

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, NOVEMBER 23, 2010
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR COMMISSIONERS' ROOM
NEW YORK, NY 10004

PRESENT: President Julie Dent

Commissioners Araujo, Barrera, Ryan, Soumas, Stupp, Umame

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
John Owens Jr., Director, Campaign Finance Enforcement
Dorothy Delayo, Director, Personnel
John Ward, Finance Officer
Valerie Vazquez-Rivera, Director, Communications & Public Affairs
Daniel Lavelle, Associate Staff Analyst, Phone Bank & Communications
Gregory Lehman, Chief Clerk, Manhattan Borough Office
Timothy Gay, Deputy Chief Clerk, Manhattan Borough Office
Robert Pataky, Administrative Associate, Queens Borough Office
Beth Fossella, Coordinator, Voter Registration
John Naudus, Senior Systems Analyst, Election Voting Systems
Marianne Effinger, Associate Staff Analyst, Election Day Operations
James Barron, Temporary Attorney, OGC
Adam Dolce, Temporary Attorney, OGC
Steven B. Denkberg, Counsel to the Commissioners

GUEST: John Smith
Marjorie Shea, WCC
Matt Gewolb, NYC Council
Teresa Hommel, Wheresthepaper.org
Jerome Koenig
Kate Doran, LWV
Alan Flacks, Member of NY County Democratic Committee

President Dent called the meeting to order at 1:51 P.M.

Commissioner Soumas moved to approve the minutes of the August 24, 2010 and August 31, 2010 meetings. President Dent seconded the motion, which was adopted unanimously. Commissioner Araujo noted that he was not present at the August 24, 2010 and August 31, 2010 meetings, but agreed to approve them based that the minutes are properly recorded and dictated.

President Dent requested to add an item to the agenda.

On behalf of Commissioner Schacher, President Dent moved to grant an advance of 210 hours of sick leave for John Sagnelli, a Clerk in the Brooklyn Borough Office. Commissioner Umame seconded the motion, which was adopted unanimously.

Ms. Sandow reported on Borough Office post election activities. The information per borough follows:

- Bronx Borough Office
 - 3% and 5% Audit – Completed
 - Write-ins Captured and Verified – In progress
 - Recanvass – Completed
 - Affidavits/Absentee Ballots – Completed

- Poll Worker Payroll – Completed
- Voter History – Completed
- Invalid/Valid Letters – In progress
- Brooklyn Borough Office
 - 3% Audit – Completed
 - Write-ins Captured – In progress
 - Recanvass – In progress
 - Affidavits/Absentee Ballots – Completed
 - Poll Worker Payroll – Completed
 - Voter History – In progress
 - Invalid/Valid Letters – In progress
 - Poll Worker Payroll – Completed
- Manhattan Borough Office
 - 3% Audit – In progress
 - Write-ins Captured – In progress
 - Recanvass – In progress
 - Affidavits/Absentee Ballots – In progress
 - Poll Worker Payroll – In progress
 - Voter History – In progress
 - Invalid/Valid Letters – Task not started yet

- Queens Borough Office
 - 3% Audit – Completed
 - Write-ins Captured – Completed
 - Recanvass – Completed
 - Affidavits/Absentee Ballots – Completed
 - Poll Worker Payroll – Completed
 - Voter History – Completed
 - Invalid/Valid Letters – In progress

- Staten Island Borough Office
 - 3% Audit – Completed
 - Write-ins Captured – Completed
 - Recanvass – Completed
 - Affidavits/Absentee Ballots – Completed
 - Poll Worker Payroll – Completed
 - Voter History – In progress
 - Invalid/Valid Letters – In progress

Commissioner Umame requested to add an item to the agenda.

Commissioner Umame asked the Commissioners to review copies of six (6) ballots which were distributed to them in folders. He requested for

Mr. Gay and Mr. Lehman to assist him in his presentation. Commissioner Umane stated that the ballots are specimens from the Manhattan Borough Office which came to the staff's attention while doing the 3% Audit. He asked the Commissioners to take an objective view of these ballots for part of the post election procedures. He stated that the first three (3) ballots are examples of votes that were cast, but not credited to particular candidates.

The first ballot is a vote for Governor that was not credited to any candidate. Commissioner Umane stated that it seems that the voter wanted to vote for Governor Cuomo which was in the target area which was not picked up by the scanners because there is nothing marked in the oval. The vote will not count. Commissioner Umane stated that it is an audit of the machines; not the audit of the voter's intent. The audit is checking to see what the machines generated, comparing what the machines read as a vote, and what they may think an actual vote is. Commissioner Araujo inquired if ballots #5 and #6 were picked up with the check marks. Mr. Lehman replied yes because the mark is in the oval.

The second ballot for the Senate race (2 year term) "Vote for 3" was counted as an over vote. Commissioner Umane stated that is correct because many votes were cast; four (4) ovals were filled in.

The third ballot was (7, 8, 9 Judges of Supreme Court) "Vote for 3." Commissioner Umane stated that four (4) ovals were filled in, so no votes should count for any of the races because it is an over vote. Mr. Lehman stated that the ballot was singled out not because the tallies were off, there was no discrepancy, but it seemed that the voter wanted to vote in the 2nd column then blackened/crossed it out and voted in the 1st column. The misuse of the ballot made the voter lose their vote.

The Commissioners skipped to the fifth ballot for review which there was a check mark for Mr. McMillan and a check mark for Mr. Barron. It counted, but the staff had to figure out if it is an over vote or for one (1) candidate. At first the staff counted it as an over vote, but it did not reconcile. The staff isolated the ballot and determined there was no over vote in the contest and there were only two (2) votes for Mr. McMillan, but it did not count for Mr. Barron. The scanner did not distinguish the two (2) ovals filled. Mr. Gay stated that he observed that if a dot is marked in the center of the oval then the scanner reads it, but if it is off center it does not. Line #5 Townshend was not counted as a vote and Line #6 Blakeman only counted, out of the three (3) ovals marked. Ms. Sandow asked if the tape reflected an over vote. Mr. Lehman replied no, they were all zero (0). Commissioner Umane stated that the Board is following the rules, but

seems that there is a flaw in the audit process. He is concerned that the rules need to be revised.

Commissioner Soumas stated that it strikes him that the machines malfunctioned on these ballots because they should have been rejected as over votes. He requested for the manufacturers to find out how they malfunctioned. Mr. Lehman reported that some of the ballots had the input of ES&S staff.

President Dent recognized Ken Carbolito, Senior Vice President of ES&S.

Mr. Carbolito congratulated the Board for doing a phenomenal job on the implementation. He reported that there is over vote protection for the voters. The scanner will see the over vote and will present the information to the voter on the screen. The voter can choose an option to spoil the ballot, get a new ballot, or to accept it. The voter may have been told it was over voted, consciously accepted it and it went into the box. Commissioner Soumas asked him to review the ballot. Mr. Carbolito reviewed the McMillan/Barron ballot. He stated that it appears that the voter marks are not fully populating the ovals and there is more or less of a line in the

ovals. Mr. Carbolito stated that the scanner would accept or reject this ballot. Commissioner Umane asked who the vote would count for, Mr. McMillan or Mr. Barron. Mr. Lehman stated that the machine counted only Mr. McMillan. Commissioner Araujo stated that the voter would have not gotten the prompt on their screen. Mr. Carbolito stated that a well marked oval is always picked up as a vote unless it is over voted in the contest. An oval that is not marked is a non-vote. Mr. Carbolito stated that there is a precise algorithm on how it counts the vote with checks, x's, marks and shades of gray. Commissioner Soumas asked which is a shade of gray. He stated that the Barron oval mark looks darker than McMillan's oval, but McMillan was counted. Mr. Carbolito stated that the McMillan oval looks better than Barron's oval. Commissioner Soumas stated that it should have counted as an over vote.

President Dent asked for Mr. Carbolito to take the findings back to the ES&S headquarters and research the actual ballot and audit data then present their report to the Commissioners at a later date. Mr. Carbolito stated that he will have his ES&S engineers research this issue. Ms. Perkins stated that ES&S can have the original ballots after the Primary Election is certified. The certification should be completed by November 30, 2010.

Ms. Perkins reported on the entrance conference with the NYC Office of the Comptroller concerning the Procurement Audit which was held on November 17, 2010. Executive Management and the auditors reviewed the particular documents that the Office of the Comptroller's Auditor requested. The auditors are presently stationed in the Board's Executive Office. They have an office with a computer, telephone and file cabinets with locks. The auditors will be working with Board staff and they anticipate their audit report to be completed by June 2011.

Ms. Perkins reported that Andy Grossman, Deputy Director of the NYC Council's Finance Division, contacted her stating that Council Member Gale Brewer would like to schedule an informal meet and greet with her and Ms. Sandow. The tentative meet and greet date is scheduled for December 1, 2010.

Ms. Perkins reported that there is a NYC Council Governmental Operations Committee Hearing scheduled for December 6, 2010 at 1:00 P.M. A copy of the email is in the agenda. President Dent noted that she will not be available that week and requested for her fellow Commissioners to attend. Ms. Perkins recommended for the Borough Chief Clerks and Deputy Chief Clerks to attend and participate in the

Hearing as well. Commissioners Soumas and Umane opposed. Commissioner Umane stated that the Board's Testimony and Executive Staff is sufficient. President Dent, Commissioners Stupp and Barrera agreed with Ms. Perkins's recommendation. Commissioner Araujo opposed because there is a lot of work to be completed in the Borough Offices. It was noted that Mr. Richman and other Executive Office Managers will be attending as well. It was not agreed to have the Borough Chief Clerks and Deputy Chief Clerks attend and participate in the Hearing. Ms. Perkins stated that Executive Management will prepare the Testimony and email the Commissioners for their review and comments.

Ms. Perkins reported on a request for funding from the Department of Education (DOE). A copy of the email is in the agenda. Salvatore Calderone, a representative from the DOE, stated that Mr. Gonzalez confirmed with him that the Board would reimburse the DOE for all costs incurred when the designated poll sites were kept open in order to receive the scanners and supply carts. The DOE opened their facilities during the holidays on September 9th, 10th, 11th and 12th. The DOE stated that the total cost incurred is \$227,557.09. Ms. Perkins stated that staff is reviewing the poll sites to confirm if the public schools were actually open on those days. She stated that is was her understanding that Mr. Gonzalez

made a commitment that the Board would reimburse the DOE.

Commissioner Umame recognized Jerome Keonig, a member of the public.

Commissioner Umame stated that the Board should reserve its rights and review the law. The Board does not have the funds to reimburse the DOE. The Commissioners will research this matter before making a decision today.

Ms. Vazquez-Rivera presented Election Connection, a poll worker newsletter. Mr. Lavelle distributed copies of the Election Connection template to the Commissioners. Election Connection is a revival of a poll worker newsletter that the Board printed in the 1980's. Ms. Vazquez-Rivera requested to revive the newsletter to supplement the Board's public education and poll worker recruitment initiative. The Election Connection newsletter could be produced quarterly and feature one (1) poll worker per borough to personalize it, important messages from the Board, and dates to remember. She requested endorsement and comments from the Commissioners. Commissioner Araujo requested how much it would cost. Ms. Vazquez-Rivera stated that there is no additional cost because it would

be an e-newsletter due to the limited budget. The Board's database has over 15,000 email addresses from poll workers and individuals who applied to be poll workers. The e-newsletter could be emailed to the Community Groups for them to forward it to their constituents as well. Ms. Sandow stated that she and Ms. Perkins would discuss this e-newsletter with the Borough Chief Clerks and Deputy Chief Clerks. They would like the Borough Poll Worker Departments to inform the poll workers that it is important to supply an email address to the Board. Commissioner Araujo asked who would oversee this e-newsletter. Ms. Vazquez-Rivera replied that she would oversee it, and then present it to the Public Education Committee, and then present to the full Board for approval. Commissioner Umame inquired how many languages would this be translated for. It was noted that poll worker information is required to be only in English. Ms. Perkins stated that in the past it was only distributed in English. Commissioner Umame moved to revive the Election Connection poll worker newsletter on a periodic basis, to send it out via email, and to translate it into the required languages. Commissioner Barrera seconded the motion, which was adopted unanimously.

Mr. Naudus presented an item concerning the Federal Write-in Absentee Ballots. A sample copy of an Official Federal Write-in Absentee

Ballot is in the agenda. He reported that a question was raised during the canvass. Mr. Naudus stated that when a voter writes in the name of a Party, as per Board practice, the staff will then figure out what candidate is running in the voter's Election District/Assembly District. On the Federal ballot there is one (1) blank place for U.S. Senator. A voter wrote "Democrat" in the blank space, but there are two (2) Democrats running for the Senate Office. Mr. Naudus consulted with the Board's Office of the General Counsel and they researched that the State Board's regulations and the New York State Election Law does not cover who to apply this vote for. There is not enough information given on the ballot to make the determination for who the voter intended to vote for, therefore, the Commissioners will have to make the determination or policy for their jurisdiction. For example, does the vote apply to both candidates, or neither candidate. Mr. Denkberg recited Section 9-209 of the NYS Election Law concerning this matter. Commissioner Umame moved to adopt a policy, based on Section 9-209 of the NYS Election Law, that in this limited circumstance the Board follows the statute and credit the vote for both candidates. Commissioner Araujo seconded the motion, which was adopted unanimously.

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

Commissioner Umane moved to amend his previous motion to adopt the Commissioners' policy for Federal and State Offices on the Official Federal Write-in Absentee Ballot. The motion was adopted unanimously.

Mr. Pataky reported poll worker pay issues that arose in the Queens Borough Office as well as in the other Borough Offices. He stated that there were three (3) Trainers that took the Train-the-Trainer Class, but did not work. He asked the Commissioners how they should be paid. Commissioner Araujo inquired if these three (3) workers notified the Queens Borough Office. Commissioner Stupp noted that she questioned those workers and they felt that the training class was not sufficient in order to train other poll workers. Commissioner Umane moved to not pay those three (3) Trainers. Commissioner Araujo seconded the motion, with Commissioner Stupp opposing. Commissioner Umane noted the absence of a quorum. Commissioner Stupp rescinded her opposition and the motion was agreed to by a vote of six (6) in favor and none opposed.

Mr. Pataky reported that there were five (5) poll workers that were not trained and went to a poll site unassigned and worked the full day. Commissioner Araujo asked if anyone requested their appearance at the poll site. Mr. Pataky reported that they worked for the Board in the past,

but were not requested. In addition, they did not receive a Notice to Work from the Board. Commissioner Soumas recalled that poll workers are required to be trained in order to work at a poll site. These five (5) poll workers were not appointed to work. Commissioner Araujo moved that these five (5) poll workers are not to be paid according to the facts presented. Commissioner Umane seconded the motion, which was adopted unanimously.

Mr. Pataky reported that there were three (3) poll workers who were trained, but were unassigned and showed up to work. It was noted that these poll workers passed the test. Commissioner Soumas moved to pay these three (3) poll workers. Commissioner Umane seconded the motion, which was adopted unanimously.

President Dent was very concerned that someone allowed a poll worker to work at a poll site who was not trained. Commissioner Araujo stated that the Borough's Poll Worker Department needs to stress to the Coordinators that people cannot work if they are not assigned by the Board's Borough Office. Commissioner Umane stated that there is a Board procedure concerning this matter, but it was not followed. President Dent recommended for this issue to be addressed in the Election Connection

poll worker e-newsletter.

Mr. Pataky reported that on October 30, 2010 he received a list of people who did not take training and/or failed training. Eight (8) people were assigned to work. Two (2) people never attended a training class and six (6) people failed training, but were assigned to work. He mailed them notices on October 30, 2010 informing them not to report to work and to disregard their Notice to Work. Mr. Pataky also called them and left them messages. However, these eight (8) people worked the full day. Commissioner Araujo suggested that these poll workers should not be paid because they were not trained and/or failed the training. Commissioner Stupp stated that the Board made an error. Commissioner Araujo stated that the Board caught the error and took every step possible to notify them not to work. In addition, they did not attend a training class and/or passed the training test which is very important. Commissioner Stupp differed and stated that these people worked a long day and should get paid. President Dent agreed with Commissioner Stupp and stated that there are many factors to consider. This matter should be brought to these poll workers' attention for the future. President Dent stated that these poll workers need to be re-trained. Some Commissioners expressed concern that the notice not to work may not have arrived at their home before November 2, 2010

General Election. Commissioner Soumas recommended paying these eight (8) people on a one time only basis. Commissioner Umane stated that there are only eight (8) people in Queens, but more in the other boroughs. He recommended paying these people one time only.

Commissioner Soumas noted that Commissioner Ryan joined the meeting.

Commissioner Umane recognized Teresa Hommel, a member of the public.

Ms. Sandow stated that per Board procedure, the Coordinator should call their Borough Office and ask permission if there are no more stand-bys, then those people are deputized by the Coordinator. Commissioner Ryan recommended for the Office of the General Counsel to review the Labor Law. A poll worker might assume that a Coordinator at a poll site has the authority to authorize them to work. The Board might violate the Labor Law if they do not get paid. Commissioner Ryan recommended for this matter to be tabled until the Labor Law is reviewed. Commissioner Umane agreed with Commissioner Ryan and suggested review before the Commissioners make a ruling on this matter. The

Commissioners questioned if they should table all items that they previously voted on. They agreed that the first matter voted on is clear, but the other three (3) matters are not clear and they should be fully informed before voting. Commissioner Araujo asked if it will affect payroll. Ms. Perkins reported that the poll worker deadline to be completed was yesterday. The Borough Office's are trying to complete their payroll, but are waiting for resolutions on these specific matters. They can close the payroll, but these poll workers will get paid late. Commissioner Soumas asked who sets the deadline. Ms. Perkins stated that the Board works with the Office of Payroll Administration (OPA), NYCAPS and the Comptrollers' Office. It was noted that it was a verbal, operational deadline by OPA in order for the poll workers to get paid in six (6) – eight (8) weeks per past practice of the Board. Commissioner Soumas stated that the deadline may be extended. Commissioner Ryan suggested to process the poll workers that have no questionable issues and to hold off on processing those with questionable issues. President Dent moved to process the poll workers that have no concerns into the payroll system, but the poll workers with questionable concerns to be put on hold after being consulted by the Office of the General Counsel, except for the first matter concerning the three (3) Trainers which was adopted unanimously. Commissioner Umame seconded the motion, which was adopted unanimously.

President Dent recognized Alan Flacks, a member of the public.

Mr. Ward reported on an update concerning the processing of poll worker payroll. He reported that there was a meeting yesterday with Executive Management, Financial Information Services Agency (FISA), OPA, two (2) Borough Chief Clerks, and some members of the Borough's Poll Worker Departments. It was reported that FISA and OPA does not want to continue the "data dumping." The Borough's Poll Worker Departments will continue to update the S-Select system, and in addition, the NYCAPS system. The meeting was geared for the Poll Worker Department staff to understand the process. They discussed poll worker payroll deadlines and supplementary payrolls as well. The Borough's Poll Worker Department staff will start training with NYCAPS in January 2011. Commissioner Ryan asked if the poll workers can remain active in the system each year so they do not have to be re-entered again. Mr. Ward replied yes; just the new poll workers will have to be entered into the system in the future.

Mr. Ward presented the Vacancy Report dated November 23, 2010. A copy of the report is in the agenda.

Commissioner Umane moved to adjourn the meeting. The motion was adopted unanimously.

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