



# OCEAN VIEW SCHOOL DISTRICT

## PERSONNEL COMMISSION AGENDA

**Thursday, August 10, 2017**

**REGULAR MEETING  
4:30 p.m.  
Board Room  
Building A**

*Classified Employees*  
in **PARTNERSHIP** with **EDUCATION**  
**Personnel Commission**  
1966 - 2017

**PERSONNEL COMMISSION:**  
Dr. Allan Pogrund, Chair  
Daniel Gooch, Vice-Chair  
Bob Ewing, Member

**A G E N D A**  
**PERSONNEL COMMISSION**  
**OCEAN VIEW**  
**SCHOOL DISTRICT**

**THURSDAY,**  
**AUGUST 10, 2017**

**4:30 P.M. REGULAR MEETING**  
**BOARD ROOM – BUILDING A**

1. **CALL TO ORDER** TIME: \_\_\_\_\_ p.m.
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **TIME CERTAIN – RECOGNITION OF DR. ALLAN POGRUND, PERSONNEL COMMISSIONER:** The Personnel Commission will honor Dr. Pogrund for his service to the District and to the Commission as Chair, Vice-Chair, and Member, from 2008 through 2017.
5. **PUBLIC COMMENTS:** The Personnel Commission welcomes comments or concerns on any item within the jurisdiction of the Personnel Commission. If you wish to address an item on the agenda, please indicate when, at this point, or at the time the agenda item is discussed.
6. **APPROVAL OF MINUTES:** The Personnel Commission will receive the minutes of the July 13, 2017, Regular Personnel Commission Meeting for approval.

**Pages 1-10**  
**(Action)**  
Moved: \_\_\_\_\_  
Second: \_\_\_\_\_  
Vote: \_\_\_\_\_

**COMMISSION BUSINESS**

7. **CLASSIFIED ACTIVITY LISTS:** The Personnel Commission will receive for information the following Classified Activity List(s) received by the Board of Trustees for their approval at the Ocean View School District, Regular Board Meeting(s) of:
- July 11, 2017 – (Exhibit A)
8. **CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION 610 POLICY:** The Personnel Commission will receive information regarding the California School Employees Association 610 policy for review and discussion.

**Pages 11-13**  
**(Information)**

**Pages 14-40**  
**(Information and Discussion)**

**COMMUNICATIONS**

9. **SECOND PUBLIC COMMENTS:** The Personnel Commission welcomes comments or concerns on any item within the jurisdiction of the Personnel Commission.

10. COMMISSIONER REPORTS

11. DIRECTOR AND STAFF REPORTS

12. ADJOURNMENT TIME: \_\_\_\_\_ p.m.

Moved: \_\_\_\_\_  
Second: \_\_\_\_\_  
Vote: \_\_\_\_\_

The Ocean View School District Personnel Commission meets on the 2<sup>nd</sup> Thursday of each month at 4:30 p.m. unless otherwise noted. Agendas are posted and are available 72 hours in advance of each regular meeting on the bulletin board outside the Board Room and on the District website, [www.ovsd.org](http://www.ovsd.org). Agenda items must be submitted in writing to the Director, Classified Personnel no later than the end of the working day seven days preceding the next Commission meeting. Items submitted less than a week before the scheduled meeting date may be postponed to a later meeting in order to allow sufficient time for consideration and research of the issue. For information call (714) 847-2551.

Pursuant to Government Code 54957.5, a copy of all documents related to any item on this agenda that have been submitted to the Personnel Commission less than 72 hours prior to the meeting, and that are public record not otherwise exempt from disclosure, will be available for review at the Personnel Commission Office, 17200 Pinehurst Lane, Huntington Beach, California, 92647, during normal business hours (Monday through Friday, 8:00 a.m. to 4:30 p.m.)

Persons requiring accommodation in order to view the agenda or participate in the meeting may make the request for accommodation by contacting the Personnel Commission Office at 714-847-2551 at least 48 hours in advance of the meeting. (Government Code 54954.2 (a)1)

**OCEAN VIEW SCHOOL DISTRICT  
MINUTES  
Regular Personnel Commission Meeting  
July 13, 2017**

**CALL TO ORDER** Commissioner Pogrund called the July 13, 2017, Regular Personnel Commission Meeting to order at 4:31 p.m.

**PLEDGE OF ALLEGIANCE** Commissioner Ewing led the pledge of allegiance.

**ROLL CALL** All three Commissioners were present. Director Vellanoweth was also present.

**STAFF MEMBERS AND GUESTS** Michelle Eifert; Yvonne Nguyen; Jason Bozarth; Michael Hoeker; Keith Farrow; Phi Tran; Sandy Vaughan; Dr. Michael Conroy.

**PUBLIC COMMENTS** Jason Bozarth, CSEA Chapter 375 President, extended his thanks and sincere appreciation for the work the Commission continues to do for the classified employees who work diligently throughout the year. He stated that it is because of the Commission's continued willingness to serve, that we work together in hiring, promoting, and retaining the most qualified employees possible. The bargaining unit strives to work with the Commission in the most professional and productive ways possible. It is with this in mind that he presents a matter regarding the processing of class specifications, also called job descriptions.

Mr. Bozarth continued that per Education Code, the responsibility of establishing job duties falls with the District, which is a negotiable item. The Commission is then charged with writing the class specification, which includes determining qualifications and examination procedures for that job. In the last few years, CSEA has refined its policy known as the 610 process on negotiable items. Job duties are negotiable items, therefore Chapter 375 has the right to negotiate any changes made to the job duties with the District before they are presented to the Commission for approval. CSEA recently reminded Chapter 375 that the Superintendent is notified of CSEA's 610 process annually, so the Chapter knows that the District is aware that all job duties are negotiable items and cannot dictate the Commission's timeline to create, change, and approve class specifications. The Chapter is painfully aware of the changes that they have had to ask for in compliance with CSEA's current policy and they sincerely and deeply apologize for the delays in the Commission's work in the recent past.

Moving forward, in hopes to establish a more cohesive relationship between the District, the Commission, and the Chapter, it was respectfully asked of the Commission to consider allowing class specifications approval to take up to, but not exceeding, two months once revisions are presented to the Chapter. The Chapter will do what they can to ensure that the process be much faster than that. Mr. Bozarth stated that the Chapter does not feel it is in the best interest of its members to allow job description creations and changes during the summer when the Chapter is not able to meet as per their constitution. This request is regarding item 6A on today's agenda.

**PUBLIC  
COMMENTS  
(CONTINUED)**

Mr. Bozarth continued that the Chapter wants the Commission to be able to perform recruitments during the summer. The Chapter intends to work with the District to ensure class specifications are finalized well before summer so that CSEA has had ample time to review and approve these changes with its membership. The Chapter hopes for the Commission's support in this proposed timeline and asks for the Commission's advisement if it is appropriate to pull item 6A given that the bargaining unit members have not approved the job descriptions that were presented to CSEA after the final chapter meeting of the school year.

Mr. Bozarth again thanked the Commission for their continued service and support. He truly hopes that CSEA can work together with the Commission to uphold the principles of the Merit System and continue the shared goal of student success.

Commissioner Pogrund asked Mr. Bozarth if he is asking the Commission not to take any action with employing staff to fill the positions listed in agenda item 6A. Mr. Bozarth answered that the Chapter would like more time to review it as per the 610 process that is mandated for them. Commissioner Pogrund asked if he is asking to put these positions on hold and not employ people in these positions. Mr. Bozarth answered that the Chapter has not had ample time to review the changes in the job descriptions that have been put forward. Mr. Bozarth stated that it is his understanding that the District can continue to fill the positions, but would have to do so using the old job descriptions.

Commissioner Gooch stated that it has been his position that when individuals, especially representatives of the union, make a proposal such as this, to ask the opinion of the Director. But, rather than ask the Director to offer an opinion spontaneously, without providing her time to do some research, and realizing that time is of the essence, he has a two-part question. Part one is whether the Director feels comfortable making a comment relative to the union president's request and/or ask her to come back with more detailed information. Secondly, he stated that he sees that these job descriptions have been run by the supervisors and were based upon input received from them and the incumbents. Lastly, he stated that while he recognizes and respects the union's desire, he does not believe it is the Commission's concern that the union chapter is not meeting during the summer. Time marches on and the Commission's respective duties march on.

Director Vellanoweth mentioned that Mr. Bozarth had met with her earlier in the week to discuss his concerns, and she did offer him the opportunity to come to the Commission meeting and express those concerns. Her recommendation, however, is to hold a meeting with herself, Mr. Bozarth, and Mr. Felix Avila, to see if there is an agreement that they can come to for future processes that would be satisfactory to all of the timelines that have to be considered.

**PUBLIC  
COMMENTS  
(CONTINUED)**

Director Vellanoweth stated that the Commission has timelines set forth such as the job description review process, the District has the need to fill positions in a timely manner, and the Commission has an obligation to provide to them the hiring lists and qualified candidates. She understands that CSEA has their own internal process that they need to abide by. She does have concerns, however, because the Personnel Commission does operate all summer long and it is a very busy time of year for our department. We do have multiple recruitments open and ongoing. Realistically, it would be very difficult to not have job descriptions continue through the process during the summer months.

Director Vellanoweth also stated that as far as the job descriptions that are on the agenda for today, the Commission has abided by the previous agreement that was established to provide them to CSEA at least three weeks in advance. She mentioned that these descriptions are being brought forward specifically because recruitments do need to be conducted for them. She and the Commission staff believe that it is imperative that the job descriptions be up to date prior to conducting a recruitment. There is no sense in conducting a recruitment when the job description does not accurately reflect the duties and responsibilities, education and experience that is required for the position. Otherwise, eligibility lists will be created with candidates that do not meet the requirements of the position.

Commissioner Pogrund stated that there is an action item on the floor to approve the revisions to the job descriptions for Locksmith and HVAC Mechanic. He asked Mr. Bozarth if it is accurate that Mr. Bozarth is asking to hold back on the approval of the two job descriptions and to use the previously approved job descriptions for the current recruitments. Mr. Bozarth answered yes. Commissioner Pogrund asked Mr. Bozarth if he was amenable to having another meeting with Director Vellanoweth and Felix Avila. Mr. Bozarth answered yes. Commissioner Pogrund stated that it seems to him that this item will be put on hold and ultimately resolved by a smaller committee meeting on these issues.

Commissioner Gooch asked what is meant by "put on hold". Commissioner Ewing stated that technically there needs to be a motion to table the agenda item, a second, and a vote. It can't just be pulled from the agenda. Commissioner Pogrund answered that he did not want to pull it nor did he want to table it.

It was decided, at this point to move to the next item on the agenda, which was to approve the minutes of the June 15, 2017 meeting, and then return to this issue as it comes up on the agenda.

**MINUTES OF  
JUNE 15, 2017**

Commissioner Gooch thanked the staff for pursuing with Edjoin the Commission's concerns with the application in regard to applicants not reporting their previous situations which may exclude them from continuing in the recruitment process. He asked that we continue to check in case somewhere down the road, Edjoin is able to include the features that would assist in this matter.

Motion by Commissioner Ewing to approve the minutes of the June 15, 2017, Regular Personnel Commission meeting.

Seconded by Commissioner Gooch, and carried with a 3:0 vote.

**CONSENT  
CALENDAR**

The following job description reviews/revisions and recruitment and testing – eligibility lists were received on the Consent Calendar:

A. Job Description Review/Revisions

1. Locksmith
2. HVAC Mechanic

B. Recruitment and Testing – Eligibility Lists

1. 2017-01 Lead Food Service Worker
2. 2017-02 Field Service Technician
3. 2017-03 Lead Evening Custodian
4. 2017-04 Director, Child Development Programs
5. 2017-05 Parent Educator - Bilingual

Dr. Michael Conroy, Deputy Superintendent, Administrative Services, addressed the Commission. In listening to the conversation and comments being made, he wanted to share that the District does try to work with the employee associations in a collaborative manner and there is a process with getting information to them. He would like it to be noted that while CSEA does not meet during the summer, this process has been in place throughout the course of the school year and different job descriptions have come forth. He thinks it would have been more appropriate to address the summer timeline a few months ago, prior to the beginning of summer, in order to advise that they could not meet and therefore they would need to change the timeline. He stated that there should be responsibility from all parties to be aware of their own responsibilities to bring information to the Commission.

Sandy Vaughan, bargaining unit member and former President of CSEA Chapter 375, stated that since the topic of job descriptions is being discussed, she wanted to bring up again the matter of salary studies. New job descriptions are being created based upon input gathered from outside similar districts to determine where these positions will be placed on the salary schedule. She asked about the positions that have been on the salary schedule for years and years.

**CONSENT  
CALENDAR  
(CONTINUED)**

Mrs. Vaughan continued saying that there have been no salary adjustments to those positions, even though more responsibilities have been added to the job descriptions. She asked when a salary study would be done and stated that CSEA has asked many times for salary studies to be conducted. Mrs. Vaughan thinks it is time the salaries are reviewed and a salary study conducted. She stated when there is change to the job description, there should perhaps also be an adjustment to the salary.

Commissioner Ewing referred to Commissioner Gooch's earlier comments and agreed with him stating that if CSEA has important matters going on during the summer they should start meeting during the summer. He stated that not having meetings during the summer is not a good enough excuse to put off job description reviews and approvals. He cannot tell CSEA when to meet because he does not know what their rules are.

Commissioner Ewing also stated that in his observation, if it is being requested that agenda item 6A be pulled, it means one of two things to him. It means that there is something within the job description that CSEA has a problem with, or they have not had enough time to review it and are asking for more time to do so. He prefers that the Commission be told why the Chapter would like to have it pulled. Is there something that CSEA believes is incorrect with the job description revision, even though it has passed through the supervisor and the incumbents of the position, or is it that CSEA needs to sit down with Director Vellanoweth and have a discussion about developing a better process.

Jason Bozarth answered Commissioner Ewing saying with regard to the first part of his question, it is not in CSEA's constitution to meet during the summer and is not something they have ever done before. To change their constitution would require some amount of time. At this point, since the Chapter does have employees who work during the summer, they could call a special meeting but there are no official meetings scheduled over the summer.

In answer to Commissioner Ewing's second question, the reason for the request to pull agenda item 6A is because it has not gone through the 610 process. Once it goes through the 610 process the state organization of CSEA asks the Chapter to ratify it. This is where the meeting comes in. Mr. Bozarth would have to have five days to post the proposed changes and then he could call a special meeting.

Commissioner Pogrund stated that he recognizes that there is a concern, but the issue is that the District needs to run in an efficient manner and at this point there is previous practice to rely on. There are two positions presented for approval now and CSEA has already stated that they can work with previously established guidelines. Mr. Bozarth confirmed this. This being the case, Commissioner Pogrund stated that he feels this should be an issue that is taken to a committee at a subsequent time, but that these two positions should be approved.



**CONSENT  
CALENDAR  
(CONTINUED)**

Mr. Bozarth replied that when CSEA reviews the job descriptions and gives the Chapter the green light, that is when he would schedule the meeting, but these job descriptions have not gone through the 610 process yet. He stated that if these are approved by the Commission at this meeting, and then CSEA finds a snag or a violation of the Education Code, and notifies the Chapter that it did not clear the 610 process, then the Chapter would not be able to vote on it.

Commissioner Ewing stated that there are some legal issues here. He asked a question of Mr. Bozarth, with regard to the proposed job description revisions, which have already been reviewed by the incumbent and the supervisor. If the job description really is not any good until it is approved by CSEA headquarters, and then approved by the Chapter, at what point does the District say they cannot wait that long to hire people and put things into place? He added that it does not make any sense to hamstring the administration and departments that need these positions filled.

He stated that he thinks there is a lot that needs to be dealt with whether it is at the Chapter level or headquarters because these issues are preventing the District and the Personnel Commission from doing their job.

Mr. Bozarth replied that these issues are happening with the timelines because this process has been fairly recently implemented. It was his understanding that changes to the job descriptions were supposed to take place during the normal job description review cycle process. It seems to him that the problem that is being run into is when last minute changes are made to a job description just before it is flown. This creates a problem if all of a sudden there is a critical need for a position to be filled and the duties and responsibilities are suddenly changed or updated and it creates a timeline that is difficult for CSEA to work with.

Commissioner Pogrund stated he does not see why we cannot move ahead with existing policy right now. He is concerned, as Mr. Bozarth stated, of making decisions at the last minute. He continued by stating that the two job descriptions in item 6A ought to be approved due to the fact that the District needs to post to fill the vacancies and needs to function well.

Commissioner Ewing stated that what needs to happen today since there is a motion on the floor is there needs to be a vote. Unless Commissioner Gooch removes his motion, it is now at the point where this matter needs to be decided. Commissioner Ewing thinks there are still other issues and he does not know how those issues will be resolved or what CSEA's solution is.

Mr. Bozarth responded that his standpoint is that we all want to work together as a cohesive unit to promote and hire the best employees we can. It is not CSEA's intention to deliberately hamstring the District in its capacity to hire. The problem CSEA is having is when last minute changes are made to a job description and then that job description is put forward for approval from the Commission.

**CONSENT  
CALENDAR  
(CONTINUED)**

These reviews and changes essentially should have happened long before they were presented to the Commissioners. The Commissioners should not have to be dealing with this. The Chapter is asking for a process to be implemented so that these matters can be resolved long before they get to this level.

Commissioner Gooch stated that fifteen or so years ago, the timeline between job description reviews was ten to twelve years. The Commission instructed the Directors, at that time and subsequently, to establish a three-year cycle so that the District is not caught in a position where an employee is working under a class specification that has not been reviewed or updated for several years. Commissioner Gooch said that the Personnel Commission has been operating under this directive for the past several years. He also stated that it is his understanding that the schedule for job description reviews is provided to CSEA to inform them of the descriptions that will be up for review throughout the year. It is also Commissioner Gooch's observation that what is before the Commission today are two recommendations for classifications that meet both the established criteria and the established timeline. He believes that the Commission is following a process that has been agreed to by CSEA and the Director of Classified Personnel.

Commissioner Gooch asked the Director to provide a brief response to the Commission before the next meeting, indicating whether a meeting was held to clarify these issues.

Commissioner Ewing asked Mr. Bozarth to define what he means by "last minute changes" because if it has gone through the supervisor and gone through the incumbent, it means someone has seen it. He asked Mr. Bozarth if he is saying that changes are being made after the incumbent and supervisor have seen them.

Mr. Bozarth answered that when he says "last minute changes" he means as opposed to the process of the review cycle. The review cycle provides one-third of the job descriptions that are up for review and revision each year. Mr. Bozarth stated that in previous discussions with Director Vellanoweth, she informed him that she frontloads a supervisor that comes to her and tells her that they want to fill a position, whether this would be a new position or is an old position but needs updating. She then begins a process of research to ensure that everything is in order. At that time, and he asked Mrs. Vellanoweth to correct him if he is wrong, CSEA is informed that a new position is coming up. This is about three to four weeks before it is taken for approval to the Commission meeting. This is what he means by last minute.

Director Vellanoweth was asked by Commissioner Pogrund if she would like to speak to this matter. She replied that the two job descriptions on today's agenda were in the cycle to be reviewed this school year. This process had already been started prior to knowing there would be vacancies. Information had already been collected from the incumbents and drafts of the descriptions were being

**CONSENT  
CALENDAR  
(CONTINUED)**

prepared. When it was discovered that positions in these classifications would need to be filled, the staff continued with the process and the drafts were provided for the supervisors and incumbents. As she explained to Mr. Bozarth in their meeting, she feels it is premature to share a job description update with CSEA if it is not a final draft that has had feedback from both the supervisor and incumbent. There is no sense presenting something to them to take to their 610 process if it has not been finalized. For the two job descriptions in agenda item 6A, she did preemptively, share drafts with CSEA while simultaneously sharing these same drafts with supervisors and incumbents for feedback. This was three to four weeks prior to today. The agreed upon timeframe from previous discussions was two to three weeks. Director Vellanoweth stated that she does not feel it was a last minute change and feels that ample time was provided to CSEA to review.

Michael Hoeker, Chief Job Steward for CSEA, and one of the incumbents of one of the job descriptions in question, stated that he knew that his job description was sent out for an update but he does not believe he saw the revised paperwork until after there was a request for it. He has reviewed it and has no dispute for his particular position. He stated that he thinks the concern by the Chapter and by CSEA, is that the 610 is a process that is established and that they are supposed to be working with Personnel through this process. Their liaison has gone to the university trainings for the Personnel Commission. This information is what the liaison has been bringing back to CSEA and also what they have been receiving from their field office. It is not always that they have an issue with the job descriptions, it is with the procedure to achieve the job position. Yes, it does take time and yes, they are trying to make changes to their constitution. CSEA respects that the District has business to do. But if there is a change to a job description, CSEA has to go through their process, and there is no membership to meet, which he understands is not the Commission's concern, if there is a problem how would they resolve that? From his point of view, CSEA is asking for the Commissions advice as well.

Commissioner Pogrund said it seems to him that there are complex problems that cannot be solved in twenty minute meetings. They are resolved by having a small committee report to a larger committee. There is another variable and that is that the Commission has a job to get done. His concern is if we procrastinate or make it too complex, the job will not get done. If he had enough power, he would table this and send it to a sub-committee even though it would slow down some later process, but it would get done eventually. In the meantime there are the two job descriptions for Locksmith and HVAC Mechanic which are critical positions for the District and he would like to see them approved.

Commissioner Gooch added that with regard to resolving a problem with a job description, if an employee is supposed to perform duties A, B, and C, and it is discovered that they are performing duties X, Y, and Z, there is a process for that. Since the Commission has gone to great lengths to establish a job review cycle on a tri-annual basis, and provides those lists to CSEA, if CSEA or the

**CONSENT  
CALENDAR  
(CONTINUED)**

District spot something that they would like to have moved forward or backward on the schedule or reviewed out of order, that should be something to discuss with the Director. If the Director recommends that this change in the review cycle schedule take place and has a good reason for it, he does not see any reason why it cannot be done. He empathizes with CSEA's plight and is certain with some administrative review we can all come to a reasonable agreement that will work for everybody.

Motion by Commissioner Gooch to approve the Consent Calendar.

Seconded by Commissioner Ewing, and carried with a 3:0 vote.

**CLASSIFIED  
ACTIVITY LISTS**

The Personnel Commission received for information only, the Classified Activity Lists that were presented for approval at the Board of Trustees meetings of June 13, 2017, and June 27, 2017.

**REACTIVATE  
CLASSIFICATION  
OF GROUNDS/  
GARDENER LEAD  
WORKER AND  
TITLE CHANGE TO  
LEAD  
GROUNDSKEEPER**

Director Vellanoweth informed the Commissioners that upon the recommendation of the Director of Maintenance, Operations and Facilities, Jim Choate, and the Deputy Superintendent, Dr. Michael Conroy, the District has proposed some duties and responsibilities that would serve in a lead capacity to the District's grounds crew. In reviewing those duties, it was determined that there was a former classification of Grounds/Gardener Lead Worker, that with some modifications would fit with the duties and responsibilities the District is looking for. The Director recommends to the Commission that the former classification of Grounds/Gardener Lead Worker be reactivated and its title be changed to Lead Groundskeeper. This position would serve as a lead over all of the classifications within the current Grounds Series. The Director also recommends that based upon the District's past practice with internal alignment of providing at least a two to three salary range difference between the regular position and a lead position, that this classification be maintained at the salary that it previously was, which was salary range 39.

Motion by Commissioner Ewing to approve the Reactivation of Classification of Grounds/Gardener Lead Worker and Title Change to Lead Groundskeeper.

Seconded by Commissioner Gooch, and carried with a 3:0 vote.

**SECOND PUBLIC  
COMMENTS**

There were no further comments from the public.

**COMMISSIONERS'  
REPORTS**

Commissioner Ewing reminded everyone that the next meeting of the Personnel Commission is August 10, 2017.

Commissioner Gooch commented that in the earlier public comments, Mrs. Vaughan had brought up her concerns regarding conducting salary studies for classified positions. Commissioner Gooch recalled previous salary studies that were quite extensive. That being the case, he asks that the Director prepare a

**COMMISSIONERS'  
REPORTS  
(CONTINUED)**

brief report on her thoughts and recommendations relative to the timeline of previous salary studies. He stated that quite candidly, he cannot remember the last time a salary study was conducted. He asked Director Vellanoweth if she recalled.

In response to Commissioner Gooch, Director Vellanoweth answered that it has been some time but the Personnel department has just recently completed a salary study which was shared with the Commissioners in their last monthly memo. The study has been shared with the CSEA President, as well. As the Commissioners are aware, all salary items are negotiable, so it is now up to the District and the Union to determine the next steps they would like to take.

Commissioner Gooch also requested a copy of the 610 process to refresh his memory so that when this is being discussed, he can reference it.

Commissioner Pogrund commented that there was a good discussion today regarding a difficult issue. Everyone handled it well with civility and courtesy and he really appreciates that.

**DIRECTOR AND  
STAFF REPORTS**

Director Vellanoweth thanked everyone for their public comments. She acknowledges that everyone has differing opinions, differing timelines, and different priorities, but she does look forward to working with the union and Assistant Superintendent Avila to see if an alternate process or timeline can be developed that will work with everyone's needs.

She mentioned that she and the staff are working on the 2016-2017 annual report and that the draft will hopefully be completed by the next Commission meeting for Commissioner review.

There are currently twelve recruitments currently open, with four just closing.

Director Vellanoweth will be meeting with Mr. Avila about classified professional development opportunities. A survey was distributed last Spring to determine what our employees are looking for. There is a student free day on November 1, 2017, and we also try to provide professional development during the conference weeks in the Fall and Spring.

**ADJOURNMENT**

Commissioner Pogrund asked for a motion to adjourn.

Motion by Commissioner Ewing to adjourn the meeting.

Motion was seconded by Commissioner Gooch, and carried with a 3:0 vote at 5:25 p.m.

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Michelle Vellanoweth, Director, Classified Personnel  
Secretary to the Personnel Commission

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Date

OCEAN VIEW SCHOOL DISTRICT  
**PERSONNEL COMMISSION**

# Memo

**TO:** Personnel Commissioners

**FROM:** Michelle Eifert  
Personnel Assistant

**DATE:** August 10, 2017

**SUBJECT: Agenda Item No. 7: CLASSIFIED PERSONNEL ACTIVITY LIST(S)**

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## **Background Information**

At the Ocean View School District, Regular Board Meeting(s) of July 11, 2017, (Exhibit A), the Board of Trustees received the following Classified Personnel Activity List(s) for approval.

These lists are provided for the Personnel Commissioners to review classified employee activity recently processed by Classified Personnel staff.

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## **Recommendation**

The Director of Classified Personnel recommends that the Personnel Commission receive the Classified Personnel Activity List(s) of July 11, 2017.

OCEAN VIEW SCHOOL DISTRICT  
Huntington Beach, California  
Classified Personnel  
July 11, 2017

**Approve Employment**  
**In accordance with Merit System Testing Procedures:**

<b><u>NAME</u></b>	<b><u>POSITION</u></b>	<b><u>SITE</u></b>	<b><u>SALARY</u></b>	<b><u>RANGE/ STEP</u></b>	<b><u>EFFECTIVE DATE</u></b>
Hunter, Travis	Field Service Technician	Information Services	\$3,907.00 per month	37.1	07/12/17

**Approve Substitute Employment**  
**In accordance with Merit System Testing Procedures:**

<b><u>NAME</u></b>	<b><u>POSITION</u></b>	<b><u>SITE</u></b>	<b><u>SALARY</u></b>	<b><u>RANGE/ STEP</u></b>	<b><u>EFFECTIVE DATE</u></b>
Vazquez, Norma	Preschool Educator	Substitute	\$20.552 per hour	32.1	09/06/17
	Associate Preschool Educator	Substitute	\$19.085 per hour	29.1	09/06/17
	Preschool Instructional Assistant	Substitute	\$16.053 per hour	22.1	09/06/17

**Approve Reemployment**  
**In accordance with Merit System Rules 8.5.2:**

<b><u>NAME</u></b>	<b><u>POSITION</u></b>	<b><u>SITE</u></b>	<b><u>SALARY</u></b>	<b><u>EFFECTIVE DATE</u></b>
Eredia, Eloy	Bus Driver (Trainee)	Transportation	\$10.50 per hour	06/26/17

**Approve Promotion**  
**In accordance with Merit System Testing Procedures:**

<b><u>NAME</u></b>	<b><u>POSITION</u></b>	<b><u>SITE</u></b>	<b><u>SALARY</u></b>	<b><u>RANGE/ STEP</u></b>	<b><u>EFFECTIVE DATE</u></b>
Lopez, Guillermo	Lead Evening Custodian	Maintenance and Operations	\$19.555 per hour	30.1	07/12/17
Turner, Derrick	Lead Evening Custodian	Maintenance and Operations	\$21.596 per hour	30.3	07/12/17

**Approve Retirement**  
**NAME**

<b><u>NAME</u></b>	<b><u>POSITION</u></b>	<b><u>SITE</u></b>	<b><u>BEGINNING DATE</u></b>	<b><u>EFFECTIVE DATE</u></b>
Theophilus, Gayle	School Health Technician	Mesa View	02/15/96	08/31/17

OCEAN VIEW SCHOOL DISTRICT  
 Huntington Beach, California  
 Classified Personnel  
 July 11, 2017

**Approve Separation - Resignation**  
**In accordance with Merit System Rules 8.1 to 8.6:**

<b><u>NAME</u></b>	<b><u>POSITION</u></b>	<b><u>SITE</u></b>	<b><u>BEGINNING DATE</u></b>	<b><u>EFFECTIVE DATE</u></b>
Chou, Khanh	Speech and Language Assistant	Westmont	09/07/05	06/21/17
Thies, Veronica	Senior Purchasing Clerk	District Office	02/27/04	07/15/17
Tintle, Vanessa	Instructional Assistant	Star View	11/20/14	06/22/17



OCEAN VIEW SCHOOL DISTRICT  
PERSONNEL COMMISSION

# Memo

**TO:** Personnel Commissioners  
**FROM:** Michelle Vellanoweth  
Director, Classified Personnel  
**DATE:** August 10, 2017  
**SUBJECT: Agenda Item No. 8: Information Only –  
California School Employees Association 610 Policy**

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## Background Information

At the July 13, 2017 Personnel Commission meeting, the Commission was presented with two classified job descriptions for review and approval, Locksmith and HVAC Mechanic. Classified School Employees Association, Chapter 375 President, Jason Bozarth spoke to these items and requested that both be postponed for consideration until CSEA had completed their internal 610 review and ratification process. A discussion ensued regarding CSEA's 610 policy and its relevance to the Personnel Commission's function, as outlined in Education Code 45256, of creating and approving class specifications, also known as job descriptions. The Commission ultimately voted to approve the job descriptions.

## History

Previous requests from CSEA to postpone job description approvals for this same reason have been brought to the Commission as early as June 2016. During the past year, Director Vellanoweth has collaborated with the Assistant Superintendent, Human Resources and CSEA to develop and refine a process for job description review and approval that will meet the needs and timelines of all parties in the hopes of reducing or eliminating future requests for postponement of Commission approval. Most recently, she met with the District and CSEA on July 14, 2017.

## Current Considerations

The Commission has indicated they would like a better understanding of CSEA's internal 610 process in order to determine its relevance to the Personnel Commission's functions relating to job descriptions. Commission Gooch requested at the July 13<sup>th</sup> meeting that the Director provide the Commission with a copy of CSEA's 610 process. In addition, the Director agreed to provide an update of subsequent meetings and discussions with the Assistant Superintendent Human Resources and CSEA and any resulting processes for resolving this issue.

The attached documents provide clarity on the 610 process itself, the Commission's role in creating and approving job descriptions as outlined in Education Code, legal opinion on the relevance of the 610 process to merit system school districts, and CSEA's response to this legal opinion.

Attachments:

- California School Employees Association Policy 610
- California Education Code 45256
- Letter dated September 30, 2015 from Attorney Kristine Kwong, Musick, Peeler & Garrett LLP, to California School Personnel Commissioners Association Executive Director George Cole, “Application of Alum Rock PERB Decision to Merit System Districts”
- Letter dated October 9, 2015 from Keith Pace, CSEA Director of Field Operations responding to California School Personnel Commissioners Association Executive Director George Cole, “CSEA Position Regarding CSPCA Legal Opinion Concerning the Application of Alum Rock PERB Decision to Merit System Districts”

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**Recommendation**

The Director recommends that the Commission review and discuss the information presented.

1 **609 REFUND FOR OVERPAYMENT OF DUES**  
2 *Adopted September 1976—Revised January 2008*

B-VII  
C-III, 4(b)  
& (c)

- 3  
4 .1 The Association recognizes that occasionally and for various reasons,  
5 chapters/employers remit dues payments for members/fee payers who, having ceased  
6 membership in a CSEA bargaining unit, have not, in fact, paid dues/fees, and that  
7 appropriate refunds should be made.  
8  
9 .2 Refund of overpayment of dues/fees for former bargaining unit members will be made  
10 only on the following basis:  
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12 .01 **100 Percent Refund.** All verified claims for refund of overpayment by the  
13 chapter/employer will be fully refunded on overpayments occurring within 12  
14 months of the date of the claim.  
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16 .02 **Administrative Charge.** An administrative charge of not less than \$50 nor more  
17 than \$150, dependent upon the number of overpayments claimed and the length of  
18 time involved shall be made when the claim includes overpayments exceeding 12  
19 months, but less than 36 months.  
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21 .03 **Non-Entitlement.** No refund for overpayment which occurred prior to 36 months  
22 from the date of the claim shall be made.  
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24 .3 All claims for refund for which an administrative charge is to be made or a denial for  
25 refund is made, shall be submitted to the Association President for approval prior to  
26 providing the refund or denial of refund.  
27

B-XII

28  
29 **610 COLLECTIVE BARGAINING**  
30 *Last Revised March 2015*

- 31  
32 .1 **Purpose.** In order to protect members' statutory rights to participate in the activities of  
33 this Union, every chapter of this Association shall negotiate a contract covering wages,  
34 hours and other terms and conditions of employment with the employer. The purpose of  
35 this policy is to ensure that negotiated agreements, as described in Section .8 of this  
36 policy, are properly approved by the chapter's membership and the Association.  
37  
38 .01 **Petitions for Recognition.** Any petition submitted by a chapter of this Association  
39 seeking exclusive recognition (including a petition seeking decertification of another  
40 organization) under the laws of this state and rules of the Public Employment  
41 Relations Board (PERB) shall seek recognition for "The California School  
42 Employees Association and its (name) Chapter (number)."  
43  
44 .02 **Collective Bargaining Agreements.** All collective bargaining agreements shall  
45 provide that the agreement is between the employer and "The California School  
46 Employees Association and its (name) Chapter (number)."  
47  
48 .2 **Failure to Adhere to Policy.** Should chapter officers fail to adhere to this policy, it shall  
49 be grounds for their expulsion from membership or removal from office under Article II,  
50 Section 7, of the Association Constitution upon charges being brought and sustained by  
51 the Board of Directors that they have intentionally and knowingly violated the provisions  
52 of Policy 610.  
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- .3 **Initial Proposals**
- .01 Each chapter, when negotiating a full contract, shall survey its membership for recommendations of its initial bargaining proposal.
- .02 Each chapter will forward a copy of its initial bargaining proposal to the Field Director and Labor Relations Representative before it is presented to the membership for approval. When it is available, a copy of the employer's initial proposal will also be provided to the Field Director and Labor Relations Representative. As soon as it is practical, the Field Director shall review the initial proposals and advise the chapter of any concerns as well as identify resources that may be helpful to the chapter in negotiations.
- .03 **Each chapter shall ensure that initial bargaining proposals are determined by a vote of the membership.**
- Initial proposals shall meet the requirements of the Public Employment Relations Board and shall include sufficient information concerning subjects to be discussed during negotiations.
- If there is more than one bargaining unit in a chapter, the chapter leadership shall ensure that the initial bargaining proposals are determined by a vote of the membership of each appropriate unit.
- .4 Prior to a chapter beginning the negotiations process, the Labor Relations Representative will review the procedures for ratification, as described in this Policy, with the Chapter leadership.
- .5 The employer shall be notified of CSEA's negotiations and ratification process and procedures at the outset of negotiations.
- .6 **Merged Bargaining.** Merged bargaining with pooled voting is an alternative form of negotiation and ratification for chapters with more than one bargaining unit. The provisions for merged bargaining and pooled voting are detailed in Section .11 of this policy.
- .7 **Bargaining**
- .01 If the Association becomes aware of a bargaining issue during the chapter's negotiations process that could be detrimental to the chapter and/or its members, the Field Director may call a meeting with the chapter's Executive Board and negotiating team/committee to discuss the issue and possible solutions.
- .02 The Association has the right, as the exclusive representative, to require that a Labor Relations Representative and/or other Association representative attend any meeting associated with collective bargaining including, but not limited to, bargaining sessions, caucuses, bargaining preparation meetings with chapter representatives and/or the employer.
- .8 **Negotiated Agreements**
- .01 All negotiated agreements shall be reviewed by the Labor Relations Representative and the Field Director. No chapter shall enter into a negotiated agreement or take a formal ratification vote, until it has been reviewed by the Labor Relations Representative and the Field Director.

(a) Negotiated agreements include any collective bargaining agreements, modifications thereof, memorandums of understanding, side letters, letters of understanding, or other contracted arrangements between the chapter and the employer.

.02 Every negotiated agreement shall be executed by both the Association and its chapter.

(a) For purposes of this Policy, the following are not required to be ratified by the chapter's membership:

(1) Settlements resulting from unfair practice charges, grievance procedures, PERB proceedings or Administrative determination unless they would change the collective bargaining agreement or the intent thereof as determined by the Field Director.

(2) An "Appalachian-Shale" agreement with the district, setting the new term of the agreement, can be signed by the Chapter President with the approval of the chapter's Executive Board. However, any re-opener modification to the agreement shall follow the regular ratification procedures, as described herein.

(3) Individual reclassifications or creation of new positions when accomplished utilizing reclassification procedures contained within a ratified collective bargaining agreement.

.9 **Ratification Procedures**

.01 When the chapter, any chapter officer or chapter negotiating committee (by whatever name) has negotiated any agreement, it shall, prior to submitting the agreement to the bargaining unit members for ratification or rejection, submit one copy to the Labor Relations Representative assigned to the chapter.

.02 Upon receipt of the negotiated agreement, the Labor Relations Representative shall provide a copy of the Agreement to the Field Director.

(a) Negotiated agreements must be reviewed by the Labor Relations Representative and the Field Director before a chapter takes a formal ratification vote.

.03 The Field Director shall forward to the Chapter President, without delay, a review that determines whether the Agreement is in compliance with applicable laws, CSEA's Constitution and Bylaws, and/or policies of the Association. If the review recommends disapproval, the Field Director shall include the specific reasons as to why such a recommendation is being made. In cases where a verbal review is necessary, the Field Director shall immediately follow up such verbal review in writing to the Chapter President. The review letter shall be provided in writing to the Chapter President prior to the ratification meeting.

.04 After receipt of the aforementioned written review from the Field Director, the Chapter President, in accordance with Article XII, Section 3, of the Association Bylaws, shall call a meeting of all members of the bargaining unit(s) at which the leadership shall outline all the provisions of the negotiated agreement and provide an opportunity for discussion, debate, answering of questions, and voting.

Chapter leadership shall not cause an unreasonable and unjustifiable delay in scheduling a ratification meeting, following Field Director review.

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(a) Such meetings shall be open to attendance by all members of the bargaining unit(s), whether or not they are CSEA members. Non-members in attendance shall be granted the right to participate in the discussions and debate. **They shall not, however, have the right to make motions or vote.**

(b) If the Association is recommending rejection of the negotiated agreement, an Association representative shall be in attendance at the ratification meeting and shall be provided ample opportunity to outline the rejection and reasons therefore.

(c) If the chapter’s constitution (as approved by the Association) specifies voting by mail or online balloting, the meeting described herein shall be a contract information meeting with balloting to begin no sooner than the day after the informational meeting. If the chapter’s constitution as approved by the Association specifies for voting by site ballot, the meeting described herein shall be a contract information meeting with balloting to occur no sooner than the day after the informational meeting.

(1) Chapters may choose to have more than one (1) contract information meeting.

.05 The meeting notice shall be issued to all bargaining unit members no later than five (5) working days before the scheduled meeting.\* The chapter executive board shall determine the most efficient means of distributing the notice, which may be to individual bargaining unit members utilizing the district mail system, distribution by site representatives or others, or by posting in prominent location(s) at each work site.

\* The Executive Director, or designee, may approve a notice period of less than five (5) working days, upon request of the chapter executive board and the concurrence of the Field Director.

.06 In addition to the meeting notice, the chapter shall provide each CSEA member of the bargaining unit(s): (1) a copy of the negotiated agreement, or a summary of the negotiated agreement; and (2) a statement indicating that the Negotiating Committee recommends ratification of the negotiated agreement.

(a) The Negotiating Committee shall not recommend rejection of a negotiated agreement reached under good faith bargaining, unless in reference to an employer’s last, best, final offer.

**.10 Ratification Vote**

The ratification vote shall be by secret ballot conducted in accordance with procedures as specified in the chapter’s Constitution as approved by the Association:

**.01 Voting by CSEA members in good standing of the appropriate bargaining unit(s) present at a ratification meeting conducted in accordance with Section .9, above.**

(a) The meeting notice shall include appropriate information and notification that the secret ballot vote on ratification will be conducted at the meeting, and shall contain the times allotted for discussion/debate, and the times during which voting will take place.

(b) Polls for voting shall not be opened until the period for discussion/debate has begun.

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(c) At least two Tellers shall be appointed to conduct the balloting. Tellers shall verify CSEA membership in good standing and members shall sign or initial for receipt of the ballot next to their name on the membership list. Ballots shall be deposited in a closed ballot box.

Bargaining unit members who are not members of CSEA shall not be permitted to vote.

(d) Absentee or proxy votes shall not be permitted.

(e) Ballots shall be tallied and results announced prior to close of the meeting.

**.02 Voting by mail ballot.**

(a) Ballots and return addressed envelopes, together with instructions for completion and return to a designated chapter officer (election official), shall be distributed to all CSEA members in good standing of the appropriate bargaining unit(s).

(b) Ballots shall be mailed via First Class, U.S. Postal Service, to the member's home address, at least ten (10) calendar days in advance of the date set for receipt of the completed ballot by the designated official.

(c) A double envelope system for return shall be used, providing a space for signature, CSEA member number, and other identification of the voter on the outside of the return addressed envelope to verify voter eligibility.

(d) At least two Tellers shall be appointed to oversee the election process and conduct the vote tally.

(e) Any and all costs of mail balloting shall be the sole responsibility of the chapter.

**.03 Voting by site ballot.**

(a) The location(s) and number of voting sites and the date and times for conducting the balloting shall be determined by the executive board.

(b) At least two Tellers shall be appointed to conduct the balloting at each voting site. Listings of members in good standing eligible to vote at each of the designated voting sites shall be provided to the Tellers.

The list shall be broken down into separate lists containing only the names and other appropriate identification of members eligible to vote at each particular voting site.

(c) Members shall be notified at least five (5) working days in advance of the date, time(s) and location where the balloting will be conducted for their designated site. Notice may be by any of the means listed in Section .9.05 of this policy.

The Executive Director, or designee, may approve a notice period of less than five (5) workings days upon request of the executive board.

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(d) Tellers shall verify CSEA membership in good standing and the members shall sign for receipt of the ballot next to their name on the voter list. Ballots shall be deposited in a closed ballot box.

(e) Members shall be required to cast their ballots at their designated voting site only.

Voters whose names are not on the site list shall be permitted to cast a challenged ballot, which shall be placed in an appropriately identified envelope, sealed and set aside until all other votes have been tallied. If the number of challenged ballots could affect the outcome of the vote, voter eligibility shall be determined and valid ballots then counted.

(f) Ballots shall be counted and verified separately for each voting site, prior to combining the count for the final tally. However, each site’s ballots shall not be tallied separately.

Counting ballots means to count the number of ballots cast without unfolding the ballots and without viewing how the ballot was marked. Tallying ballots means to unfold and tally the results of the ballots.

**.04 Voting by online ballot.**

(a) An online ballot shall be requested from the CSEA Executive Department prior to the commencement of online balloting.

(b) Notice of online balloting, along with the appropriate information needed to cast an online ballot (such as member identification and password), shall be mailed via U.S. First Class mail to each CSEA member in good standing of the appropriate bargaining unit(s) at his/her last known home address at least ten (10) calendar days in advance of the date set for online balloting to close. Chapters may distribute the notice of online balloting via e-mail only if the chapter has a complete and accurate list of e-mail addresses for all CSEA members in good standing of the appropriate bargaining unit(s).

(c) Chapters shall ensure that an election conducted via online balloting shall be open on the same day the election notice (referenced in 610.10.04) is mailed, and shall remain open until the date set to close.

(d) Members must also be given the option of casting a paper ballot.

(1) A paper ballot, return addressed envelope, and instructions for completion and return to a designated chapter officer (election official), shall be mailed via U.S. First Class mail to the last known home address of any member who requests a paper ballot in a timely manner.

The chapter shall set the deadline for request of a paper ballot, which shall not be less than five (5) calendar days prior to the date set for online balloting to close.

(2) A double-envelope system for return shall be used, providing a space for signature, CSEA member number, and other identification of the voter on the outside of the return addressed envelope to verify voter eligibility.

(3) The Tellers shall immediately inactivate a member’s online ballot upon receipt of a timely request for a paper ballot.



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(e) At least two Tellers shall be appointed to oversee the election process, retrieve the results of the online balloting, and tally any paper ballots cast.

(f) Any and all costs of online balloting shall be the sole responsibility of the chapter.

.11 **Chapters With More Than One Bargaining Unit.**

.01 **Merged Bargaining.** Merged bargaining with pooled voting is an alternative form of negotiation and ratification for chapters with more than one bargaining unit.

(a) Prior to submission of the initial proposals to the employer, each bargaining unit shall separately determine whether negotiations for the units should be merged, including a pooled ratification vote, or whether negotiations will be considered separate for each unit and thereby subject to separate, independent ratification votes by each unit.

(b) The employer shall be notified of the agreed-upon ground rules for ratification at the outset of negotiations.

(c) No bargaining unit can be included in merged negotiations without its consent. Once consent is given, no unit can withdraw from merged negotiations for that contract without the consent of all parties including, if initial proposals have been submitted to the employer, the consent of the employer.

.02 **Negotiated Agreement.** Each unit shall vote separately on ratification of the negotiated agreement, unless merged bargaining with pooled voting has been agreed to in accordance with Section .2.05 of this policy.

.03 **Ratification Vote.** Separate colored ballots shall be used for each unit and each unit's vote tallied separately UNLESS the members of each unit agreed to pooled voting.

.12 **Violations of Ratification Policies and Procedures**

.01 If, within six (6) months of a ratification vote, the Field Director determines that a ratification procedure violated policies and procedures of the Association assuring fair representation, s/he may order that the results of the ratification vote be set aside and a new ratification vote be conducted.

.02 A chapter may appeal the Field Director's decision to set the results of the ratification vote aside. Such appeal shall be in writing, addressed to the Association President with a copy to the Executive Director, postmarked within ten (10) calendar days of the date of the notice from the Field Director, and shall stipulate the reasons why the chapter believes the results of the original ratification vote should stand.

Within five (5) working days, the appeal will be considered by the Association President or his/her designee, the concerned Area Director, and the Executive Director or his/her designee, with the decision referred to the CSEA Board of Directors for ratification at its next meeting. (If the Area Director is a member of the appealing chapter, the Association President may appoint another Board member to consider the appeal.)

1 Immediately following action on the appeal, the Executive Director shall cause the  
2 Director of Field Operations, Field Director, Labor Relations Representative,  
3 Regional Representative and Chapter President to be orally notified of the approval  
4 or denial of the appeal, and shall issue a follow-up written notification to all  
5 concerned.

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7 .13 **Contract Execution.**

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9 If ratification is properly approved over the objection of the Association  
10 representative, the Association shall execute the negotiated agreement thereto  
11 together with authorized chapter personnel, unless one or both of the following exist:

- 12
- 13 .01 The negotiated agreement contains provisions which are unlawful.
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- 15 .02 The negotiated agreement is in violation of CSEA’s Constitution & Bylaws,
- 16 Policies, or procedures of the Association assuring fair representation.
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- 18 (a) If within six (6) months of a ratification vote, the Field Director determines
- 19 that a negotiated agreement violates law and/or CSEA’s Constitution &
- 20 Bylaws, Policies, or procedures of the Association assuring fair
- 21 representation, s/he may prohibit the negotiated agreement from taking effect
- 22 and/or considered for ratification, including informing the employer that the
- 23 specific negotiated agreement is not legal and/or violates CSEA’s Constitution
- 24 & Bylaws, Policies, or procedures of the Association assuring fair
- 25 representation.
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- 27 (b) A chapter may appeal the Field Director’s decision to prohibit the negotiated
- 28 agreement from taking effect and/or considered for ratification. Such appeal
- 29 shall be in writing, addressed to the Association President with a copy to the
- 30 Executive Director, postmarked within ten (10) calendar days of the date of
- 31 the notice from the Field Director, and shall stipulate the reasons why the
- 32 chapter believes the results of the original ratification vote should stand.
- 33

34 Within five (5) working days, the appeal will be considered by the  
35 Association President or his/her designee, the concerned Area Director, and  
36 the Executive Director or his/her designee, with the decision referred to the  
37 CSEA Board of Directors for ratification at its next meeting. (If the Area  
38 Director is a member of the appealing chapter, the Association President may  
39 appoint another Board member to consider the appeal.)

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41 Immediately following action on the appeal, the Executive Director shall  
42 cause the Director of Field Operations, Field Director, Labor Relations  
43 Representative, Regional Representative and Chapter President to be orally  
44 notified of the approval or denial of the appeal, and shall issue a follow-up  
45 written notification to all concerned.

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- 47 .03 The chapter shall, immediately upon ratification of the negotiated agreement (by the
- 48 chapter and the employer), provide the Labor Relations Representative assigned to
- 49 service the chapter with three (3) signed copies of the negotiated agreement.
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**State of California**

**EDUCATION CODE**

**Section 45256**

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45256. (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those that are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

(b) All of the following are exempt from the classified service:

(1) Positions which require certification qualifications.

(2) Full-time students employed part time.

(3) Part-time students employed part time in any college workstudy program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds.

(4) Apprentice positions.

(5) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board or by the commission when so designated by the commission.

(6) Part-time playground positions, where the employee is not otherwise employed in a classified position. Part-time playground positions shall be considered part of the classified service when the employee in the position also works in the same school district in a classified position.

(c) (1) Employment of either full-time or part-time students in any college workstudy program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(2) Nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provisions of this law.

(d) No person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above shall be employed outside the classified service.

(e) A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than 87½ percent of the normally assigned time of the majority of employees in the classified service.

(Amended by Stats. 2002, Ch. 1100, Sec. 3. Effective January 1, 2003.)

MUSICK, PEELER & GARRETT LLP  
ATTORNEYS AT LAW

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LOS ANGELES  
ORANGE COUNTY  
SAN DIEGO  
SAN FRANCISCO  
SANTA BARBARA  
WESTLAKE VILLAGE

FILE NO.: 99999.349

September 30, 2015

VIA EMAIL & U.S. MAIL  
[cspca01@gmail.com](mailto:cspca01@gmail.com)

George Cole  
Executive Director  
California School Personnel Commissioners Association  
15350 Tacony Road  
Apple Valley, CA 92307

Re: Application of Alum Rock PERB Decision to Merit System Districts

Dear Mr. Cole:

You have asked us to prepare a legal opinion addressing whether *California School Employees Association, Chapter 305 v. Alum Rock Union Elementary School District* (1983) PERB Decision No. 322, which held, in part, that the allocation of classifications into occupational groups, the allocation of positions to classifications, and the salary ranges of existing classifications are all proper subjects for negotiation, applies to merit systems.

We find that the *Alum Rock* decision does not apply to merit systems, and further, that a Personnel Commission has the sole and exclusive authority to “allocat[e] positions to appropriate classes, arrang[e] classes into occupational hierarchies, determin[e] reasonable relationships within occupational hierarchies,” and further, the personnel commission must recommend salary schedules for each classified service, which recommendations then serve as the school district’s initial proposal to the employee representative.

We discuss the bases for our opinion in detail below.

While *Government Code* Section 3543.2 states that matters relating to wages are within the scope of union representation, Section 3540 provides that nothing contained in the Educational Employment Relations Act (“EERA”) shall supersede provisions of the *Education Code* that establish and regulate a merit service system.

Under *Education Code* Sections 45260(a) and 45256, it is a Personnel Commission’s sole statutory right to “...classify all employees and positions within the jurisdiction of the governing board....” The Personnel Commission’s statutory right includes,

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but is not limited to, "...allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications."

Further, Education Code Section 45268 provides as follows:

The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. **No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission.** (Emphasis added.)

Based on the foregoing statutory authority, a Personnel Commission has the sole and exclusive authority to classify positions. It is also obligated to recommend the governing board salary schedules for the classified services, as further explained in several Public Employment Relations Board opinions:

In *United Public Employees Local 390, SEIU, AFL-CIO v. San Lorenzo Unified School District* (1982) PERB Decision No. 274, the SEIU asserted that the District violated the EERA by "refusing to negotiate with SEIU before making a recommendation to the personnel commission of the salary range for a newly created position of lead custodian. PERB was asked to determine "whether the personnel commission's recommendation on the initial salary range for the lead custodian position is negotiable or within the exclusive province of the personnel commission." *Id.* at p. 6. In this case, the SEIU argued it had the right to negotiate the new position's placement on the classified salary schedule, while the District argued that "the personnel commission is empowered to initially recommend the salary range for a newly-created position, and only then may the Union and the District negotiate wage rates."

PERB found that the District's position was correct. Relying on *Sonoma County of Education v. PERB* (1980) 102 Cal.App.3d 689, where the court recognized the "school district could negotiate salaries so long as the relationship between salaries for job classifications within the same occupational group, as established by the personnel commission, remains the same," the hearing officer reasoned: "if these relationships cannot be disturbed once initial salary levels are set, it is only logical that the personnel commission must have authority to set salary rankings in the first place. The personnel commission's statutory authority to set classification relationships would be effectively thwarted if before it could act, salaries for new positions were negotiated between the Union and the District." *Id.* at p. 8. Thus, based on the foregoing reasoning, PERB determined that "the personnel commission, pursuant to Education Code

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section 45268, *supra*, does have the sole statutory authority to set the initial salary ranges. Once established, the District would be under the obligation to negotiate with the Union over wages.” *Id.* at p. 8.

The *Sonoma County* decision was later echoed by the California Supreme Court, which described the powers of a personnel commission as follows:

Although Education Code section 45268 forbids salary changes which effectively “disturb the relationship which compensation scheduled bear to one another,”...negotiation of salary adjustments for individual job classifications [is] permissible provided that the relationship between positions established by the personnel commission remain intact.”

*San Mateo City School Dist. v. PERB* (1983) 33 Cal.3d 850, 865; *see also, California School Employee Assoc., et al. v. Antioch Unified School Dist.* (1985) PERB No. 515 (The Education Code related to merit systems require districts to negotiate wage rates consistent with job classifications established by the personnel commission. However, personnel commission’s salary recommendations serve only as a district’s initial proposal in negotiating employee salaries. A district cannot simply implement the salary recommendation without first engaging in negotiation.); *California School Employee Assoc., et al., v. San Bernardino City Unified School Dist.* (1989) PERB No. 723 (“...the District shall not be obligated to negotiate proposal which would change the relative relationships as defined under Education Code section 45268, of the individual job classifications as established by the personnel commission within an occupational group or which would change the relative relationships among occupation groups.”).

Unlike the cases discussed above, the Alum Rock Union Elementary School District is not a merit district. Careful review of the *Alum Rock* decision reveals that the district’s obligations to negotiate in that case were governed by *Education Code* section 45103, which is entitled “Classified Service in District Not Incorporating the Merit System,” and applies to school districts that opted out of the merit system. Furthermore, the opinion focuses only on the negotiation obligations between the District and the Union, and does not involve a personnel commission whatsoever. Thus, PERB’s finding that the Alum Rock District was obligated to negotiate the allocation of classifications into occupational groups, the allocation of positions to classifications, and the salary ranges of existing classifications, among other issues, is inapplicable to districts that adopted the merit system.

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Please do not hesitate to contact the undersigned with any questions.

Very truly yours,



Kristine E. Kwong  
for MUSICK, PEELER & GARRETT LLP

KEK:bp

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October 9, 2015

Via Electronic Mail Only

George Cole, Executive Director  
California School Personnel Commissioners Association  
15350 Tacony Road  
Apple Valley, CA 92307

Re: CSEA Position Regarding CSPCA Legal Opinion Concerning  
Application of Alum Rock PERB Decision to Merit System Districts

Dear Mr. Cole:

CSEA is in receipt of the legal opinion you forwarded to Field Director Charley Goetchius regarding the above mentioned matter. CSEA has had an opportunity to review and analyze the legal opinion and offers our organizational response and position.

In non-merit districts it is clear that a reclassification plan affects matters within the scope of bargaining and must be negotiated. (*Alum Rock Union Elementary School District* (1983) PERB Dec. No. 322 (“*Alum Rock*”).) It is CSEA’s understanding that the California School Personnel Commissioners’ Association (“CSPCA”) is intending to present a legal opinion that *Alum Rock* does not apply to merit system districts at its upcoming merit system conference. The first question presented is whether this same right to negotiate the various components of a reclassification applies in districts which have adopted the merit system. (Ed. Code §§ 45240 et seq.) The second question is whether CSEA Policy 610 applies to agreements with, or actions by, a personnel commission.

What is presented in the CSPCA legal opinion is nothing new and is well settled law. The Education Code sections at issue have been in place for decades and the cases cited are from the 1980’s. It is true that personnel commissions do have the authority to classify and reclassify positions in the classified service but there are aspects of reclassification for which the public school employer is responsible and which are therefore negotiable. As held in *Sonoma County Board of Education v. Public Employment Relations Board* (1980) 102 Cal.App.3d 689 (“*Sonoma*”) and *San Lorenzo Unified School District* (1982) PERB Dec. 274 – cited in the CSPCA opinion -- salary and wages are negotiable with the District as are duties (Ed. Code § 45109), and reductions in hours (*North Sacramento School District* (1981) PERB Dec. No. 193) Policy 610 does not apply to agreements with, or actions by, a personnel commission since Policy 610 covers agreements between CSEA “and the employer.” A personnel commission is not an employer under the Educational Employment Relations Act with whom an exclusive employee representative may “negotiate.” (Govt. Code § 3540.1(k).)



## 1. NEGOTIABILITY OF COMPONENTS OF RECLASSIFICATION IN MERIT DISTRICTS

### A. The Alum Rock Decision

In *Alum Rock*, PERB held that the district unilaterally adopted and implemented a reclassification plan for classified employees without negotiating with CSEA. PERB held, relying on *Healdsburg Union High School District* (1980) PERB Dec. No. 132<sup>1</sup> and National Labor Relations Board and other state public employment relations cases that this classification plan affected matters within the scope of representation and was therefore negotiable. (*Alum Rock*, at pp. 6-7.) PERB used the test stated in *Anaheim Union High School District* (1981) PERB Dec. 177 (the “*Anaheim test*”) to determine the negotiability of those portions of the *Alum Rock* classification plan which are not expressly enumerated as terms and conditions of employment in Government Code section 3543.2.

Under the *Anaheim* test, PERB held that the creation and abolition of classifications was not a negotiable subject because management has an overriding interest in determining which functions are necessary to the accomplishment of its mission and which functions no longer serve its purposes. However, PERB held that those aspects of the creation or abolition of a classification which merely transfer existing functions and duties from one classification to another involve no overriding management prerogative. Thus, the decision to transfer duties from one classification to another was negotiable.

PERB held the following items were negotiable:

... [T]he District was obligated to negotiate regarding: (1) the transfer of work from one classification to another; (2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned and any changes in salaries or salary ranges of existing classifications; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; (6) the grouping of classifications into occupational groups; and (7) the effects, if any, on terms and conditions of employment of those classification decisions within the District’s exclusive prerogative, including the creation of new classifications to perform functions not previously performed, the abolition of classifications to cease engaging in functions previously performed, and the revision of job specifications.

(*Id.*, at p. 23.)

The *Alum Rock* decision was made in the context of a non-merit district. However, PERB made no distinction between merit and non-merit systems in its opinion. The issue of merit systems was not discussed in *Alum Rock*.

In order to determine which components of a reclassification plan are negotiable in the context of a merit district, we must look to the provisions of the Education Code giving certain authority to personnel commissions. EERA contains a supersession provision in Government Code section 3540:

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<sup>1</sup> This case was later appealed to the Supreme Court (*San Mateo City School District v. Public Employment Relations Board* (1983) 33 Cal.3d 850) and then remanded to PERB for further proceedings which can be found at *Healdsburg Union High School District* (1984) PERB Dec. No. 375.

*This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective bargaining agreements. (Emphasis added.)*

This statute has been interpreted to mean that negotiations on an issue addressed in the Education Code are prohibited only where the provisions of the Education Code would be “replaced, set aside, or annulled.” (*Healdsburg Union High School District (1984) PERB Dec. No. 375.*) Therefore, unless a matter is foreclosed by the provisions of the Education Code, it is negotiable. Where the Education Code does not give specific authority to personnel commissions to make decisions, or where the Education Code specifically delegates authority to the public school employer to make decisions, PERB would apply the *Anaheim* test to determine whether the component was negotiable.

**B. Basic Education Code Framework Between Public School Employers and Personnel Commissions**

Public school employers have the right to determine what services they will provide and what positions are needed to carry out the mission of the school district. Personnel commissions are responsible for creating and maintaining an equitable civil service framework for the purpose of recruiting, selecting and advancing employees under conditions of political neutrality, equal opportunity, and competitive merit. (*Sonoma*, at p. 694.) Generally, a public school employer, union, or employee will request that a position be classified or reclassified. It is then the authority of the personnel commission to carry out that classification or reclassification.

**C. Authority of Personnel Commissions**

The Education Code provides that a personnel commission has the authority to “classify” all non-exempt classified employees. Education Code section 45256(a) states:

The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those that are exempted from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. “To classify” shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

This means that personnel commissions have the authority to classify and reclassify classified positions. However, the public school employer has the authority to determine what positions are necessary to its mission. A public school employer would inform a personnel commission of the positions it requires and it is the duty of the personnel commission to classify or reclassify positions in order to accommodate the school district.

Further, personnel commissions have the authority to transfer employees to the higher class when they are reclassified and to provide guidelines for the basis of a reclassification. Education Code section 45285(a) and (b) state as follows:

(a) When all the positions in a class are reclassified to a higher class, the incumbents of the positions who have been in the class for two or more years may be reclassified with their positions by the personnel commission. When a portion of the positions within a class are reclassified to a higher class, an incumbent who has a continuous employment record of two or more years in one or more of the positions being reclassified may be reclassified with his or her position as provided by personnel commission rule.

(b) The basis for a reclassification of the position shall be a gradual accretion of duties and not a sudden change occasioned by a reorganization or the assignment of completely new duties and responsibilities. Determinations as to gradual accretion shall be *on the basis of guidelines provided by the personnel commission rules*.

Also, no classification or reclassification plan may be adopted by a personnel commission until the exclusive bargaining representative and the public school employer have been given reasonable notice of the proposed classifications or reclassifications. Education Code section 45285.5 provides as follows:

No position in the classification or reclassification plan which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission *until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposed classifications or reclassifications*. (Emphasis added.)

Nothing prevents CSEA from negotiating what school districts recommend to their personnel commissions. Similarly, nothing prevents CSEA from attending meetings of a personnel commission, making comments or presentations to a personnel commission, or applying pressure through the commissioner we select or politically.

#### **D. Limits on the Authority of Personnel Commissions and Negotiability of Reclassification Components**

There are other components of a reclassification which are reserved to the public school employer and are therefore negotiable with the exclusive representative.

##### **1. Establishing Positions**

Public school employers may establish the positions they require. Education Code section 45259 discusses "restricted" employee positions – the authority of the governing board to restrict initial appointment of new employees to mentally, physically, or developmentally disabled persons. In doing so, it allocates authority to the governing board to establish positions. Education Code section 45259 provides in part:

*If the governing board of any school district establishes positions and restricts initial appointment of new employees to mentally, physically, or developmentally disabled persons, then such positions shall, in addition to the regular class title, be classified as "restricted."*

However, as established in *Alum Rock*, even in a non-merit district, the establishment of positions is not negotiable unless the creation or abolition of a classification merely transfers existing functions and duties from one classification to another.

## 2. Duties of Classified Personnel

Governing boards, not personnel commissions, have the authority to fix and prescribe the duties for all persons in the classified service. Education Code section 45109 provides as follows:

*Governing Boards shall fix and prescribe the duties to be performed by all persons in the classified service and other positions not requiring certification qualifications of the school district, except those persons employed as part of a personnel commission staff as provided in Article 6 (commencing with Section 45240) of this Chapter.*

*This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were part of Article 6 (commencing with Section 45240) of this chapter. (Emphasis added.)*

This conclusion is bolstered by Education Code section 45110 which states in part:

*Classified employees shall not be required to perform duties which are not fixed and prescribed for the position by the governing board in accordance with Section 45109, unless the duties reasonably relate to those fixed for the position by the board, for any period of time which exceeds five working days within a 15-calendar-day period except as authorized herein . . . Notwithstanding the provisions of this section, a personnel commission and governing board, or a governing board in a non-merit system district, may, by written rule, provide for an upward salary adjustment for any classified employee required to work out of classification for any period of time less than that required herein. . . . This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were part of Article 6 (commencing with Section 45240) of this Chapter. (Emphasis added.)*

This section affirms that the governing board fixes and prescribes the duties for classified positions.

As the fixing of duties is under the authority of the governing board, the duties of classified positions may be negotiated with the public school employer.

## 3. Recommendations for Minimum Education and Work Experience

With regard to the minimum educational and work experience for classified positions, the governing board may make recommendations to its personnel commission. Education Code section 45276 provides:

The governing board shall fix the duties of all positions a part of the classified service as required by Section 45109. *The board may recommend the minimum educational and work experience requirements for classified positions to the personnel commission. Minimum qualification requirements shall be subject to approval of the commission.*

In approving minimum educational and work experience requirements for classified positions, the commission shall insure that such requirements reasonably relate to the duties of the position, as established by the governing board, and that they will admit an adequate field of competition. No requirements may be approved which unduly or unreasonably restrict the field of competition.

*The position duties shall be prescribed by the board and qualification requirements for the position class shall be prepared and approved by the commission, required by this section, prior to issuance of an announcement calling for a competitive examination to fill position vacancies. (Emphasis added.)*

A personnel commission also has the authority to determine, for promotional positions, service in class required; minimum qualifications of education, training and experience; and length of service subject to the recommendations of the school board. Education Code section 45272 states in part:

All applicants for promotional examinations shall have the required amount of service in classes designated by the commission or meet the minimum qualifications of education, training, experience, and length of service, which shall be determined by the commission to be appropriate for the class for which they have applied.

CSEA can, of course, negotiate with the public school employer as to what recommendations it makes to its personnel commission regarding minimum educational and work experience requirements for classified positions.

#### 4. Hours of Work

In *North Sacramento School District* (1981) PERB Dec. No. 193, PERB held that hours is an enumerated subject and a reduction in hours was a negotiable subject even though the district was a merit system district. Citing to *Healdsburg Union High School District* (1980) PERB Dec. No. 132, at p. 77, PERB held that reductions in hours were “inextricably bound to employees’ wages and hours” and that the decision to reduce hours was within the scope of representation.

#### 5. Salary and Wage Determination

Finally, while a personnel commission has the right to make an initial salary recommendation, the governing board may approve, amend, or reject these recommendations although a governing board may not disturb the relationship which compensation schedules bear to one another as set by the commission.

##### a. Education Code Provisions

Education Code section 45268 states:

*The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission. (Emphasis added.)*

Also, Education Code section 45160 grants to the governing board the authority to fix and pay the compensation of classified employees. Education Code section 45160 states as follows:

The governing board of any school district, including city boards of education, shall fix and order paid the compensation of persons a part of the classified service and other employees not requiring certification qualifications employed by the board unless otherwise prescribed by law.

Consistently, Education Code section 45162(c) states as follows:

A governing board may, at any time, increase the wages or salaries of classified employees if the board or, in a merit system district, the personnel commission approves a classification change in a position, a class of positions, or any or all of the positions or classes of positions a part of the classified service.

Therefore, salary for classified positions may be negotiated with the school district so long as the relationship between the individual positions as established by the personnel commission remains intact. (*Sonoma County Board of Education v. Public Employment Relations Board* (1980) 102 Cal.App.3d 689 (“*Sonoma*”); *Cajon Valley Union School District* (1989) PERB Dec. No. 766.)

b. PERB Cases Regarding Wages and Salary in a Merit System

In *San Lorenzo Unified School District* (1982) PERB Dec. 274, PERB followed *Sonoma* to hold that a personnel commission establishes the initial salary range but the district must then negotiate over wages:

We conclude that the personnel commission, pursuant to Education Code section 45268, *supra*, does have the sole statutory authority to set the initial salary ranges. Once established, the District would be under the obligation to negotiate with the Union over wages.

(*Id.*, at p. 8.)

In *Antioch Unified School District* (1985) PERB Dec. No. 515, PERB held that, where CSEA had requested negotiation on wages *during a reclassification*, *Sonoma* requires the District negotiate wages.<sup>2</sup> PERB stated:

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<sup>2</sup> In the proposed decision in *Antioch*, the ALJ found that the district had violated 3543.5(a), (b), and (c) by unilaterally transferring duties among job classifications, by unilaterally changing a job title, and by unilaterally

The court's conclusion was that, subject to one limitation, the merit system of personnel administration codified in the Education Code does not exempt a merit system school district from the obligation imposed on school employers under the EERA to negotiate matters related to the subject of wages. The one limitation was that the District may not negotiate wage rates which would negate the system of job classification structured by the personnel commission. Thus, where occupationally related classifications have been hierarchically arranged to form an occupational group (e.g., a clerical group or a custodial series), the wage relationships within that group must reflect the hierarchical relationships of the classifications as established by the personnel commission.

(*Id.*, at p. 13.)

In 1989 PERB issued two additional opinions which followed *Sonoma*. In *San Bernardino City Unified School District* (1989) PERB Dec. No. 723, the District argued that *Sonoma* had been overruled by a 1981 amendment to Education Code section 45256. PERB held that the 1981 amendment did not overrule *Sonoma* and therefore, the District was ordered to:

[Cease and desist from] [f]ailing to meet and negotiate in good faith upon request with the exclusive representative of the classified employees concerning wages and salaries paid to individual job classifications, except that the District shall not be obligated to negotiate proposals which would change the relative relationships as defined under the Education Code section 45268, of the individual job classifications as established by the personnel commission within an occupational group or which would change the relative relationships among occupational groups.

(*Id.*, Order at p. 54.)

In *Cajon Valley Union School District* (1989) PERB Dec. No. 766, PERB similarly stated that the 1981 amendment to Education Code section 45256 did not overrule the *Sonoma* decision, citing to *San Bernardino City Unified School District, supra*. PERB held that personnel commissions do not have exclusive salary-setting authority but, rather the public school employer must negotiate wages with the exclusive representative:

[I]n the absence of exclusive salary-setting authority vested in a civil service commission, it remains an unfair practice for the employer to alter the clear terms of the collective bargaining agreement without the consent of the exclusive representative.

(*Id.*, at p. 3.)

c. The *Sonoma* Decision

Since the CSPCA's legal opinion discussed *Sonoma* specifically, it will be addressed in detail here. *Sonoma's* holding is simply that a union may negotiate salaries for classified positions with the

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changing wages. However, PERB held that CSEA's statement of charges was narrowly drawn to include only a charge that wages were set unilaterally. Therefore, PERB held that the ALJ exceeded the scope of the charge. Therefore, PERB addressed only the salary issue.

school district so long as the relationship between the individual positions as established by the personnel commission remains intact.

In *Sonoma*, the union became aware of a pending study by the personnel commission related to salaries of the various classified positions and the proposed realignment or reclassification of certain positions on the salary schedule. The union then demanded that the governing board meet and negotiate regarding the salaries of individual job classifications within the bargaining unit. The governing board refused to negotiate and the union filed an unfair practice charge with PERB. PERB held that the governing board's refusal to negotiate salaries violated Government Code section 3543.5(c) and issued a cease and desist order with the proviso that the governing board had no obligation to bargain proposals which would change the relationships of individual job classifications within an occupational group, as established by the personnel commission. (*Sonoma*, at pp. 692-693.) The district appealed to the court. The court held:

The statutory model established an independent personnel commission (§ 45253) charged with the duty to classify all school employees and positions not otherwise expressly exempted (footnote omitted) (§45256; see also § 45258) and to enact rules binding upon the governing board designed to promote efficiency and merit employment (§ 45260). Such rules are to provide procedures to be followed by the governing board applicable to all the classified service concerning-inter alia-“compensation within classification” (§45261 subd. (a)). *Although the governing board alone is empowered to fix compensation for those employed within the classified service, (citations omitted) the Commission is authorized to recommend salary schedules for the classified service which the governing board may approve, amend, or reject, provided that no changes shall operate to disturb the relationship between compensation schedules established in the classification by the Commission.* (Citations omitted.) (Emphasis added.)

(*Sonoma*, at pp. 695-696.)

The *Sonoma* court then analyzed the purposes of EERA and the legislative intent to achieve an accommodation between the merit system and collective bargaining infrastructures. (*Sonoma*, at pp. 697-701.) The court's final holding was:

We construe the statutory intentment as manifesting a legislative policy that in the areas of collective bargaining authorized under the provisions of the Rodda Act [EERA], those provisions prevail over conflicting enactments and rules and regulations of the public school merit or civil service system relating to the matter of wages or compensation of its classified service. Accordingly, we hold that the Board is under a duty to bargain in good faith with [the union] concerning proposals related to the salaries or wages of the represented unit within the classified service. We further hold that no restriction is imposed on the Board under the provisions of section 45268 in negotiating salary adjustments for individual job classifications within the same occupational group provided that the relationship between such individual positions as established by the Commission remains intact. (Footnote omitted.)



(*Sonoma*, at pp. 701-702.)<sup>3</sup>

Therefore, *Sonoma's* narrow holding is that personnel commissions have the authority to recommend salary schedules for classified employees but only governing boards may actually set the salary for classified positions. The *Sonoma* court did not comment on other aspects of personnel commission authority vis-à-vis school districts.

**E. Note On Collective Bargaining Agreement Provisions and Merit System Rules**

Education Code sections 45260 and 45261 should also be noted. These statutes prescribe the subjects about which personnel commissions may make rules and also provides that those rules are subject to the provisions of collective bargaining agreements. Education Code section 45260 provides that where there is a conflict between the personnel commission rules and the collective bargaining agreement, the rules shall not apply. This is bolstered by Education Code section 45261 which states that where matters within the scope of negotiations under EERA (Govt. Code § 3543.2) rules which apply to the bargaining unit *shall* be in accordance with the negotiated agreement. Education Code section 45260 provides as follows:

(a) The commission shall prescribe, amend, and interpret, subject to this article, such rules as may be necessary to insure the efficiency of the service and the selection and retention of employees upon a basis of merit and fitness. *The rules shall not apply to bargaining unit members if the subject matter is within the scope of representation, as defined in Section 3543.2 of the Government Code, and is included in a negotiated agreement between the governing board and that unit.* The rules shall be binding upon the governing board, but shall not restrict the authority of the governing board provided pursuant to other sections of this code.

(b) No rule or amendment which would affect classified employees who are represented by a certified or recognized exclusive bargaining representative shall be adopted by the commission until the exclusive bargaining representative and the public school employer of the classified employees who would be affected have been given reasonable notice of the proposal. (Emphasis added.)

Education Code section 45261 provides as follows:

(a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility,

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<sup>3</sup> Prior to *Sonoma*, in 1971, the Attorney General issued an opinion which held that the governing board of a merit system school district has the power to fix, determine, increase, or decrease the wages or salaries paid to classified employees of the District notwithstanding what is now 45256. (54 Cal. Attny. Gen. Ops. 77.) The Attorney General's opinion stated that pursuant to what is now Education Code section 45268, a personnel commission shall recommend salary schedule and the board shall approve, amend, or reject such recommendations with two restrictions. First, amendment by the governing board shall be adopted until the personnel commission is heard concerning the effect any amendments will have upon the principal of like pay for like service. Second, the governing board may not disturb the relative relationships between classifications as established by the personnel commission.

appointments, promotions, demotions, transfers, dismissals, resignations, layoffs, reemployment, vacations, leaves of absence, *compensation within classification, job analyses and specifications*, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

*(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer. (Emphasis added.)*

PERB also has addressed the issue of conflicting collective bargaining provisions and merit system rules. In *Chico Unified School District* (1983) PERB Dec. No. 286, CSEA members engaged in a sick out. The public school employer required classified employees who called in sick on that day to either provide a doctor's note or to sign an affidavit before a notary public attesting that they were actually sick. Without citing to Education Code sections 45260 or 45261, PERB held that the District was entitled to enforce the plain language of the collective bargaining agreement over the language of the merit system rule. (*Chico* at p. 14.)

## **2. APPLICATION OF POLICY 610**

Personnel commissions are not within the definition of "public school employer" under EERA. (Govt. Code § 3540.1(k).) EERA provides that employee organizations have the right to represent their members in their employment relations with public school employers only. (Govt. Code § 3543.1(a).) Even the employees who work for a personnel commission are employees of the public school employer. (*Hood v. Compton Community College District* (2005) 127 Cal.App.4th 954.) Therefore, CSEA cannot have a negotiated agreement with a personnel commission.

Policy 610.8.01 states:

*All negotiated agreements shall be reviewed by the Labor Relations Representative and the Field Director. No chapter shall enter into a negotiated agreement or take a formal ratification vote until it has been reviewed by the Labor Relations Representative and the Field Director.*

*(a) Negotiated agreements include any collective bargaining agreements, modifications thereof, memorandums of understanding, side letters, letters of understanding, or other contracted arrangements between the chapter and the employer. (Emphasis added.)*

As there can be no negotiated agreement with a personnel commission, Policy 610 does would not as written apply.

## **3. CONCLUSION**

Personnel commissions have the authority under the Education Code to classify and reclassify classified positions. However, the public school employer has the authority to determine the

October 9, 2015  
George Cole, Executive Director  
Page **12** of **12**

duties, wages, and hours assigned to classifications and therefore must negotiate those components with CSEA.

Sincerely,

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

A handwritten signature in black ink, appearing to read "Keith Pace". The signature is fluid and cursive, with a large loop at the end.

Keith Pace  
Director of Field Operations

KP:kp

Cc: Michael Bilbrey, Association President; Dave Low, Executive Director; Michael Clancy, Chief Counsel; Linda Vaughn, Chair, CSEA Merit System Committee; Jennie Batiste; Leticia Munguia, Field Director; Charley Goetchius, Field Director; File