

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

MINUTES

March 14, 2012

5:30 P.M.

I. CALL TO ORDER

- A. The meeting was called to order at 5:33 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	Ms. Early	Seconded	Mr. Barabani	
Vote: Barabani	Aye	Early Aye	Salazar	Aye

Mr. Barabani I would like to remove action item A under IV.

Ms. Early Mr. Chair I would like to approve tonight's agenda and reagendaize action item A.

Mr. Barabani I will second that.

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.

Liz Madera, Classified Employee I have a question? Well I have a question about whether I should speak or not? Can I speak on something that is attached to the agenda?

Mr. Barabani Yes, at this time, yes; comments of the public on any agenda item.

Liz Madera, Classified My name is Liz Madera, classified employee. Everyday we get a quote on our computers that start the work day and one quote a while back was "there

Employee

is right and wrong; there is honesty and dishonesty, do what is right and do everything with honesty.” That does not appear to be the case with the two egregious examples of classified hiring contained in the hearing officer’s report attached on tonight’s agenda. I am outraged and appalled at this unethical behavior; these people did not act alone. Will there be any consequences or a report to the board possibly?

The custodian whose application was found to be falsified was hired back full time and has been working again in the classified service since 2009. Since then she has even been working out of class in a utility technician position at her current site. That has been renewed every six months like clockwork. What a violation of trust. This is a disservice to put it mildly to the district and the community, and a slap in the face to every employee in this district. Thank you.

David Myers of
The Meyers
Law Group

Sir, if I got a comment with regards to Abe’s issue is that now or when that issue comes up? If I can just have a minute. I am David Myers, I am Abe’s counsel.

Obviously Abe’s decision the district and my office has litigated this over the last 4 years and at 20 hearings called multiple witnesses over 20 days.

The decision with regards to Abe is bigger than just Abe. I think that in volume 15 of the proceedings there is a discussion with TJ McCauley. Mr. McCauley is African American, 60 year old, been working for the district for an extended period of time and as an IT he has worked his way up, and was under a lot of pressure.

We subpoenaed him to come and testify on Abe’s behalf. I think he was extremely nervous to do it. During that testimony with Mr. McCauley he talks about Nicole Ramirez, Mel Albiso’s daughter, and he talks about the preferential treatment that Nicole Ramirez received as being Mel Albiso’s daughter. When she wanted to work part time she was granted part time. When she wanted to work part time from home, she was allowed to work part time from home. When she wanted to work less hours but paid more money she received the highest pay rate in IT.

When I asked the individual that is TJ McCauley’s boss “who have you had in this position” he identified two people and I said “how about Nicole Ramirez?” he said “no, she’s not qualified”. In the testimony was and if you hear the hearing officer; the hearing officer says, “Nicole Ramirez’s tenure with the district can only be characterized as nepotism, she is not qualified for the position, when she wants a position she gets it and all of this.” And I say this issue is more than about Abe.

On page 24 of 87 there is a moment where there it says the hearing officer asked; I asked the question, “are you ok sir?” the hearing officer says, “do you need a minute?” The witness says, “yes sir, please.”

A 60 year old grown man started to cry on the stand after recounting the preferential treatment that Nicole Ramirez received; after Mr. Ken who was very, very well qualified, had a family of his own was dismissed so Nicole could stay and Mr. McCauley recites this.

I will say that Mr. Flory, even as his attorney, I look at some of the things that Mr. Flory did and the hearing officer chastises him for it, He says, "listen, your cartoon was inappropriate; you get one week suspension". I get it, I get that there was times when Mr. Flory; when he was trying to get people's attention because he felt that the district was not following Personnel Commission Rules, the Ed Code he felt like he had to act.

Maybe you and I would not all act the same. But, when you are being asked to sign under penalty of perjury that the Education Code is being followed day in and day out. When well before now, this process where you are at with the district was not even here. You did not even have these computers; everything was happening under Mel Albiso's watch. That Mr. Flory at the end of the day says, "I can't sign this anymore" and I don't think any of us could sign under the penalty of perjury that Human Resources was hiring pursuant to the Ed Code.

The hearing officer lays out all the reasons why Mr. Flory had justification to say that the Education Code was not being followed. It's been a long process and I know it can be very easy to have the status quo as we sit here today with Mr. Maher, who is respected and has been here with the district.

I know it is a difficult decision, but the right decision. If you look at it you see how many people in the district are sending letters into Personnel Commission saying, "somebody please investigate", "thank you for the newsletter", which might be rough in tone, but it gets the message out; classified people are saying, "yes, thank you." One person's got a voice who's got a position that can stand up because nobody can go after him, except the district tries to do it.

Really, this decision is about TJ McCauley; the decision is about the Ed Code; the decision is about the Personnel Commission. We ask that we adopt the Norman Brand who literally wrote the book on *Disciplining Public Employees*. We ask that it be brought back and be made vocal. It has been a long, long journey, and we hope that today's decision is a good decision, not only for Abe but for the classified employees here at the school district.

Mr. Barabani Is there anyone else who would like to speak during the Public Comments? If you have any questions this is the right time. Some people were reluctant; they didn't know if this is the right time, this is the right time. I will move on to Action Items section IV, we will move to B.

IV. ACTION ITEMS

~~A. The commission will consider revising the classification specification for Human Resources Director – Classified. A proposed motion is:~~

~~It is moved that the commission approve the revisions to the classification specification for Human Resources Director – Classified as submitted.~~

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

- B. The commission will consider approving a policy that will address reassignment of duties for positions that are eliminated or frozen. A proposed motion is:

It is moved that the commission establish the following policy that applies to the elimination or freezing of positions and direct the Personnel Commission Director to enforce it:

1. Duties assigned to a frozen or eliminated position may not be performed by any other classified position that is in a lower salary range, but may be performed by any person in a classification that are at an equal or higher salary range.
2. Out of classification compensation may not be provided to any person in a lower classification as a result of reassigning higher level duties from a position that has been eliminated or frozen.
3. If anyone is awarded an out of class compensation as a result of the reassignment of duties from a higher level classification, the Personnel Commission Director shall conduct an immediate reclassification study to determine if the duties reassigned result in a need for reclassification to a higher classification.
4. Reclassification of an individual employee to a higher classification will not be approved by the Commission because the employee will have gained the additional duties as a result of a "sudden change occasioned by a reorganization or the assignment of completely new duties and responsibilities" rather than by a "gradual accretion of duties.

Ms. Early I second.

Mr. Barabani Ok, this is a large one so I open this for discussion. Any discussion from the commissioners? Is there anymore clarification that we need?

Patrick Maher What this deals with is the district because of economic situations. I found out the term they use is unfunded, the district uses the term unfunded. They are eliminating and I am sure you are aware by a press conference are going to unfund, well freeze, keep the position but not put any money into it in which it can't be filled. That money will be taken from the position and put someplace else; the position still exists but it's not going to be filled. What often happens, what frequently happens in many districts when they do that those duties some, but not all those duties can disappear. Some of the duties have to continue and go someplace else. One way to do it is giving equal pay rates as lateral classification and reassign those duties that way, it does not affect pay or out of class compensation. Another way to do it is move those duties upward to a higher level classification, it does not affect the out of class compensation because of being compensated on higher duties that the person and that the position is assigned to. To prevent that from happening and is often what happens those duties are performed. So what they do they take a lower level person, give them the

duties down here, then they come in from out of class compensation and then two years later they say I want to be reclassified I had the job for two years. So we are looking for a policy statement that is clear to everybody else it is announced to everybody that basically conforms with the law.

The law says that when duties are reassigned as a result of sudden reorganization which freezing is, they cannot be reclassified. They can be reclassified only with graduate accretion of duties over two year period of time. So all you're being asked to do is clearly enunciate in the fact that you will implement what the law says. Same thing is on these reassignments of duties and is somewhat of a conflict.

What happen is, out of class compensation is the right of the employees is a matter of law, is a compensation issue. Whenever an employee meets the criteria in which is five consecutive working days or five working days within a 15 day period by law they are entitled to compensation. We can't stop some administrator someplace in the vast district to say I am going reach down, cut you, and make you out of class and then they put them for out of class compensation of pay and that is the first time we find out about it.

But the second that happens this then triggers the commission staff will go in there and analyze that position, and if necessary, reclassify to a higher position and (inaudible) with the funding. It stops the abuse of employees and the fact of giving them additional duties without compensation; it stops the abuse of employees in the sense of giving these duties for two year period of time thinking two years from now I can get reclassified upwards to find out that they can't because the law wasn't inappropriate; and make sure that when the district freezes the position, and they absolutely say we no longer have money to fulfill those duties, those duties that are essential to continue are re-distributed according to some kind of organization of stand-point that's lateral or upwards that the people getting the additional duties are not being asked to work out of class.

All this basically is asking the commission to establish a policy that says we will follow the law and if we find an exception to it then the director will investigate and take appropriate actions.

Mr. Salazar I have a question, do we have that language written? You're comfortable with this language?

Patrick Maher Yes.

Mr. Salazar Ok because it sounded like you were saying that you were talking about a couple of little messages or things that may have been a slightly different from the language stand-point when you were talking a second ago. I want to make sure that I understand that this is the language; I know it is written here in front of me but this is the language that you want not something else because if there is something else that needs to be tweaked or moved around a little bit, I prefer that we have that exact precise language that you are comfortable with.

Patrick Maher What I am trying to do is explain the possibilities and I think whatever the possibilities are it's covered by this language.

Mr. Salazar There is nothing you can tighten up on there?

Patrick Maher Not that I can think of.

Mr. Salazar Ok, I just want to make sure you are comfortable with that.

Mr. Barabani Mr. Vollkommer looked this over?

Patrick Maher Dr. Vollkommer and I discussed it, I explained it to him, and he got some things going on he may be here later. We did pull item A at his request. He asked for clarification, I asked to pull this to modify it.

Mr. Barabani Did President Holt have any discussion on this?

Patrick Maher They got the agenda.

Mr. Barabani Alright. Call for the vote.

Ms. Early Aye.

Mr. Barabani Aye.

Mr. Salazar Abstain.

It is moved that the commission approve the minutes of the meeting of December 14, 2011.

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

Mr. Barabani I have a correction on page 5 of the minutes but that's page 14 of 94 in the packet. Where it says, Mr. Barabani second down says *I called on Chief Paulino* should say *I'll call on Chief Paulino, you're the expert on that*; that should be *I'll call* not *I called*. That is the only correction I have for that. Call for the vote.

Ms. Early Aye.

Mr. Barabani Aye.

Mr. Salazar Aye.

It is moved that the commission approve the minutes of the meeting of January 25, 2012.

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

Ms. Early Item 1A I called the meeting to order not commissioner Barabani. Page 1 its 17of 94 in our packet.

Mr. Barabani Anything else? Mike?
On page 21 of 94 under section 5 commissioners directors comments Mr. Barabani that sentence "Pat I just can't are we do anything we can to process the hiring that *should have read "are we doing everything we can to speed the hiring process up?"* That is the only corrections I have. No more discussion, call for the vote.

Ms. Early Aye.

Mr. Barabani Aye.

Mr. Salazar Aye.

V. COMMISSIONERS/DIRECTOR COMMENTS

Ms. Early I like the new minute format it's easier to read. It makes it easy to identify who's making comments, I like it.

Mr. Salazar No comments.

Mr. Barabani I just had to be down here a little early today and (inaudible); our staff was really working hard, and I was over there by payroll just talking to some people. Are we having trouble getting rooms for testing? There seems to be a problem and then the other day I was talking it might have been some issues with the liaison some lack of cooperation, is that just me seeing that?

Patrick Maher I don't want to say there is a lack of cooperation at least across the way. We are doing custodian we had 3 panels going simultaneously, we are doing 125 people in two days which is a lot of interviews. We don't have the ability here to conduct the interviews with the office space we have so we are using conference over at the district. Certificated HR has a conference room, Classified HR has one, and Payroll has one, and the Superintendent has one that is upstairs. We reserved the conference rooms and we generally get when we ask for them we work around their days when they are available we generally get them. This time for a number of reasons, part of it was a communication misunderstanding was we got corrected; I worked with Dr. Volkommer, Mr. Islam and we thought we were going to lose a room tomorrow because of the misunderstanding and when we set testing what that meant there was a need for the room; and the room is a large room that can be divided into two smaller rooms if necessary, so if we divided the room into two smaller rooms both of us can meet our needs tomorrow in terms of our testing. But then later on there was a decision that there was going to be a meeting, the Superintendent called a meeting she'd take over both rooms, so therefore we can't do our testing in those rooms. At the last minute again, we have people coming in to the interview as scheduled and is a tight schedule so now we going to run around trying to find some other kind of a room to be able to conduct this second interview. There is a room upstairs but the problem is the interviewers are doing three an hour for 8 hours, 24

interviews a day per person; if we do it upstairs the person upstairs would have to come up and down those stairs 24 times during the day to come down to pick up the next interviewee and bring him up because that is the only source that we know they are ready for the next person; because even after they release someone they have to fill out the forms and it takes a certain amount of time so we don't know when they are ready until they come and get the person. So that's creating a problem for tomorrow afternoon in terms of how we are going to be able to conduct the one room in the afternoon session, I'll work on that tomorrow morning, we have the morning taken care of but I'll work on that tomorrow morning to try to find it. The problem that we have is that apparently the policy is each unit has their own rooms and even though you reserve it they can veto it at the last minute if they feel that they need it for their unit and that creates a real problem if we feel we can't reserve a room and be guaranteed that we have that room because we have to notify applicants at least two weeks ahead of time, 10 days to make sure they get a letter on time that notify them of the interview, date, time, and location; so that creates a disturbance for us tomorrow afternoon which we have to work out. When we can't be guaranteed that a reserved room is going to be reserved for us and available to us it does create a problem.

Mr. Barabani We had 125 people show up for this interview, correct?

Patrick Maher Today and tomorrow.

Mr. Barabani You reserved the rooms in advance.

Patrick Maher Correct.

Mr. Barabani At the last minute they wanted to pull all the rooms or just one?

Patrick Maher Pull one of the rooms.

Mr. Barabani So pull one of the rooms so that brings it down to two, right?

Patrick Maher We have to find where to put the third person.

Mr. Barabani They are the ones that you know; what I'm trying to get at here is not the lack of cooperation I mean but I'm sure that everyone needs a room, how far in advance did you reserve it?

Patrick Maher A couple of weeks ago, it was confirmed for us we also said that we would make our room available here the for anyone that needed it, if they needed a private room we could make our office available because our staff was over there, so we offered that as an alternative; this room has been used several times by other district members that have had a need for it I always make it

available. Our (inaudible) if we make it available unless an earthquake, tornado or whatever we are not going to change that if we made that commitment that to me would seem to be a practice but they have; this is a long standing practice in the district so we have to live the confine we just don't have space to conduct those number of interview panels for that time with the privacy, the walls are too thin. We haven't got the availability. We conducted some interview and some actual application Monday morning and while they were using the three offices Steve and I are wandering around kind of talking to each other because we can't get to our computers, we can't get to our office, we can't get to our phones, so we are kind of kicked out during that period of time to be able to do that. We can't do that all day for two days because we have to have access to our office and our equipment as well to be able to conduct our other work. It's just a problem and I don't know.

Mr. Barabani My concern is in the past we have been accused of delaying things and now all of a sudden you got a 125 people showing up and we do not have the place to the interviews for and it's not really our; the issue other than the fact, we did what we could but I don't like the idea of having delays.

Patrick Maher Look in using some other facility that they'll guarantee us space or can we; I don't know right now, the district is accommodating us here but if they can veto it at the last minute that doesn't seem appropriate.
At the present time I don't know of any other place in the district where we set up for interviews. We did use the Adult School, the green room, for our paper and pencil test and for things along those lines, but in terms of interviews because we have to put them in separate rooms and we have that number of people you have to run multiple panels over several days. Right now I don't know of another resource in the district I will spend some time to find to see if the district can help identify some resources for us that we can be guaranteed on that, but at the present time I don't know.

Mr. Barabani I mean I don't want to go outside that cost money to get something that is guaranteed.

Patrick Maher I am not sure where we would do that.

Mr. Barabani I don't know either I just I don't want to; these tests are very important, I mean that's what I heard for many years; nothing against you, you are doing the best you can I had a couple people complaining. It doesn't seem right at this point especially when you have 125 people waiting.

Patrick Maher I have to say that this is an unusual time for the district with all the layoffs, and the reductions, and the salaries, and everything else they have got to do, I can understand being under pressure. I will work on it tomorrow and try to work out a plan in the future and see what we can do, and see what we can work out. I know I can meet with Dr. Volkommer and he will give me whatever assistance and help and support that he can. He helped me out today when we thought we would lose one of the rooms all day tomorrow and we thought we had it back and then we lost it for half a day.

Mr. Barabani Well don't we appreciate him. That's just my comment on it. Anybody else? We are now going to move into closed session it is 6:03 p.m. right now. We're going to have a little break I guess. How about we reconvene closed session at 6:10 p.m. at that time I'll read this.

VI. CLOSED SESSION

The commission adjourned into closed session at 6:10 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 7:35 p.m. and announced the following action taken in closed session: The recommendations on the charges are:

Mr. Barabani Will announce the following actions taken in closed session. As to the recommendation on the charges, charge number 15, the commission recommendation was moved to modify the arbitrator's recommendation and to reduce the one week suspension to a letter of reprimand. To the issue of the time period from October 15th to March 23, 2011 as to the pay we upheld the arbitrator's recommendation. Do we report the vote out now?

Patrick Maher What did you do with the rest of everything?

Mr. Barabani We upheld.

Patrick Maher Ok.

Mr. Barabani (Inaudible) two items.

Patrick Maher You have to announce out the report.

Mr. Barabani Do we announce out the vote?

Patrick Maher The vote, yes.

Mr. Barabani Ok the vote on the first part that we didn't know about that this time. On the vote on the first one

Patrick Maher Who made the motion, who seconded and what the vote was.

Moved Rhonda Early Seconded Mike Salazar

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

Mr. Barabani The vote on the item 17

Moved Mr. Salazar Seconded Ms. Early

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

Patrick Maher And the vote to accept everything else with that was?

Mr. Barabani We did that at the very beginning but I am going to call for that now, we are going to do that in public.

Patrick Maher Ok.

Mr. Barabani Ok. The motion is we will accept the recommendations of the arbitrator except for the two items mentioned. Got a second? Any more discussion?

Moved: Mr. Barabani Seconded: Ms. Early

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

Patrick Maher Aye on all three?

Mr. Barabani Yes. What time is it? 7:42 p.m.

David Meyers of The Meyers Law Group This decision is through February 1st, right?

Kristine Kwong of Musick, Peeler & Garrett Right.

David Meyers of The Meyers Law Group And then, today is March 14, he shows up to work when, tomorrow?

Kristine Kwong of Musick, Peeler & Garrett	No, they need to sign a final decision
David Meyers of The Meyers Law Group	Ok.
Kristine Kwong of Musick, Peeler & Garrett	and then the district has 90-days to file an appeal with the Superior Court. So you have to wait for the 90-days to exhaust itself before it becomes the final judgment. If the district does not file a writ in 90-days then this becomes final.
David Meyers of The Meyers Law Group	And then my issue is for those 90-days there is still a delay, right?
Kristine Kwong of Musick, Peeler & Garrett	Right.
David Meyers of The Meyers Law Group	So we can go back to the hearing for the Personnel Commission to say from the day he actually starts going back he's entitled to his pay for the next 90-days, right?
Kristine Kwong of Musick, Peeler & Garrett	No, because they already decided tonight what his damages are.
David Meyers of The Meyers Law Group	But he is still; but that assumes maybe I'd just brief it; because what happens if he doesn't come back for a year and half?
Kristine Kwong of Musick, Peeler & Garrett	If he doesn't come back for a year and a half it's because it's now being litigated in Superior Court and then your judge will issue another remedy. But this tribunal already made this decision tonight as to what the actual damages are. The opportunity to litigate for damages is now over.
David Meyers of The Meyers Law Group	The arbitration decision, and let me say I am thankful. The arbitrator says through February 1 st these are his damages. The assumption was that we would have the hearing and it would be placed back on the board by February 1 st ; that's what we know his damages are. I still think it's within, if September 11 hit all over again and there was a delay of saying the hearing

it's still within the Personnel Commission jurisdiction to sort of say, we get it, he was an employee February 1st. I understand your position but maybe I articulate my position. Through your advice or whatever it think it's still within the jurisdiction to make him whole, and there is a 90-day

Kristine Kwong of Musick, Peeler & Garrett: They've already decided; they decided tonight what the damages are, it's over, everything is over now.

David Meyers of The Meyers Law Group Alright, sounds good, we appreciate it.

VII. ADJOURNMENT

The commission adjourned the meeting at 7:42 p.m.