

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

MINUTES

April 10, 2013

5:30 P.M.

I. CALL TO ORDER

A. The meeting was called to order at 5:44 p.m. by Commissioner Early.

B. Roll-Call

1. Commissioner Rhonda Early, Chair
2. Commissioner Gino Barabani, Vice-Chair
3. Commissioner Michael Salazar, Member
4. Abe Flory, Personnel Commission Director

C. Pledge of Allegiance

II. APPROVAL OF AGENDA

Moved	<u>Mr. Barabani</u>	Seconded	<u>Ms. Early</u>
Vote: Barabani	<u>Aye</u>	Early	<u>Aye</u>
		Salazar	<u>Aye</u>
Ms. Early	Approval of today's agenda. Do we have a motion to approve?		
Mr. Barabani	I want to make a motion to approve the agenda.		
Ms. Early	I second. Any discussion on the motion? All in favor		
Mr. Barabani	Aye.		
Ms. Early	Aye.		
Mr. Salazar	Aye.		
Ms. Early	Motion carries.		

III. PUBLIC COMMENTS

- NOTE:**
- Comments from the public on any agenda item may only be made at this time. Because this is a special meeting, comments may only be made on an agenda item.
 - Each member of the public may speak only one time during the public comment session.

Terry Young, Substitute Employee My name is Terry Young currently being working as a sub over the fire equipment devices that sound alarms and I also did sub teaching for six years prior to this. I recently talked to you about environment compliance and safety officer position. I want to talk to you about environment compliance, again I have applied for it I do meet the requirements for it. I know that Eric voluntarily works in the position as a sub or out of class. I was wondering how long a person is permitted to work out of class, and if that same condition how long has he been working out of class? In addition I also like to know the mandatory requirements in which of this is he currently meeting? Because

I understand he doesn't have the university grad industrial studies which I do have for engineering and the two years' experience prior as a safety person. Does he know how to use the OSHA handbook? That was the course all by itself, I had an entire semester just to learn how to use that book, and it's very complicated. I am not so sure he would not know how to do it without having that training. What does he know about safety as it applies to mechanics, electrical, and chemicals. I have no idea. I have worked it for a bit so I know what I know. Does he know safety requirements for machines, hard pressure painting machines, pressings, procedures for dressing tools? I would not think that a person has been all these different areas would know of that information. One of the chemistry classes is working on the spill. What are the immediate requirements? Would he know? I don't think so. Its mandatory fill where you get everyone out of there immediately and then you either bring in the fire department or you have people skilled come in and clean in the dirt and feast at the time out of the vacuum cleaner and has to go into a class container. It has to be shipped back and then refurbished. They called the impurities out of it.

Another thing I was at one of the schools, it was towards the end of the day ending my shifts and checking one of the fire alarm panels and this young girl walks in she is with the cadet and she came in and she was talking about how she fainted twice, while she was out there in formation and no one brought it to the attention of the school. I asked her what happened. And she said I don't know I just fainted. Well, anybody with any kind of mind knows that whenever you stand in formation you have to bend your knees because if you don't you cut the circulation that goes to your head. And anybody that is out there teaching that class should know this and should be telling this people first thing straight up before there ever get out there in the field to march or stand on attention and anything that they need to bend their knees. It wasn't hot, so it wasn't to do with the heat, it was strictly the fact that the girl didn't know to bend her knees while she was out there. And I wonder how many others we have to make sure this kind of things are reported to the schools and then reported to safety officer so that he can go out there and make this corrections and nobody seemed to know anything about it so I sort of took it like nobody out there knew.

Ok, I can't say enough about safety. In the job description you state positions some of the duties are stipulated job case 53036 and are you currently meeting those requirements or are you in violation of this stipulated judgment? I have been going to circles trying to find answers I don't like going in circles but I would like to get the answers. And another thing this schools at lunch time, I have gone out there I have never seen so many trip hazards in my entire life, you don't throw oranges, apples, bananas and all this other trash in the middle of the place where you have 400 students out there walking. This is appalling to me. Another thing you don't stick your gum on the wall where someone else can stick their hand and get your diseases.

HVAC can be transmitted through a piece of gum, and these things are not looked at it at all. They just paint all over them whatever the time, what happens in the mean time when the student leans on it. That is not right. Those diseases can be transmitted. That's the only thing I have to say. I hope I get some answers. Thank you.

- Mr. Barabani Mr. Young. Can you leave Nerci your information so we can get in touch with you? Thank you
- Mr. Young Yes, thank you.
- Ms. Early Are there any other comments? Seeing none we will move on with our agenda. Action Item IV.

IV. ACTION ITEMS

- A. The commission will discuss the pending motion by CSEA to compel compliance with discovery take appropriate action. A proposed motion is:

It is moved that the commission

1. Finds that to date the Personnel Commission Director has failed to comply with numerous directives to provide the requested CSEA discovery and that solely as a result of his failure to carry out his duties the commission faces possible sanctions.
2. Directs the Personnel Commission Director to forthwith contact the commission counsel and take all necessary action to provide the requested discovery before 4:00 p.m. April 11, 2013 with this directive to be his sole activity and duty until he has fully complied with the requested for production.

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

Ms. Early Any discussion on the motion.

Mr. Barabani Yes. Looking through here, I seen this started back in February 20th you gave an initial request. Seven eight weeks now. I am kind of curious; Mr. Flory is there is reason why this has not been done?

Mr. Flory Honorable chair members of the commission if you look at the date that was submitted to us I was unfortunately out sick something like the chair had. I was not able to act upon it because I was not even aware of it. Once I was made aware of it we began to direct all our efforts to applying the discovery request and will have the discovery request completed by Friday, this Friday at 4:00 p.m.

Ms. Early Is that after the deadline that we established because I sent several reminder emails asking what the status of the legal request is? Now Ms. Kwong can you help us? What is our deadline?

Kristine Kwong The deadline already expired.

Ms. Early Yes, I know we requested information as by this Thursday.

Ms. Kwong The initial request was this last Monday

Mr. Barabani Wow.

Ms. Kwong I think you made another request.

Ms. Early Asking for you to be provided with prior to close of business Thursday I believe. Realizing that the deadline had expired which is why we are in the dilemma that we are currently in.

Ms. Kwong Monday April 8 was the deadline. That passed. I think you have another deadline for today also.

Ms. Early So has any information provided since you been back? Because those were the emails, the follow up emails was to give us a follow up of where we are with providing the information to legal counsel.

Mr. Flory Honorable chair members of the commission we are going by your agenda that you prepared and you wanted by April 12th 2013. We will have it by 4; 00 April 12th 2013 we are dropping every other one of your numerous number one priority to get this done. We are not going to do a piecemeal and do a couple pages. We will do it all at once. Have it ready and it will be ready to be picked up at 4; 00 o'clock per your agenda item.

Mr. Barabani Picked up by whom?

Mr. Flory I would imagine somebody from the commission law firm, unless you have other directions for us.

Ms. Kwong Actually it would be less expensive if you PDF the documents to me, it should not be that much.

Nersi Garcia It's a lot.

Mr. Flory PDF the documents?

Ms. Kwong You can scan it and send it through.

Mr. Flory Honorable chair members of the commission we are talking about 4 or 5 boxes of documents. If we are going to need to PDF them then that is going to add a least another week.

Mr. Barabani Are you sending the originals? You are sending copies right?

Mr. Flory No, we are sending copies. That is correct.

Mr. Barabani It takes as much time to make PDF as to scan them and make copies. Instead of making copies just make PDF files.

Mr. Flory Thank you, and had we known that before the boxes that have been done currently we would have done them that way.

Ms. Kwong That is fine if it is easier for him to have the box available on Friday, he can make arrangements to have a messenger to send it to my office on Friday that will be acceptable. I think it is less expensive if the district did send it to my office with a messenger

from out here to deliver to my office.

Mr. Barabani Monday was our date that we should of have this done correct?

Ms. Kwong No that date was expired. It was due in late March. You gave it after the expiration late March you gave a directive by this Monday that passed you gave another alternative directive yesterday that passed Wednesday at 4:00 p.m. that passed.

Ms. Early So was there any kind of contact between you and Ms. Kwong letting her know that you were would provide the information because part of my several multiple emails was for you to contact legal counsel and give her an update of status of your original request that was send out way back in February.

Mr. Flory Honorable chair members of the commissions if you look at the agenda package. There is a point of contention and it has to do with attorney client privilege. I have been informed by two individuals or more that there is no attorney client privilege for me, however; I am not waiving my attorney client privilige from per the direction of the commission chair I did contact Ms. Kwong and she responded back then responded again and then I still didn't get the information I needed. Yes there has been communications.

Ms. Early But I saw the email that you sent to Ms. Kwong specifically to contact with Ms. Kwong and to let her know the status of efforts that were been made by you to obtain the documents that CSEA attorney requested. I didn't see that part addressed in the email correspondence that was sent to Ms. Kwong. So my question is what ever was made on your part the contact legal counsel to let them know that efforts that we were making from this office to provide them with the requested documents that they were seeking. Did that conversation ever take place?

Mr. Flory Everything is in the email.

Ms. Early Did that conversation take place between you and Ms. Kwong?

Mr. Flory I thought I communicated that in my email in requesting assistance to get us some additional people to help us with this correspondence. Of course we can't ask the district for help and then we go through this mode of contention about filling what you requested since Dr. Steve Williams left filling that position and then we go back and forth on that. I did not get copied on that particular update then. So can you provide the verbal update on what you have acquired as it relates to the list of documents that was requested back in February? You say you have already gathered boxes of information on this list what information has already being obtained?

Mr. Flory Well is everybody workings so we are having the meeting tomorrow morning to pull together, which items have been covered. I have been working mainly on 10 and 11 and Nerci, Irma, and Alexis have been working on pulling together all the list, the announcements, the job descriptions etc. the agendas which are on the web, the minutes which are on the web and the

rest of the request. It is just a tremendous time consuming process I am sure you are aware from other litigation we are working as hard as we can without having adequate resources to get it done.

Mr. Barabani But now you are claiming today is Wednesday, within 48 hours you will have this task completed.

Mr. Flory I believe that is what I said earlier, yes. Because we were...

Mr. Barabani First I understand people getting ill back and when you returned what has that date that you returned that you first found out about it?

Mr. Flory I don't recall that.

Mr. Barabani Let's back track here, was it four weeks ago?

Mr. Flory I don't recall.

Mr. Barabani As an appointee of CSEA and they requested this stuff, I thought it was being done. This is not something, now we are going to have sanctions, legal fees. And I hear you many times come up here and complain about our legal cost and now we might possibly be sanction, go in front of the judge. Right? And since we are the commission, this whole responsibility is to classified employees whom CSEA represents and you have not made a legitimate effort to get this stuff out, I find that offensive. So as we stand here today this will be done Friday right?

Mr. Flory To repeat for the third time, yes sir.

Ms. Early Ms. Kwong after the deadline and we did receive the email stating that if CSEA attorney had not received information by Thursday past other she will be filing a motion in court to compel for us to say you will have the information by close of business Friday what position does that put the personnel commission in seeing that we have not met the deadline that has been established?

Ms. Kwong Thank you for asking that questions. First of all, I like to premise that when you are in litigation parties have certain statutory rights and, one of those rights is the absolutely rights of demand the any other party to request documents from you and if you don't comply with that command, the way that the attorney enforces that is to ask the court to become involved and to ask the court to issue a direct order to the party to produce the documents. And that is where we are at right now. In addition to that the court sometimes will punish the party for being uncooperative and that is in the form of a monetary fine. And at this point when you don't respond in time the attorney can file a motion in court that is called the motion compelled. And even as you scramble now at the 11th hour to produce this documents the CSEA attorney may not take the motion off calendar she can still go forward on this motion. Even we produce the documents for her, because she still has the right to ask the judge to sanction you for your level of cooperation and the sanction that she is

asking for is a fine of an amount of \$3,400 and the judge can still sanction the commission for that. And that is the punishment you get for not cooperating in this litigation process. Therefore to answer your question even if I produce the documents now she may continue to go to court and ask for this monetary sanction as a way of basically reimbursing her for the time that she took to actually file this motion in court. Which she has the right to do and she is filling it out at \$400.00 an hour. So that is the long answer to your question.

Ms. Early Thank you.

Ms. Kwong. In addition to that receiving documents by Friday at 4:00 p.m. Does not necessarily mean that I can send them to the CSEA attorney because my job is to actually organize and collate those documents, and dates stamp them. And if you are telling me they were ordered by boxes that will take me another several days to do because those are done by hand. So we in my office go through each piece of document collated, organize it, dates stamp it, identified and then produce it in a very nice fashion and the attorney gets those papers. So it will be another week or so before the attorney gets the documents. That is why I asked for them earlier for process. Thank you.

Ms. Early Any other discussion on the motion? All in favor of the motion signify with the voting sign of aye.

Mr. Barabani Aye.

Ms. Early Aye.

Mr. Salazar I will abstain.

Ms. Early Motion carries. Two in favor, one abstention. Next agenda item.

B. The commission will consider limited waiver of attorney client privilege for the purpose of responding to the CSEA motion to compel documents. A proposed motion is:

It is moved that the commission authorize a limited waiver of attorney client privilege to its counsel for the purpose of responding to the CSEA motion to compel documents.

	Ms. Early		Mr. Barabani	
Moved		Seconded		
Vote: Barabani	Aye	Early	Aye	Salazar Aye
Mr. Barabani	I will second that.			

Ms. Early Discussion on the motion.

Mr. Salazar I just have a question. What is limited waiver of attorney client privilege that is said? Does that open up liability for commissioners?

Ms. Kwong That is a very good question, that is why it say limited waiver, is not a full waiver. I am requesting the commission to waive a portion of its attorney client privilege communication for the purpose of submitting my opposition to the CSEA's attorney's motion to compile a motion of documents. Currently right now

you are faced in precarious situation. You are faced with a possible sanction of up to \$3,500 for being uncooperative in the litigation process. And it's a discretionary decision by the court whether or not to issue those sanctions. But generally if the judge sees that you are being difficult, uncooperative and not working with other attorney in producing documents then one way of enforcing cooperation is by sanctioning you. So as part of my opposition I need to lay the foundation that you had made efforts to obtain these documents and that you have been working on obtaining them when the request actually came in so that is why I am asking for your waiver. If you don't give me the waiver then I have nothing to show the court that you have actually have tried to comply.

- Mr. Barabani I have a question?
- Ms. Kwong Yes.
- Mr. Barabani Are you saying that we are responsible we as the commissioners I understand that, but we are now personally responsible because of another individual in the staff did not do the work like we requested.
- Ms. Kwong In our official capacity you are responsible not in your individual capacity. So personally are not responsible but as an official appointee, as a government official you are responsible for the actions of your staff.
- Mr. Barabani But we ultimately would have to go to court face the judge. If it came to that we would be the one to go to court and face the judge?
- Ms. Kwong Ultimately I go on your behalf as your representative, and I have to explain to the court why you took the actions that you took? Why you waited so long? Why you delayed? Why you let these deadlines expired and why we are here today?
- Mr. Barabani And that is the way it works.
- Ms. Kwong That is right.
- Mr. Salazar So and that is what the waiver is for?
- Ms. Kwong Yes that is correct that is what is for.
- Mr. Salazar My concern is that there are other things that limited waiver with cover but it just specifically covers that.
- Ms. Kwong It covers this motion but then once the motion is set you now wave the privilege which means it's now going to be public. So other people will see it I don't know what they would use it for so that is, yes so you are opening the door.
- Mr. Salazar Yes, that is my concern and that answered my questions so thank you for addressing that. Now we talked about sanctions.
- Ms. Kwong Yes.

Mr. Salazar Are we strictly talking because I'm reading this it says monitoring sanctions? Can all together, it carries one thing and additional sanctions are another thing?

Ms. Kwong Well you know a judge can issue different types of sanctions. One form of a sanction is in monetary nature. Where the judge is saying to you, you did the wrong thing, you were uncooperative, you did not play by the rules and to encourage you to be more cooperative I am sanctioning you \$3,400 in the hopes that you won't do this again that is one type of sanction. The judge could sanction you in other ways to.

Mr. Salazar At this point the only sanction here is the monetary sanction?

Ms. Kwong At this point, yes. If you continue your abstinent ways the judge could consider non-monetary sanctions.

Mr. Salazar Ok, thank you.

Mr. Barabani You said that we open the door, but what I am hearing we speak here we don't have a choice.

Ms. Kwong In terms of what?

Mr. Barabani There is no closing door here; we don't want to do that. You are saying we are opening the door. Once we open the door there is other possibilities. The documents and all that stuff becomes public.

Ms. Kwong That is correct they become public.

Mr. Barabani I mean we are between a rock and a hard place right?

Ms. Kwong Are you referring to the contents of the documents itself?

Mr. Barabani No the commission in general. I mean even though it was not our intention for this stuff to go out we are still can be sanctioned.

Ms. Kwong That is correct.

Mr. Barabani Thank you.

Ms. Kwong Any other questions?

Ms. Early I have a question and just hearing the volumes of information that has to be gathered and a timeline that has exceeded the deadline I heard Mr. Flory state that he has already gathered boxes of information. And I'm hearing you say that your staff would have to date, stamp, collate. Are you willing to take the information that he has already gathered with you this evening realizing that your office in Los Angeles so that your staff can start date stamping and collating tomorrow and in effort to expedite us providing the information that has been requested.

Ms. Kwong If there are ready now, I can take it now, but I don't want to take it in pieces.

Ms. Early Do you have boxes of information ready now?

Mr. Flory Yes.

Ms. Early You do, well can you tell us exactly what information you have gathered this far.

Nersi Garcia I have minutes and agendas 2010, minutes and agendas for 2011, minutes and agendas for 2012.

Mr. Flory In additional we have items 10 and 11 and tomorrow morning we will have the item related to the list, I'm not sure what the number is on that one.

Ms. Kwong That sounds like I am getting it piece by piece. I don't want it that way. I would like it all complete.

Mr. Barabani I kind of I sent a copy to everyone, one of the things I thought would be more efficient, maybe we need a check list as commissioners I like to add that check list as soon as this is done. Stating that this was done and sent.

Ms. Early Well we requested that, if you look at the emails, the items requested was directly sent Ms. Kwong to provide an email on the update of information and the status of gathering information and to copy the commissioners on that update so we knew where we were as far as addressing the original request, we just never received that information, that is why I was asking Ms. Kwong did you receive it and the commissioners would like a cop of that.

Ms. Kwong Responding to your request?

Ms. Early Responding to my request to contact you, and notify you on where the commission director was as far as the status of the request to supply the information.

Ms. Kwong I see, well I did receive a response on Monday April 8th at 11: 17 a.m. Mr. Flory emailed me and he indicated he was asked to contact me to gather my assistance in helping the commission fill a vacancy. And then some other nonrelated litigation issues.

Mr. Barabani Fill a vacancy?

Ms. Kwong Yes.

Ms. Early And that was why not he supposed to contact you. He was supposed to contact you to update you on the status of the request and acquiring the information that was requested by the CSEA attorney.

Ms. Kwong I did not receive such information.

Ms. Early Ok and neither did I, thank you.

Mr. Flory Madam Chair members of the commission, I would refer you to page 9 of 23 of your agenda and it is my response to you.

Ms. Early This has nothing to do with what material you had acquired and where we are as far as when you started to obtain the information. Why the information was so late and how many items were obtained as far as what was requested. In fact this

email does not even reference what you acquired as it was related to the documents requested as a CSEA attorney and that information was requested back in February, we are into April. There are several emails asking what is the status of the request for documents? There are emails saying this is a priority, none of that is addressed in this email dated April 1st. And so for me as Commission Chair, I feel that I put forth an effort to follow up and make sure that CSEA had the information that they requested because I knew this was related to litigation, I copied the commissioners on all of my emails requesting a follow up status report, where are we at on complying with this request. So as commissioners I feel that we exercise due diligence in making sure that the information was obtained and disseminated prior to the deadline and that was done in an effort to keep us out of the position that we are currently in.

- Ms. Kwong And for that reason that is why I am asking for unlimited waiver of privilege because I need to show that to the judge.
- Ms. Early Ok and I'm willing to give it to you.
- Ms. Kwong Ok, thank you.
- Ms. Early But I am only one commissioner and that is the motion that is before us, is there any more discussion on this motion? Ready for the vote? All in favor signify with the voting sign of aye.
- Mr. Barabani Aye.
- Mr. Salazar Aye.
- Ms. Early Aye. Motion carries.
- Ms. Kwong Thank you.
- Ms. Early Thank you. The commission will now adjourn into closed session at 6:20 p.m. I want to thank you all for coming this evening.

VI. CLOSED SESSION

The commission adjourned into closed session at 6:24 p.m. for:

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

Pursuant to Government Code Section 54957 to discuss:
PUBLIC EMPLOYEE DISCIPLINE

Pursuant to Government Code Section 54957 to discuss:
PUBLIC EMPLOYEE APPOINTMENT

Title: Personnel Commission Director (Limited Term 45286)

The commission reconvened into open session at 8:00 p.m. and announced the following action taken in closed session:

Ms. Early: Commissioner Barabani moved that the commission find that Dr. Vollkommer has failed to work with the commission in controlling the misconduct of commission staff has interjected personal opinions and not legal binding for objecting to our efforts and has now totally abandoned all cooperation with the commission on discipline with commission staff while at the same time refusing to allow us to take any action in regards to discipline. This motion was seconded by Rhonda early with the vote as follows: Commissioner Salazar voting Nay, Commissioner Early voting Aye, and Commissioner Barabani voting Aye.

The commission finds that Dr. Vollkommer has failed to work with the commission in voting and controlling the misconduct the commission staff has interjected personal opinions and none legal basis for objecting to our efforts and has now totally abandoned the cooperation with the commission on discipline of the commission staff while at the same time refusing to allow us to take any action in regards to discipline.

Ms. Early: The second motion Gino Barabani moved that the commission notify the superintendent that Dr. Vollkommer is not a reliable partner with the commission on behalf of the district and that we requested that the superintendent change the liaison between the district and the commission to someone who will work with commission on accomplishing the goals, objectives and needs of students administrators, the public classified staff, CSEA and the commission in order to move forward and put the past behind us. This motion was seconded by Rhonda Early for sake of discussion. On the motion of the commissioner Barabani the vote was defeated unanimously with the nay vote from all three commissioners.

The commission meeting was adjourned at 8:07 p.m.

VII. ADJOURNMENT

The commission adjourned the meeting at 8:07 p.m.