

THE MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, APRIL 13, 2010
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR COMMISSIONERS' ROOM
NEW YORK, NY 10004

PRESENT: President Julie Dent
Secretary Juan Carlos "J.C." Polanco

Commissioners Araujo, Barrera, Ryan, Schacher, Sipp, Soumas, Stupp,
Umane

George Gonzalez, Deputy Executive Director
Steven H. Richman, General Counsel
John Owens, Jr., Director, Campaign Finance Enforcement
Dorothy Delayo, Director, Personnel
John Ward, Finance Officer
Nicholas Squicciarini, Facilities Manager
Curt Sawyer, Associate Director, Gartner
John Naudus, Senior Systems Analyst, Electronic Voting Systems
Lucille Grimaldi, Manager, Electronic Voting Systems
Daniel Lavelle, Supervisor, Phone Bank
Valerie Vazquez-Rivera, Director, Communication & Public Affairs
Thomas Sattie, Associate Staff Analyst, Candidate
Steven B. Denkberg, Counsel to the Commissioners
Charles S. Webb, III, Counsel to the Commissioners

GUEST: Jerome Koenig
Mark B. Herman
Marjorie Shea, WCC
Laurent Lawrence, Burson Marsteller
Rima McCoy, CIDNY
Stewart Armstrong, VAC
Andrea Senteno, CUF
Teresa Hommel, WheresThePaper.org
Carol Green, DCAS
Alan Flacks, Member of NY County Democratic Committee

President Dent called the meeting to order at 1:38 P.M.

Commissioner Araujo moved to approve the minutes of March 16, 2010, March 16, 2010 Finance Committee and March 23, 2010. Commissioner Barrera seconded the motion with Commissioner Umane abstaining. The motion was adopted.

Commissioner Araujo requested to discuss a Queens personnel matter in Executive Session.

Commissioner Barrera requested to discuss a Bronx matter in Public Session.

Mr. Gonzalez presented the HAVA update. He reported that the Board has received 370 BMDs. As of today, the Board staff has conducted the acceptance testing on 100 BMDs and it is an ongoing program. The staff has completed 1,780 upgrades to the operating/firmware on the system. Mr. Gonzalez reported that there are six (6) BMDs that need repairs and once complete the staff will conduct the operating/firmware upgrade. The Board staff has verified the codes on 1,736 BMDs and 1,659 BMDs codes have been recorded and verified.

Mr. Squicciarini presented the update on the Voting Machine Facilities (VMFs) renovations. He distributed the Voting Machine Facility Readiness Workstream: VMF Renovation Status Report to the Commissioners. Mr. Squicciarini reported that the Bronx VMF is in the process of renovation. The air conditioning, electric and flooring will be updated. The estimated scheduled completion date is May 13, 2010. He noted that DCAS fell behind schedule with the Certificate to Proceed with the Voice/Data funds. The Brooklyn VMF's renovations are complete. The Voice/Data wiring is ongoing and should be complete in one (1) week. The scanners were delivered to the VMF and staff is conducting acceptance testing. The Manhattan VMF has ongoing renovations. The 10th floor is complete with new flooring and air conditioning. The 8th floor is expected to be complete within two (2) weeks. It should be complete in time to receive deliveries of the new machines. The Queens VMF mezzanine is complete except for the Certificate to Proceed for Voice/Data wiring. Recently, the Board acquired approximately 30,000 sq. ft. on the 1st Floor and DCAS is currently bidding to renovate that space. The Staten Island VMF renovations are complete except for the Certificate to Proceed for Voice/Data wiring. There was new flooring, painting and electrical work. Mr. Squicciarini recalled that the Board is trying to acquire the 11th Floor at 42 Broadway and to this date DCAS reports that the

license agreement is with the landlord's attorneys. Mr. Squicciarini attends bi-weekly meetings with DCAS and will follow up with them. Commissioner Barrera inquired why the Bronx VMF is still under renovations. Mr. Squicciarini reported that DCAS had problems with the renovation bidding on that site. He gave DCAS the timeframe for machine deliveries, so they will put extra people on shifts.

President Dent inquired if any resumes were received for the position of Executive Director. Mr. Gonzalez replied no.

Mr. Gonzalez reported that he has an added item to the agenda concerning Dominion V. Board of Elections. He stated that Mr. Richman received a request last week with regard to a response to the lawsuit. Mr. Richman distributed a copy of the draft letter prepared by the New York City Law Department to the Commissioners. In addition to the lawsuit, Dominion filed what they purported to be a bid protest in awarding the contract of voting system to ES&S. The NYC Law Department advised the Board to issue a response letter to close the file. Mr. Richman requested approval from the Commissioners to send the draft letter prepared by the NYC Law Department. Commissioner Umane moved to approve the draft letter and to send it. President Dent seconded the motion, which was

adopted unanimously.

Mr. Gonzalez recalled that the EMS Settings and Voting Messages item was tabled at the previous meeting to acquire more information. He requested for Mr. Richman to research the Election Law regarding the matter. Also, he requested for John Naudus to be present today to assist the Board in making a determination. Mr. Gonzalez noted that a copy of the memorandum and statutory provisions concerning the EMS Settings and Voting Messages are in the agenda. President Dent requested for Mr. Richman to elaborate because he was not available at the previous meeting. Mr. Richman explained the over-vote. The NYS Election Law requires that the voting system should notify the voter before the ballot is cast, the effect of casting multiple votes for the office, and provide the voter with an opportunity to correct the ballot before it is cast and counted. The voting system shall provide the voter an opportunity to privately and independently verify votes selected and the ability to privately and independently change such voters or correct any error before the ballot is cast and counted. The Help America Vote Act (HAVA) provisions are similar; the voting system shall permit the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct

the error through the issuance of a replacement ballot, if the voter was otherwise unable to change the ballot or correct any error. Mr. Richman reported that he asked the State Board for the correct citations for the current standards regarding notifying voters who cast a scannable paper ballot containing an over-vote, under vote and blank ballot. He also inquired if the given the language in Section 7-202(1) (A) (e) of the Election Law, allow the scanner to display messages advising the voter of an under vote or a completely blank ballot. A copy of the email is in the agenda. Mr. Richman did not receive a response from the State Board to this date. Commissioner Soumas inquired if there is any conflict with the State Law and State Board rules. Mr. Richman stated no, with respect to the over-vote, and there may be a “gap” concerning the under vote and blank ballot. He is waiting for a response from the State Board. Secretary Polanco inquired if the Legislation decided the issue on the over-vote. Mr. Richman stated no; the over-vote has specific language in Section 7-202 (1)(d) and (e). The question is how the voter knows of the other error such as completely blank ballot or under vote if the system does not inform them. Commissioner Umane stated that the voter can look at their ballot; the Board entrusts the individual voter the right and obligation to not prompt them. He stated that the State Law deals with over-vote, but not under-vote and blank ballots. There is no issue if someone submits a blank

ballot, and with the issue of under-voting, many people choose not to vote for all candidates. Commissioner Barrera inquired if it was acceptable for someone who voted for the first two (2) candidates and did not select down the row on the lever machines. Mr. Richman replied yes. In order to move the red lever back, the voter had to vote for one (1) candidate or ballot question, or use the silver release lever which was at the bottom of one of the columns. If a voter wanted to cast a blank ballot, they had to pull the lever of the latch to allow the red lever to go right to left. At one point it was disabled on the lever machine, but it was restored due to litigation. Commissioner Umane stated that the Board spent a lot City funds to reinstall the latch and he was against the settlement at that time. Commissioner Barrera clarified that when someone voted a blank ballot on the lever machines they had to press something to confirm that they wanted to cast their blank ballot. Secretary Polanco stated that he had a procedural issue. At the previous meeting, he recalled that the Commissioners decided not to give an opinion on reminding the voters whether or not they submitted a blank ballot. As a result of the missing pages in last week's agenda, he feels they should not vote again on this issue. He stated they have to vote on the over-vote issue. President Dent stated that he is correct, however, the Commissioners indicated that there were pages missing from the agenda and to her understanding the blank

ballot was still an issue. President Dent stated that she does not see any harm informing the voter if they cast a blank ballot and asked for a better understanding. Secretary Polanco stated that he believes very strongly for voters' rights, but last week it was discussed that the Scantron ballot has 16 pixels and will detect whether or not someone had intent to vote a certain way. He added that if someone casts a blank ballot it is clearly a protest ballot, whether or not it is an error, it is a philosophical opinion. The voter has every right to vote in protest. He feels that it is unacceptable to remind a voter of a protest ballot. Commissioner Soumas inquired about the likelihood that a voter casts a blank protest ballot or they made a mistake. They do not want to disenfranchise voters without the full knowledge on operating the new voting systems. Commissioner Schacher stated that they have to presume that a person is at the poll site to vote and if he/she chooses not to vote, so be it. Commissioner Barrera stated that she fails to see how this is any different from what was presented by Mr. Richman concerning the lever machines. Voters had to take an extra step by pressing a button in order to cast a blank ballot. Commissioner Sipp stated that when a voter gets their Scantron ballot they have to fill, or not fill, in the circles in the privacy booth and then wait in line to cast it. He feels that the voter had ample opportunity to make that their protest ballot. Commissioner Soumas inquired how many people will cast a protest vote

and questioned if the one (1) extra step will not preserve their privacy. He stated that they have to do everything they can to make sure everybody has the right to cast their ballot and to be counted. Commissioner Ryan stated that they are inviting a lawsuit in difficult economic times. They are calling into question the process if we do not give the opportunity to have a notification for the blank ballot which is the computer equivalent to the silver switch on the lever machines. Ms. Grimaldi reported on an experience when the Board first introduced the ballots. People would put a circle around the candidate's name of choice, or they would mark a straight line down the column's party line, or put a check mark outside of the oval. The scanner does not see those marks and will scan it as a blank ballot. When the scanner says it is a blank ballot, it is not always blank because the voter put a mark outside of the oval. Over time voters started filling out the ballot correctly, but not completely.

President Dent recognized Jerry Koenig, a member of the public.

President Dent recognized Teresa Hommel, a member of the public.

Mr. Naudus clarified the technology. The scanners the Board currently use for absentee ballots are a system such that if it is out of

calibration it will not pick up an oval. It is looking for a percentage of light and dark within a specified location on the scanner read head. It grades from 0-16 for a vote and anything over the 6 score gets treated as a vote. The ES&S poll site scanning system does not operate on that technology because it is an image scanner. It takes a complete picture of the entire ballot and the software reads each oval and determines the pattern whether it is an "x" mark, check mark, filled in, half filled in, or a line in the oval. The only thing it does not recognize is static noise which is a dot. Commissioner Araujo clarified that it is possible for a voter to put a dot and it will not count. Mr. Naudus stated that without any marking in the oval it will not count. President Dent thanked everyone for their input.

Secretary Polanco requested a Republican Party caucus.

The Commissioners convened a party caucus.

After the caucus, President Dent convened the regular stated meeting. She thanked everyone for their patience. President Dent noted that the agenda has to move on and the blank ballot discussion will be revisited.

Mr. Gonzalez recalled that last week Latino Justice-PRLDEF gave a presentation with regard to securing a grant from the ECA to assist the Board with poll workers in the upcoming election cycle. The Commissioners requested for PRLDEF to submit resumes of the individuals who would be conducting the recruitment and training of poll workers. Mr. Gonzalez distributed the resumes to the Commissioners for their review.

Mr. Richman reported on the temporary additional staff for The Office of the General Counsel during the 2010 Primary and General Elections. A copy of the memorandum is in the agenda. Mr. Richman requested authorization to begin the process of contacting several temporary legal staffing agencies and ask them to submit proposals. For the last nine years, the Board contracted for two (2) temporary legal support positions to assist the Board in the petition process at a cost not to exceed \$100,000 for the period of July 1 – November 2010. Secretary Polanco inquired how much funds were used last year. Mr. Richman replied \$70,000. Secretary Polanco inquired if the Board could legally transfer the money in an effort to hire two (2) permanent attorneys. Mr. Ward stated that the Board cannot mix OTPS and PS. Mr. Richman stated that the City Council is aware of this. President Dent moved to accept Mr. Richman's request. Secretary

Polanco seconded the motion, which was adopted unanimously.

Mr. Richman reported on the Legislative Education and Information Day on May 4, 2010. The workstreams have submitted materials of proposed legislation changes for Part 2. Mr. Richman and Mr. Owens Jr. will review the changes and prepare a package for the Commissioners by Friday for their consideration. Mr. Richman requested for the Commissioners to confirm their attendance for the Legislative Education and Information Day after the meeting or via email.

Mr. Richman requested for the Commissioners to review and make comments on the proposed Designating Petition Rules for the 2010 Primary Election. He stated that he would like the Commissioners to act on them at next week's meeting. Commissioner Araujo inquired if these proposed rules are the same as last year without any changes. Mr. Richman replied no. He stated that the changes are listed and summarized in the memorandum and the changes are stylistic or reflect recent court decisions. Commissioner Araujo stated that he has an objection to Rule C-2. Commissioner Umame stated that it concerns the complete address. Mr. Gonzalez requested clarification on Rule D-6. He inquired if this rule states that any amended cover sheet will be reviewed at

the end of the three (3) day period or as they come in.

President Dent recognized Jerome Koenig, a member of the public.

President Dent revisited the over-vote, under vote and blank ballot matter. She asked for the Commissioners to vote on each one separately in a roll call vote. Commissioner Sipp stated that they he thinks they already voted on some of the issues.

President Dent requested the Minutes of April 6, 2010. She thanked the general public and staff for their patience.

The Secretary of Record clarified that the vote at the previous meeting was concerning the Blank Ballot (Query Voter Option.) The motion was, "President Dent moved to send a letter to the State Board indicating the Blank Ballot (Query Voter Option) to inform the voter on the screen that it is a blank ballot. Commissioner Araujo seconded the motion, with Secretary Polanco, Commissioners Umane, Schacher, Sipp, Soumas, and Stupp opposing. The motion was not adopted."

President Dent reported that Commissioner Soumas addressed the Board indicating he would like to reconsider the vote.

Commissioner Soumas moved to reconsider the determination regarding the blank ballot at the previous meeting. In a roll call vote: Five (5) in favor; President Dent, Commissioners Araujo, Barrera, Ryan, Soumas, and Five (5) opposed; Secretary Polanco, Commissioners Schacher, Umane, Sipp, Stupp. The motion was not adopted.

President Dent stated that after the testimony from the Board staff the voters will not see the blank ballot on the screen. Commissioner Umane stated that they voted not to take a position to make a recommendation to the State Board. Mr. Richman stated that it will be the City Board's option to turn on the message in the City of New York. President Dent stated that the City Board should reach out to the State Board because she does not see any reason why the message should not appear for the voters. Mr. Richman stated that the State Law requires an affirmative message for the over vote, but the law is silent with respect to an under vote or blank ballot. Secretary Polanco stated that last week this issue was presented as a recommendation that the City Board was going to present to the State Board and it was voted in a bipartisan fashion. Mr. Gonzalez stated that he

did not present the issue as a recommendation to the State Board. President Dent stated that this matter has to be clarified and inquired if this message will or will not appear on the screen. Commissioner Ryan stated that based on the testimony of the Republican Commissioners it is not clear what they voted on. Mr. Richman stated that the State Board certified the system with three (3) options leaving the choice up to the local Boards. Commissioner Umane stated that they already had a vote on the blank ballot. Secretary Polanco stated that there is a lot of work to do and asked Mr. Richman to assist with this matter. He requested to table the other two (2) choices for next week. Commissioner Umane stated that they voted already and feels it is incorrect to reconsider the vote. President Dent asked the Commissioners to keep in mind that these are new machines and the public are not used to them. The more information the Board provides them with then the easier the transition will be. She asked what is wrong with informing the voter because it will only help, not hurt. Commissioner Stupp inquired if the Board will have instructions at the poll sites on how to fill in a ballot. Mr. Richman stated there will be instructions on how to fill in the oval. Commissioner Ryan asked Mr. Richman if in order to program the machines do the Commissioners need to have a future vote on the other two (2) choices. Mr. Richman referred him to Mr. Naudus.

President Dent recognized Mark Herman, a member of the public.

Mr. Naudus stated that each option (blank ballot, over-vote and under vote) needs to be reconfigured in the system before they can set up the scanners. For each option, there are three (3) choices available; accept ballot as is, query the voter, or reject the ballot. He stated that the systems have to be set-up for the public demonstrations next month and they will need an answer soon. Commissioner Soumas stated that the Commissioners have statutory and regulatory requirements and they need six (6) votes. He requested a copy of the transcript of the April 6, 2010 meeting. President Dent stated that this is a very serious issue and if the Commissioners are not sure then they need a copy of the minutes. She stated that the issue should be tabled for one (1) week. Mr. Naudus stated that one (1) week is fine. President Dent stated that the public wants training on the new machines and they cannot go out until they are fine tuned with the important messages. Secretary Polanco added that he agrees with President Dent and asked Mr. Richman to provide the Commissioners with an objective analysis on this matter. In addition, he asked for the Secretary of Record to provide an objective set of minutes for April 6, 2010.

President Dent moved to table this issue for one (1) week. Secretary Polanco seconded the motion, which was adopted unanimously.

Commissioner Barrera requested to table her matter for one (1) week.

Commissioner Araujo moved to fill an Administrative Assistant vacancy in the Executive Office which formally belongs to Angel Holcomb. He referred Amanda D'Amico to fill in the position by close of business today. Commissioner Umane seconded the motion, which was adopted unanimously.

Mr. Ward presented the Vacancy Report dated April 13, 2010.

Commissioner Umane moved to adjourn the meeting. Commissioner Araujo seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, April 20, 2010 at 1:30 P.M.