

**BERKELEY UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION OF THE MERIT SYSTEM
THURSDAY, MAY 6, 2010, 4:00 P.M.**

AGENDA

1835 Allston Way
Berkeley, CA 94703
(Administrative Annex Conf. Room)

- | | |
|---|-------------------------|
| 1. Call to Order | INFORMATION |
| 2. Commissioner Roll Call | INFORMATION |
| Shirley Van Bourg, Chair <input type="checkbox"/> present <input type="checkbox"/> absent | |
| Dan Lee, Vice-Chair <input type="checkbox"/> present <input type="checkbox"/> absent | |
| Hiedi Hoffman Hintz <input type="checkbox"/> present <input type="checkbox"/> absent | |
| 3. Approval of Agenda | ACTION |
| 4. Approval of Minutes | ACTION 1-7 |
| a. Personnel Commission Meeting of Nov. 5, 2009/Dec 3, 2009 | |
| b. Personnel Commission Meeting of April 8, 2010 | |
| 5. Public Comments | INFORMATION |
| 6. Reports | INFORMATION |
| a. Collective Bargaining Units' Comments | |
| b. Secretary's Comments | |
| 1. Current Recruitment Report | |
| c. Commissioners' Comments | |
| 9. Approve the Following Eligibility Lists: | ACTION 8-9 |
| a. Parent Liaison/Rec. and Culture Facilitator – Bilingual (Open) | |
| b. Instructional Assistant –ECE (Open/Combined) | |
| 10. 2010-11 Proposed Personnel Commission Budget Public Hearing | DISCUSSION 10-12 |
| 11. Adoption of 2010-11 Personnel Commission Budget | ACTION 13-13 |
| 12. Reclassification Appeal Hearing – Rafael Adames | ACTION 14-14 |
| 13. Legal Opinion – Limited Tenure Employees | ACTION 15-20 |
| 14. Public Comments | INFORMATION |
| 15. Adjournment | BY 7:00 P.M. |

March 4, 2010

To: Personnel Commission of the Merit System

From: Denise Diggs-Ray

Subject: Correction of Minutes for November 5, 2009/December 3, 2009--Administrative Assistant Appeal Process

In the meeting of Thursday, November 5, 2009, after the confusion of whether my appeal was being heard at this meeting or not, a tentative date was set of November 10, 2009. I was then instructed to advise the Personnel Commission, by calling the Director of Classified Personnel (Francisco Martinez) whether or not I would be available on this tentative date, due to pre-arranged medical appointments which could not be changed.

On Friday, November 6, 2009, as instructed I called the Human Resources Office and spoke with the Administrative Assistant (Jana Jandra), and asked her to inform the Director of Classified Personnel I would not be available November 10, 2009. The Director should have advised the Commissioners.

However on November 7, 2009, I received a notice indicating the meeting would be November 10, 2009. On Monday, November 9, 2009, I was advised by Director Martinez that the Personnel Commission Chairperson (Dan Lee) said the meeting would take place anyway, without me.

I would the minutes corrected as follows:

November 5, 2009: "A tentative appeal hearing date was given."

December 3, 2009: "Denise Diggs-Ray followed the instructions given and advised the Director of Personnel she would not be available November 10, 2009. Did the Director inform the Commissioners?"

Personnel Commission of the Merit System Minutes

Thursday, April 8, 2010

BUSD Admin Annex Conf. Room

2134 Martin Luther King Jr. Way– Open Session

Berkeley, CA 94703

Personnel Commission Members

Shirley Van Bourg, Chairwoman

Dan Lee, Commissioner

1. Call to Order

Chairwoman Van Bourg called the meeting to order at 3:30

2. Commissioner Roll Call

Roll call was taken by Francisco Martinez, Director of Classified Personnel and Secretary of the Personnel Commission.

Present: Commissioner Shirley Van Bourg and Commissioner Dan Lee

3. Move to Closed Session

a. Selection of Third Commissioner

b. Personnel Matter

4. Report from Closed Session

The Commission set interviews for the new Commissioner for Thursday, April 22nd at 3:00 p.m..

5. Approve Agenda

Motion: approve agenda

Unanimously approved

6. Approval of Minutes

a. Personnel Commission Meeting of March 4, 2010

Corrections: #7, 3rd paragraph, second sentence; change “could get hired” to “are getting hired” and “could run rampant” to “is running rampant.” #8, 3rd sentence, change “believes” to “stated.”

Ms. Denise Diggs-Ray would like to see the changes to the Nov 5th minutes included in the next agenda.

Motion: To approve minutes from March 4, 2010 meeting as corrected.

Unanimously approved

7. Public Comments

Michelle Khazai, Berkeley Schools Volunteer Coordinator, spoke about the active volunteer program in the District. The program has placed over 1277 volunteers in 2009/2010. Volunteers are only assigned to credentialed and classified employees who request them. Ms. Khazai stated that the "volunteer program creates a link between the community and the school district." The program works with high risk students and increases support for public education.

Janet Huseby, BCCE member and Volunteer Coordinator at Berkeley High School, explained that BHS has approximately 55 parent volunteers that work sporadically at the front desk. They assist in answering phones, stuffing envelopes, taking visitors on tours and editing college entrance essays for students. Ms. Huseby stated that she "understood that BCCE was very upset about the parent volunteers, but that the volunteers could never take the place of a paid employee." She felt the Union's stance could alienate the community from volunteering with the school district.

Denise Diggs-Ray, BCCE, expressed concern that parent volunteers are not fingerprinted. She also expressed concern about volunteers having access to students' confidential information. Michelle Khazai responded stating that all volunteers are screened through the Megan's Law data base, present picture identification, provide two letters of reference that are contacted and are never left unsupervised. Paula Phillips, BCCE president, commented that the union did not disagree that volunteers are helpful and that parents have a right to help in their child's classroom. BCCE does not agree with volunteers performing clerical work while BCCE members are being laid off.

8. Reports

a. Collective Bargaining Units' Comments

Ms. Paula Phillips, BCCE President, stated the BCCE contract states the district may use volunteers to enhance the educational programs, but not to do clerical work.

b. Secretary's Comments

Francisco Martinez, Director of Classified Personnel, informed the Commission that the Board will act on classified employee lay offs on April 28th. Effected employees will be notified on April 29th and 30th. This is in compliance with the 45 day Education Code requirement.

Filled Positions

Instructional Specialist-Dance	Cragmont
Instructional Specialist-PE	Oxford
Instructional Specialist-PE	Jefferson
Instructional Technician-EDP	BAM
Instructional Assistant-ECE	Rosa Parks

c. Commissioners' Comments

Commissioner Lee requested a report regarding how possible management lay offs would effect the position of the Director of Classified Personnel at the next meeting..

9. Approve the Following Eligibility Lists:

- a. Parent Liaison/Rec. and Culture Facilitator – Bilingual (Open)
- b. Instructional Specialist - Dance (Open/Combined)
- c. Instructional Assistant –Special Ed. (Open/Combined)
- d. Food Service Assistant (Open/Combined)
- e. Instructional Assistant –ECE (Open/Combined)
- f. Instructional Technician – EDP (To Be Provided at Meeting)
- g. Food Service Satellite Operator (To Be Provided at Meeting)
- h. Sr. Food Service Assistant (To Be Provided at Meeting)
- i. School Bus Driver (Open) (To Be Provided at Meeting)

Motion: to approve eligibility list (b- i)

Unanimously approved

Paula Phillips, BCCE President, requested to pull list (a) because the District had not negotiated with BCCE over the bilingual classifications. Pasquale Scuderi, Director Personnel Services, stated that the BCCE contract requires the District to consult with the union and that the District had met with BCCE on March 17th, 2010 to meet the contractual obligations. Mr. Scuderi was present at the meeting to clarify for the Commission that the District is not required to

negotiate the positions with BCCE. Mr. Scuderi stated that it is management's right to create a position when needs arise. The District is required to consult and receive feedback from BCCE. The requirement is stated in the contract- it is not Education Code. Mr. Scuderi confirmed that the District had met the contractual obligation of consulting with the union regarding the creation of bilingual positions. Paula Phillips, BCCE, stated that BCCE did not agree with the way that Vision 2020 is being implemented. Commissioner Van Bourg did not believe it was within the purview of the commission to resolve the dispute between BCCE and the District.

Vote:

Lee: Yes

Van Bourg: No

List (a) Parent Liaison/Recreation and Culture Facilitator-Bilingual was not approved

10. Review Appointments of Provisional (50.300), limited term, (60.300.1), and Temporary Appointments to Ensure Compliance with Ed Code and Merit Rules.

This item was placed on the agenda by BCCE. Ms. Phillips, BCCE, provided a legal opinion concerning limited term employees prepared for the California Schools Personnel Commissioners Association. Commissioner Lee stated that he wished he had received the document before the meeting so he could have reviewed it prior to the meeting.

Ms. Phillips, BCCE, stated provisional employees are being allowed to stay in positions beyond 90 days. BCCE requested that employees in provisional appointments beyond 180 days be made probationary. Ms. Phillips stated that the Commission has the ability to make employees who have been in positions for more than 180 days probationary. Ms. Phillips expressed concern specifically for Instructional Assistants-Special Education that have worked more than 75% of the school year with out a status change.

Paula Phillips, BCCE, inquired about a contractor working in the payroll department while an employee was out on sick leave. Mr. Martinez stated that the District currently had two temporary employees working in positions where there was no substitute pool. Both of the positions require specific job knowledge and skill sets (Payroll and Accounting). The District had to bring in someone on an emergency basis to ensure departmental operations were not delayed or stopped. Commissioner Lee requested that the Commission be informed when emergency contractor hires are made.

Commissioner Van Bourg informed Ms. Phillips that the item needed to be placed on the next meeting's agenda as an action item for the Commission.

11. Proposed Personnel Commission Budget

The Merit Commission budget was submitted for discussion. Director Martinez announced that the directive from the Governor states that budget cuts have to come from the central offices. The major difference in the budget is with the Clerical Specialist position being eliminated in Human Resources. The Commission paid 20% of the position's salary. Mr. Martinez advised the commission that the budget would be submitted to the Board for approval at the April 28th meeting.

12. Classified Employee Recognition Celebration

The Employee Recognition event has been set for May 20th at B-Tech, 3:00 – 5:30 pm.

Commissioner Lee requested that the event be similar to last year's event.

13. 2010 Personnel Commission Meeting Dates

The July 1st meeting date was reviewed due to the holiday and summer recess. The Commission decided to leave it on the meeting calendar and to decide in June if the July meeting would take place.

14. Review BUSD Hazardous Communication Program for Commission's Role and Implementation

This item was placed on the agenda by BCCE. Paula Phillips stated that employees are to be given hazard communication training within two weeks of being hired. Commissioner Lee inquired if this was a contractual issue. Ms. Phillips responded that training of classified staff falls under the Commission. Director Martinez stated that he needed to review the Merit Rules and EdCode to see if it falls under the Commission. Mr. Martinez suggested that the safety issues brought about by the BUSD Hazardous Communication Program be explored by the District/BCCE Safety Committee.

15. Public Comment

Paula Phillips, BCCE, requested that State Disability and FMLA information be provided to new hires at the time of hire.

Motion Summary

Motion: To approve agenda

Unanimously approved

Motion: to approve March 4, 2010 minutes as corrected

Unanimously approved

Motion: to approve eligibility list (b-i)

Instructional Specialist - Dance (Open/Combined)

Instructional Assistant –Special Ed. (Open/Combined)

Food Service Assistant (Open/Combined)

Instructional Assistant –ECE (Open/Combined)

Instructional Technician – EDP (To Be Provided at Meeting)

Food Service Satellite Operator (To Be Provided at Meeting)

Sr. Food Service Assistant (To Be Provided at Meeting)

School Bus Driver (Open) (To Be Provided at Meeting)

Unanimously approved

BERKELEY UNIFIED SCHOOL DISTRICT

MERIT SYSTEM

Eligibility List for: **PARENT LIAISON/ RECREATION & CULTURAL
FACILITATOR- BILINGUAL (Spanish/English) (Open)**

Written Examination: **January 27, 2010**
Performance Evaluation: **n/a**
Technical/General Fitness Oral: **February 24, 2010**

Lists established by Personnel Commission: **May 6, 2010 to expire May 6, 2011**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Pacheco, Carol	_____	_____
2. Trowbridge, Christine	_____	_____
3. Amezcua, Leticia	_____	_____
4. Valenzuela, Eduardo	_____	_____

BERKELEY UNIFIED SCHOOL DISTRICT
MERIT SYSTEM

Eligibility List for: **INSTRUCTIONAL ASSISTANT-ECE –
Open/Combined**

Written Examination: **n/a**

Performance Evaluation: **n/a**

Technical/General Fitness Oral: **April 22, 2010**

Lists established by Personnel Commission: **May 6, 2010 to expire May 6, 2011**

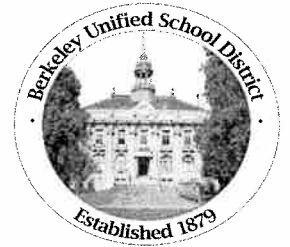
	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Lee, Angie***	_____	_____
2. Connolly, Peter	_____	_____
3. Long, Diane**	_____	_____

**Expires February 4, 2011

***Expires April 8, 2011

Berkeley Unified School District

2134 Martin Luther King Jr. Way, Berkeley, California 94704-1180
Phone: (510) 644-6150 Fax: (510) 644-6151 www.berkeley.k12.ca.us



William Huyett
Superintendent

TO: Personnel Commissioners
FROM: Francisco Martínez, Director Classified Personnel
DATE: May 6, 2010
SUBJECT: Personnel Commission Budget Public Hearing - FY 2011

Background Information:

Pursuant to Education Code 45253 and Merit Commission Rule 20.400.2.B. which states, "The [Personnel] Commission shall hold a public hearing on its proposed budget not later than May 30th." Education Code 45253 also requires that the Classified Personnel Director forward a copy of the proposed budget to the Board of Education and notify the Board of the date, time and location of the public hearing so that the Board and administration representatives may attend the public hearing and present their views on the proposed budget. The Director of Classified Personnel submitted and presented the FY 2011 proposed Personnel Commission's budget to the Berkeley Unified School District Board of Education on April 28, 2010. The Director also informed the Board of the date, time and place where the public hearing would take place.

Recommendation

Hold a public hearing on the FY 2011 proposed Personnel Commission budget.

BERKELEY UNIFIED SCHOOL DISTRICT

FY 2010-2011 BUDGET REQUEST FORM

DEPARTMENT/SCHOOL: Personnel Commission

DATE: July 1 2010 - June 30, 2011

ITEMS REQUESTED	CODE	AMOUNT REQUESTED
Staffing FTE:		
1.0 FTE Director, Including Statutory Benefits	2302/7403	\$147,834.00
1.0 FTE Administrative Assistant, Including Statutory Benefits	2402/7403	\$62,501.00
Subs/Proctors, Including Statutory Benefits	2416/7403	\$4,697.00
Hourly Overtime	2412/7403	\$3,163.00
Total Salary Requests		\$218,195.00
Other Items:		
Books and Other Ref. Material	4200/7403	\$500.00
Other Supplies	4350/7403	\$9,800.00
Equipment	4400/7403	\$1,114.00
Travel and Conference	5200/7403	\$3,999.00
Dues and Memberships	5300/7403	\$3,000.00
Central Printing - Xerox	5712/7403	\$5,000.00
Copier Lease - Intrafund	5713/7403	\$8,640.00
Postage/Federal Express/Certified Mail	5910/7403	\$475.00
Total Other Items		\$32,528.00
Prof/Consulting Svcs & Operating Expenses:		
Prof/Consulting Svcs	5800/7403	\$4,600.00
Legal Counsel	5829/7403	\$10,000.00
Commissioner Fees	5800/7403	\$3,400.00
Hot Jobs/Craigslist/CASBO	5800/7403	\$3,750.00
Recruiting/ Advertising	5800/7403	\$5,000.00
Applications/ Announcements/ Copying	5800/7403	\$3,200.00
Testing (CODESP)	5800/7403	\$1,900.00
Pre-employment Examinations (Kaiser)	5800/7403	\$3,500.00
Drug Testing (Bus Drivers per State Requirement and Union Contract Provisions)	5800/7403	\$2,000.00
Total Prof/Consulting Svcs & Operating Expenses		\$37,350.00
Grand Total		\$288,073.00

FUND :01 GENERAL FUND RESOURCE:0000 UNRESTRICTED GEN. EDUC. & OTHR
 FUNCTION:7403 Personnel Commission

SUMMARY BY OBJECT	WORKING BUDGET	EXPENDED/RECEIVED		%	ENCUMBERED	UNENCUMBERED BALANCE	%
		CURRENT YEAR TO DATE	YEAR TO DATE				
2302 CLASS SUPER & ADMIN MONTH SAL	104,382.00	86,990.00	86,990.00	83.3	17,392.00	0.00	-0
2316 Class Supv - hourly/daily	4,697.00	0.00	0.00	0.0	0.00	4,697.00	100.0
2402 CLERICAL TECH & OFC STAFF SAL	62,772.00	46,407.82	46,407.82	73.9	8,854.40	7,509.78	11.9
2403 CLERICAL TECH & OFC SUB	4,016.00	867.97	867.97	21.6	0.00	3,148.03	78.3
2416 CLERICAL HRLY/DAILY	5,164.00	2,289.86	2,289.86	44.3	323.76	2,550.38	49.3
2450 CASH IN LIEU OF BENEFITS	1,546.00	1,274.40	1,274.40	82.4	509.76	238.16	9.6
TOTAL: 2xxx	182,577.00	137,830.05	137,830.05	75.4	27,079.92	17,667.03	9.6
3102 STATE TEACHERS'RET.SYS, CLASS	12.00	605.16	605.16	100.0	0.00	593.16	-0
3202 PUBLIC EMP. RET. SYS, CLASSIF	16,383.00	11,468.08	11,468.08	69.9	2,548.27	2,366.65	14.4
3302 MEDICARE - CLASSIFIED	2,656.00	1,971.46	1,971.46	74.2	386.40	298.14	11.2
3312 FICA - CLASSIFIED	11,361.00	7,980.21	7,980.21	70.2	1,652.22	1,728.57	15.2
3402 HEALTH & WELFARE BEN. CLASSIF.	17,186.00	10,327.81	10,327.81	60.0	2,155.58	4,702.61	27.3
3502 STATE UNEMPLOYMENT INS. CLASSI	632.00	476.95	476.95	75.4	93.70	61.35	9.7
3602 WORKERS' COMPENSATION INS. CLASS	4,464.00	3,377.20	3,377.20	75.6	663.45	423.35	9.4
3702 RETIREE BENEFITS, CLASSIF. POS	5,042.00	3,706.81	3,706.81	73.5	1,008.13	327.06	6.4
3802 PERS REDUCTION, CLASSIFIED POS	4,209.00	3,316.79	3,316.79	78.8	737.00	155.21	3.6
TOTAL: 3xxx	61,945.00	43,230.47	43,230.47	69.7	9,244.75	9,469.78	15.2
4200 BOOKS & OTHER REF. MATERIALS	500.00	0.00	0.00	0.0	0.00	500.00	100.0
4350 OTHER SUPPLIES	11,800.00	3,146.38	3,146.38	26.6	4,347.53	4,306.09	36.4
4400 EQUIPMENT \$500 TO \$5,000	1,114.00	1,084.83	1,084.83	97.3	0.00	29.17	2.6
TOTAL: 4xxx	13,414.00	4,231.21	4,231.21	31.5	4,347.53	4,835.26	36.0
5200 TRAVEL AND CONFERENCES	3,999.00	3,323.50	3,323.50	83.1	0.00	675.50	16.8
5300 DUES AND MEMBERSHIPS	3,000.00	1,746.00	1,746.00	58.2	776.00	478.00	15.9
5712 CENTRAL PRINTING - XEROX	2,500.00	53.78	53.78	2.1	46.21	2,400.01	96.0
5713 COPIER LEASE - INTRAFUND	4,320.00	0.00	0.00	0.0	0.00	4,320.00	100.0
5800 PROF/CONSULTING SVCS & OPR EXP	35,174.00	12,687.98	12,687.98	36.0	11,721.56	10,764.46	30.6
5829 LEGAL FEES	10,175.00	4,004.31	4,004.31	39.3	6,170.69	0.00	0.0
5910 POSTAGE/MAILINGS	475.00	0.00	0.00	0.0	0.00	475.00	100.0
TOTAL: 5xxx	59,643.00	21,815.57	21,815.57	36.5	18,714.46	19,112.97	32.0
TOTAL: 1xxx - 5xxx	317,579.00	207,107.30	207,107.30	65.2	59,386.66	51,085.04	16.0

Berkeley Unified School District

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William Huyett
Superintendent

TO: Personnel Commissioners
FROM: Francisco Martínez, Director Classified Personnel
DATE: May 6, 2010
SUBJECT: Personnel Commission Budget, FY 2011

Background Information:

Pursuant to Education Code 45253 and Merit Commission Rule 20.400.2.A. which states, "The Personnel Director shall prepare and submit to the Commission a proposed operating budget for the Commission for the next ensuing fiscal year. The budget shall be submitted not later than the first Commission meeting in April." Merit Commission Rule 20.400.2.B. also requires the Commission to "hear and fully consider all comments and suggestions that may be offered by District administration, the Board, or other concerned persons or organizations."

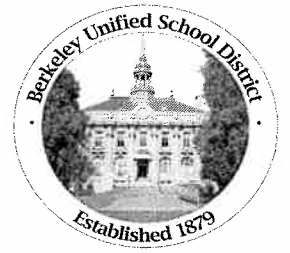
Today's proposed budget is to comply with Merit Commission Rule 20.400.2. The District's Fiscal Services Director and the Director of Classified Personnel met and drafted the proposed budget. The Personnel Commission budget falls within the budgetary constraints provided by the Fiscal Services Department. The Director of Classified Personnel has already submitted the proposed Personnel Commission's budget to the Board of Education. The attached Personnel Commission budget details the 2010-11 expenditures.

Recommendation:

Staff recommends that the FY 2011 Personnel Commission budget be approved as presented and forwarded to the County Superintendent.

Berkeley Unified School District

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William Huyett
Superintendent

To: Personnel Commission of the Merit System
From: Francisco Martínez
Director of Classified Personnel
Date: May 6, 2010
Subject: BCCE's Request for Reclassification Appeals Hearing- Rafael Adames

The Berkeley Council of Classified Employees (BCCE) is requesting the Berkeley Unified School District Personnel Commission consider whether to grant a reclassification appeal hearing to Rafael Adames. The Personnel Commission heard Mr. Adames' reclassification request on July 9, 2009. After considering Mr. Adames' reclassification request, the Personnel Commission decided not to re-classify Mr. Adames from a Instructional Technician – Computers to an Assessment Technician. At this time, BCCE is requesting a reclassification appeal hearing on behalf of Mr. Adames. Should the Commission decide to hear Mr. Adames' appeal hearing, a date must be set for such hearing.

Recommendation:

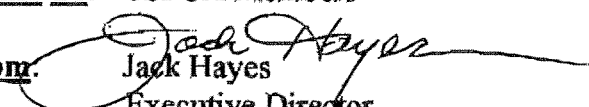
Receive BCCE's Request for a Reclassification Appeals Hearing- Rafael Adames

CALIFORNIA SCHOOL PERSONNEL COMMISSIONERS ASSOCIATION
327 Rto Del Mar, Aptos, Ca. 95003 (831) 662-8753

David Holmerud
President

Jack Hayes
Executive Director

Memo To: CSPCA Members

From: 
Jack Hayes
Executive Director

Subject: Legal Opinion Concerning the Retention for More Than Six Months
of Limited Tenure Employees Hired Under Education Code Section
45286

Date: March 30, 2005

As a result of several inquiries and discussions among Personnel Directors and Commissioners, the Board of Directors of CSPCA has been reviewing Education Code Section 45286. The questions raised were related to the interpretation, meaning and intent of this section of the education code to determine if limited term employees who work beyond the six-month requirement attain permanency as a classified employee. CSPCA's attorney, Bill Corman, was asked to research and give an opinion on this section to clarify the issues.

Following lengthy review and discussion by the Board of Directors at their meeting on February 10, 2005, Mr. Corman was requested to provide this opinion for dissemination to all Personnel Commissions for their review and appropriate action. The opinion letter from Mr. Corman is enclosed and should receive your earliest attention.

If you have any questions relating to this matter or what action should be taken, please give me a call. It is recommended that this matter may be an appropriate topic for discussion and review at your Regional Association meetings.

(15)

February 22, 2005

David Holmerud
President, CSPCA
327 Rio Del Mar Blvd.
Aptos, CA 95003

RE: Legal Opinion Concerning the Retention for More Than Six Months of Limited Tenure Employees Hired Under Education Code Section 45286

Dear Dave:

As discussed and requested at the CSPCA Board Meeting on February 10, 2005, I am herein providing my opinion and advice concerning the application of Education Code section 45286 involving the hiring of limited tenure employees by Merit System districts.

The issue that I have been asked to address is whether a person employed as a "limited-term employee" under Education Code section 45286 becomes a permanent classified employee if he continues to work beyond the 6-month period specified by the statute? My conclusion is that unless the Personnel Commission has enacted a rule that provides that limited-term employees shall not acquire permanency in their position regardless of length of service, limited-term employees who are permitted to work beyond 6 months become permanent classified employees of the District.

ANALYSIS:

Education Code section 45286 states:

Whenever the appointing power shall require the appointment of a person to a position, the duration of which is not to exceed six months, or, in case of an appointment in lieu of an absent employee, is not to exceed the authorized absence of said employee, the appointing power shall submit a request in which the probable duration of the appointment is stated. Eligibles shall be certified in accordance with their position on the appropriate employment list and their willingness to accept

(16)

appointment to such position as limited-term employees. Limited-term employees shall be subject to conditions affecting status and tenure during and after employment that the commission may by rule determine. Notwithstanding these limitations on the duration of these positions, the commission may, based on a declaration of an emergency by the President of the United States or the Governor, authorize an extension that may not exceed one year. The duties of the extended position must be related to the emergency. (Emphasis added.)

There are no precedential judicial decisions concerning the meaning or interpretation of section 45286's language. There have been, however, decisions rendered that have interpreted provisions of similar public employment statutes that present significant guidance in analyzing the impact of 45286's statutory language on the issue presented.

As a general principle, the courts have found that: "It is well settled that the terms and conditions of public employment including term of service, are fixed by the statute, rules or regulations creating it . . . In all cases dealing with termination of public employment the court examines the statutory scheme creating and regulating the same." (Williams v. Department of Water & Power (1982) 130 Cal.App.3d 677, 680.) In Williams, a 13-year part-time employee of the city of Los Angeles contended that she had a property interest in her position and could only be removed for cause thus entitling her to a due process hearing before being terminated. Looking to provisions of the Los Angeles City Charter and Civil Service Rules that expressly stated that part-time employees could not accumulate seniority or appeal a suspension or discharge, the court rejected the employee's appeal. The court held that regardless of the length of time the employee had worked, the City had the authority to promulgate rules that denied part-time employees an accumulation of a property interest and rights of appeal from disciplinary and termination actions.

For our purposes here, the importance of the Williams decision is the court's recognition of the need to look at the specific statutory authority and local agency regulations to determine the rights of public employees.

Thus, in a recently decided decision, California School Employees Association v. The Governing Board of the South Orange County Community College District (November 2004) 24 Cal.App.4th 574, the court interpreted Education Code section 88003¹ to hold that both "substitute employees" and "short-term employees" who work

¹Section 88003 states: "The governing board of any community college district shall employ persons for positions that are not academic positions. The governing board, except where Article 7 (community) will, Section 88060 or Section 88137 applies, shall classify all these employees and positions. The employees and positions shall be employees as defined in Section 88001. Substitute and short-term employees employed for any, or less than, a full year shall not be a part of the classification system established by the governing board of the community college district." (Emphasis added.)

David Holmerud

March 31, 2005

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more than 75% of the academic year become a part of the permanent classified service—even if this was not the intended result of the employer. In so holding, the court specifically cited to the statutory scheme of the Education Code which “defines a classified position by describing what it is not. Thus, '[e]very position not defined by the regulations of the board of governors as an academic position and not specifically exempted from the classified service according to the provisions of Section 88003 or 88076 shall be classified as required by those sections and shall be a part of the classified service.’” (Emphasis added.)

The court's decision in California School Employees Association provides direct support to find that “limited-term employees” hired under section 45286 may become permanent classified employees of merit-system districts. Per its statutory language, a merit system “limited-term employee” is a hybrid of the non-merit system “substitute” and “short-term” employees defined in Education Code sections 45103 and 88003. Education Code sections 45256 and 88076, which collectively encompass K-12 and Community College Merit System Districts, do not exempt “limited-term employees” from the merit system district classified service. Accordingly, pursuant to the California School Employees Association holding, a merit system limited-term employee who remains in his or her position for more than 6 months or 130 days, whichever is longer, becomes part of the permanent classified service (Ed. Code sec. 45301).

project, regardless of length of employment, shall not be a part of the classified service. Full-time students employed part time, and part-time students employed part time in any college work-study program, or in a work experience education program conducted by a community college district and which is financed by state or federal funds, shall not be a part of the classified service. Unless otherwise permitted, a person whose position does not require certification qualifications shall not be employed by a governing board, except as authorized by this section.

“Substitute employee,” as used in this section, means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

“Short-term employee,” as used in this section, means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. Before employing a short-term employee, the governing board, at a regularly scheduled board meeting, shall specify the service required to be performed by the employee pursuant to the definition of “classification” in subdivision (a) of Section 88001, and shall certify the ending date of the service. The ending date may be shortened or extended by the governing board, but shall not extend beyond 75 percent of a school year.

“Seventy-five percent of a college year” means 125 working days, including holidays, sick leave, vacation and other leaves of absences, irrespective of number of hours worked per day.

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

This section shall apply only to districts not incorporating the merit system as outlined in Article 3 commencing with Section 88000.

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Adding further support to the developing notion that purported "temporary" employees may be seen as acquiring permanent vested rights in their positions is a decision just issued by the United States Ninth Circuit Court of Appeals in San Francisco: Jenkins v. County of Riverside (2/9/2005) 2005 DJDAR 1624. In Jenkins, the court found that a person hired and continuously employed for several years as a "temporary" county employee in the position of an office assistant who had otherwise been found qualified for the position and had worked more hours than the maximum authorized for temporary employees, had obtained a property right in continued employment and could not be terminated in violation of the due process rights given to all permanent employees.

Section 45286 does expressly empower a Personnel Commission to promulgate rules affecting the status and tenure of limited-term employees. Under that authority, a Personnel Commission may enact rules specifically exempting those employees from acquiring permanence while serving in a limited-term position (as per the situation in the Williams case.) If no rule has been enacted, however, the limited-term employee will become permanent after 6 months (or 130 days) in the position.

A review of the regulatory scheme governing limited-term employees working for the State of California further buttresses the notion that merit system limited-term employees acquire permanence in the absence of express rules or regulations to the contrary. Government Code sections 19080-19083 govern the hiring of limited term employees for up to 2 years duration for state agencies. Government Code section 19083 is substantially similar to Education Code section 45286 in that it states: "Limited-term employees shall be subject to such conditions affecting appointment, status, tenure and separation during and after employment as the board by rule determines . . ." **Pursuant to Govt. Code sec. 19083, the State Personnel Board has promulgated 2 Cal. Code of Regulations section 281 which states: "No time served in a limited term appointment may count toward acquiring permanent status in any position."** There would be no obvious need for this rule other than to prevent the acquisition of permanence that would otherwise accrue under the statutory scheme for hiring State limited-term employees.

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Given the development of the case law in this area, it is my opinion that in the absence of a Personnel Commission rule similar to that quoted above from 2 CCR sec. 281, limited-term employees who are allowed to remain in their position for more than 6 months will acquire permanent employee status in the District. If a Commission wishes to avoid that result, it should exercise its powers under Ed. Code section 45286 and enact a rule that expressly prohibits the acquisition of permanent status for time employed in a limited term position.

Very truly yours,

William Corman

WC:me

cc: Jack Hayes (by e-mail only)
Leonard Bonilla (by e-mail only)

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