

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, MARCH 24, 2009
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR HEARING ROOM
NEW YORK, NY 10004

P R E S E N T: President Frederic Umane

Commissioners Araujo, Polanco, Sampel, Schacher, Silie, Sipp, Soumas,
Stupp

Marcus Cederqvist, Executive Director
George Gonzalez, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Owens Jr., Director, Campaign Finance Enforcement
John Ward, Finance Officer
Joseph LaRocca, Coordinator, Candidate Records Unit
Tim Gay, Deputy Chief Clerk, Manhattan Office
Cynthia Belton, Administrative Associate, Manhattan Office
John O'Grady, Chief, Voting Machine Technician
Dorothy Delayo, Director, Personnel
Steve Ferguson, Director, MIS
Thomas Sattie, Associate Staff Analyst, Candidate Records Unit
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Mary Lou Urban, League of Women Voters
 Teresa Hommel, Community Church of New York
 Rima McCoy, CIDNY
 Marjorie Shea, Women's City Club
 Andrea Senteno, Citizen's Union

President Umane called the meeting to order at 1:37 P.M.

Commissioners Silie requested an Executive Session to discuss personnel matters.

The General Counsel announced he had an added item to his report regarding New York State Legislation.

President Umane convened the Commissioners as the Board of Canvassers in the City of New York to consider the following matter.

President Umane called upon the Chief and Deputy Chief Clerk for Manhattan to present Amended Statements and Returns of Canvass for the November 4, 2008 General Election for certification. Cynthia Belton, Administrative Associate, represented Troy Johnson, Chief Clerk, who could not attend the meeting. Tim Gay, Deputy Chief Clerk, and Ms. Belton presented the Amended Statements and Returns of Canvass for the November 4, 2008 General Election in New York County for various public offices, as certified by the Chief Clerk and Deputy Chief Clerk of Manhattan. The Deputy Chief Clerk stated that in the original certification, 301 ballots were invalidated in error. The amended Statements correct these errors.

President Umane moved to approve the Amended Statements and Return of Canvass for the November 4, 2008 General Election in New York County for various public offices. Commissioner Araujo seconded the motion, which was adopted unanimously.

President Umane moved to authorize the use of the Commissioners' stamps on the Amended Statements and Returns of Canvass for New York City approved today. President Umane designated Commissioner Schacher to be the second Republican member of the Board of Canvassers. The motion was duly seconded and adopted unanimously.

President Umane adjourned the meeting of the Board of Canvassers and convened the stated meeting of the Board of Elections.

Commissioner Schacher made a motion to adopt the corrected minutes of March 3, 2009. Commissioner Silie seconded the motion, which was adopted unanimously. President Umane made a motion to table the minutes of March 17, 2009. Commissioner Silie seconded the motion, which was adopted unanimously.

The Executive Director presented the HAVA update. Mr. Cederqvist reported on the letter by Sequoia Voting Systems to the Board regarding their “best and final” offer. Mr. Cederqvist asked for approval to send a letter to both vendors expressing the Board’s interest in receiving the best and final offers after SBOE certification, but prior to BOE selection. President Umame stated that the proposed letter is to set procedure.

Commissioner Sampel moved to adopt the Executive Director’s suggestion to send letters to both voting systems vendors to remind them of the Board’s intent in their “best and final” offers. Commissioner Silie seconded the motion.

In a roll call vote of:

Six (6) in favor (President Umame, Commissioners Sampel, Araujo, Silie, Sipp, Stupp,); and

Two (2) opposed (Commissioners Polanco and Schacher);

Commissioner Sampel’s motion was adopted.

The Executive Director reported that SysTest has to coordinate with NYSTEC to resolve some issues before testing can resume, and the State Board has requested a Conference for all the parties before Judge Sharpe in the U.S. District Court. The General Counsel stated the State Board will

be meeting on March 25, 2009. It is the State Board's request for the first Conference with the Court in more than a year. The Conference will follow the SBOE meeting.

The Executive Director reported that there is a Voter Assistance Commission (VAC) Meeting on Wednesday, March 25, 2009 from 1:00PM – 3:00PM.

The Executive Director stated the last day to file Objections for Independent Nominating Petitions for Bronx Borough President has passed without any objection hearing filed. He stated the Board is in a great position and can set the ballot and begin preparations for the Special Election with several weeks to go.

The General Counsel presented the draft Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election. Mr. Richman stated that the Chief Clerk of Queens Office recommended adding a provision requiring that the Specifications of Objections shall be prepared using either blue or black ink. He reported that Barbara Conacchio, Queens Chief Clerk, stated that during the February 24, 2009 Special Election some specifications were in red or

other color ink which was hard to Xerox, therefore, made things difficult for her staff to work the petitions. The Board usually performs their work in red or green ink.

Commissioner Polanco stated he does not like the term “shall.” He inquired what would happen if the specification were not in blue or black ink. He stated he would dislike seeing someone make the ballot, who shouldn’t be on the ballot, because they used the wrong ink color. After discussion, President Umane recommended using the term “prefer” instead of “shall.”

Commissioner Soumas stated that historically the Board would use red pencil so the documents could not be altered. He stated the Board should not be concerned about the color of ink, but to mandate the use of ink so specifications cannot be altered. President Umane agreed with Commissioner Soumas’ compromise.

Commissioner Soumas made a motion to amend the language in Rule H-1 of the Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election. The amended language in the second sentence will read, “The specifications of objections

shall be prepared in ink.” Commissioner Araujo seconded the motion, which was adopted unanimously.

Commissioner Araujo made a motion to amend the language in Rule H-12 of the Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election. The second sentence shall read, “Upon such a preliminary determination by the Chief Clerk and Deputy Chief Clerk, they shall refer their preliminary determination to the Borough Commissioners.” President Umame requested to add the following language to Commissioner Araujo’s amendment: “To the extent it is a petition for Citywide office, the preliminary determination shall be referred to the Executive Committee.” Commissioner Polanco seconded the motion as amended, which was adopted unanimously.

Commissioner Polanco stated last year he attended his first Specifications of Objections hearing at the Board and felt it was wrong to remove candidates from the ballot due to missing digits of petition cover sheets and/or clerical error. Commissioner Polanco requested to review the provisions of the Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election concerning the abbreviations that are acceptable. Commissioner Polanco urged the

Commissioners to think about how important it is if a subscribing witness on a petition, who has a Change of Address, but hasn't submitted a Voter Registration Card, to consider for the Board to update the subscribing witness Change of Address. President Umane raised a serious concern of fraud. He stated the Board should not officially change the subscribing witness's record without a submitted Voter Registration Card.

Commissioner Polanco requested changes to Rules D-2 and D-3 of the Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election. He requested that the contact person receive notice as well as the candidate. Commissioner Polanco stated the candidate probably receives a lot of mail and can easily overlook the notice in the mail. The General Counsel stated the reason the notice is only mailed to the candidate is because it's not a curable defect, it's a Prima Facie Notice that the hearing is in 3 to 4 weeks for an example. Mr. Richman also noted there is insufficient staff to for the volume of notices to be mailed. President Umane suggested allowing the contact person to receive the candidate's notice if the candidate requests it. The General Counsel stated in a July period 300 - 400 notices are mailed, but it depends which party positions are running.

Commissioner Polanco moved to amend Rule D-2 and D-3 of the Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election. He suggested the rule read, “In the event that the Board determines that a petition does not comply with these Rules, the Board shall forthwith notify the candidate and contact person named on the petition of its determination and the reasons therefore.” The motion failed since no other Commissioner seconded the motion.

Commissioner Polanco stated he had an issue that a candidate was kicked off the ballot because of missing a identification number on his cover sheet. He explained that it is not fair. President Umane recalled that the candidate was mailed a Notice of Non Compliance, but did not follow through. Commissioner Polanco stated you have to be an expert on the Board’s rules and he feels it protects the interest of people who are savvy, election lawyers, and experienced candidates. Commissioner Polanco stated the candidate has to be a master of the rules.

Commissioner Silie stated that if a person is running for office they have to be able to read and understand the rules. A candidate should be considered competent if they’re running for Public Office. She noted the Board has to hold a certain level of standards.

Commissioner Stupp inquired if the Notice of Non Compliance is sufficiently defined so a candidate would understand without an attorney explaining it to them. The General Counsel stated yes, it is in plain English.

President Umane moved to adopt the amended Designating Petition and Opportunity to Ballot Petition Rules for the September 15, 2009 Primary Election. Commissioner Silie seconded the motion. The motion was adopted with eight (8) in favor and one (1) opposed - Commissioner Polanco.

The General Counsel reported that the Governor's Counsel has asked the Board for comments within 10 days on a S. 2810 that both houses of the New York State Legislature have passed. After brief discussion, the Commissioners tabled this issue for next week's meeting.

The Chief Voting Machine Technician requested direction on the use of combined election districts for the April 21, 2009 Special Election. He stated the New York Election Law allows combining election districts up to 2,000 voters. Commissioner Silie stated she and Commissioner Polanco will not combine any Election Districts in the Bronx.

The Chief Voting Machine Technician inquired if the Board is sending out double lever machines and additional BMDs. The General Counsel stated the BMD formula that had been submitted received pre-clearance by the Department of Justice. Any change would require a new pre-determination. Commissioner Silie and Polanco will discuss this issue of double lever voting machines with the Chief and Deputy Chief Clerks and reply to Mr. O'Grady as soon as possible.

The Finance Officer provided the Commissioners with the Comparative Expenditures Report dated March 24, 2009. Commissioner Schacher inquired about overtime usage. Mr. Ward explained that overtime begins in the 36th hour at straight pay, and after the 40th hour, it is at time and a half.

President Umame moved to convene an Executive Session to discuss litigation and personnel matters. Commissioner Polanco seconded the motion, which was adopted unanimously.

The President reported that in Executive Session the Commissioners took the following personnel actions:

- A) Approved 6 new temporary employees (3 Democrats and 3 Republicans) to assist the Bronx Office in connection with the April 21, 2009 Special Election. The temporary employees may be hired effective March 25, 2009 and will be terminated on May 1, 2009.
- B) Valerie Vazquez-Rivera, Director of Communications and Public Affairs in the Executive Office, was granted an advance of 210 hours of sick leave.

President Umane adjourned the meeting.

The next Commissioners' meeting is scheduled for Tuesday, March 31, 2009 at 1:30 PM.