

THE MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, JULY 6, 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, Umame

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
Valerie Vazquez-Rivera, Director, Communications
Daniel Lavelle, Associate Staff Analyst
John O'Grady, Chief, Voting Machine Technician
Jose Polanco, HAVA Training Specialist, Election Day Operations
Stephen Thompson, HAVA Training Specialist, Election Day Operations
Lucille Grimaldi, Manager, Electronic Voting Systems
Kate Nowady, Law Student Summer Intern
Ted Anastasiou, Law Student Summer Intern
Jeremy Fredericksen, Temporary Attorney, OGC
James Barron, Temporary Attorney, OGC
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Andrea Senteno, CUF
Carol Green, DCAS
Alan Flacks, Member of NY County Democratic Committee
Gary Du, The Epoch Times
Stewart Armstrong, VAC
Rima McCoy, CIDNY
Isaac Dove, City Hall
Yadvice Colon
Judd Ryan, ES&S

President Dent called the meeting to order at 1:41 P.M.

Mr. Richman introduced the two (2) temporary attorneys who will be assisting the Board during the petition and election cycle. The Commissioners welcomed the temporary attorneys.

Commissioner Barrera requested to discuss a Bronx personnel matter in Executive Session.

Commissioner Umane requested to discuss some issues that came before the Finance Committee Meeting today. He reported that there was no quorum to vote.

President Dent noted that Secretary Polanco indicated to her that he will be late for today's meeting.

Commissioner Schacher moved to approve the minutes of the May 25, 2010 meeting. Commissioner Barrera seconded the motion, which was adopted unanimously.

Mr. Gonzalez presented the HAVA update. He summarized the status for scanners as of July 2, 2010. A copy of the report was distributed to the Commissioners. Mr. Gonzalez noted that he will keep the Commissioners updated on the status of equipment.

Mr. Richman presented an update on New York State legislation. As he reported at the previous meeting, the Governor has before him four (4) bills of great importance to the Board. Three (3) bills relate to the opening and closing procedures of the elections and one (1) relates to the procurement of goods by the Board outside of DCAS channels. Mr. Richman reported that the Office of the Governor formally requested comments on the procurement bill. A copy of the response letter is in the agenda. The Office of the Governor reported that the three (3) bills relating to the opening and closing procedures of the elections will be signed within the next 48 hours. Mr. Richman stated that Bill No. S8002, which would eliminate the statutory requirement for the NYPD to return the unused ballots on Election Day, remains on the Senate calendar.

President Dent noted that Secretary Polanco has joined the meeting.

Mr. Polanco presented the review of poll worker recruiting flyer and application on behalf of the Poll Worker Recruiting Workstream. He distributed copies of the draft flyer and draft poll worker application to the Commissioners. Mr. Polanco summarized the flyer which contains specific information on how to apply to be an Election Day Inspector or Interpreter, the hours, location and salary. He noted that the salary information is pending due to the budget and the Commissioners' decision. Mr. Polanco summarized the revisions on the poll worker application. He requested for approval on the flyer and poll worker application. Mr. Richman recalled that the Commissioners proposed for the \$35 performance reward to be raised to \$100 which would be approved subject to the budget. It was included in the New Needs Request and the potential allocation of the "HAVA holding code monies." The staff recommendation was attracting, training and attaining poll workers. Mr. Richman suggested for the Commissioners postpone a decision until they have the budget. Commissioner Umane agreed to postpone the decision. President Dent asked if the Board has enough time. Ms. Perkins stated that poll worker training begins on July 28, 2010 so she would like a decision today if possible. Mr. Richman added that the six (6) hour training class was approved. Commissioner Umane stated that if they do not receive the funds then they might have to consider a four (4) hour training class which would reduce 1/3 of the

curriculum before the classes start. Commissioner Umame suggested a revision for the poll worker application. He recommended to move, “Are you a registered voter?” to #1 instead of #6.

President Dent recognized Alan Flacks, a member of the public. He raised concerns that a person does not have to be an enrolled Republican or Democrat to serve as a poll worker. He requested for the staff to review the New York State Election Law.

Mr. Richman reviewed the New York State Election Law and recited § 3-404. A person does not have to be an enrolled Democrat or Republican. He explained that election officers shall be appointed from the lists submitted, by those members of the board who represent the political party which submitted such lists. If such list is not furnished, the members of the board who represent the political party in default, shall designate the persons to be appointed as election officers. Secretary Polanco asked what happens to a voter who submits their poll worker application, but the party does not submit their lists directly. Mr. Richman stated that the voter would go into the stand-by pool and depending on whether or not the party makes appointments by Election Day, the Borough Offices endeavor to make sure every approved slot is filled by someone rather than waiting for

Election Day to deploy them. The Commissioners can fill the vacancies which is the same practice as the past. Commissioner Ryan recommended including an "Other" box available for check off with a write-in blank line. Commissioner Umane suggested revising the written statement on the application. Mr. Richman recommended the following revised statement, "(Interpreters, Door Clerks and Information Clerks do not have to be registered voters; however, to serve as an Inspector or Poll Clerk you must be appointed by the Democratic or Republican Commissioner of Elections.) The Commissioners agreed with the revised statement. Commissioner Umane suggested tabling on this item until they know the budget as it relates to the bonus. Commissioner Umane moved to approve the flyer and poll worker application, except for the three (3) bullet points with the dollar amounts, which will be amended as reflected by the budget. Commissioner Barrera seconded the motion, which was adopted unanimously.

Mr. Thompson presented the poll worker procedures. He distributed the draft 2010 Poll Worker's Manual and a summary report of the revised law changes and decisions for the full Board's approval to the Commissioners. Commissioner Umane stated that he serves on the subcommittee and they had elaborate discussions on these proposed

changes in the Poll Worker's Manual. He stated that the manual contains over 150 pages which could worry some poll workers, but it is actually more user-friendly. It has been re-written for the new procedures and contains a lot of helpful pictures. Commissioner Umame asked the Commissioners to review the summary report of the decisions to made by the full Board. He explained some controversial issues that were discussed in the subcommittee. He discussed the effect of Bill No. S8022. He stated that the law has been the same for the past 25 years and the Board has never returned the unvoted ballots in the bags that go back to the Borough Offices on election night. They were stored in the back of the lever machines until they were returned to the Borough Offices. The subcommittee suggested placing the unvoted ballots in the ED Supply Cart at the end of the night. The cart will be sealed and left at the poll site on Election night. Under this option, the blue rolling bag is not required to transport the unvoted ballots with the Police Officer on election night. This would enable the Board to save money rather than purchasing the large bag with wheels. For security purposes, the cart would be locked with two (2) seals on it which should be sufficient and substantial compliance with the law. Commissioner Ryan confirmed that the Board would maintain the status quo. Secretary Polanco asked if there would be a security issue. Commissioner Umame replied no; the ED Supply Carts are very sturdy and

have locks. Mr. Richman stated that per past practice, no one has ever returned unused paper ballots to the Borough Offices on election night. Secretary Polanco suggested for the Police Officers to secure the unused ballots in the cart. Commissioner Schacher stated that the Board has to account for every ballot. Mr. Thompson stated that the poll workers have to account for all of their ballots on election night so the Board would know how many unused ballots are sealed in the cart. The poll workers have to fill out Work Sheet B – ED/AD Ballot Control Sheet. President Dent confirmed that procedure would be completed in a bi-partisan manner as always. She reiterated that in the past years the Board always stored the unused ballots in the back of the lever voting machines and the NYPD would not have the manpower to transport all of the unused ballots at the close of polls. President Dent added that the NYPD would like to be trained on how to use the machines and Executive Management is looking into that. Secretary Polanco asked Mr. Richman to inquire if the Police Officers would secure the unused ballots in the carts at the poll site to satisfy the statutory requirement. Mr. Richman stated that they looked into that for the reasons of drafting the bill. The bill was drafted because the current statute is explicit. Mr. Gonzalez stated that the Board has to develop a reasonable mechanism to get the ballots back to the Borough Offices in a timely fashion. It used to take three (3) days to get all of the

lever machines back to the Borough Offices from the poll sites. Commissioner Ryan stated that the most important ballots are the voted ballots and it seems that the compromise is for the NYPD to remain responsible for the voted ballots and to return them as quickly as possible. Mr. Richman recited § 9-124 Subdivision 2 of the Election Law. Ms. Perkins stated that they have exhausted this matter. Executive Management has met with the NYPD on several occasions discussing this issue and they do not want to carry additional bags if possible. The vendor's deadline to print the Poll Worker's Manual is July 9, 2010 and in order to train over 30,000 poll workers by July 28, 2010 they have to get the manual to print. In addition, there is a vendor deadline on purchasing the rolling bags as well, but it is pending on the law. President Dent stated that they are a team and would like to move ahead. Commissioner Umame moved to continue the existing procedure and put the unused ballots in the new ED Supply Carts and not to give them to the Police Officer on election night. The carts would remain locked at the poll site and it will be a pilot program for this year. Commissioner Schacher seconded the motion, with Secretary Polanco and Commissioner Araujo abstaining. Commissioner Araujo indicated that he abstained because he does not feel comfortable about the explicit law. President Dent asked if they could wait one (1) week to decide collectively. Mr. Denkberg suggested following the statute and

give all of the ballots to the NYPD. Commissioner Barrera stated that the NYPD made it clear that they do not have the staff or money to handle that procedure. Mr. Richman stated that the NYPD may not have it available, but they understand their legal obligation and Commissioner Kelly requested a memorandum from the Board stating what the Election Law requires. Commissioner Barrera moved to comply exactly with the law which is to hand over all ballots, voted and unused, to the NYPD on election night and the training curriculum should reflect the current law. Commissioner Araujo seconded the motion with Commissioner Umane abstaining. The motion was adopted.

President Dent stated that these are very important decisions that the Commissioners have to make to ensure they do not disenfranchise any voters and act in accordance with the law.

Commissioner Ryan strongly stated that the Commissioners will not tolerate “catcalling” from the members of the public. He expressed that there needs to be respect at the meetings and anyone who is not properly addressed at the podium should be removed.

Commissioner Umane discussed the procedure for replacing inoperable scanners on Election Day. He explained that the poll worker would seal and set aside the entire scanner (leave it in the poll site) and replace with a new scanner (along with a new PMD and new yellow small scanner voting records pouch) which is consistent with the old lever machine procedure. At the end of the night, the bi-partisan team of Scanner Inspectors would remove the ballot bin liner case from the scanner. The Inspectors would pull the sealed yellow small scanner voting records pouch into the ballot bin liner case of the inoperable scanner, lock and seal the ballot bin liner case. They would also put a label on the ballot bin liner case to indicate that the ballots in the case have not been canvassed at the poll site and deliver the case to the Police Officer. The Scanner Inspectors would remove the PMD from the inoperable scanner, put it into the zip lock bag, seal and sign the bag and place it in the yellow small scanner voting records pouch. Mr. Richman stated that the intent of the proposed bill is to have as many ballots as possible scanned on Election night and anything that is not scanned, which is not on the tape, will be hand counted. If both machines break down and Emergency ballots are used, then they are to be taken out and scanned in. It was noted that the Chief and Deputy Chief Clerks requested for the least possible hand counting at the poll site on Election night. Ms. Grimaldi added that the

ballots should be separated and counted in a controlled atmosphere in the Borough Offices. President Dent and Commissioner Ryan requested for the ES&S technicians to explain if the PMD will have the results of the ballots that have already been scanned. Ms. Grimaldi stated that any ballots that have been scanned will be on the PMD. Commissioner Ryan inquired if staff could put a PMD from an inoperable scanner into a new scanner to print out the results. Ms. Grimaldi replied yes, but the Board staff does not agree with that idea. Commissioner Ryan stated that the only choices would be to do that step or completely hand count all of the ballots from the inoperable scanners. Secretary Polanco requested for a representative from ES&S to attend the next meeting and explain this procedure to the full Board. Commissioner Umame strongly opposed rescanning the ballots. President Dent and Secretary Polanco indicated that an ES&S representative should come before the full Board next week and answer everyone's questions as it relates to the technical assistance and address it. Ms. Perkins stated that Ms. Grimaldi and her staff could answer some concerns of the Commissioners. Ms. Grimaldi stated that staff has to develop a procedure to physically secure the ballots to return them to the Borough Offices in a way that they do not get mixed in with anything else. As part of the recanvass process, they will count these ballots the same way they do for Emergency ballots. Mr. Richman stated

that the procedures would not conform to the proposed statutory requirement which is that everything gets counted one way or another on election night at the poll site and announced as part of the results. Commissioner Ryan stated that the Board has to create a policy and procedure to comply with the law. After discussion, Mr. Thompson stated that if the Commissioners are not ready to make a decision on this procedure then staff will not place the section in the Poll Worker's Manual at this time. Commissioner Umane stated that the Commissioners are not ready to make a decision today and they will revisit the item at next week's meeting. Ms. Perkins asked what is going to be included in the Manual because it has to go to print this week. Commissioner Umane stated that the section will be blank and it will become a pocket-part. President Dent commended the Poll Worker Procedures Workstream for working very hard on the manual. It is a new way of voting and by trial and error they can approve upon this. She stated that it is very important that they get this information out and to the printer as soon as possible so they can move forward. President Dent stated that it is a wonderful idea to deal with the issues that came up today and create a separate pocket-part. Commissioner Umane recalled that on election night there will be two (2) sets of result tapes printed – one (1) set for the Police Officers and one (1) to be posted on the wall at the poll site for the Poll Watchers to view. The

Committee created a sign stating, “Do Not Tamper with the Results Report Tapes Posted on the Wall. Tampering with the Tapes May Result in Criminal Prosecution or Civil Liability,” which is to be posted next to the result tape. President Dent noted that it is a very important sign and it is a wonderful idea. Commissioner Umane reminded the Commissioners that there are eighteen (18) revised law changes which are indicated on the summary report. Commissioner Umane moved to adopt the changes recommended by the Poll Worker Procedures Committee with the exception of the 2 (two) items discussed (Items #15 and #16.) Commissioner Araujo seconded the motion, which was adopted unanimously.

Commissioner Barrera presented the report on the Finance Committee Meeting because there was no quorum. Ms. Grimaldi recalled that last week she presented to the full Board a City contract to order spare scanners and BMDs. They were not ordered on the OGS contract deliberately because they are capital goods using City capital funds. There were concerns about the amount of scanners to be ordered. Ms. Grimaldi explained that 782 spares would be 20% of the fleet that will be deployed to the poll sites on Election Day. The spare machines would remain in the VMFs and if a scanner breaks down they would deliver it. Commissioner

Umane was concerned about the high number of spares requested to be ordered. Ms. Grimaldi stated that it is an untried system in New York City and they do not want to be short. The number of scanners ordered for the actual fleet is based on the number of registered voters which is one (1) scanner per 1,400 voters. She added that voter registration increases in time and there is also a possibility of damage during trucking. Commissioner Barrera agreed that the reasons given is justified for ordering the suggested 782 spare machines. Ms. Grimaldi added that it is coming from capital City funds at a cost of \$5.1 million dollars. Commissioner Ryan asked if it will prevent future acquisition throughout the years. Mr. Richman stated that the Board has the funds available for the hardware. Commissioner Umame stated that there are only a few things that the VMTs can repair on Election Day so unless it is something easy to repair then they will have to replace the scanner as quickly as possible. Commissioner Barrera stated that she would not like to be in a position where the Board orders only 10% and run the risk of not having enough spares needed on Election Day. Commissioner Barrera moved to authorize the Board to enter into a contract for 782 spare scanners and related matters. Commissioner Schacher seconded the motion with Commissioner Umame abstaining. The motion was adopted.

Ms. Perkins reported on the Acknowledgment Packages. She explained that they are sent to voters when they register, change their address, change their party, etc. It informs them of their name, registration date, poll site, etc. and has instructions on how to use the voting machine. Currently, the packages are being mailed out with instructions on how to use the lever machines which needs to be addressed quickly. Ms. Perkins said that Mr. Richman indicated that the State Board is supposed to give the City Board new language and form on the new voting system. He has requested for the information several times, but he has not received it yet. Executive Management spoke with Ms. Fossella and Ms. Vazquez-Rivera who helped developed language on instructions that may or may not be able to be used for the Board. Ms. Perkins asked for direction from the Commissioners on how to proceed. Commissioner Umame recommended including the public demonstration brochure or flyer in the package. He suggested submitting the brochure or flyer to the State Board for their review. Mr. Gonzalez stated that the State Board is responsible to promulgate these forms. He indicated that at every conference, Executive Management reminds them about these forms. Mr. Richman stated that the Acknowledgement Package is now called the Notice of Approval and Notice of Rejection. Ms. Perkins stated that this issue is very timely. After further discussion, Secretary Polanco moved to send the draft notice that

the City Board has created to the State Board for a request for immediate approval. Commissioner Umame seconded the motion, which was adopted unanimously.

Mr. Ward presented the Vacancy Report dated July 6, 2010.

Mr. Ward presented the report on the Board's Budget for FY2011. He explained the PS and the OTPS reports to the Commissioners. Mr. Ward reported that PS is \$9 million dollars short and OTPS is \$10 million dollars short. Secretary Polanco requested for a detailed contingency plan for the Commissioners. Mr. Gonzalez stated that Executive Management and Mr. Ward will develop a plan by July 16, 2010. Commissioner Ryan requested for the report to be broken down by reasonable and specific increments so they can demonstrate effectively when the funds will run out. He stressed that the Commissioners' questions should be anticipated by staff and there should be solutions. He stated that it is a frustrating process. Commissioner Ryan thanked Secretary Polanco for pushing this issue. Commissioner Umame questioned when the Commissioners will decide on the poll workers compensation and bonus. President Dent clarified that the poll workers will receive more money because they will need more hours of training

because of the implementation of the new voting system. For the first two (2) years the poll workers may need six (6) hours of training, but after that time they may not and it should be clear to the poll workers. Ms. Perkins clarified that the poll worker flyer and application is on hold.

President Dent reported that there are two (2) typographical errors on page 5 in the Minutes of May 25, 2010. The Minutes will be revised to reflect those changes.

President Dent asked Mr. Gonzalez if he has received any other resumes relating to the Executive Director's position. Mr. Gonzalez replied no.

President Dent reported that she received a letter today from Hon. Gail Brewer asking for information as it relates to training the public on the new voting machines and if the Board has reached out to Community Boards and Council Members. President Dent stated that the Board will reply to her request.

President Dent inquired about the extra office space on the 11th Floor in 42 Broadway. Mr. Gonzalez and Ms. Perkins reported that the process

is moving slowly. President Dent stated that it will be discussed at a later date to see if the Commissioners can help expedite the moving process.

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

Following the Executive Session, the open public meeting resumed and President Dent reported the actions that were taken in Executive Session:

- I. Unanimously granted Gertrudis Cortez, Temporary Clerk in the Bronx Office, an advance of a second 210 hours of sick leave. Ms. Cortez's time expired in March;
- II. Unanimously granted Kim Laidla-Ziegler, VMT in the Bronx Office, an advance of 210 hours of sick leave retroactive to July 1, 2010.

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

The next stated meeting of the Commissioners is scheduled for Tuesday, July 13, 2010 at 1:30 P.M. in the 7th Floor Executive Conference Room.