

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, FEBRUARY 2, 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, Schacher, Sipp, Soumas, Stupp, Umane

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
Valerie Vazquez-Rivera, Director, Communications and Public Affairs
John O'Grady, Chief, Voting Machine Technician
Troy Johnson, Coordinator, Candidate Records Unit
Tom Sattie, Associate Staff Analyst, Candidate Records Unit
Rosanna Rahmouni, Coordinator, Election Day Operations
Rachel Knipel, Coordinator, Language Assistance Program
Stephen Thompson, HAVA Training Specialist, Election Day Operations
Daniel Lavelle, Supervisor, Phone Bank
Michael Kinara, Associate Director & Project Manager, Gartner
Aparna Nistala, Consultant, Gartner
Steven B. Denkberg, Counsel to the Commissioners
Charles S. Webb, III, Counsel to the Commissioners

GUEST: Commissioner Gracia Hillman, US EAC
 Mary Lou Urban, LWVNYC
 Barbara Barr, LWVNYC
 Mark Herman
 Jose Adames
 Marjorie Shea, WCC
 Carol Green, DCAS

Jim Robbins, NYVV
Andrea Senteno, CUF
Stewart Armstrong, VAC
Keith McGinnis, NAZTEC
Todd Mullen, NAZTEC
Rima McCoy, CIDNY
Teresa Hommel, CCNY
Alan Flacks, Member of NY County Democratic Committee

President Dent called the meeting to order at 1:43 P.M.

Commissioner Schacher requested an Executive Session for personnel matters.

The General Counsel requested an Executive Session to discuss litigation matters.

President Dent introduced Commissioner Gracia Hillman of the United States Election Assistance Commission (EAC).

President Dent recognized EAC Commissioner Hillman who addressed the Board.

Commissioner Hillman thanked the Commissioners for the

opportunity to speak and stated that she is a member of the United States Election Assistance Commission which was created by the Help America Vote Act to work with the states to implement the requirements of the law. The EAC also has small grant funds for special programs for the recruitment of college students as poll workers, mock student election programs for elementary and middle school students, and research on the accessibility of voting systems for persons with disabilities. Commissioner Hillman added that she is very pleased to be at the Board of Elections to observe.

Commissioner Schacher moved to approve the minutes of January 12, 2010. Commissioner Barrera seconded the motion, which was adopted unanimously.

The Executive Director presented the HAVA update. He reported that last week the Election Commissioners' Association Winter Conference was held in Albany, NY. He stated that he could not attend so the General Counsel will report on the conference. Mr. Cederqvist reported that he is preparing a draft letter to OGS concerning the ES&S requisition. The draft letter will be circulated to the Commissioners early next week.

The Executive Director reported that he needs to add an item to the agenda concerning the privacy booths.

The Executive Director reminded that the February 9, 2010 Special Election in the 24th Assembly District, Queens is next week.

The Executive Director reported that the Board received a Proclamation of Election yesterday for a Special Election in the 44th Council District in Brooklyn on March 23, 2010. He noted that a copy of the Calendar for Independent Nominating Petitions is in the agenda.

The Executive Director reported that the Finance Officer included a memorandum to the Commissioners concerning the January Budget Plan and the Fiscal Year 2011 Preliminary Budget which Mayor Michael Bloomberg released last week proposing adjustments for Fiscal Year 2010 and the preliminary budget for Fiscal Year 2011. Copies of the relevant documents are in the agenda. Mr. Cederqvist stated that the Board is recommended to receive additional funding for this year's PS allocation and \$13.5 million in PS for the Run-off Election. Mr. Cederqvist also reported that Mayor Bloomberg's preliminary budget proposes additional reductions for the Board including a contingency preliminary budget plan, in the event

the Governor's proposed State Budget is enacted, which eliminates 109 positions at the Board, (which is 1/3 of the agency). Mr. Cederqvist stated that Mr. Ward will report further on this item at next week's meeting.

President Dent expressed relief that the Mayor heard the Board's plea and all the efforts to ensure that the Board had sufficient funds to conduct elections in the proper fashion. She was saddened to learn that the Board would lose 1/3 of its staff and does not know how the Board would function without these staff members because of the changes we have to implement. She suggested that the Commissioners jointly appeal to the Mayor and City Council again to let them know of the vital need of having a full staff for implementing the new voting machines.

Secretary Polanco noted that Mr. Cederqvist will be leaving the Board. He noted that he has been a fantastic Executive Director and led the Board in the right direction for the last two (2) years. He will miss working with him on a daily basis. He wished him the best of luck. Mr. Cederqvist replied that he will be available if there are any questions and thanked the Commissioners for the fantastic opportunity to serve the Board. President Dent stated that Mr. Cederqvist will be missed. She

added that he is a gentleman and scholar, and did a wonderful job for the short time at the Board.

The General Counsel reported on the proposed hearings for the March 23, 2010 Special Election to fill the vacancy in the New York City Council in the 44th Council District, Borough of Brooklyn. He recommended that in the event that hearings relating to said Independent Nominating Petitions are required, the Commissioners set Tuesday, March 2, 2010 for said hearings. Commissioner Umame moved to set March 2, 2010 at 1:30PM for said hearings. Commissioner Schacher seconded the motion, which was adopted unanimously.

The General Counsel reported on the 2010 Election Commissioners' Association Conference which was held last week in Albany, NY. He reported that Commissioners Stupp, Schacher and President Dent were in attendance, along with Mr. Gonzalez, Ms. Perkins, Ms. Grimaldi, Mr. Naudus, Mr. O'Grady, Ms. Rudiano, Ms. Sattie, Ms. Sandow, Ms. Conacchio, Mr. Lehman and Mr. Gay. Mr. Richman reported that the focus of the conference was the experience of the New York State counties that conducted the HAVA Pilot Program last fall using the new voting systems. It ranged from programming a system correctly, training the poll

workers, deploying equipment, managing the new range of equipment, and a litigation summary. He stated that the City Board staff benefited from the experiences which were shared. It should be helpful to guide the City Board's preparations. For the first time in the history of the ECA, the Governor addressed the conference, as well as the Chair and Ranking Member of the Assembly Election Law Committee and Chair of the Senate's Elections Committee. Mr. Richman stated that both Chairs and Ranking Member of the Assembly expressed the desire to work with the Commissioners as the Board implements the new voting system and will be responsive to any legislative requests. Also, they understand that there is a need for adequate funding for the Board and are waiting for the Board's proposal on statutory mandated minimum funding. Mr. Richman stated that the draft proposal is scheduled to be submitted for the Commissioners next week.

Commissioner Stupp stated that it was the first ECA Conference she attended and found it very beneficial. She had trepidation about the new voting system which has to be implemented for this year's Primary Election, but since attending the conference she has a very positive attitude that the Board will receive help and have a very successful implementation in September. Commissioner Stupp noted that some counties learned that

only poll workers that are trained are to operate the new voting system should; no one else should be operating the system. Some counties cautioned against overzealous Inspectors who in their effort to help the voter might intrude on the voter's privacy. Another county discussed the 3% audit, and that all witnesses to the audit should understand it is to test the machines to ensure they are working properly; it is not a recount. Another concern was the probability that affidavit ballots may be scanned by the machine inadvertently, so there should be a way the ballots be prevented from scanning said ballot.

President Dent stated that the ECA Conference was very interesting and she learned a lot. The Commissioners and staff will do their best to apply the lessons learned to the City of New York so there will be a smooth transition from the lever machines to the ES&S system.

Commissioner Schacher stated that she has attended many ECA Conferences, but this one in particular was extremely helpful with a wonderful interchange of ideas and thoughts.

The General Counsel announced that the Deputy Executive Director was elected as one of the Democratic members of the ECA's Executive

Committee, so now there is bipartisan representation with Commissioner Schacher serving as the Republican member. President Dent congratulated Mr. Gonzalez and stated that she and the Commissioners are very proud and happy that he will be serving on the ECA Executive Committee. Commissioner Umame stated that there is an ECA Legislative Committee, but the City Board is not represented. The General Counsel stated that in the past Commissioners Sampel, Schacher and Kellner, along with Daniel DeFrancesco served on the ECA Legislative Committee, and he is currently serving as its counsel. Mr. Richman stated that there will be an election at the ECA Summer Conference for committee members, so if any Commissioner is interested they can seek election to the committee in June. Commissioner Umame noted that it is important to have a Commissioner of Elections in the City of New York to be a part of that committee.

The Deputy Executive Director presented the Comparative Expenditures dated January 26, 2010 and the Vacancy Report dated February 2, 2010 in the absence of the Finance Officer.

The Chief Voting Machine Technician reported on the selecting of a privacy booth. A copy of the recent correspondence from ES&S

concerning the NAZTEC privacy booth was distributed to the Commissioners. Mr. Richman stated that ES&S declined to add the NAZTEC privacy booth on to their OGS on the basis of ethical consideration's and potential litigation relating to patent infringements. The New York City Law Department reviewed the issue and they replied that if the Board independently contracted these booths, it should seek an intellectual property indemnification from the vendor they choose. Mr. Richman stated that the Board encouraged both NAZTEC and ES&S to work out an arrangement so that NAZTEC be added to the ES&S OGS contract to allow for a timely procurement, but ES&S declined. The privacy booth workstream met today to discuss other options for the Board. The options are: 1. Continue to use the cardboard privacy cutouts at the poll sites; or 2. Request DCAS to prepare a City contract which takes up to nine (9) months and would be selected through a competitive bidding process. Vendors would have to submit a sealed competitive bid to the Board. Mr. Richman stated that as of this date NAZTEC has no contractual relationship with New York State as part of the voting system selection. Commissioner Umame requested the NAZTEC representatives speak on this issue. Commissioner Polanco inquired about the privacy booths offered by ES&S. Mr. O'Grady displayed the sample ES&S privacy voting booths to the Commissioners. He stated that they are the same style as

the NAZTEC booth.

President Dent recognized Keith McGinnis and Todd Mullen of NAZTEC.

Mr. McGinnis stated that NAZTEC has taken the step to be added to the OGS contract and Dominion has agreed to add them to their contract. He added that Mr. Franklin Hecht stated that if someone wants to purchase a product without a tabulator that they would look at adding them on the contract as an individual. Mr. Mullen stated that they are waiting for the Minutes from the last meeting in order to add them on the contract. Mr. Richman stated that the Board did not receive any notification at this time that NAZTEC was added on any contract. Mr. McGinnis stated that last week Aldo Tesi, President and CEO of ES&S, met with Sal Pazhoor, President and CEO of NAZTEC, and they made an agreement to add NAZTEC on the OGS contract. Commissioner Schacher requested for something in writing. Mr. Richman stated that OGS advised the Board that any change to the contract can take up to 3-6 weeks and currently the Board does not have a contractual relationship with Dominion, but that can be explored. Commissioner Polanco stated that the ES&S privacy booth is very similar to the NAZTEC privacy booth. Mr. O'Grady stated that they

are the same dimensions, style and have the same nesting system. Commissioner Polanco stated that he wants to ensure that the voters of New York City have a privacy booth for the Primary Election. Commissioner Umame inquired of NAZTEC if they have a timeframe when they will get added to the contract. He stated that the Board's workstream chose the NAZTEC booth over the ES&S booth because it was better in terms of durability, it was easy to repair, and it was cheaper. The workstream did not present the ES&S booth in the top three (3) for the Commissioners. He suggested the to Board wait for a one week to see if NAZTEC is added to the Dominion contract. Commissioner Schacher expressed concerns for the future with ES&S. President Dent inquired what the January 12, 2010 Minutes, which contains the record of the Commissioners' privacy booth preference, will do for NAZTEC. Mr. McGinnis replied that it allows them to give it to OGS and Dominion as part of their request to add their product to the contract. Commissioner Umame suggested the Commissioners wait a week to make a final decision. President Dent requested that Management research where the Board stands with the contract and table this issue until next week's meeting. She stated that she is very concerned that the voters have privacy booths for the Primary Election in September. She wants to purchase the best privacy booth that has great durability. President Dent

added that all of the excellent concerns of the Commissioners, Ms. Perkins and Mr. Cederqvist have to be acted on immediately.

Commissioner Polanco inquired about the cost of the NAZTEC privacy booth. Mr. O'Grady stated that the NAZTEC booth was listed at \$160 each and the ES&S booth listed at \$265 each. President Dent stated that the Board has to move on this privacy booth issue right away because there is not a lot of time. Mr. Mullen stated that the NAZTEC ADA privacy booth would cost \$405 each because it is manufactured with more metal and the request of Mr. O'Grady to add serial numbers on the legs of all privacy booths would increase the cost. President Dent reiterated that the price is more since their presentation for the Commissioners. Mr. Richman stated that the price can be negotiated down. President Dent stated that when NAZTEC presented their booth it was indicated as \$160 each regardless of contract, and does not think it is fair to the Commissioners because it was voted on and they have to find a way to stick to \$160. President Umane stated that NAZTEC has one week to report back to the Board. Commissioner Soumas suggested that the Commissioners vacate their prior vote and conduct a new vote regarding this issue. Commissioner Umane inquired if the Commissioners rescind their prior vote, does the State Board have to pick the privacy booth for them since they would

violate their timeframe? Mr. Richman replied no. Secretary Polanco stated that if NAZTEC comes back with the original price from the presentation then it would be fine. President Dent strongly requested for NAZTEC to have all information submitted to the Board by Monday.

Commissioner Umane moved for Executive Management to contact Dominion and OGS to verify the Board would have ability to purchase the NAZTEC privacy booth through the Dominion contract and verify with OGS that such is an option. If not, the Board should commence negotiations with ES&S on the backup plan and the price should be negotiated down. Secretary Polanco seconded the motion. The motion was adopted by a vote of eight (8) in favor, one abstention (Commissioner Soumas).

President Dent recognized Jose Adames, a member of the public, for brief comments.

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

Following the Executive Session, the open public meeting resumed

and President Dent reported that in Executive Session, the Commissioners took the following personnel actions:

- I. Unanimously approved an advance of 210 hours of sick leave for Ameriar Feliciano, a Clerk in the Brooklyn Office.
- II. Changed the title of Daniel Lavelle, currently an Administrative Associate in the Executive Office at an annual salary of \$56,495, to Associate Staff Analyst at an annual salary of \$69, 711. The motion was adopted in a roll call vote of:

Seven (7) in favor (President Dent, Secretary Polanco, Commissioners Araujo, Barrera, Sipp, Stupp and Soumas);

One (1) opposed (Commissioner Schacher); and

One (1) abstention (Commissioner Umane).

- III. Authorized an allocation of \$13,000 for salary increases for borough office personnel for the following Commissioners: Soumas, Umane, Barrera, Polanco, Dent, Schacher, Araujo, Stupp and Sipp. The motion was adopted in a roll call vote of:

Six (6) in favor (President Dent, Secretary Polanco, Commissioners Araujo, Barrera, Schacher, Stupp);

Two (2) opposed (Commissioners Soumas and Sipp);
and

One (1) abstention (Commissioner Umane).

Commissioner Schacher moved to adjourn the meeting. Commissioner Stupp seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, February 9, 2010 at 1:30 P.M.