

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

**MINUTES**

February 5, 2014

**I. CALL TO ORDER**

A. The meeting was called to order at 5:31 p.m. by Commissioner Barabani.

B. Roll-Call

1. Commissioner Gino Barabani, Chair
2. Commissioner Valeria Dixon, Vice-Chair
3. Commissioner Michael Salazar, Member
4. Patrick Maher, Personnel Commission Director

C. Pledge of Allegiance

**II. APPROVAL OF AGENDA**

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

Mr. Barabani      I request that item be removed because no one offered any legal reasons to take that action. So far I see none. I asked for items to support this, on page 4 of our packet, we do have a legal opinion. It would be very hard to perceive without a lawful legal action. We have all evidence. Approval of the agenda.

Ms. Dixon          I motion for approval of agenda.

Mr. Salazar        I will second.

Mr. Barabani      Call for the vote.

Ms. Dixon          Aye.

Mr. Salazar        Aye.

Mr. Barabani      Nay.

**III. PUBLIC COMMENTS**

- NOTE:**
- Comments from the public on any agenda item may only be made at this time.
  - Comments from the public on any agenda item may only be made at this tie.
  - Public comment during the commission's discussion of an agenda item will not be permitted.
  - Each speaker may speak only once.
  - Each speak is limited to a maximum time of 5 minutes.
  - A request to speak form must be completed before the meeting is

called to order and submitted to the Chair in order to speak.

Lisa Towery,  
CSEA Labor  
Representative

Lisa Towery asked how we can start the process for substitutes because there is a lack of substitutes. As I understand the process we do ask people if they would like to apply for substitutes. I just don't understand what the next step is to create an eligibility list for substitutes if they qualify or if there is a process. We have not done this in such a long time; we are not familiar if we need substitutes. I would like to know where that is. Right now we have an opportunity to create substitute list to get people to fill the vacant position. We have 460 vacant positions, so I would appreciate a response.

Mr. Greenwood,  
President, CSEA

Good evening commissioners I have a couple of statements I would like to speak for our members. Our members are concerned about the switch of the chair, why is it being done? Why is it being done so apparently and is there a legal reason or a legal explanation of why is it being done. I have been approached on this for a couple of weeks. Why are they doing this right now?

The second thing is things that have been happening here at the personnel commission office. There is a protocol when something happens especially any type of verbal or physical altercation that protocol was not in our opinion followed. The district and the union got involved as of yesterday. It should of being taken care of immediately, in this days and times we don't we know what is the individuals mind, we don't know what someone may or may not do so there is a protocol on how this things should be handle and I would greatly appreciate if you would look into that. At any time there is altercation, law enforcement should of being involved immediately but that was not done. Management is a big a part that in my opinion it should of being on the ground when he or she would notify that something is going on and that is my opinion, this are our employees and we don't want harm to come to anyone, especially when something gets out of hand it needs to be addressed immediately. So thank you.

Alex Raya,  
President of  
SPOA for  
District Police

Good evening personnel commission, Alex Raya president of SPOA, I'm here in regards of how we are doing our hiring process. I know Chief we all sat down. We also agreed on waiving some of the stuff, part of graduate from post academy and we go into physical agility and background process. One of the problems is that we are testing the LEP test which is an academy test to get into intro level position for the academy at 45 or above the standard is 42; I have print out of T scores. Mr. Raya explained the standard deviation of the scores, if the

applicants compare to other applicants taken the test does not require all agencies to passing scores, this is the research likely hood of successful of completion a test before you get into the academy for every point.

Lisa Towery,  
CSEA Labor  
Representative

Hello commissioners; I was surprised that no class specs came to you tonight. Some of them took too long to fix the format, and the physical agility. However that being said when we came back from winter break we sat down with current job specs and we went through and decided there are no issues with this lets move forward. I emailed Mr. Maher of 21 job specs and let him know there are no problems with this job specs to move forward in posting them. CSEA is committed with process.

**IV. ACTION ITEMS**

A. The commission will take action concerning the officers for the remainder of 2014.

1. It is moved that Gino Barabani be removed as Chairperson for the 2014 term.

Moved Mr. Barabani Seconded Ms. Dixon  
Vote: Barabani Dixon Salazar

Mr. Barabani: We move to Item A, I have been placed in an awkward position here with Item A, on page 4 the last sentence this document, the rule does not permit any commissioner to remove a lawful appointed chair. As I stated before there is no legal merit reason for this item was placed on and demanded to be placed and it was placed on the agenda. The chair had been voted on legally, the problem is it is an awkward position because I am sitting here. The merit system belongs to classified employees also the position of the chair and so everything other position in the merit system. There is no legal reason for this. And it is hard for me to proceed with what constitutes possibly a support of an illegal action. The letter submitted it's not just an opinion but a legal opinion from an officer of court. This states that there is no merit to this item. Again, the last part of that letter the rules do not permit any one to remove a lawful pointed chair. Until they can prove that it was done unlawfully I'm going to move to item b.

Mr. Salazar You can't move to item B. Action Item IV A (1) and (2) are agendize item.

Mr. Barabani I understand but it's an illegal item.

Mr. Salazar You cannot move to the next item.

Mr. Barabani I will not proceed with this unlawful item, we have a legal opinion. But a legal opinion so basically you are trying to do

something that is illegal.

- Ms. Dixon            How do you get authorization to get a legal opinion? I'm asking you.
- Mr. Barabani        Who me? On the Writ. The Writ says we have to follow the rules I think its \$5,000 if I remember correctly.
- Mr. Salazar           That is something that the commission decides on. Not the individual, not individual commissioners, let me finish.
- Mr. Barabani        You want this chair real bad, why don't you just ask for it?
- Mr. Salazar           I think we need to proceed with Action Item A.
- Mr. Barabani        I am not going to proceed with something the attorney wrote which is a legal opinion. The rules do not permit any lawful commissioner to remove a lawful chair.
- Mr. Salazar           I did not have any say in asking for an opinion from the attorney, none of the commissioners did, one of the commissioners, you, on your own and did that. That has to be voted by the commission. Who do you think you are? You apparently go out there and do whatever you want. This is not the wild west. That's why we have a commission.
- Mr. Barabani        You bet is not the wild west.
- Mr. Salazar           You act like it's the wild west.
- Mr. Barabani        You ask for items to be placed on the agenda that is illegal.
- Mr. Salazar           This action item must be attended to during this meeting it is on the agenda.
- Mr. Barabani        I am moving on to Item B.
- Mr. Salazar           Well you can't do that.
- Mr. Barabani        I am going to read it, "the commission will consider ratifying eligibility list for proposed motion."
- Mr. Salazar           You can't do that.
- Mr. Barabani        It is moved that the commission ratify the proposed eligibility list for superintendent assistant exam 13-031.
- Mr. Salazar           Is this meeting over?
- Mr. Barabani        No we proceeded to item B.
- Mr. Salazar           At your pace, we proceed at your pace?
- Mr. Barabani        I am the chair.
- Mr. Salazar           It sounds like you are more interested in bullying for a chair position then having your fellow commissioner vote on that position.

Mr. Barabani You already voted back on December. You are now trying to vote. I guess you want this thing so bad that you violate the law.

Mr. Salazar Well I think you did violate the law in asking for an opinion without the consensus of the commission. So you can violate the law?

Mr. Barabani The law says that the chair is appointed for one year, it does not say if Mr. Salazar does not like it, it says that when a chair is appointed is for one year, but you come up with this logic we got a legal opinion .

Mr. Salazar Let's follow the logic, you can just arbitrary whenever you want you can go out and order a legal opinion.

Mr. Salazar No it's in the Writ.

Mr. Salazar You did it. It's not on the Writ. It does not say any commission can do whatever he wants. Read that to me on the Writ. Go ahead and explain to me how logically you can get to do that.

Mr. Barabani The law says that the commission....

Mr. Salazar Are you a lawyer? When did you get your law degree?

Mr. Barabani Where did you get yours to put this on the agenda?

Mr. Salazar I never claimed to be a lawyer. Are you a lawyer? I know you are not a lawyer, it's clear.

Mr. Barabani It's pretty clear you are not either.

Mr. Salazar I will question the common sense. We are on Action Item IV. A.

Mr. Barabani We are on item B.

Mr. Salazar So if I may while we can defer to the Vice Chair on this I would simply read Action Item IV. A.

Mr. Barabani No we are on Item B. Do I have a second?

Ms. Dixon No I still have some questions, I need an answer but I was letting you guys debate. Now if I read the Writ conflict counsel, did you ask the district? Did you wait for the 15 days? Did you ask for in writing, phone call? I mean what did you do?

Mr. Barabani This was placed on the agenda, the agenda needed to go out, this is not the first time you placed something illegal. You tried to violate the Brown Act and place a couple of times different items on the agenda, we had to pull it. But I would of pull it this time but you pretty much said it had to be on there. You told the vice chair tell the personnel commission director to place it on the agenda.

Mr. Salazar I did I ordered it. It was ordered publicly twice.

Mr. Barabani There you go, you at one time it was not even 48 hours and you tried to place it on the agenda, you had a habit on that.

Mr. Salazar Really, you have pretty bad habits yourself.

Ms. Dixon            You did say we can get a legal opinion. My understanding is I just can't ask to get a legal opinion without asking you all if it is ok to go out there and get a legal opinion. Is that what we want to do?

Mr. Barabani        We can put that on the agenda that you would like a legal opinion and to be placed on the agenda. The law says that the chair is appointed for one year; it does not say that the chair can be taken out because I do not like him. Remember I am in an awkward position, I am the chair and I am fighting for the position. The chair belongs to the classified employee which you care to have no respect

Mr. Salazar         That is an insult. So now we are going to go....

Ms. Dixon            On December the 4<sup>th</sup> when this took place, the comment that was done when it got to the Vice Chair he said you know what maybe we need to wait until its appointment. I don't see how this is any different, so I just don't see how waiting for the Vice Chair is any different than waiting for the chair, and I did not have an opportunity to vote on that I don't know why I can't have an opportunity to vote on this.

Mr. Barabani        Because we had to appoint the Chair at that time lucky me. We followed the rules we stayed within the rules, I guess we did not like it. Now I'm stuck here trying to fight for something on principle. I mean I was not even here at the last meeting. You know maybe a little respect we could have discussed it, and say hey maybe you can resign and we have a new vote. It did not happen, you came behind the door trying to power grab this.

Ms. Dixon            I'm listening what you are saying. Here is the thing, I hear what you are saying Mr.Barabani, but there are actions items that we need to take actions on.

Mr. Barabani        Then let's put it on the agenda march for 30 days let's put it on. Because it thinks the chair position should be respected. Even if Mr. Salazar gets it, especially if you get it you should be able to take it for the full term. Let's come up with you know, there is an easy way around this, there so that it is legal.

Ms. Dixon            So repeat what you said?

Mr. Barabani        Let's give 30 days. Let's place this on the agenda. The Chair to resign.

Mr. Salazar         I don't' think the chair is going to resign. If he is going to resign you can simply resign right now.

Mr. Barabani        Maybe a little respect would be nice.

Mr. Salazar         I would respect you if you resign right now.

Mr. Barabani        You don't have to wait until I was home sick to do this.

Mr. Salazar Listen this conversation took place long before you were sick.

Mr. Barabani No it was done because the Writ says we have to follow the rules and we have to follow the law.

Mr. Salazar You won't know you don't have a copy of the Writ.

Ms. Dixon I'm going to intervene on this confrontation. I will say this we did, Mr. Salazar asked Mr. Maher what would be the correct language to be placed on the agenda. So if you have a concern with the language then...

Mr. Barabani My concern is straight out says there is no legal reason to remove the chair. You just don't like it, we are expected to go on Mr. Salazar opinion and he can do it. Heck no I don't like my personal opinion to be challenged.

Ms. Dixon My only concern that I have it's on the agenda.

Mr. Barabani The rules do not permit anyone to remove a lawfully appointed chair. If this was a Brown Act violation I would not proceed.

Mr. Salazar But it is not.

Mr. Barabani Yes it is you are trying to remove a commissioner who is legally fully appointed. Since you believe it's not then bring forth the evidence, so the public can see it so everyone can see it and let's do it.

Mr. Salazar I am upset that you can arbitrary go out and get a legal opinion.

Mr. Barabani I am mad that you...

Mr. Salazar I don't want to get too far into this debate. We have precious time that we are wasting. You went out and did something illegally. Let me know when you are done talking so I can talk. Are you done yet?

Mr. Barabani We will proceed on the next item.

Ms. Dixon Well we need to come to the next meeting before we can go into closed session. I am saying that for the record we will come back to action item IV A at the time of closed session.

2. It is moved that \_\_\_\_\_ be appointed as Chair for the 2014 term.

~~Moved: Mr. Barabani~~      ~~Seconded~~      ~~Ms. Dixon~~  
~~Vote: Barabani~~      ~~Aye~~      ~~Dixon~~      ~~Aye~~      ~~Salazar~~      ~~Aye~~

B. The commission will consider ratifying eligibility lists. Proposed motions are:

1. It is moved that the commission ratify the eligibility list for Superintendent's Assistant (Exam 13-031)

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

Discussion:

2. It is moved that the commission ratify the eligibility list for HVACR Mechanic (Exam 13-024)

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

Discussion

Ms. Dixon This letter is coming from Mr. Maher to Dr. Wiseman; I know it's about something different. Did we fix the exam?

Mr. Maher This is a promotional or outside it's different.

Ms. Dixon I just needed clarification. Ok, thank you. That is all I have to say.

Mr. Barabani Call for the vote.

Ms. Dixon Aye.

Mr. Salazar Aye.

Mr. Barabani Aye.

C. The commission will consider action to open the recruitment for Personnel Commission Director to fill the vacancy on a permanent basis. Such action may involve developing a recruitment plan, obtaining the services of a vendor or other external assistance, or other action as necessary to commence the recruitment process.

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

Mr. Maher That is not a motion.

Mr. Barabani Discussion I guess, in this case you had the most information on that right? Everybody read the emails.

Ms. Dixon Are those the only two?

Mr. Maher CSPCA has had a program to try to fill the vacant positions. As a service of no cost. However they don't have enough staff to handle that. The executive director has to handle that to find the personnel director that will volunteer the time to do that. At the present time the annual conference is coming and they are swamped they have done 2 or 3 last year and George Cole can't get to it immediately help on that. Marry Ann from Codesp has done it before but right now they are very busy. This is the busiest time right now. And they do some other internal upgrading programs and so on. She does not have the time to do it right now. I have done it a couple of times for CSPCA as a volunteer basis but I won't do it this time. I don't think it would be good idea it's just a matter of finding someone that can do it. I talked to George Cole that I know almost everyone that is working is working full time. He is going to talk to people down there to see if they are interested. The problem is we are isolated in terms of the area where we are at. Most of the Personnel commission directors and retirees are in the area of



L. A. area, the San Diego and Orange County area and trying to get someone here is impossible. Retirees are limited to 960 hours a year if they are retired from peers, maximum time to work for the year. Right now I'm trying to find someone and I'm hoping George Cole will find someone at the conference. We will have a special meeting if needed to get that information.

- Ms. Dixon            Let me just stop.
- Mr. Maher            This weekend, starts tomorrow and it goes to Sunday.
- Ms. Dixon            By the time we do that maybe this folks will be freed up. What you are saying maybe we don't have people to run recruitment. And both help run the recruitment that you have going on
- Mr. Maher            Do this recruitment. I don't have any names for you right now, I will check with association.
- Mr. Salazar            Don't we pay dues to codesp and cspca?
- Mr. Maher            For codesp we pay for them to give us written test item. Sometimes they would do additional one for additional fees. CSPCA will attempt to assist at no cost. For membership you get a discount for merit academy to support for CSPCA, codesp we get written test, they send us 150 items. I can try to put a recruitment done for you.
- Mr. Salazar            Codesp will charge a fee for that.
- Mr. Maher            The second part is where you are going to recruit for that.
- Mr. Salazar            This has nothing to do with what we just discussed.

D. The commission will consider contracting with the Office of Administrative Hearings. A proposed motion is:

It is moved that the commission approve the contract with the Office of Administrative Law Judges to serve as hearing officers for administrative appeals of classified employees as approved by the commission in individual appeals.

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

- Ms. Dixon            How many appeals we have currently pending?
- Mr. Maher            We have one right now pending.
- Ms. Dixon            Is it going to cost us \$48,000 for one?
- Mr. Maher            The state required for a 5 year term if something happens that we have a lot of appeals if we don't use it we don't spend a dime. The state required that we have a contract. State budgeting factor of \$48,000.00 you don't pay in advance if you only use \$10,000 then you only pay \$10,000.
- Ms. Dixon            What if we don't like those folks?
- Mr. Maher            It's not a binding contract. It allows you to ask them and for

them to provide the service as a hearing officer. The contract does not bind you to use them to for that length of time. In some cases we can't use them.

- Mr. Barabani How do we get the money back?
- Mr. Maher You don't pay them until they are done with the job. You are not paying \$48,000 up front. What they are asking about is when the State approves the contract for \$48,000. That is all it is. That is authorization for them. You only pay for service you actually use, not ahead of time, no deposit, no retainer, and no money up front.
- Mr. Salazar I have a question? What happens if we don't use them?
- Mr. Maher You have a hearing you would have to set a procedure hearing.
- Mr. Salazar We don't have a procedure right now for this district?
- Mr. Maher We don't have officers in the contract before you can engage in services.
- Mr. Salazar Whose job is that?
- Mr. Maher This would be the cheapest way to go.
- Mr. Salazar Six months ago, how were we doing this?
- Mr. Maher We did not have this six months ago.
- Mr. Salazar You have been in the district for a while how did we do this before?
- Mr. Maher The last hearing that I knew was Mr. Flory and they hired Mr. Brand.
- Ms. Dixon He had a contract, \$5,000 a day.
- Mr. Salazar He was a judge?
- Mr. Maher He was a labor law attorney.
- Ms. Dixon How long is this pending?
- Mr. Maher He just came in the other day; I explained to him I had to get a hearing officer to hear his case. I would let him know so we can assign it to hearing officer. They charge \$180.00 hourly rate.
- Mr. Salazar Do you have a copy of this contract?
- Mr. Maher It's in your packet that was the contract that was sent to me starting on page 13. This has to go to the board before we start to process a hearing for employee.
- Ms. Dixon There is no one closer.
- Mr. Maher It's in Los Angeles. The main office is in Sacramento. These are administrative law offices. You are not spending anything until you use the services.
- Mr. Barabani Proceed with the motion. Do I have a second? Call for the vote.

Ms. Dixon Aye.

Mr. Barabani Aye.

Mr. Salazar Aye.

Ms. Dixon Back to action Item IV. What concerns me if we act on it are we violating the Brown Act?

Mr. Maher The Brown Act only requires that you give public notice, it does not require for you to act upon it. Or any particular action once it's on the agenda. Once it's on the agenda you are not bound by the action or depends what you want to do. Motions are to help you put the stuff together.

Mr. Salazar But it has not been pulled.

Mr. Maher The Brown Act does not require acting on anything on the agenda.

Mr. Salazar Ok, got it.

Mr. Barabani We can get 30 days notice on next meeting March 5<sup>th</sup> to get a legal opinion.

Ms. Dixon We did not have an opportunity to get a legal opinion.

Mr. Maher You can ask for legal opinion. Historically a lot of items come to commission to get formally or informally legal opinion. In the past it has been the Chair to prepare and approve final agenda. Some certain authorities have been granted to the chair. Things come up in between meetings.

Ms. Dixon Remember I asked last meeting what those things were?

Mr. Maher I have to go back what was done and research those for you.

Ms. Dixon Put it on the record. What concerns me was on December 4<sup>th</sup> you decided to vote. I was sitting here, I heard it clearly. We need to revisit this item, I don't know how to word it but we need to come back to this item on the next agenda for next month.

Mr. Salazar There is no law that says we can't change it. We have the rules here on page 26.

Mr. Barabani Why don't we make it simple and bring Mr. Bentley here on the next meeting. He is the district attorney.

Mr. Salazar That should have been done in the first place.

Mr. Barabani I make a motion we bring Mr. Bentley's firm to give us an opinion.

Mr. Maher If you want I can ask him on the wording, how to say it.

Mr. Barabani I make a motion to have Mr. Bentley come in and give us his opinion.

Ms. Dixon        Aye.  
Mr. Barabani    Aye.  
Mr. Salazar      Abstain.

**V. COMMISSIONER'S AND DIRECTOR'S COMMENTS:**

Mr. Maher        Pat Maher gave a summary on how many applicants were up to date and testing information. He passed out information to the public on the job description postings and how many applications received for each one. Up to date we have received 3115 applicants for all the jobs that have been posted. The exams closed on Sunday or Monday night. You get a big rush of applicants at the last minute before the job closes. I would not be surprised if we are pushing 4,000 or more applicants by the time all jobs close. We got 609 applying for attendance verifier; we got 817 for clerk I, and so on. We posted job announcements on press release from district, the Sunday Sun newspaper of San Bernardino.

Ms. Dixon        Ms. Dixon asked if everyone in the office helps to screen applications. Can HR people help to screen the applications?

Mr. Maher        Mr. Maher explained that the main screening is done by the HR Specialist and if he needed he will help and the provisional analyst.

Ms. Dixon        Asked for there to be some cross training if there are 40 job specs coming in so everyone can help out. In his absence for the sake of time. I will recess the public portion. The commission will go into closed session at 7:05 p.m.

**VI. CLOSED SESSION**

The commission adjourned into closed session at 7:05 p.m. for:

Pursuant to Government Code Section 54957 to discuss:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

The commission reconvened into open session at 7:30p.m. and announced the following action taken in closed session. There was no announcement for closed session.

**VII. ADJOURNMENT**

The commission adjourned the meeting at 7:30 p.m.