

TULARE/KINGS COUNTIES PERSONNEL COMMITTEE
Tulare County Office of Education
Board Room
February 6, 2004

Minutes

The Personnel Committee meeting was called to order at 8:32 a.m. Jeanne Nava welcomed those in attendance. Introductions were made around the table.

Members in attendance were:

Jeanne Nava	Rosemary Spencer	Cathy Martin
Enid Brinkman	Jim Pitkin	Tamara Ravalin
Maria Marquez	Luis Castellanoz	Jeri Higdon
Rosamund Barteau	Paul Cannon	Tom Addington
Gail Kaulfuss	Corina Valderrama	Traci Fullerton
Patti Ernsberger	Valene Staley	Dick Doepker
Rick Rayburn	Diane Graziani	Bernie Hanlon
Dennis Martinez	Collin Bromley	Joyce Purpuro
John Lollis	David DePaoli	Rosa Rodriguez
Craig Drennan	Marlene Jeung	

Minutes Approval of the minutes of the January 9th meeting were deferred to the March meeting.

Alert A *Fiscal Report* stated that the bid limit was raised by 2.18% to \$60,900 effective January 1, 2004. This higher bid limit only applies to (1) the purchase of equipment, materials, and supplies; (2) services, except construction services; and (3) repairs, including maintenance as defined in Public Contract Code Section 20115. The \$15,000 threshold for construction contracts under Section 20111(b) remains unchanged.

The School Employers Association of California and the Personnel Administrative Services Steering Committee will be presenting their 29th Annual Spring Conference on Collective Bargaining and Employment Relations on March 18-19, 2004, in Cerritos, California. The topic will be *Bargaining on the Margin: Scarce Resources and Increased Accountability*. For information, call 949-387-1869 or e-mail SEAC@seacal.org.

Jeanne provided a handout of 2004 Labor Law Legislative Update prepared for the Tulare/Kings Society for Human Resources Managers. Of particular interest is AB 76 which provides that employers are now responsible for the acts of non-employees “with respect to sexual harassment of employees, applicants, or person providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate an appropriate corrective action.” In the Department of Health Services vs. McGinnis the court held that the doctrine of avoidable consequences applies; in other words, “a plaintiff’s recoverable damages do not include those damages that the plaintiff could have avoided with reasonable effort and without undue risk, expense, or humiliation.” To limit damages, an employer must prove that: (1) the employer took reasonable steps to prevent and correct workplace sexual harassment; (2) the employee unreasonably failed to use the preventative and corrective measures that the employer provided; and (3) reasonable use of the employer’s procedures would have prevented at least some of the harm that the employee suffered. It is important for employers to provide a ‘reasonable avenue’ for complaints and to investigate all complaints.

AB 196 prohibits discrimination against transgender employees. This law includes harassment or discrimination based upon “perceived gender” traits such as personality, clothing, hairstyle, speech, mannerisms, or demeanor. (e.g., men who act “too feminine” or women who act “too masculine.”)

SB 796 provides that class action lawsuits for Labor Code violations may be brought against any California employer by an “aggrieved employee.” For Labor Code violations which have no statutory penalty, a new penalty is established at the rate of \$100 for a first violation, and \$200 for each subsequent violation. The prevailing employee is entitled to an award of attorneys’ fees and costs plus 25% of any penalties recovered (50% to General Fund and remaining 25% to Labor and Workforce Development Agency).

SB 777 expands protections regarding employees who disclose violations of state or federal law to a governmental agency or law enforcement agency to include any employee who refuses to participate in an activity that may result in violations of the law, or who did so during former employment. The new law establishes a “whistle blower hotline” where employees can report illegal conduct of their employer to the State Attorney General’s Office. Employers may be liable for a \$10,000 civil penalty per violation. Employers must now display a poster that includes the phone number of the hotline.

SB 478 allows employees who are victims of certain crimes to be absent from work in order to attend judicial proceedings related to crimes committed against the employee, or individuals with whom the employee has a significant relationship such as immediate family members, a registered domestic partner, or the child of a registered domestic partner.

Tulare County Counsel *School Team Updates* are available on their website. A *Procedures and Time Lines for Certificated Layoffs* memorandum by Carol Laird is available on the website. Jeanne alerted those present to the enactment of AB290 which increased the notice period for laying off classified employees from 30 to 45 days. Additionally, a classified employee may not be laid off if a short-term employee is retained to render a service that the classified employee is qualified to render.

AB 918 requires a school district to pay the employee on a pro rata basis for the additional assignment or service, not less than the compensation and benefits that are applicable to the classification of the additional assignment or service during the school year, unless the district has negotiated a contract that allows for a lesser pay scale.

Pursuant to AB 1038 a classified employee may not be required to secure advance permission in order to take PN leave for the death of an immediate family member or for an accident involving the person or property of the employee or an immediate family member. The bill also provides that a classified employee who is terminated reassigned, transferred or becomes the employee of another employer as a result of the development or revision of a local plan for the education of individuals with exceptional needs, shall retain his or her original seniority and classification, and shall receive full credit for years of service for purposes of placement on the salary schedule. Classified employees who are laid off from special education programs as a result of the reorganization of such programs shall have first priority to be informed of and hired for vacant positions in the reorganized program.

SB 253 revises the definition of confidential employee as follows: "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

AB 954 amends the Stull Act providing that a permanent certificated employee need be evaluated only once every five years if the employee has been employed by the district for at least 10 years, is highly qualified as defined by federal law, the employee's previous evaluation was good, and the evaluator and employee both agree to the five-year period.

SB 259 has extended the benefits given to members of the CA National Guard and the U.S. Military Reserves to any school employee or community college employee who is called into active military duty regardless of the particular conflict or crisis. These special benefits which are in addition to those provided by the Military and Veterans Code, must be approved by the governing board of the district. The bill also provides that a certificated employee's credential may not become invalid for failure to renew while the employee is on active military duty.

AB 205 establishes the CA Domestic Partner Rights and Responsibilities Act of 2003 which becomes effective January 1, 2005. Eligible couples who register as domestic partners are entitled to the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to each other, to their children, to third parties and to the state, as the laws of CA extend to and impose upon spouses. Employers are required by law to verify the legal registration of partners. Districts must amend their collective bargaining agreements and board policies wherever the word "spouse" occurs to also include the words "domestic partner."

SB 65 expands existing Education Code Section 35182.5 to restrict not only contracts for "exclusive" beverage sales, but now also any contract for the sale of carbonated beverages or non-nutritious beverages or food.

A *Negotiations Alert* from the School Employers Association confirmed that the new legislation pertaining to the evaluation of a certificated employee only once every five years falls within the scope of bargaining and it would be an Unfair Labor Practice by a district to refuse to negotiate it. However, after negotiating it in "good faith" the district could say no. A few different rationales for this decision were provided in the handout.

An *ACSA Alert* offered insights into the budget and collective bargaining. The alert related that the governor and members of the Education Coalition reached an agreement for the 2004-5 Proposition 98 spending, but the "deal" hinges on the passage of Propositions 57 and 58. If these propositions fail, the 2004-05 K-12 funding will likely remain at the 2003-04 per-pupil level. It was recommended that districts prepare two budgets and not finalize any collective bargaining until after the March 2nd election. Districts are advised to stay with one-year bargaining agreements and avoid giving COLA's.

A *Lozano Smith Client News Brief* with the topic “Employers Are Automatically Liable for Sexual Harassment by Supervisors; However, Doctrine of Avoidable Consequences May Limit Damages” was provided. This News Brief outlined the State Department of Health Services v. Superior Court of Sacramento County (McGinnis) which was mentioned earlier in the meeting.

A *Lozano Smith Client News Brief* addressed the topic “Obligation to Engage in Interactive Process for Reasonable Accommodation of Employee with a Disability May Be Limited By Employee’s Failure to Qualify for Alternative Position.” In Allen v Pacific Bell the Ninth Circuit Court of Appeals held that where an employee is not otherwise qualified to return to his/her prior position and also fails to take steps to qualify for other positions which may be an appropriate accommodation, the employer is not required to further engage in the interactive process.

A *Fiscal Report* dated January 30, 2004, regarding “No Child Left Behind and Collective Bargaining” was provided. The report pointed out that NCLB requires that a local education agency select at least one of six corrective action consequences for a school in year three of Program Improvement. Many of the six corrective action options under NCLB could have collective bargaining ramifications. A discussion ensued regarding the CLAD and BCLAD certifications.

**Teacher
Recruitment
Center**

Gail Kaulfuss, Recruitment Specialist, circulated brochures for CSET Test Preparation to be sponsored by the Central CA Teacher Recruitment Center and Tulare COE Teacher Induction Programs. Classes will address specific subjects with participants paying only for those subjects they wish to take. Dates were scheduled so that the preparation would be completed before the March 28th exam.

Gail also provided the TRC Out-of-State Recruiting Schedule. The focus will be on visiting universities and contacting their special education, math and science programs to explore the possibility of bringing cohorts of new teachers to this area. Interviews with teacher candidates will be video-taped and made available to school districts for their perusal. She mentioned that San Juan, Puerto Rico has an outstanding special education program and no VISA is required. A group of students from there may be doing their student teaching in Kern County this summer. Gail encouraged districts to let them know of their openings. You can do this by sending an e-mail to gailk@tcoe.org

TRC staff is available to assist school districts with Part I of the HOUSSSE process for a small fee. If your district is interested in assistance, call Donna Glassman-Sommer at 730-2549.

Credentials

A discussion ensued regarding the old Standard Elementary and General Elementary credentials in relation to NCLB compliance. Enid Brinkman related that it is difficult for a district to determine where a teacher stands if they earned their degree a long time ago. They were given a credential for a specific subject but they did not earn a Liberal Studies degree. She said that she was told by CTC that every document based on an exam will state that on the document. She has seen Liberal Studies majors who have not met subject matter competence. She cautioned that when you try to HOUSSE a teacher, you may need to look at the units from their transcripts to evaluate them.

Enid mentioned restrictions on the STRS Golden Handshake—retired teachers cannot work for one whole year and not for five years for the district they retire from. This includes K-12 public schools; county offices and community colleges were omitted from the language.

Enid related that she recently received a coded correspondence from STRS regarding the 2004 Spring Credential Workshops being held via video-conference since they do not have a budget for travel. There will be one at Kern COE on March 16 and one in Fresno on March 24. They go from 9 a.m. to 12 p.m. and reservations are needed. Information is available on their website. Enid encouraged districts to send their credentials staff to this worthwhile workshop. The topic is NCLB and what they are to do to help teachers become compliant.

Enid shared that districts can go to the CTC website to learn more about the appropriateness of assignments for coordinators versus administrators.

NCLB

Jeanne asked if districts were requiring substitute paraprofessionals to meet the NCLB requirements. The districts in attendance indicated no, except for one district, which does require this if they work for more than 30 days.

Alternative Retirement Package

Steve Spence, Kennan & Associates, was unable to attend the Personnel Meeting to introduce his retirement planning package, however, packets were provided.

Teacher Recruitment Fair

Jeanne reminded districts that the Booth Information Form for the Teacher Recruitment Fair is due back February 6th.

Other

A discussion regarding new legislation pertaining to the limitation of buses idling on school grounds for no more than five minutes ensued. A sample policy will be posted as a handout under this meeting on our website.

David DePaoli mentioned that CSBA will be coming to Tulare County to do a 3-4 day policy workshop where they help you go through your policies page by page to make sure they are updated. The cost is between \$400 and \$500 depending on the number of participants. He said that interested school districts should contact Kitty at the CSBA office.

Rosemary Spencer initiated a discussion regarding whether or not districts put a slate of teachers for the upcoming school year before their board for approval. The general consensus was yes.

The meeting was adjourned at 10:15 a.m. The next meeting will be held in the Board Room of the Tulare COE Education Building on March 5, 2004, at 8:30 a.m.

March 5, 2004	Friday
April 2, 2004	Friday
May 7, 2004	Friday