr. Grant's hearing and we submit also that that proceedings hearing under the new commission rules, which I believe they are active and approved back in October 2011 was posed hearing, the Flory matter proceeded under the commission rules that are predated and there is no, I think it was section 6.28 it has been as a provision for several hearings for the underline there's a separate hearing for issues such as attorney's fees. One final comment in terms

of the transcripts we would submit that under the law under the CCP and Mr. Meyers would know this. We tried reading the recovery of cost fit in getting court transcripts if it is not required by court or not recoverable as a cost. Now I understand here that the district had hired for court reporter and paid for its transcripts. If Mr. Flory requested such transcripts we submitted that it would be cost to him. If there is any question from the commission for me to answer I would be happy to answer them. Thank you.

**Dave Meyers,
Attorney at law
for Abram Flory
III**

Can I have one more minute? 45307 is always been inactive. 45307 gives the commission an inheritance power to make him whole. Kent's point ask to there is a tort plan, those tort plans has specific remedies but special damages, back wages, accumulative damages, emotional stress. Nowhere in any of those statues is an empowerment for personnel commission to make whole. That is a discretionary powerless in a uniquely to the three of you and no other statue does someone does the fact finding trial fact sit in equity to make Mr. Flory whole. That is the difference between a tort plan and 45307. 45307 is given the commission a lot of discretion and a lot of power to say this is what makes Mr. Flory whole. If you notice the district, the district takes the position on this issue like they taken every issue. Don't give them an inch. I get the argument on the attorneys for really the transcripts? At what point did the district argue yet at some expense he gets an expense. They are not given him an inch. They have not given Mr. Flory an inch for 5 years. This is my review. This district has been through a lot of hurt financially they spent \$ 600,000 on an Arizona law firm. They are spending \$550,000 on Mr. Flory to say that awe because he wants to fight to get his job back. One Million Dollars without even talking about my fees. Until this day they won't give an inch; they won't look at the statue and think rationally what it actually means. So I am asking you with the legislature accept we give you power to make Mr. Flory whole. We do the just that. That at the end of the day he cashes a check for the amount of money that he is entitled to. We don't worry out the frustration and the stress that he has had over the last four years trying to figure out how he is going to do it. We just focus on the finances and the finances that make him whole financially, and pay his attorneys so at the end of the day he would say I am out of money they would of not terminated because he refuse to go along with what was wrong. Thank you.

**Kenneth S.
Kawabata**

I have one question. Thank you sir. It just one thing. The commission should apply a horrendous decision based on reasoning and based on principles of law. Nowhere on section 45307 does it state that the district is supposed to make whole. Acclaiming and I wonder if the situation was reversed and the district was the prevailing party. Would then Mr. Flory then pay the district back all its fees and all its cost

would that be an interesting question? Thank you.

**Dr. Vollkommer,
Assistant
Superintendent**

Good evening again, Commissioners I will distribute this may be inclusive not following your agenda in appropriate manner. I just wanted to comment two additional items. Thank you by the way for pulling item C. I will give the information to Mr. Maher first thing in the morning, the stipulated judgment. . I just wanted to make comments on the two on under action items, first one is Action IV. A. We actually followed the same guidelines some other issues have taken with this issue knowing that it is the first reading to have opportunity to have a second reading, we will moving forward any information that you will need to know prior to that time. We do have some concerns we want to deal with, we want to make sure those are given to you in the appropriate manner.

The second item I want to address this evening is item IV (B) taken possession of the personnel files for all commission staff. I read it. Mr. Maher is I just brief me. I just want to make sure that the commission does not get confused to two issues and that is first of all the ability to supervise and I suppose there is controversy behind that but there is the custodian of records issue. Whether or not the commission's actions supervisor or evaluator of the commission staff, it's not really contingent upon where the personnel files rests. Every individual that works for our district has access to their personnel files both by statue and by contract through bargain agreement and they can look at anything they have a right to. Locate anything in their personnel file that is placed in their personnel file. So I want make sure where the records are kept, the issue of where the records are kept is not to confuse who actually produces the record. I think it is an important distinction being the custodian of records for the personnel files I can tell you when I read this my heart bled just a little bit because when subpoenas come along or they ask for the records I am the one who is responsible to make sure those records are appropriate and their given to the right people. Not having those files in our office is a primary concern for me. But I wanted to draw that essentially between who actually supervises and puts in the job files and where ever those files are kept would be two separate issues. I appreciate your time of listening. I think Mr. Maher shared with you earlier that we will be briefing about this issue. Thank you very much. I am going to excuse myself because my daughter's 17th birthday. Thank you very much for your time.

Mr. Barabani

Got keys to the new car? Any further comments?

**Tom Hernandez,
District
Employee**

Tom Hernandez SBCUSD employee for approximately for 22 years down in Maintenance and Operation. I was involved quite a bit at one time. I work for maintenance and operation basically the reason I am here tonight, I heard the qualifications for custodian I has been changed recently and, my concern that I bring tonight that I understand that is an

entry level position but I feel that there should be some type of educational requirements. In years pass when I started many years ago when I started high school diploma was required or GED. Something that basic to me I would like the commission to reconsider the fact is that maybe this can be put back as far as the requirement goes. When I found recently is that classes can be taken so many hours of requirement of the class. Detailing what the job consist of is sufficient in being able to take the test. My concern at this time would be I encountered several situations where me myself I actually had a problem communicating with and I don't want to say some issues temporary employees and that concerns me as far as the safety issue, its really hard to be out there doing what I do, maintaining the schools and, seeing what is happening with the applicants that we are getting. I kind of sort of like to see that change so this way everyone is given just like I was back when I was hired an opportunity and this way everyone can be safe with the district as far as employment goes.

I also like to address the fact is of a rumor that is being happening that you know maybe you can comment on it as far as manpower in general of temporary agency. When I heard through work is that apparently down in Maintenance and Operation announced even district or the commission I have no clue who controls that part of it. They are looking into contracting out which would be grounds I don't know if it is a rumor. I am here on behalf of myself again my career and I would just like to state those two issues tonight. Thank you.

**Steve Holt, Vice
President CSEA
Chapter 183**

Good evening my name is Steve Holt, Vice President Classified Union CSEA, and Chapter 183. I like to make comment first of all I would like to thank the commission for the hard work again. I know we came along to fill in candidate on recruiting. I am a little disappointed though in the hiring process part of what I have been hearing is we have certain people of the district who has been working of out of class for years. The positions have been submitted to the commission and the board of education. My understanding of laws and vacancy list it supposed to be filled, I don't know why the district isn't hiring faster in particular for food service workers. We still have more additional employees that need to be hired and we are going so slowly. As far as the job descriptions I do remember at the time when we were sending post cards to the district before questioning for custodian as I came back the employment they got testing and recruiting, I think you guys have been moving towards that direction so you have more qualified candidates for the district so the district hires employees. Testing procedure is part of that. I do wish economical and I am hoping the commission was contemplating on taking action but we do have a problem with Manpower and Arrow this temporary agencies. I was informed today by district that I believe they are only covering

for food service worker positions, and I have been informed by other people in the district that they are working in Maintenance and Operations and I do believe I saw something come across I have to confirm on that, they are planning on expanding and my concern is and the commission is functioning in testing and recruiting. Why are we not hiring in this positions, why is manpower such an issue, in particular with Maintenance & Operation by director or the assistance superintendent in charge of that facility to expand services to manpower. This is concern that a ledge information that has come to me and I will be investigating. I will be very concern with that I thank the commission for going forward the district continues to fill position as the list as you know there is a position that needs to be filled. Thank you for time, have a nice evening.

**Carl Greenwood,
CSEA
representative**

Good evening commissioners. My name is Carl Greenwood employee for the school district. At the board meeting I asked about all of this issues that have come up tonight. I just wanted everybody to know that these are human beings under counts of custodians three's, the ones that are going to be out the door. Going back to what Thomas said. Nowhere has it will no step I don't want to work beside somebody who really does not care about his or her job. I came here in 5 steps. The 5's were abolished; the 4's were abolished now the three's are abolished. So what type of employee is going to come in this district that does not aspire to move up or can't move up? Number two some of this three's custodians have been here for twenty plus years. And if they are in the same boat that I am in I got one more kid to get through college. You can't do that and everything has been changed like I said at the board meeting. By doing certain things, you are hurting not just us as workers, you are hurting the community. What type of employee is going to really come and do a really good job for you? Like I said, at the board meeting there is got to be a different level Mr. Vollkommer is trying really hard with us. There's got to be a different way, We have to brainstorm and find a way to find the money through whatever we have to do still try to keep good qualified workers from the district. Because after all we are here for one reason to make sure this kids are safe well taken care off. I look to the board within and try to figure out, and I will say what I said at the board, whatever it takes my vacation time, whatever, I am here to work with them; I am here to work with you. There is a way we can get this done and still keep people here in this district good, hardworking, qualified people. We can give to this district years and years of service. There is no way we can't do it if you brainstorm; there is a lot of knowledge and education. In this district I just will not believe that we can't do that. Thank you very much.

**Steve Holt, CSEA
Vice President
for Chapter 183**

I want to emphasize what Carl said to you referring to your job family for custodial position to be abolished the 4's are abolished and the 3's. We believe that at some point, we

may need to look at getting the job back. We are picking more and more to be from other classification that are abolishing recommending so we would like you to look at the specifications at some point. I am disappointed that it seems every time you try to have resolution some of this problems are brushed off and it seems and I heard Ed Code regarding own litigation file, and the district seems to be challenging a lot of this stuff, what is going on? Even when we present a documentation, and I am concern in the merit system that we supposed to promote career opportunities in the past we have seen more growth to see more then we plan because this district, as Mr. Greenwood referred to some place holding down this district very disappointed in merit system has that type of mentality to cut entirely that we are basically in this district. Thank you.

Mr. Barabani Any further comments? I like to thank everyone for the public comments. Let's move on to action item IV (A).

IV. ACTION ITEMS

A. The commission will have a first reading to a proposed revision to Rule 6.02. A proposed motion is:

It is moved that the commission adopt the proposed revision to Rule 6.02 as submitted (First reading).

Moved	<u>Mr. Barabani</u>	Seconded	<u>Ms. Early</u>
Vote: Barabani	<u>Aye</u>	Early	<u>Aye</u>
Mr. Barabani	<u>Discussion?</u>	No discussion.	

B. The commission will consider taking possession of the personnel file for all commission staff. A proposed motion is:

It is moved that the Personnel Commission obtain from the District and maintain personnel files for all staff appointed by the Personnel Commission and paid for out of the Personnel Commission budget.

Moved	<u>Mr. Barabani</u>	Seconded	<u>Ms. Early</u>
Vote: Barabani	<u>Aye</u>	Early	<u>Aye</u>
Mr. Barabani	<u>Call for discussion?</u>	Call for the vote.	

D. The commission will obtain a status report on current hiring from the eligibility lists and on projected recruitment activities.

Mr. Maher Basically today we are doing the interviews for school police officer reviewing two panels today. Finish up one panel tomorrow. Will produce an eligibility list probably on Monday or Tuesday in which case they can start the hiring process. We just opened up the recruitment for secretary III right now it's a promotional only. It is design to identify within the district the permanent employees and various secretarial classes that can apply for the test and be tested. The list will be created,

once the list is established we will know whether or not we will have to open up the recruitment or not to go outside or from the inside and maybe, we do not have to go outside and hopefully we get enough inside people to fill the vacancy but I do not know yet. What is going to happen on that. We are in the process we are going to have to reopen regarding the examination for school police dispatcher; we have to reopen for cafeteria trainee.

At the next meeting I will have a revision to the class spec for nutrition service custodian/utility worker and as soon as we get that finalized we can open the recruitment on that, it will be promotional only. I am trying to meet with I got a meeting tomorrow scheduled with Dr. Vollkommer to review class spec for the Superintendent Assistant its kind of confusing for example it says, the person must be able to take shorthand at 90 words per minute I am not sure if they should transcribe at 90 wpm, type at 90 wpm. I have no idea what that means so I can't even begin to develop an exam. So there is some things like that have to be looked at, that have to be examined. Again as soon as we get that work out we will create classification specification for commission and once approved by commission we will get that recruitment for that position. We got the custodian list it is complete as of right now because of layoffs we can't the district is waiting to see what positions are currently vacant. It will be filled as a result of bumping through layoffs and so on. However, I believe the district should be moving forward, to hiring interviewing from that list to hire subs immediately. The district has a large number of custodian subs none of which were hired and accord with the merit system.

The rules of the commission or the statue of the merit system they should be able to move forward to process those people which a lot of them are willing to take substitute jobs and they should be processing those forthwith terminating the other subs that are not legally within hired and now that we have a list there is no reason for them to continue because it says on 45286 required that all subs hired from eligibility list and we now have that list. That is kind of the status right now. We are looking at a couple other positions. The problem that we are facing is the classifications specification that exist right now are basically very poorly written and very poorly worded and is very difficult for us to take the class specs as it is and just open an exam. It does required a modification, and that process will be followed through the letter of the law we give notice of the exclusive collective bargain unit and to the district of what we intended to do and we get whatever feedback we can get.

We will make modifications on that with the feedback and that will come before the commission and under the statue of the commission we can only post an examination once the commission has approved the minimum qualification for the

position and the qualification of the position because those qualifications I just gave one example. The other one is food service worker where they qualified they did some home food preparation I have no idea what that entails. I do microwave dinners all the time but I am not serving and that does not qualify me to be or not to be cafeteria worker. So we have those kinds of issues we have to fix on every single classification specification first that takes times for us to get to that process. Get those up to date, and then we can post and we can develop a recruitment plan, an examination plan, and we can post it. We have minimum staff we have myself, Dr. Williams who is the specialist and we have two specialists who are learning a lot more about examinations processes but, they also have to do the administration examination so given our staff level and the amount of work that has to be done it takes a lot time, it means we can only work at a few examinations at a time.

In the past the district just did anything to create a list. I looked at some of the past examination processes they don't make any sense, they are not certainly job related, they certainly have no criteria that meet professional guidelines standards on a point selection. So we have to create everything from scratch. The written tests are outdated, some have not been updated, and some were created 20 years ago and never updated. We just have to do everything from scratch to comply with the job related examination as required by the code so all this takes time and we have limited staff and we are moving as much as we can.

Again the problems is if we change classification to developed for recruitment, develop an examination process it takes as much work if we are recruiting for 100 vacancies or recruiting for 1 vacancy. As a consequence we can do a lot of work and only fill 10 vacancies, we do a lot of work and fill 50 or 60, 80 or 100 vacancies, depending which one we pick so that this is the kind of choice that we have to make to with what the needs are of the district are to fill this many vacancies along with the fact of variable staff that we have, along with the fact of all the work we have to do to bring up to date, those are the issues we are dealing with.

Again, I would like to address the issue for example the High School Diploma, I know of a case for a hearing officer recently ruled for an individual was not qualified to hold the position that she was assigned to because she did not have sufficient fluency in English to meet the essential requirements of the job. She has a GED, so having a GED does not indicate that you are apparently self-sufficiently fit for a specific job. What we are doing is we are doing a custodian examination we gave a comprehensive written examination and we gave an interview that measure their skills, abilities, knowledge, their reasoning. And so on and they it was measured in English to make sure they had sufficient fluency to perform that job. That

is the way you decide whether or not if a person is fit for the job, not whether or not they possess an artificial document that has no relationship between the actual daily to perform the job or not to perform job. Those are the things that we are moving towards doing and those are the things that it takes time to do those kinds of things. Again I wish we had a lot more jobs, the job for police officer, it is very technical, and it is legally oriented. It is controlled by post and state law, and certain other requirements that we have to meet. So we just we don't give a written exam just to hire somebody we have to follow a process that we have through and this takes time to get the process developed.

We are also creating for the very first time procedures that have never been implementing before for example, we are asking other agencies to volunteer their employees to us to conduct the interview for police officer. That carries with a price because they expect us at some time to reciprocate and somebody in turn help them out. We don't have a mechanism or place for that to happen. We don't have a place or mechanism to make a formal request through the district to say we need a person that has experience in a certain classification in a certain job that we need to take off the job at our cost and expense and lend them to somebody else in another district to conduct the examination for some time in the future and it will give us somebody in return. That is how that process works and none of that has been set up. For us to do that for things like performs exams and so on. So this are all the problems that we are facing to trying to build the structure, build the system and get everything operational and at the same time do on going examinations as we need to do.

Mr. Barabani On the positions that are been held by where we aren't hiring off the list to fill vacancies like we should, is there a date or some type of agreement with the district when that is going to be settled?

Mr. Maher The district has agreed to stop hiring subs of their own, outside the merit system. They stopped their hiring and a few that they come through they come to me, I look at them, if we agree that such position we make sure they are properly hired as either provisional or as a substitute, because we can't have the list and we can't always comply strictly so certain essential positions so we are working together on that on a case by case basis as necessary. By talking for example, custodian again this is past practice that was improper where that just hired people custodians and put them all kinds of different jobs whether it was a custodian worker or not. That is the problem with some of this custodian subs, you know for custodian sub that was hired working as a HVAC sub or a custodian sub that hired to work in grounds worker or custodian sub hired for something else. And that system is all

messed up. That is all set to terminate the process would require by June 30th every single existing temporary employee substitute provisional or if they want to call it interim which does not exist legally in the merit system, acting who does not exist legally in merit system such those positions will terminate and then we would have to rehire. We are watching and monitoring each one of those rehires to make sure that they are valid and appropriate or if we can give them what they need. We will work with them to fill the positions temporarily so they can at least keep the work and the business of the district continually. We still see hiring and filling vacancies as one of our primary function but it is not the only function that the commission has. Again, we have limited resource, limited staff to perform that function.

Mr. Barabani We are approaching May here. And if we have everybody leave by June 30th?

Mr. Maher They can rehire July 1st.

Mr. Barabani I realize that we are going to have to go off the list legally, and we are hiring those people off the list that is an extreme step up and speed to get this done.

Mr. Maher What I am saying is the tentative agreement we have with the district we cannot provide them a list we will work with them to fill those positions that are critical. We find those positions that are illegal total violation of law and a few cases we ask the district to terminate, the district says no that is not your authority that is not your decision, we are going to do what we want. So it is hard to work in a situation where we are not getting the corporation in return in those special cases. We are not going wholesale and tell them they we can't from their positions we are saying certain position for a very what I feel it was a very good reason and the district is saying no we are not going to do what you are asking us to do. We don't have to; we control those decisions so it is hard to get that working relationship going. So I am very reluctant to allow people to be placed into a position that is not strictly performing in the merit system because if we do that there is no guarantee the district will hold up their part of the bargain and terminate that position where becomes time to do so. That is something we have to get the district to agree at some time before we can move forward in a cooperative fashion.

Mr. Barabani Any discussion? On that item I know we pulled item C on this. Pat I would like to thank you and Dr. Williams here, maybe you can use this as example this announcements that we got on the background I like it. It you can see what it is needed things like that and using it right, thank for the work. I really do appreciate that.

E. It is moved that the commission approve the minutes of February 8, 2012 as submitted with corrections.

Moved Mr. Barabani Seconded Mr. Salazar

Vote: Barabani	Aye	Early	Aye	Salazar	Aye
Mr. Barabani	Call for discussion and correction. I just had one on page 8 of the minutes which is page 26 of 48 in the packet. Right below Ms. Early where it says Mr. Barabani said statement got a motion I discussed just add <i>ed</i> on that.				
Ms. Early	<p>Mr. Barabani on the same page three speakers up from the bottom where it says Ms. Early, it's written I will offer to substitute it, strike <i>to</i> and insert <i>a</i> strike <i>it</i> and insert <i>motion</i> it should read <i>I will offer a substitute motion</i>.</p> <p>On that same paragraph send sentence strike <i>they</i> and insert <i>there</i>, so instead of it saying I understand that they will not be in need it will be <i>I understand that there might be a need</i>, and then the following sentence strike <i>we</i> and insert <i>their</i> and again same thing <i>we</i> and insert <i>they</i>, strike <i>my</i> and insert <i>the</i>, the last sentence where it says I am been mindful strike <i>been</i> and insert <i>being</i>. First sentence following paragraph it reads I am in agreement for providing strike for and insert <i>with</i>.</p> <p>Going backwards we skipped page 6 of the minutes page 24-48 four speakers up towards the end of the first line panelist should be one word it states panel list two words should be one word, it should be panelist are.</p>				
Mr. Barabani	On page 25 of 48 first statements, Mr. Barabani paragraph that starts to me that would and then in the last sentence, we can return it the word before we waist, its waste as in waste of money.				
Mr. Salazar	Revisions on page 33 of 48 minor revisions six lines up from the bottom strike the word <i>have</i> after CSEA and insert the word <i>has</i> , strike the word <i>do</i> in the same line and <i>insert the word does</i> , that is all thank you.				
Ms. Early	<p>Page 29 of 40 two lines up under Mr. Maher, strike an increase and insert <i>addressed</i>. So it reads <i>this whole issue was not addressed</i> as opposed this whole issue was increased.</p> <p>Page 27 of 48 under Item B where it says Ms. Early last line on that paragraph strike <i>the feeling</i> and insert <i>and</i>, so it should say <i>hiring and filling of positions</i>.</p> <p>Page 31 of 48, page 13 of the minutes under Dr. Vollkommer first line and this is actually the last paragraph for Dr. Vollkommer speaks at the end of the first line where it says trial strike trial and insert <i>right</i>.</p> <p>Page 34 of 48, second paragraph through where it says meeting was set up after today's, strike <i>date</i> so it will read <i>set up after today's commission meeting</i>. Strike <i>its</i> and insert <i>is</i>. One two three paragraphs after that where it says, it starts out, we grown accustomed to insert <i>have</i>, <i>we have grown accustomed to</i> and the last line last sentence in that paragraph strike <i>end</i> insert <i>the end</i>. So it will read <i>they are</i></p>				

been denied.

Next paragraph four lines up where it says was a fact a state of emergency strike a, and insert *when so it was in fact a state of emergency*.

Next sentence after of and insert *have* so it will read if it was not we should have not made that statement public.

Last sentence in that paragraph after that insert *that so it will read* and that is the statement that was publicized. First sentence next paragraph strike outmost insert *of most*.

Mr. Barabani Call for approval of the minutes for February 8th with corrections.

Ms. Early Aye.

Mr. Salazar Aye.

Mr. Barabani Aye.

F. It is moved that the commission approve the minutes of February 22, 2012 as submitted with corrections.

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

Mr. Salazar I have one correction. On Page 43 of 48 eight lines up, strike the work something and insert the word *anything*.

Mr. Barabani On page 44 of 48, Mr. Barabani I mean if we get, strike knew one two three four lines and insert *if we know sooner*, it's on the bottom.

Ms. Early On page 45 of 48 on commissioner Barabani at the top Mr. Barabani second line, strike go and add *know*, so it will read *they should let us know*, and then I am not sure if the remainder of that sentence is correct. First thing the commission gives us we should have I'm thinking gives should be corrected, but I don't know what it should be.

Mr. Barabani Nersi can you revisit that?

Nersidalia Garcia, Secretary III Yes.

Ms. Early Page 9 of minutes 46 of 48 fourth speakers down strike divisions and insert positions. I will like to see those positions not divisions been recruited.

Next line down looking forward to you provided strike for and insert *to*. Providing the list strike to and insert *of*.

Two paragraphs after that first line, strike four insert of it should read *approval of minutes*.

Further down on the same page, under Mr. Maher 2nd line strike is and insert as. It should read *the district as what they see as critical positions*.

Mr. Barabani On that page 48 of 48 where it says Mr. Barabani, *I will move now on to the next item which is closed session.* Call for the vote on approval of the minutes of February 22, 2012 with corrections.

Ms. Early Aye.

Mr. Salazar Aye.

Mr. Barabani Aye.

V. COMMISSIONERS/DIRECTOR COMMENTS

Mr. Salazar Just briefly it has been a really good meeting and I appreciate everyone who came out on public comments and followed our agenda tonight, I found some valuable information. I would like to say with respect to Item IV. D. I thought you did a good job Pat updating giving and letting us know some of the people had asked some questions to us earlier why things have taken this long in fact they did a really good job to explaining that process so they can get that information first hand from the commission instead of hearing from the community so thank you for that. That concludes my comments.

Mr. Barabani I have no comments.

Mr. Maher I just want to respond to something Dr. Vollkommer said earlier, I wish he was still here but you will have a chance to look at the minutes. Basically he made a statement that the attorneys getting involved only when the district is going beyond its authority and the letter from Mr. Trejo. Mr. Trejo written the very first sentence, the very first paragraph his letter says of stipulated judgment and that is all there is there would not be any problems. For Mr. Trejo is an advocate for the district and is trying to carry out certain things that the district wants to accomplish. In this so called letter so called legal opinion. He ignored, completely ignored a number of statutory authorities. First one that he ignored is...

Mr. Salazar Pat, what letter are you referring to? Do I have that?

Mr. Maher The letter from Monday dated the 23rd.

Mr. Barabani April 23, 2012.

Mr. Maher It should be in there. It was e-mailed to everybody. Was there a copy put in their file?

Mr. Salazar I don't think I have a copy of that. That what I was saying.

Mr. Maher I know it was emailed. Basically what Mr. Trejo never mentioned was section 45256, the commission should classify all employees in positions within the jurisdiction of the governing board or the commission except those that are exempt. To classify shall include but not be limited to allocating positions to appropriate classes arranging classes into the occupational hierarchy's determine reasonable relationships within the occupation hierarchy's in preparing written class specifications. That is the clarity the statutory authority of the commission. He never mention that section at all on this letter, never said anything about

it.

Come into section 45268 salary schedule for all classified service the commission should recommend to the government board salary schedule for the classified service. He mentioned that we did that but that is our authority, that is our responsibility and we recommended. The government board may approve, amend or appeal or reject these recommendations. No member shall be adapted to the commission it is first given a reasonable opportunity to make a written statement of the amendment would have upon the principle of light pay for light work. No change shall operate to disturb the relationship which compositions schedule change to one another as the relationship been established and the classification made by the commission, so we have clearly established authority to make recommendations and the governing board is limited for Mr. Trejo also omitted several perks decisions and several case law that clearly states that the commission recommends the union that was recommendation was made if the position is represented by a collected bargain organization the district must negotiate with that union to set the final salary. In no case can they disturb that relationship in other words if we place a person at a certain level in terms of classification we see it there is a secretary I, there is a secretary II and there is a secretary III, the district can't move that salary to secretary I to secretary III. They can only move between the secretary I and the upper limit of a secretary II. So Mr. Trejo never explained that in the so called explanation as of how we were exceeding our authority.

Section 45301 again Mr. Trejo did not touch upon. A person who deals with probationary period of 132 days however; the commission may establish a provisional period in a class not to exceed one year for classes designed by the commission as executive administrative for police classes again the commissions has the exclusive statutory authority to decide whether or not the position is secondary managing or police class, not the district. Mr. Trejo never mentions that in his letter. What he did was provide a distorted interpretation of the law did not mention case law, did not mention perks decision, did not mention applicable sessions ignored them and supposedly he is telling us that we are exceeding our authority. And that is the problem with the stuff is coming in. This is the problem the district is taking. The district does not like the commission being a commission's and carrying out the responsibility. What they are trying to do is create some kind of a false record that we are somehow going beyond our authority I would you tell you that as a personnel director everywhere that I worked, I am fully aware of what the authority of the commission is or what the authority of the commission isn't. And I never exceed that authority, and never have exceeded that authority. There are sometimes there is a gray area and opens up for a debate, but where the authority is clear I don't ever exceed that authority. And I am dismayed and I am appalled that they would even make that recommendation or make that accusation either against the commission as a whole against me

or against the staff or anything else. We are operating strictly on statutory authority. The district does not like the statutory authority so they pick and choose the law they want to follow. Mr. Trejo picks and chooses the laws that he wants to use to boast his position in every case decision and every perks decision but does not support his position and that letter was a waste of public funds for them to write that kinds of stuff it was wrong as a matter of law, it was wrong as a matter of fact. You misinterpret the fact and he should be, and the district should stop that from happening again, and they should learn what the laws are. They are the ones that are violating the law, they are the ones that are saying we don't have to, if provisional appointments for as long as you want to and the commission has nothing to say about that that is wrong as a matter of law. Mr. Trejo should be dealing with that with the district instead of harassing the commission and the law for discharge for his authority and his functions.

Mr. Barabani Thank you for that, this letter here, we will probably put it in the next packet right?

Mr. Maher Which letter?

Mr. Barabani We got about five minutes before we start the meeting.

Mr. Maher I am not sure If there is anything, you wrote a letter of response, I'm not sure if there is anything for us to do right now, unless you want to make some kind of an agenda item that was specifically addressed the concerns you raised, or the issues raised by him and give some kind of, I am not sure if there would be an action item or you want for us to an unless you want to specify in the agenda action item or what it would be.

Mr. Barabani Let's see what we get the opinion. I want this opinion we can't get much farther.

Mr. Maher Once we get the opinion we can't look at it and make adjustments and hopefully bring that issue back before the commission at the next meeting so can move forward. What is interested is that what I did in my research is that position that is Environment Safety officer has been vacant since July 2011. I received three separate requests from the district to fill critical positions they think are priority and environmental safety officer is not one of them. It should be up to the stipulated judgment that position must be filled that would be the one thing under the court order that they would be to get that position filled and we finally move to do it all they want to do is object to what we are doing. So I see a little bit of hypocrisy and the pros that are taken over that matter as well.

Mr. Barabani We are going into closed session now. The commission will adjourned into closes session at 7:10 p.m. Everybody needs a little break.

VI. CLOSED SESSION

The commission adjourned into closed session at 7:10 P.M. for:

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 DISCIPLINE

The commission **reconvened into open session at 8:44 P.M.** and announced the following action taken in closed session:

The commission moved that Abe Flory be reinstated effective May 1, 2012.

Moved Gino Barabani Seconded Rhonda Early
Vote: Barabani Aye Early Aye Salazar Abstain

The commission moved to compensate Abe Flory from February 1, 2012 to the date of his rehire.

Moved Rhonda Early Seconded Gino Barabani
Vote: Barabani Aye Early Aye Salazar Abstain

The commission moved to expunge from Abe Flory's personnel file all notices of disciplinary actions/evaluations and termination notices not prepared by the personnel commission.

Moved Rhonda Early Seconded Gino Barabani
Vote: Barabani Aye Early Aye Salazar Abstain

The commission moved to grant seniority credit to Abe Flory from the last date of employment through April 30, 2012.

Moved Gino Barabani Seconded Rhonda Early
Vote: Barabani Aye Early Aye Salazar Abstain

The commission moved to make Abe Flory whole by approving \$254,375 in attorney fees and \$12,823.65 for court reporter fees.

Moved Rhonda Early Seconded Gino Barabani
Vote: Barabani Aye Early Aye Salazar Nay

VII. ADJOURNMENT

The commission adjourned the meeting at 8:50 PM.