

THE MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, APRIL 20, 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
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Owens Jr., Director, Campaign Finance Enforcement
Dorothy Delayo, Director, Personnel
John Ward, Finance Officer
Rosanna Rahmouni, Coordinator, Election Day Operations
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
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Jerome Koenig
 Mark B. Herman
 Marjorie Shea, WCC
 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 1:39 P.M.

Commissioner Araujo moved to table the minutes of March 30, 2010. Commissioner Sipp seconded the motion, which was adopted unanimously.

Mr. Gonzalez presented the HAVA update. He reported that the Board has received 1,343 scanners and 792 ballot bins. The Board staff has conducted the acceptance testing on 542 units.

Mr. Gonzalez briefed the Commissioners regarding a conference call with the State Board on April 8, 2010. He distributed a memorandum regarding the call to the Commissioners. The State Board's Co-Executive Directors asked to discuss the implementation of the new systems and how they can assist the Board. On the call were Mr. Gonzalez, Ms. Perkins, Mr. Richman, Mr. Brehm, Mr. Valentine, and Ms. Galvin. The focus of the discussion was the City Board's budgetary needs and Mr. Gonzalez explained the Mayor's Proposed Budget to the State Board staff. The State Board suggested for the City Board to review the requisitions that were submitted to the State Board to see if the City Board can reissue those requisitions with regard to taking some of the funding to see if the Board

can allocate funding, for example, to properly train the poll workers. Mr. Gonzalez explained that part of the State Board requirements need certifying to the Federal Government that the State of New York is in full compliance of the Help America Vote Act. The Board staff developed a proposal on how the Board would be able to secure funding from within the HAVA grant to see if the Board can pay for services they do not have funding for beginning July 1, 2010. Commissioner Soumas was concerned that the State Board recommended for the City Board to reallocate funds because they do not run elections and questioned the staff's proposal. President Dent inquired if the State Board reached out to the City Board, or if the City Board reached out to the State Board. She added that from her understanding the State Board can provide assistance, but that it takes six (6) votes from the Commissioners to make a policy. Mr. Gonzalez explained that they informed the State Board that if the current budget is adopted as is, the City Board will not have enough money to successfully implement the new voting system. Secretary Polanco inquired if Mr. Gonzalez made it clear to the State Board that they cannot tell the City Board how to run the Public Education and Poll Worker Training because the Commissioners are working very hard. Mr. Gonzalez replied that they were discussing options and did not make any commitments. Commissioner Soumas was concerned that he just learned about this

conference call today and inquired if Mr. Gonzalez notified the Commissioners about this call. Mr. Gonzalez replied no. President Dent indicated that when Executive Management received the phone call from the State Board that the Commissioners should have been made aware of it and it should have been stated what conversation transpired between both Boards. President Dent directed Executive Management that they must include the Commissioners in any thing of importance as soon as possible. Secretary Polanco asked if anything has changed concerning the proposed budget. Mr. Gonzalez replied no. Commissioner Soumas stated that the Board was supposed to respond with comments regarding the proposed budget to the Mayor. He inquired where the Board is at with that request. Mr. Gonzalez stated that he has not started the report yet, but will start working on it today. Commissioner Soumas requested for Mr. Richman to assist Mr. Gonzalez with the letter. Commissioner Stupp inquired if the response letter due date was April 7, 2010 and if the Board responded to that request asking for more time. Mr. Gonzalez replied yes, and that the Board responded and the new due date was after April 13, 2010. President Dent asked Mr. Gonzalez to elaborate on the draft NYCBOE Funding Plan for Additional Poll Workers, Training and Public Education. Commissioner Ryan inquired if staff knows when the Mayor's Executive Budget is going to be bound by the printer because that is the

“drop dead” date and the Board needs to submit to the Mayor prior to the bounding. Mr. Richman replied that May 6, 2010 is the last date. Commissioner Soumas was concerned that the draft NYCBOE Funding Plan was prepared instead of responding to the Mayor and asked who prepared it. Mr. Gonzalez replied Ms. Perkins, Mr. Richman, Ms. Grimaldi, Mr. Ward, Ms. Rudiano, Ms. Sattie, three (3) Gartner Consultants, and himself. Secretary Polanco stated that Commissioner Soumas made it an issue, approximately three (3) weeks ago, that it is imperative that the Board responds to the Mayor and the Commissioners agreed. President Dent stated that they are aware that the Board received the letter because Commissioner Soumas’ letter was attached to the information that Mr. Gonzalez had provided. Commissioner Umame stated that the most important issue the Board faces is having enough funds to conduct the elections. The Board has to make a cogent application and presentation to the Mayor, City Council and the Office of Management and Budget. It should be the primary focus. Commissioner Schacher asked when Mr. Gonzalez will have the draft letter prepared. Mr. Gonzalez replied that he will complete a draft before he goes home tonight. Commissioner Umame suggested for him to not take the Testimony and “mark it up.” He recommended focusing on what the Board needs as a minimum to conduct elections. Commissioner Araujo suggested including how each department

will be effected specifically. Commissioner Soumas recommended including why the Mayor's proposal will not work. President Dent thanked the Commissioners for all of their statements, concerns and suggestions. She stated that the plan has to be put into place and the Commissioners will review the draft letter and edit, if needed. President Dent noted that it was indicated to her earlier by a fellow Commissioner that it is not what the Board wants, but it is what the Board needs. The Board needs to prioritize its needs to make sure it carries out a successful election with the new machines so that the 4.5 million voters will be able to vote with confidence in the way they have been voting for years. President Dent added that the Board has turned out wonderful elections throughout the years and it has to continue to do this. They are faced with severity and time constraints, but the Board still has to carry out the Primary Election in September and do their best. Commissioner Ryan recommended that a comprehensive budget analysis examining PS, OTPS, and grant money should be included in the letter. President Dent agreed with Commissioner Ryan.

Mr. Richman recalled that at a previous meeting the Commissioners approved the Poll Worker Training Plan which was presented by Ms. Rudiano and Ms. Sattie. President Dent clarified that the plan was created in the workstream and Ms. Rudiano and Ms. Sattie were asked to

be the leads. Mr. Richman stated that part of the plan is to hire outside training consultants at a cost of \$95,000 and use \$25,000 for the trainers to attend training classes. The Board does not have that currently in the funds and they request the authority to make a modification to move out of the \$12 million holding code. The funds can be spent by June 30, 2010 and any money left in the account after that date is taken by the Office of Management and Budget. President Dent stated that the most important component is to train the poll workers because if they are not trained they will not be able to work the machines on Primary Election Day. Secretary Polanco inquired who the consultants will be. Mr. Richman stated that a Request for Proposal (RFP) will be mailed out and the most responsible, lowest bidder will be hired. President Dent stated that the time is of the essence and the Board has to move forward. She added that the Public Education Committee sent out notices to the public stating that training starts on May 1, 2010.

Commissioner Umane moved to authorize a \$120,000 budget modification for the development of a poll worker training program for consultant services and to allocate funds to pay the Board's trainers to attend presentations in order to train poll workers. President Dent seconded the motion, which was adopted unanimously.

Mr. Gonzalez reported on the April Readiness Assessment Summary. He noted that a copy of the report is in the agenda. Mr. Gonzalez summarized the items that are at significant risk of falling behind schedule and/or impact on the ability to conduct the election. The items are as follows:

Delivery, Receipt and Tracking for OGS Contract - The requisitions are delayed and the receiving and invoicing processes need to be confirmed.

Voting Machine Facilities - Construction work, voice/data installation and facility security are delayed that may impact scanner delivery timelines.

Poll Worker Recruitment Program - Recruiting events needs to be scheduled as soon as possible to ensure adequate number of poll workers and a new workstream lead needs to be identified.

Poll Worker Procedures – Open questions regarding ballot reconciliation and closing procedures could delay completion of procedure development, legislative changes may be required, and Commissioners' approval required on the new procedures in a limited timeframe.

Poll Worker Training – Potential delay in poll worker procedure development may impact development and implementation of training

program and there is a funding risk.

Poll Site and Training Site Readiness – All new poll sites and training sites have not been identified based on new space requirements.

Public Information and Education – Funding risk for outreach and other public information campaigns.

Election Management System – Potential issues exist with the EMS process for handling ballot changes.

Secretary Polanco reported that there was a Public Education Committee meeting two (2) weeks ago and they were enlightened to learn about a modification to pay for temporary employees for their campaign. The Public Education Committee approved it based on the recommendation. Secretary Polanco requested clarification. Mr. Richman stated that one of the elements outlined with the initial plan for the HAVA holding code included Public Education and to allocate the funding there needs to be a request for modification. Ms. Vazquez-Rivera stated that the overall staffing plan was approved by the Board, but now the committee needs approval for the modification so they can start hiring and training the public outreach staff members. The committee hopes to begin public outreach on May 1, 2010. Commissioner Umame inquired how many temporary employees will be hired and for how long. Ms. Vazquez-Rivera

replied that twenty (20) temporary employees will be hired; four (4) from each borough, two (2) from each party. The staff will be hired from May 1, 2010 to June 30, 2010. The existing Board HAVA staff will train the temporary employees. Commissioner Umame inquired if the temporary staff will be paid overtime. Ms. Vazquez-Rivera stated that one of the staff requirements is that they have to understand that they will be working after hours with no overtime. Commissioner Stupp stated that it will be \$12.20 an hour with no overtime. Secretary Polanco moved to request approval for a \$100,000 modification for the purposes of hiring staff for the Public Education outreach campaign. President Dent seconded the motion, which was adopted unanimously. Secretary Polanco moved to amend the previous motion, that in the event that OMB does not approve the request for modification in a timely fashion, he requests authorization for the Board to hire the twenty (20) temporary employees for purposes of the Public Education campaign. Commissioner Stupp seconded the motion, which was adopted unanimously.

Mr. Gonzalez reported on the EMS Settings and Voting Messages which were tabled at the previous meeting. He contacted the State Board for an opinion concerning over voting, blank ballots and under voting. A copy of the email response is in the agenda. Mr. Richman stated the State

Board responded on what is required to be displayed and there is a New York State Election Law requirement for each message. He summarized that the ES&S EMS system must be set to automatically accept an undervoted ballot, and with respect to a completely blank ballot the ES&S EMS system must be set to query the voter, so that an option may be selected by the voter. With respect to an overvoted ballot, the ES&S EMS system must be set to query the voter, so that an option may be selected by the voter. Mr. Richman read from the State Board's email response that New York County boards of elections may not independently select alternate voter queries or messages, other than those that the State Board has presented in the enclosed samples. These references and samples represent the system features certified by the State Board, and as such, are the options to be selected when performing ballot configuration tasks within the voting system's EMS. Commissioner Umame stated that there is no statutory back-up on the blank ballot matter. Mr. Richman stated that Section 7-202.1d states that it provides voters with the opportunity to correct that ballot before it is cast and canvassed. Commissioner Ryan stated that there was a difference of opinion on the statute. He stated that error means error, for example, a blank ballot in error was submitted and now there is clarification from the State Board that he was correct. Commissioner Ryan was concerned that this matter was presented to the

Commissioners and they wasted time debating with all of the other issues that need to be discussed. Secretary Polanco agreed that there was a lack of direction. Mr. Richman stated that the system was certified and cannot change.

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

Mr. Naudus clarified that it seems that the opinion is to follow the State Board's recommendations on how the staff will set-up the systems, so the system will automatically accept an undervoted ballot, and query the voter for a blank ballot and overvoted ballot.

Mr. Gonzalez reported on the paper ballot instructions for the public. A copy of the current standby instructions are in the agenda. He stated that the paper ballot instructions are part of the public BMD demonstrations program and requested approval of the draft instructions. Mr. Richman stated that the staff of the Assembly and Senate indicated that they have drafted a bill to change the instructions from Section 7-106 of the New York State Election Law. The Board is looking for guidance from the Commissioners for only the public demonstration ballots. Commissioner Umane moved to adopt the standby instructions for the limited purposes of

the public demonstrations. Commissioner Sipp seconded the motion, which was adopted unanimously.

Mr. Richman reported that the City Board Annual State Government Education and Information Day Luncheon will be held on May 4, 2010. He requested for the Commissioners to advise him of those needing overnight accommodations. Secretary Polanco inquired if the Commissioners will meet next week since some Commissioners are attending the New York State Board conference. President Dent inquired if all Commissioners can meet again this week to discuss the response letter to the Mayor concerning the proposed budget. She added that she feels the Board conferences have been very informational and beneficial to herself as a Commissioner serving the New York City Board of Elections. Commissioner Soumas moved to hold a Meeting of the Commissioners on Friday, April 23, 2010 at 2:00P.M. Commissioner Ryan seconded the motion, which was adopted unanimously.

Mr. Richman reported on the request by Governor's Counsel for comments on pending legislation. He noted that a copy of the memorandum is in the agenda and it was also emailed to the Commissioners. Mr. Richman stated that the bills before the Governor are

A-3910a, A-4015a and A-5276-a. He summarized the bills and requested direction from the Commissioners on how to respond to the request. Commissioner Umane moved for the Board to not comment on the bills. Secretary Polanco seconded the motion, which was adopted unanimously.

Mr. Richman reported on the draft City Board's Recommended Revisions in New York State Election Law 2010 – Part 2. A copy of the memorandum is in the agenda. The changes were identified by the staff that are needed to make possible the implementation of a new voting system in the most efficient and effective manner within the City of New York. There are three (3) areas concerned relating to the closing of the polls. #1 relates to the current statutory requirement which will require the Board to open up and account for all paper ballots in the bin manually, #2 requires all paper ballots to be hand canvassed even though it is being done by the scanner, and #3 relates to the transportation of the materials back at the close of the polls by the NYPD. The Board drafted an additional proposal to deal with the concerns of the City Board and the NYPD. The draft proposal requires the NYPD to only bring back the voted ballots, not the extra blank ballots. The blank ballots will be locked in the transport case and brought back when the Board brings back the scanners. This would be similar to the procedures the Board followed when the

unused paper standby ballots were left in the back of the lever machines. The police officer only brought back the voted emergency and affidavit ballots. The proposal would not require the police officer to bring back thousands of unused ballots. Commissioner Umame recommended for the cast scanned ballots to be locked in the back of the voting machine rather than have the NYPD removed them. He stated that it would be the safest place because there are locks and seals on the machines. Mr. Richman was concerned that the scanners will be unguarded at the poll site for days and stated that the NYPD will bring back the cast ballots in the locked box. Commissioner Umame proposed for the NYPD to take back the emergency and affidavit ballots as they currently do, but the bulk of the ballots that were scanned and counted by the machines stay in the scanner. Commissioner Stupp stated that the NYPD will take one (1) memory card. Mr. Richman stated that the actual records are the paper ballots and if a scanner disappears then there is no accurate record. The memory card is only the preliminary canvass, but the ultimate decision maker is the actual ballots. Mr. Richman stated that the State Board's proposal and discussions with the Legislature involves bringing back the ballots in a secure manner so they will be in custody of the Board within 3-6 hours after the close of the polls, rather than be left in 1,300 poll sites. The ballots would be secured and contained in a double-locked room at the Board.

Commissioner Stupp stated that there might be an issue for the NYPD transporting all the ballots. President Dent recalled that this issue was discussed previously and asked for an update about this matter. Ms. Perkins reported that there will be a follow-up meeting with the NYPD to discuss this issue, but the Board is waiting for different sample items such as transport bags. President Dent was concerned for the cast ballots and thinks it is wise for the police take the ballots and transport them back to the Board of Elections offices. The ballots will be under lock and key. Commissioner Umame was concerned about the chain of custody between the opening of ballots and the police officer. Mr. Richman stated that the ballot box folds and the two (2) inspectors put seals on top and the police officer will wheel it out like luggage. Ms. Perkins stated that there is a liner in the ballot bin and it will be sealed. Commissioner Stupp asked if it will be a bi-partisan team of inspectors. Mr. Richman replied yes. President Dent added that when the ballots reach the Board of Elections office there will be also be a bi-partisan team receiving them and ensuring they are under lock and key. Commissioner Umame expressed concerns about poll workers handling the ballots.

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

The Commissioners requested for the ballot box to be demonstrated.

Commissioner Sipp raised concerns that the closing procedure will not work and recommended for another procedure to be created.

The ballot box procedure was demonstrated by Mr. Richman.

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

Commissioner Ryan inquired how the ballots will get back to the facility if the police officers do not retrieve them. Mr. Richman stated that they will get picked up within 3-4 days. Commissioner Ryan questioned that if there is an impound will the NYPD will have to secure the poll sites. President Dent stated that the ballots should be brought back to the Board of Elections offices. Commissioner Barrera stated that there could be tampering if the ballots are left at the poll sites. President Dent stated that there is a better chance that tampering will not happen if the police officers bring the ballots back to the Board of Elections offices. She does not think it is a good idea to leave the ballots in so many different locations.

Commissioner Umane moved to amend the draft proposal #10-12,

Section 9-124(2) of the Election Law relating to the return of canvass procedure for the City of New York for the police officers to take the emergency and affidavit ballots and leave all scanned and voted ballots locked in the scanner. The unused ballots will be locked in the designated container and not taken by the police officers. The police officers will only take the written report, the thumbnail memory card from the computer that is connected to the scanner, emergency and affidavit ballots, and other documents. Secretary Polanco seconded the motion. In a roll call vote, four (4) in favor (Secretary Polanco, Commissioners Umame, Schacher and Stupp); and five (5) opposed (President Dent, Commissioners Barrera, Ryan, Soumas, and Sipp). The motion was not adopted.

Commissioner Umame moved to recommend the three (3) remaining proposals as part of the Legislative package. Commissioner Ryan seconded the motion, which was adopted unanimously.

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

Mr. Richman reported on the draft Designating Petition and Opportunity to Ballot Petition Rules for the September 2010 Primary Election. He circulated the draft rules via email to the Commissioners.

Secretary Polanco moved to table this matter for Friday's meeting. Commissioner Umame seconded the motion, which was adopted unanimously.

Mr. Richman reported that there was a request from the State Senate Elections Committee for the Board to testify at their public hearings. A copy of the email is in the agenda. Mr. Richman stated that the bills do not relate to the Board's area of operations or activities. Commissioner Schacher moved to decline the invitation. Commissioner Sipp seconded the motion, which was adopted unanimously.

Secretary Polanco inquired if the Board can take an existing line for an employee and divide it into two (2) lines. Mr. Richman stated that under Section 3-300 the Commissioners have the rights to set the terms and conditions of employment, titles, etc. within the amounts appropriated.

Ms. Rahmouni reported on the Poll Site Designation Report. She distributed the report to the Commissioners. Ms. Rahmouni requested approval of the report. Commissioner Umame moved to approve the Poll Side Designation Report for the five (5) boroughs. Commissioner Sipp seconded the motion, which was adopted unanimously.

Mr. Ward presented the Comparative Expenditures report dated April 20, 2010.

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

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 Friday, April 23, 2010 at 2:00 P.M.