

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

PRESENT: President Frederic Umane
 Secretary Julie Dent

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
Dorothy Delayo, Director, Personnel
Stewart Liberman, Agency Chief Contract Officer, Procurement
Beth Fossella, Coordinator, Voter Registration
Valerie Vazquez-Rivera, Director, Communications and Public Affairs
Christopher Manos, Temporary Attorney, Office of the General Counsel
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Marjorie Shea, Women's City Club
 Revathi Nair, Citizen's Union
 Alan Flacks, New York County Democratic County Committee
 Mary Lou Urban, LWVNYC
 Ronald Perez, 71st A.D. Leader
 Patrick T. Todaldi, OLR
 Jerry Koenig
 Mark B. Herman
 Jimmy McMillan
 Frank Castel, for Jimmy McMillan
 John Haggerty

Secretary Dent called the meeting to order at 1:44 P.M. She explained that President Umane is behind schedule today and will be arriving shortly.

Secretary Dent announced that the Commissioners would conduct the Hearings on Independent Nominating Petitions of Osaretin Ighile prior to the regular Board meeting.

The General Counsel reported on the Independent Nominating Petitions of Osaretin Ighile, Candidate for Member of the City Council for The Underserved Party. He noted that the Prima Facie Notice to the Candidate is in the agenda. Mr. Richman brought this matter to the Commissioners' attention at the previous meeting. When he reviewed the petition, he observed that the Independent Nominating Petition submitted contains labels containing the candidate's name, address and public office, as well as the committee to fill vacancies which have been placed on Designating Petition sheets or Opportunity to Ballot petition sheets. The dates printed next to the signatures often overlap for the period of both Designating Petitions and OTB Petitions. The copies of the petitions were present for the Commissioners' inspection. Mr. Richman stated that the determination is that the petition volumes should be removed Prima Facie

because the Board does not know for certainty when the labels were affixed and for which type of petition the signatures were obtained, thus creating an invalid petition. The Commissioners reviewed the petitions. Mr. Richman reminded that the candidate was already removed Prima Facie from the ballot because the petition does not include a district. The Supreme Court Kings County has sustained that determination, but yesterday he was advised that the determination is being appealed to the Appellate Division, Second Department. The defect on the use of labels was not discovered until the Office of the General Counsel was preparing for the court proceeding and they closely examined the petitions. The General Counsel reported that Mr. Ighile was given notice of the hearing and he came to the Board this morning, but stated that he refused to appear at the hearing because he views that this defect is encompassed already in the court proceeding even though he never heard it before. After discussion, President Umame suggested to table this matter to see if it is necessary to rule on.

President Umame adjourned the hearing and convened the stated meeting.

Commissioner Polanco moved to approve the minutes of

August 18, 2009, August 25, 2009, September 1, 2009 and September 8, 2009, and tabled the minutes of September 14, 2009 and September 16, 2009. Secretary Dent seconded the motion, with any necessary corrections, which was adopted unanimously.

The Executive Director presented the HAVA report. He reported that the State Board and Election Commissioners Association had a conference call yesterday to discuss the HAVA Pilot Program. Mr. Cederqvist could not participate, so he had staff listen and take notes of the conference call. He will report on the call when the notes are complete.

The Executive Director reported on the Runoff Primary Election. He stated that the Election Law requires absentee ballots to be mailed to military voters thirty-two (32) days before the General Election, which was last Friday. He explained this matter to the Executive Committee and was authorized to produce and send absentee ballots to the military voters for the November 3, 2009 General Election. The military ballots are currently being mailed in compliance with the Election Law. Mr. Cederqvist reported that Executive Management is working closely with the borough offices to turn this matter around and also in preparing the Runoff Primary Election results in hopes of certifying the election at the next meeting on

October 13, 2009. President Umame moved to confirm the determination of the Executive Committee to produce and send the military ballots to conform to the military and absentee ballot rules and regulations. Commissioner Schacher seconded the motion, which was adopted unanimously.

The Executive Director reported on the Gartner Task Order F. He has been emailing the Commissioners with updates regarding this matter. Mr. Cederqvist recently sent a Task Order to the Office of Management and Budget (OMB). OMB sent a Task Order back to him eliminating tasks to try to reduce the dollar value to be approved. Mr. Cederqvist sent another letter to OMB questioning the elimination of tasks. The Commissioners were sent a copy of the letter via email. Mr. Cederqvist received a call last Friday from OMB and explained what the tasks entailed. OMB agreed to restore most of the tasks. Initially, OMB lowered the Board's Task Order to \$5.8 million, but now it is restored to \$6.7 million. Mr. Cederqvist stated that Gartner has been working at risk for a couple of months now. He noted that additional funding could be added to the Task Order if needed. President Umame stated that Gartner has been very helpful to the Board for many years. President Umame moved to adopt and authorize the signing of the Task Order. Commissioner Soumas seconded the motion, which

was adopted unanimously. President Sampel inquired if the Board's staff acquired any knowledge from Gartner. He noted that Gartner's original staff is no longer working for the Board and they are now training new staff. Commissioner Sampel stated that he wants to ensure that the Gartner funds are being used properly. Mr. Cederqvist replied that Gartner added a lot of value to the Board and monitored the Board's implementation of Ballot Marking Devices (BMDs). Commissioner Polanco inquired if there is an outline of what Gartner has accomplished for the year, or every six (6) months, or a quarterly. Mr. Cederqvist replied that there are weekly assessment meetings with Gartner. Commissioner Schacher added that Gartner has been very beneficial, but would like to have an either oral or written annual report from Gartner. Commissioner Polanco stated that it would be very helpful if the Commissioners had a report from Gartner.

The Executive Director called to the Commissioners' attention an issue with the Mayor's Management Report (MMR), a portion of which was copied in the agenda. Mr. Cederqvist stated that the MMR report is mandated by Section 12 of the New York City Charter, requiring the Mayor to report to the public and the City Council twice yearly on the performance of Mayoral agencies. The Office of the Mayor determined that they want the Board, a Non-Mayoral agency, to report to the MMR. Mr. Cederqvist

explained that there are no Mayoral appointees at the Board, which is intentional, in order to remain an independent agency from the Executive of the City. He stated that most of the information the Office of the Mayor seeks is in the Board's Annual Report which is required by the New York State Election Law. Mr. Cederqvist stated that the Commissioners in the past have expressed that it is inappropriate for the Board to report to the MMR because it is not a Mayoral agency. The Executive Director noted anecdotally that several agencies with Mayoral appointees, and even the Office of the Mayor itself, do not currently report in the MMR. Commissioner Polanco applauded and supported the Board for standing ground in maintaining independence for the Board. He also noted that the Annual Report Committee has been working very hard to include a lot of the information which is requested by the MMR is contained in the Annual Report. Commissioner Polanco moved to include the Annual Report on the Board's website. The motion was adopted unanimously.

Secretary Dent inquired if the Executive Director heard anything from the Office of the Mayor as it relates to the meeting they had on some of the issues they presented, which included acquiring additional work space on another floor of this building. Mr. Cederqvist replied that DCAS reported that the 3rd Floor is in the process of being rented to another tenant. There

is another space on the 11th Floor which the Facilities Manager recently viewed. Secretary Dent suggested that at this point the Board has to do something if the work space is too uncomfortable for the staff. The Board has to look into the other locations in the building as soon as possible. Mr. Cederqvist stated that Executive Management is trying to schedule a viewing of the other spaces this week and will report to the Commissioners. President Umame stated that the Office of the Mayor also discussed finding interns who they have used in the past to help the Board with the revamping the website and that issue should be looked into as well. Commissioner Polanco stated that it is very important for the Board's website to be updated.

President Umame recommended that perhaps a letter to the Office of the Mayor regarding the MMR should indicate that the Board does provide information in the Annual Report which is available to the public, and the Board fulfills their salutatory obligation. A friendly reminder of the revamping of the website, more work space, and a pay raise for the Board staff should also be included in the letter. Secretary Dent strongly agreed with President Umame.

The General Counsel reported in the Matter of the Application of

Osaretin Ighile V. Board of Elections, Notice of Appeal, Index No. 700036. The Notice of Appeal was served late yesterday afternoon requesting authorization to defend the Board's action in the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department. The Notice of Appeal is in the agenda. President Umame moved to ask the Corporation Counsel to vigorously defend the Board's position in connection with the Notice of Appeal. Secretary Dent seconded the motion, which was adopted unanimously.

The General Counsel reported that the New York State Senate Standing Committee on Elections is holding a public hearing on October 9, 2009. The subject is to address Election Law issues, including HAVA complaint voting system implementation, the pilot program for the use of optical scan voting machines in the 2009 Primary and General Elections, ballot access for candidates and deceptive practices and voter intimidation legislation (S. 2554-A). Mr. Richman requested guidance from the Commissioners if the Board should appear, listen and/or testify at the public hearing. Commissioner Polanco strongly recommended for the Board to testify at the hearing. He stated that it is very important for the Board to participate and address some of the concerns the Board has, and to include some recent matters that have come to their attention. Secretary

Dent agreed with Commissioner Polanco's recommendation. Mr. Richman stated that he will reply to the NYS Senate Standing Committee on Elections via telephone by close of business today. Commissioner Polanco stated that he will volunteer to participate with the Board staff at the public hearing.

The Director of Personnel reported that last Friday she received an email from DCAS advising that there will be Breast Cancer Risk Reduction Workshops, provided by the Maurer Foundation, to all City employees for Breast Cancer Awareness Month. Ms. Delayo forwarded the email to the Commissioners on Friday and a copy of the email is in today's agenda. She explained that City employees will receive excused time up to a maximum of 90 minutes, including travel time, to attend a workshop. The time will not be charged to their leave balance. She requested guidance from the Commissioners before circulating the email to the Board staff. President Umane moved for the Director of Personnel to circulate the Breast Cancer Risk Reduction Workshops email to the Board staff. Secretary Dent seconded the motion, which was adopted unanimously.

Commissioner Silie reported that she has a Bronx personnel matter to discuss in Executive Session.

The Finance Officer reported on the Comparative Expenditures dated October 6, 2009 and the Vacancy Report dated September 29, 2009.

President Umane opened the floor for brief comments from Marjorie Shea, a member of the public. Ms. Shea raised an issue concerning the Board's Annual Report.

President Umane opened the floor for brief comments from Alan Flacks, a member of the public. Mr. Flacks raised issues concerning the Commissioners' Meeting Minutes and the cost of FOIL data CDs.

President Umane opened the floor for brief comments from Tyrrell Eiland, a member of the public. Mr. Eiland raised an issue concerning his Independent Nominating Petitions, Candidate for Mayor. He is not on the ballot and claimed that he never received any Board notices in the mail regarding this matter. President Umane stated that Mr. Eiland was "knocked off" the ballot on a Prima Facie basis; he did not submit enough signatures. Commissioner Sipp inquired how many signatures he had collected. Mr. Eiland claimed that he collected ten thousand (10,000) signatures. Based on the United States Postal Service Express Mail records, one (1) notice addressed to Mr. Eiland was returned to the Board,

the other two (2) notices were received. President Umane requested the copies of documents for review. The Coordinator of the Candidate Records Unit retrieved copies of Mr. Eiland's documents and petitions for review by the Commissioners. This matter was placed on second call.

President Umane opened the floor for brief comments from Jimmy McMillan, a member of the public. Mr. McMillan raised concerns about his party's name, "THE RENT IS TOO DAMN HIGH." He explained that he prefers the word "damn" in his party's name and requested for the name to be changed to, "RENT IS 2 DAMN HIGH." The Board sent notice to Mr. McMillan advising that the name selected for his independent body "THE RENT IS TOO DAMN HIGH" and the emblem did not comply with the requirements of the Election Law. Mr. Richman stated that the name exceeded the number of characters allowed on the ballot and the choice of emblem was not an emblem, it was the full name selected for the independent body. By a certificate filed on August 24, 2009, Mr. McMillan filed a certificate seeking to use the same name and emblem. Therefore, said designation still does not conform to the Election Law in that the name exceeds fifteen (15) letters, and it is not an emblem for the independent body. On September 22, 2009 it was determined by the full Board that the name would be changed to, "RENT IS TOO HIGH" and the emblem would

be the word "RENT" with a circle around it. Commissioner Polanco inquired if the ballots were already printed. President Umane replied that the absentee and military ballots have been printed and mailed to voters already. Tom Sattie, Ballot Coordinator of the Candidate Records Unit, stated that the emergency, affidavit and BMD ballots have been printed as well. Commissioner Araujo inquired about the cost of the ballots. Commissioner Sampel stated that Mr. McMillan had a chance to discuss this matter with the full Board, but did not appear at the hearing. President Umane stated that other party names that exceeded fifteen (15) characters were reduced as well. After review, Commissioner Sampel moved to adhere to the Board's original determination in changing the name to, "RENT IS TOO HIGH." Commissioner Sipp seconded the motion, with Commissioners Polanco, Dent and Silie abstaining. The motion was adopted.

President Umane presented the second call. The Commissioners reviewed Mr. Eiland's petitions. Commissioner Sipp pointed out that the petitions have signed witness statements with no signatures. He inquired why there were witness statements with no signatures. Mr. Eiland replied that he did not review each sheet when he signed the witness statements. Commissioner Sipp stated that he might have submitted a fraudulent

document to the Board. After the debate, Commissioner Araujo stated that ignorance of the law is not a defense. President Umane explained the seriousness of the witness statement in conjunction with the Election Law. President Umane moved to not change the previous determination on this matter. Secretary Dent seconded the motion, which was adopted unanimously.

President Umane convened an Executive Session to discuss personnel matters.

Following the Executive Session, the open public session resumed and President Umane reported the following action which was taken in Executive Session:

- I. Unanimously approved the extension of four (4) temporary employees in the Bronx Borough Office which was created to assist in the certification of the November 3, 2009 General Election.

President Umane adjourned the meeting.

The next stated meeting of the Commissioners is scheduled for

Tuesday, October 13, 2009 at 1:30 P.M.