

THE MEETING OF
THE COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, SEPTEMBER 20, 2011
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Juan Carlos "J.C." Polanco
Secretary Gregory C. Soumas

Commissioners Araujo, Barrera, Dent, Guastella, Schacher, Sipp, Stupp,
Umane

Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Raphael Savino, Director, Campaign Finance Reporting
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
John Naudus, Manager, Electronic Voting Systems
Daniel Lavelle, Supervisor, Phone Bank and Front Counters
Giacomo Kmet, Temporary Attorney, OGC
James Barron, Temporary Attorney, OGC
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Jerome Koenig
Kate Doran, LWV
M. Scott – McFadden
A.B. Britton
Judd Ryan, ES&S
John Smith
Teresa Hommel
Elizabeth Brown, for Council Member Gale A. Brewer
Alex Camarda, Citizens Union
Rima McCoy, CIDNY
Cathy Gray
Joseph H. Garber
G. Butts

President Polanco called the meeting to order at 1:36 P.M.

President Polanco recognized the return of Commissioner Barrera. Commissioner Barrera stated that she is glad to be back at the Board.

President Polanco announced that Secretary Soumas and Commissioner Umane are currently conducting a disciplinary hearing and will be late to the meeting.

Commissioner Dent moved to table the minutes of the August 30, 2011 and September 8, 2011 meetings. Commissioner Sipp seconded the motion, which was adopted unanimously.

President Polanco noted that Secretary Soumas and Commissioner Umane have joined the meeting.

Ms. Perkins presented an overview on the September 13, 2011 Primary and Special Elections which were held in New York, Queens and Kings Counties. She reported the following information:

- The Board deployed 12,493 pieces of equipment to 753 poll sites;
- The total number of Poll Workers assigned to work was 19,159;
- The Borough Call Centers received the following number of calls:
Manhattan – 461, Brooklyn – 1,167, and Queens – 503;
- The total number of calls to the Borough Call Centers was 2,131;
- The Board received a total of 1,551 calls in the Executive Office Phone Bank and 1,012 calls in the Staten Island Phone Bank;
- The total number of calls to the Phone Banks was 2,563;
- The preliminary number of Affidavit Ballots received citywide is 3,070;
- The total number of Absentees Ballots returned citywide is 10,243;
- In accordance with the NYS Election Law, Manhattan, Brooklyn and Queens Offices have started the following post-election tasks:
 - Reading the Portable Memory Devices (PMDs) into the Election Management System (EMS) which is complete;
 - Reading of the PMDs and the upload - Manhattan and Queens are completed including the upload, and Brooklyn is on-going;
 - The Recanvass of the Election Night numbers and the PMDs - Manhattan and Queens have started recanvass;
 - The Random Draw for the 3% Audit was completed on September 14, 2011;

- The initial 3% Audit – Queens and Brooklyn are completed and Manhattan is on-going;
- Brooklyn and Queens are waiting sign-off for the Commissioners' Audit Reconciliation Certification;
- Review of the write-in ballots – Queens is complete, Manhattan is in progress, and Brooklyn has not started;
- Status of data entry into S-Elect System – Queens is on-going and Manhattan and Brooklyn has not started;
- The preliminary review of Affidavit and Absentee Ballots have started in all boroughs in preparation for the September 22, 2011 Canvass of all Absentee ballots (including Military and Special). After the canvass is completed, staff will start giving credit to every voter that voted in the election;
- The following tasks are in progress in the Voting Machine Facilities (VMFs) – Review of incidents tickets for correctness in the system, inspection of voting equipment for damages, inventory of voting equipment, and removing unused supplies out of the ED Supply Carts for recycling.

Ms. Perkins reported that other Borough Office tasks are in progress in addition to the tasks outlined. The staff is also preparing Testimony for the September 22, 2011 New York City Council Committee on

Governmental Operations Hearing concerning the Board's 2011 Primary and Special Elections Performance. The Hearing will be held in 250 Broadway, 14th floor, at 1:00 PM.

Ms. Perkins reported that the staff anticipates to be prepared to present the election results of the September 13, 2011 Primary and Special Election for certification at the September 27, 2011 Commissioners' Meeting.

Mr. Richman presented an update on judicial proceedings relating to the September 13, 2011 Primary and Special Elections. Copies of the Turner V. BOE documents concerning the 9th Congressional District in Queens County are in the agenda. Mr. Richman reported that he received a Notice of Discontinuance and the Board will proceed with the certification next week. Mr. Richman stated that according to the revised provisions of Chapter 4, all Military ballots can be received through next Monday.

Mr. Richman reported that the U.S. Department of Justice (DOJ) filed a notice with the U.S. District Court in the Northern District seeking a hearing on October 20, 2011 concerning why an Order should not be entered to move the non-Presidential Federal Primary in 2012 to at least

eighty (80) days before the November General Election, which would be in August 2012. Mr. Richman noted that he circulated the documents to the Commissioners earlier. The Order also seeks relief for the Board to canvass and cast any Military or Special ballots that were found to be invalid last year no matter when they were received and then add them in the totals which is based on the Federal MOVE Act. Commissioner Umane asked if the City Board is a party of the Order. Mr. Richman replied that both the City and State Boards are Defendants. Commissioner Umane asked if this is part of the on-going litigation. Mr. Richman replied that it is part of the 2010 litigation relating to the Federal MOVE Act. Commissioner Stupp inquired if the Military ballot has to be postmarked no later than Election Day. Mr. Richman stated that it has to be postmarked or witnessed the day before the election. Secretary Soumas suggested for the Board to write a letter to NYC Council Members Gale Brewer and Domenic Recchia, copying Mayor Michael Bloomberg, stating that in the event that there are two (2) separate Primary Elections then the Board would need additional funds. He suggested discussing this issue at the NYC Council Committee on Governmental Operations Hearing.

Commissioner Dent requested to discuss a Brooklyn personnel matter in Executive Session.

Secretary Soumas requested to discuss a Manhattan personnel matter in Executive Session.

Mr. Naudus presented the Election Night Results Reporting Pilot for the 2011 General Election. He distributed copies of his proposal to the Commissioners. Mr. Naudus recalled that he requested authorization from the Commissioners to move forward on the new Election Night Results Reporting process at the previous meeting. He reported that the Office of the General Counsel reviewed the proposal and made minor changes with respect to the language. Mr. Naudus stated that the Commissioners' Sub-Committee reviewed the proposal on Friday as well. Mr. Richman stated that this proposal would be considered an internal test which does not directly affect voters or candidates. It does not change the procedures which were pre-cleared by the DOJ. Commissioner Araujo stated that the Sub-Committee (Commissioners Araujo, Dent, Stupp, and Umane) was informed that the NYPD was willing to try this pilot program with the Board. He stated that the Sub-Committee recommends moving forward with the pilot program because it is very beneficial to the Board. Commissioners Araujo and Stupp support the pilot program to be conducted in Queens County. Commissioner Barrera requested for a summary of the proposal. Mr. Naudus explained that currently three (3) copies of results tape are

produced from the Scanner on Election Night. The Poll Workers cut the results tape in three (3) parts at the close of the polls; one (1) copy is hung up on the wall, one (1) copy is cut-up, and one (1) copy is put in the Portable Memory Device (PMD) bag. The copy that gets cut up is distributed to each ED/AD table at the poll site. The Inspectors take the tapes, record the results on the Return of Canvass Sheets, and then the results are tallied for each candidate. The NYPD takes the Return of Canvass sheets, data enters it into their system, and then transmits the results to the Associated Press (AP) and the Board. Mr. Naudus stated that manual mistakes could be made by the Poll Workers and/or NYPD staff. Mr. Naudus explained the new proposed process. The NYPD would pick up the PMDs from the poll sites, return the PMDs to the Board's VMFs, Board staff would read the PMDs on the machines and transmit the results to the NYPD, and then the NYPD would forward it to the AP. This process would eliminate manual data entry by both the Poll Workers and the NYPD staff. Commissioner Barrera agreed that the proposal a logical process for the future. Mr. Naudus stated after the 2011 General Election test, he would like to have a citywide test for the 2012 President Primary. Commissioner Umame stated that the Sub-Committee discussed other issues as well. He stated that the Board has been criticized for having the Poll Workers cut-up the results tape. The Sub-Committee researched if it

would be better to report by Scanner rather than ED/AD on Election Night. Commissioner Umame stated that the Board would like to make it as easy as possible for the Poll Workers on Election Day. He stated that the Return of Canvass sheet could be changed slightly, that has been approved by the State Board, which would describe the Scanners at the Poll Site. Commissioner Umame reported that they researched the NYS Election Law and it does not prohibit this step. He stated that the Scanners have the capability for printing out the totals by candidate by party instead of the ED/ADs. He stated that most voters care about finding out who won on Election Night, not who won from which particular district. After the election, voters and candidates can analyze the results further by ED/AD. He stated that this proposed change in procedures could facilitate the close of polls on Election Night. Commissioner Umame stated that the proposed process developed by Mr. Naudus is a significant improvement and the Board should try to have the law changed to rely more on the PMDs. He stated that it would be much quicker to utilize the PMDs to a larger extent. Commissioner Umame stated that this suggestion should be researched more by the Board. He suggested that the results should be uploaded straight to the Board's website as long as there is high security and approval from the State Board. Commissioner Umame stated that the Board's ultimate goal would be to remove some of the manual procedures.

Secretary Soumas recalled that he spoke with Mr. Naudus and Mr. Ferguson about the current configuration of the Scanners which has two (2) PMDs; one is a hidden back-up and one is shared to transcribe the results. Secretary Soumas inquired that if the law could be modified to modify the Scanners to have two (2) read-only results CDs with one (1) PMD back-up. He explained that one (1) CD could be given to the NYPD and one (1) CD returned to the Board, and one (1) PMD back-up remain within the Scanner. He stated that ES&S would have to develop the modifications of the software and hardware. Secretary Soumas stated that it would require a statutory modification and the approval of the State Board. He stated that he asked Mr. Naudus to look in this matter. Mr. Naudus stated that he has started a discussion with ES&S staff, but has not received a proposal yet. Mr. Richman stated that at the last Election Commissioners' Association (ECA) Conference there was a discussion about the need to rewrite Title I of Article 9 in the NYS Election Law. He stated that the law was written for manual machines. Mr. Richman stated that there is a growing support among some Elected Officials about eliminating the need to have the results certified by ED/AD on Election Night. He stated that this matter should be included in next year's Legislative Agenda. Mr. Richman stated that the Board should look into modifying the requirement that only the NYPD can take custody of the

Return of Canvass to transmit it. He noted all other boards of elections in New York State release the results directly. Commissioner Araujo suggested for the Board to start working on this draft legislative proposal now. Commissioner Umane added that the Board could provide results by ED/AD once the results are transferred into the system, which might take one (1) or two (2) days.

President Polanco recognized Jerry Koenig, a member of the public, who inquired about how many VMFs the Board plans on using for the proposed citywide plan for Election Night Results Reporting. Mr. Naudus replied one (1) VMF for each borough. Mr. Koenig inquired where the law regarding the tally by Election District is located. Mr. Richman stated that it is located in Article 9 of the NYS Election Law.

Commissioner Sipp strongly stated that Article 9 of Title I in the NYS Election Law needs to be changed in order to comply with the new technology. He recalled that in the past two (2) years he has stated that this law needs to be changed. Commissioner Sipp stated that it is very frustrating because the voters and candidates had the results on time before the new voting system. He stated that the new voting system makes it impossible for the Administrators to run the elections.

Secretary Soumas recognized that a representative from ES&S is present and requested for him to discuss the proposed modifications of the Scanners.

President Polanco recognized Judd Ryan, a representative from ES&S. Secretary Soumas asked Mr. Ryan how much it would cost to modify the Scanners to have two (2) read-only CDs in addition to the back-up PMD. Mr. Ryan stated that he will ask his co-workers and report at the next Commissioners' Meeting.

President Polanco recognized Teresa Hommel, a member of the public, who raised concerns about election results corruption. She recommended for the Board to upload the PMD results into a stand-alone system first then upload the results to the internet.

President Polanco recognized Alex Camarda, a representative from Citizens Union, who inquired how the new Election Night Results Reporting proposal contrasts with other counties.

Commissioner Umane moved to adopt the proposal plan for Election Night Results Reporting in Queens County. Commissioner

Schacher seconded the motion, which was adopted unanimously. Commissioner Araujo requested for the Office of the General Counsel to start researching the legal changes concerning this matter.

Mr. Ward presented the Vacancy Report dated September 13, 2011 and the Comparative Expenditures Report dated September 20, 2011. Copies of the reports are in the agenda.

President Polanco moved to convene an Executive Session to discuss personnel matters. Secretary Soumas seconded the motion, which was adopted unanimously.

Following the Executive Session, the open public meeting resumed and President Polanco reported on the following actions taken in Executive Session:

- I. The Commissioners granted Kaseem Edwards, a Clerk in the Brooklyn Office, an advance of ten (10) days of sick leave in accordance with the City's personnel attendance policy;
- II. The Commissioners promoted Charles Drummond to Administrative Assistant in the Manhattan Office, at an annual salary of \$42,659, effective upon the day that Nathaniel

Gregory is taken off the payroll;

III. The Commissioners promoted Timothy Edgerton to Voting Machine Technician in the Manhattan Voting Machine Facility, at an annual salary of \$30,088, effective upon the day that Nathaniel Gregory is taken off the payroll;

IV. In conclusion to a disciplinary hearing, the Commissioners terminated Yolanda Sanders, an Administrative Assistant in the Manhattan Office, effective by the close of business today.

President Polanco moved to adjourn the meeting. Commissioner Umane seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, September 27, 2011 at 1:30 P.M.