

VISTA UNIFIED SCHOOL DISTRICT  
Classified Human Resources  
1234 Arcadia Avenue, Vista, CA 92084

Unadopted Minutes of the  
Personnel Commission Meeting on  
September 6, 2017

MEMBERS	Glen Hampton	STAFF	Alaina Reede
PRESENT:	Donald LeMay	PRESENT:	Bill Meni
	Teri Minoux		

OTHERS

PRESENT: Alicia Evilsizer, Marie Hovel, Shari Fernandez, Rachel D'Ambrosio, Elaine Alexandres, Jordan Bilgeisi, Michael Ortega

CALL TO ORDER:

The meeting was called to order at 9:00a.m. followed by the Pledge of Allegiance. Staff member, Mr. Michael Ortega, was not in attendance. A 30 minute recess was given in the event Mr. Ortega was delayed. Session came to order at 9:28 a.m.

OPEN SESSION – EMPLOYEE APPEAL HEARING – EMPLOYEE #17-30:

Mr. Hampton gave an introduction of the Commission Panel and explained the process of the hearing. Mr. Hampton read the charges of dismissal:

- 1) Personnel Commission Rule 19.1.4.1 - Incompetency
- 2) Personnel Commission Rule 19.1.4.2 - Inefficiency
- 3) Personnel Commission Rule 19.1.4.4 - Inattention to or dereliction of duty
- 4) Personnel Commission Rule 19.1.4.1 6 - Repeated unexcused absence or tardiness
- 5) Personnel Commission Rule 19.1.4.17 - Abandonment of position
- 6) Personnel Commission Rule 19.1.4.29 - Any other cause deemed appropriate by the Personnel Commission

Mr. Hampton introduced Jordan Bilgeisi, District Representative, Michael Ortega, representing himself and William Meni, recorder for the proceedings. Mr. Hampton requested all witnesses to leave the room and informed them that they would be called in when their statements were to be heard. Mr. Hampton stated that during the open session they will hear all evidence in the case and then the commissioners will deliberate in closed session to render a decision.

Mr. Bilgeisi distributed binders to the Commissioners and Mr. Ortega with Exhibits A, B and C from the District. Mr. Bilgeisi stated Exhibit A were the charges, documents 1 -14. Mr. Hampton asked Mr. Ortega if the exhibit can be submitted, Mr. Ortega did not object. Mr. Hampton admitted in Exhibit A. Exhibit B was the medical reports and Exhibit C was an article from the California School Employee Association (CSEA). Mr. Hampton asked if they can be submitted, Mr. Ortega did not object.

Mr. Hampton asked Mr. Ortega if he had any exhibits to submit, Mr. Ortega stated no.

Mr. Bilgeisi asked if the Commission had the additional submission of documents from the District, Mr. Hampton responded yes.

Mr. Hampton continued with the instructions with the proceeding.

Mr. Bilgeisi began with an opening statement. The District is asking that the Commission uphold the decision to separate Mr. Ortega. The decision of separation is based on the employee not following the rules for notifying his supervisor of absences. The Board decision to separate Mr. Ortega had nothing to do with Mr. Ortega personally or from a work injury. It is about an unexcused leave from January to March. Mr. Ortega was on an approved leave from October to December. Testimony will be given today by Laura Smith and Alaina Reede regarding Mr. Ortega's refusal to supply required medical updates and reporting his absences.

Mr. Hampton asked Mr. Ortega if he would like to make an opening statement. Mr. Ortega stated he would wait.

Mr. Bilgeisi called his first witness, Ms. Laura Smith. Ms. Smith was sworn in and stated she was the Principal at Casita Center Elementary School and the overall supervisor of the campus. Ms. Smith was asked her duties over the custodial staff. She said to evaluate work performance of staff with observation, input from the Plant Lead and other staff members. Mr. Bilgeisi referred to an evaluation sheet on Mr. Ortega dated June 2015. He pointed out the below expectations markings on Mr. Ortega in the area of attendance, quality of work, quantity of work along with work habits. Based on the low marking, Mr. Ortega was placed on a Performance Improvement Plan (PIP). This plan was to assist Mr. Ortega to help improve in these areas. The plan indicates the expectations to the employee and lists review dates to verify improvement is occurring. Ms. Smith defined quality of work as completely cleaning a classroom/restroom. Using a checklist to complete task. Children and staff arrive the next day, rooms not cleaned, doors not locked and alarms not set. When asked what is acceptable volume of work Ms. Smith indicated that the custodial staff have a route sheet they follow. The beginning of the route is completed by Mr. Ortega but the end of the route was not completed on a regular basis. When asked what work habits were expected from the school site, Ms. Smith stated Mr. Ortega should report to work on time or, contact Plant Lead or Office Secretary if running late or not able to work so a substitute can be located. Ms. Smith stated Mr. Ortega did not always follow call-in instructions. Mr. Ortega's shift began at 1:30pm which allowed the Plant Lead time to explain any events at the site that evening or any other needs of the school. Another area of concern, Ms. Smith stated, was work judgement. At times the custodial staff need to be independent on judgment. An example of this is the checklist states to vacuum the classroom and you noticed glue from an art project on the desk, then you should clean the desk, or if the light switch is dirty you should wipe the switch. It is important to comply with the rules for calling off on a regular scheduled day. Custodial staff is required to call in early enough to the Operations Department so that a substitute might be able to be located. Absences are also to be reported to the school directly.

Mr. Bilgeisi stated there was improvement in Mr. Ortega's performance from June 2015 – November 2015. Ms. Smith responded that he was completing routes, doing adequate work and attendance improved. Some of the reason was the school was off for summer and Mr. Ortega was working the day hours in place of his night time shift. Also, Mr. Ortega was in constant supervision from the Plant Lead. Mr. Bilgeisi asked whether Mr. Ortega under a microscope for his performance. Ms. Smith replied yes.

Another PIP was issued to Mr. Ortega once again in June 2016, Ms. Smith stated old work habits returned. The District updated the evaluation form but marks on below requirements were still listed in Quality, Quantity and Punctuality. The PIP addressed all the areas and set meeting dates in July, August, September and October. Improvement again was noticed, again over the summer months because of direct supervision. Once school went back into session complaints of work performance began to arise. Meetings were conducted up until October when Mr. Ortega sustained an injury.

Mr. Bilgeisi asked Ms. Smith to review exhibit A tab 12. Listed were the absence reports on classified staff Mr. Bilgeisi asked what the letter "L" meant on the form Ms. Smith indicated the employee is 15 minutes or more late

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without calling in. Mr. Bilgeisi asked what "W/C" indicated Ms. Smith replied Workers Compensation. The site secretary is responsible for completing the form for Ms. Smith to sign. Individuals who are off with a W/C is an approved leave. When Mr. Ortega was not on W/C he was instructed to call in every day or to provide a medical excuse if not at work. Mr. Bilgeisi asked Ms. Smith when a substitute was located for Mr. Ortega how did the work performance change? Ms. Smith responded, rooms were clean, substitute was on time and no monitoring of behavior was necessary. Mr Bilgeisi ended his questions of Ms. Smith. Mr. Hampton asked Mr. Ortega if he had any questions, he replied no.

Mr. Hampton instructed Ms. Smith not to discuss the issue until a decision was made by the Commission.

Mr. Bilgeisi called his second witness Ms. Alaina Reede. Ms. Reede was sworn in and stated her position of Director of Classified Human Resources. Ms. Reede stated one of her responsibilities was to monitor the employee leaves of Classified Staff. Rights for leaves are guided by the Department of Labor, Government Laws, Personnel Commission Rules and the bargaining agreement with California School Employee Association (CSEA). When the leave involves a work injury, Ms. Reede would work with the District's Workers Comp Technician and the 3<sup>rd</sup> party administrator, Keenan.

Mr. Bilgeisi asked Mr. Ortega if he was familiar with the forms from Exhibit B, work injury form October 2016. Mr. Ortega stated yes. Mr. Biegeisi asked Ms. Reede to describe the documents in Exhibit B. She stated they were work status reports from Work Partners, Keenan's medical providing office. Noted on the form was that the patient is able to return to work with restrictions. Ms. Reede stated a meeting was held between Ms. Smith and herself and it was determined accommodations to work could not be met. Mr. Bilgeis asked Ms. Reede if Mr. Ortega was on an approved leave at this time and also being paid, she replied yes to both. The second medical note, dated November 18, 2016, stated that the employee was still under restricted work until December 9, 2016 with an anticipated return to full duty on December 23, 2016. Mr. Bilgeis asked Ms. Reede if the District assumed if no other medical note was provided that Mr. Ortega would return to work on December 23, 2016, Ms. Reede responded yes. Asked if any other medical note was produced from December 9 – December 23, 2016, Ms. Reede responded no. Mr. Ortega was on an approved leave until December 22, 2016 then an unapproved leave starting December 23, 2016, Ms. Reede responded yes.

Mr. Bilgeisi noted Exhibit A number 7, Notice to Deny Works Compensation Benefit from Keenan dated January 4, 2017. The notice stated that benefits are being denied and he will no longer be covered. Mr. Ortega would need to provide a medical note from a private practice to continue his leave or return to work.

Mr. Bilgeisi referenced Exhibit C the CSEA contract between the District and the bargaining unit members. Article 8 of the agreement referred to absence reporting and the rules to follow. Noting that staff members must call in no later than the first hour of the first day. Failure to call in would forfeit any pay for the day. Mr. Bilgeisi asked if any medical note was produced for the month of January and Ms. Reede stated no.

Mr. Bilgeisi referenced Exhibit A number 8, letter to Mr. Ortega to contact the Ms. Reede. Several calls were also made with no response from Mr. Ortega. On February 13, 2017 a letter was sent saying it was imperative for Mr. Ortega to contact the office otherwise the District had no choice but to determine job abandonment by Mr. Ortega. Mr. Ortega did contact Ms. Reede and she informed him to contact Keenan representative about his case if he is still having medial issues and to contact the school site on a daily basis regarding absences and submit in any medical notes. Mr. Bilgeisi asked if Mr. Ortega was placed back on to an approved leave, Ms. Reede stated no because no medical note was provided.

Mr. Bilgeisi then brought to the attention Exhibit A number 9, email communication between the District and Mr. Ortega. In this email exchange Mr. Ortega was going to be seen by a medical provider on February 16, 2017. , The medical office that day referred Mr. Ortega back to Kaiser for a work injury. No medical note was provided. Contact was made, via email, by Mr. Ortega not going to work on Thursday, Friday, Monday and Tuesday. On February 28,

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2017, Ms. Reede repeatedly asked for a medical note and to for Mr. Ortega to report his absences daily. If the instructions were not followed, it will result in disciplinary action for unexcused absences for two (2) months and for ignoring requests for medical documentation and contacting the District.

On March 2, 2017, a medical note received and a reminder was sent to Mr. Ortega to contact Ms. Smith regarding absences. On March 7, 2017, another email request was sent to contact the District to report absences. On March 8, 2017, an email was received from Mr. Ortega notifying us of a possible meeting with Keenan to reopen the work injury case. From March 7, 2017 there was no further communication from Mr. Ortega.

Mr. Bilgeisi reviewed Exhibit A number 12, Absent Report Log. The log is completed by the school site secretary and during the months of January and February the log indicated W/C for Mr. Ortega. Mr. Bilgeisi asked if he was on an approved leave. Ms. Reede stated no he was not and the logs because there was no medical note. The logs are viewed by payroll and they generally don't review the logs.

On June 29, 2017, with no medical note provided, a recommendation of termination of employment for Mr. Ortega went to the School Board. The School Board approved the termination effective June 30, 2017.

Mr. Hampton asked Mr. Ortega if he had any questions to ask. Ms. Reede replied no. Mr. Hampton instructed Ms. Reede not to discuss the issue until a decision was made by the Commission.

Mr. Bilgeisi stated that the District rests.

Mr. Hampton instructed Mr. Ortega to call his first witness. Mr. Ortega asked for a break to get a file from his vehicle. Recess of meeting 10:54a.m.

Session came to order 11:05a.m.

Mr. Hampton instructed Mr. Ortega he may begin. Mr. Ortega noted he would like to address the workers compensation of December 21, 2016. Mr. Ortega stated he had recommendation from Keenan from October 5, 2016 until May 22, 2017 and recommend surgery at the end of December. Mr. Ortega stated he was confused as to what to do and who to call. Keenan supplied Mr. Ortega a list of medical providers in December who might be able to help. On December 7, 2016, Mr. Ortega underwent an MRI that stated a possible surgery needed and Mr. Ortega was confused on who to give the medical note to. Mr. Ortega asked to submit the documents into evidence.

Mr. Hampton called for a short recess so that copies could be made at 11:08a.m.

Session came to order 11:15a.m.

Mr. Hampton received the documents and submitted the applet exhibits 1 – 7. Mr. Hampton asked Mr. Bilgeisi if the District had time to review the documents and accept them, Mr. Bilgeisi stated yes.

Mr. Hampton asked Mr. Ortega to call any witnesses, Mr. Ortega stated there were no witnesses. Mr. Hampton asked if he would like to make an opening statement, Mr. Ortega declined.

Mr. Bilgeisi asked to rebuttal and asked for a witness, Ms. Shari Fernandez, to testify. Ms. Fernandez was sworn in and stated she is the Director of Human Resources. Ms. Fernandez testified she was the Skelly Hearing Officer and met with Mr. Ortega in the past. Mr. Bilgeisi asked the purpose of the meeting; Ms. Fernandez stated that she was to explain the separation charges to Mr. Ortega and give options to him and provide a time to obtain any information from Mr. Ortega before the School Board took action. Mr. Bilgeisi asked Ms. Fernandez if Mr. Ortega provided any documents, she replied no. Mr. Hampton asked Mr. Ortega if he had any questions for Ms. Fernandez, he replied no.

Mr. Hampton instructed Ms. Fernandez not to discuss the issue until a decision was made by the Commission. Mr. Bilgeisi recalled Ms. Reede. Mr. Hampton reminded Ms. Reede she was still under oath. Mr. Bilgeisi asked Ms. Reede if she recalled ever seeing the medical notes provided by Mr. Ortega, she replied no. Asked if any of the notes were medical excuses from staying away from work or to prevent any communication to the supervisor, again Ms. Reede stated no. Mr. Hampton asked Mr. Ortega if he had any question for the witness, he replied no.

Mr. Hampton asked if there were any further witnesses or documents from either party, both said no.

Mr. Bilgeisi asked for a short break to update his closing statement based on the new evidence brought in by Mr. Ortega.

Mr. Hampton called for a short recess at 11:29a.m.

Session came to order 11:46a.m.

Mr. Hampton asked Mr. Bilgeisi if he would like to make a closing statement. Mr. Bilgeisi stated that it is not easy terminating an employee. There was nothing presented today that was negative personally on Mr. Ortega or a work injury. Simply put, rules are established for everyone and everyone must conform to the rules. The rules were to provide a medical note and contact the supervisor if unable to come to work. Despite numerous requests to provide documentation and to make contact regarding his absence there was no evidence provided today to indicate Mr. Ortega followed these requests. Ms. Smith testified regarding the repeated bad behavior of Mr. Ortega. What else could the District have done? Much time and effort was provided to Mr. Ortega, by many individuals, to comply with the rules. Evidence was provided today to support and uphold the decision to terminate Mr. Ortega and that the District asks the Commission to uphold the decision.

Mr. Hampton asked Mr. Ortega for a closing statement. Mr. Ortega asked to submit another document regarding his work status report from December. Mr. Hampton agreed to add to the Applet Exhibit. Mr. Bilgeisi's only objection was that no one had seen this document until today. Mr. Bilgeisi asked Mr. Ortega if he presented this to the District in the past, Mr. Ortega stated no.

Mr. Hampton asked Ms. Reede how she obtained the work status reports in the past. Ms. Reede stated they were provided from Keenan. Mr. Hampton asked if she was aware of the work status report given by Mr. Ortega, she replied no. The work status report was from December 21, 2016 until January 11, 2017. The work status report recommended surgery.

Mr. Hampton instructed both parties to complete closing statements. Mr. Bilgeisi stated Ms. Reede sent a letter instructing Mr. Ortega to provide a medical notification and to comply with the absence reporting protocols after this medical excuse of January 11, 2017 and Mr. Ortega failed to do so. No closing statement was made by Mr. Ortega.

#### CLOSED SESSION – APPEAL HEARING DELIBERATION:

Hearing concluded at 12:01p.m. and went into closed session to deliberate. Mr. Hampton said all parties will be notified of the decision of the Commission.

Session came to order 12:17p.m.

Mr. Hampton stated based on the findings of the evidence by the Personnel Commission the Commission finds :

- 1) The Applet engaged in below standard work - Incompetency.
- 2) The Applet engaged in the inability to perform and engage in assigned duties - Inefficiency.
- 3) The Applet engaged dereliction of duties and attention to – Inattention to or dereliction of duty.
- 4) The Applet engaged in unexcused absences or tardiness - Abuse of leave.

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- 5) The Applet engaged absences in 3 consecutive working days without notification or permission - Abandonment of position.
- 6) There has not been an abuse of discretion by the appointed or recommend authority
- 7) The causes of discipline the applet are supported by the facts – The plenty invoked by the District was excessive.
- 8) Progressive discipline is not required based on the facts and circumstances of this disciplinary action.
- 9) Disciplinary decision of dismissal was not excessive.

Mr. Hampton stated therefore it is the Commission's decision taking disciplinary action against the Applet was taken in accordance with facts and was not an abuse of discretion. The plenty invoked was not excessive and the District's action is hereby sustained. The Applet with the disciplinary action was not in accordance with the facts that the disciplinary action was abuse of discretion and that the plenty was excessive and for the foregoing reason denied.

Mr. Hampton said a copy of the decision will be given to the District representative, forwarded to the Board and also given to the Applet.

ADJOURNMENT:

The meeting was adjourned at 12:20 p.m.