

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, MARCH 13, 2012
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Maria R. Guastella
 Secretary Frederic M. Umane

Commissioners Araujo, Barrera, Dent, Polanco, Schacher, Sipp, Soumas,
Stupp

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
Valerie Vazquez, Director, Communications and Public Affairs
Raphael Savino, Director, Campaign Finance Reporting Enforcement
John Naudus, Manager, Electronic Voting Systems
John O'Grady, Chief, Voting Machine Technician
Stephen Thompson, HAVA Training Specialist, Election Day Operations
Giacomo Kmet, Temporary Attorney, OGC
Joel Bermejo, Temporary Attorney, OGC
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Marjorie Shea, Women's City Club
 Monica Bartley, CIDNY
 Liz Brown, for Council Member Gale Brewer
 A.B. Britton, KLC – GOP USA
 Kate Doran, LWV
 Cathy Gray
 John D. Smith

President Guastella called the meeting to order at 1:51 P.M.

President Guastella announced that a quorum was not present and that Board Staff will present the items that do not require a vote.

Mr. Ward presented the Vacancy Report dated March 13, 2012. A copy of the report is the agenda.

Mr. Ward reported on the estimated cost savings due to combining Election Districts for the April 24, 2012 Presidential Primary Election. The Board saved \$32,000 in trucking, \$300,000 in supplies, and approximately \$1.8 million due to fewer Poll Workers. The total estimated cost savings is approximately \$2.1 million.

Mr. O'Grady reported that on March 1, 2012, the Voting Machine Facilities (VMF) Staff began upgrading the firmware on the Scanners and Ballot Marking Devices (BMDs). To this date, 53% of the Scanners have been upgraded and 27% have been tested citywide. 64% of the BMDs have been upgraded and 44% have been tested citywide. Mr. O'Grady

stated that his staff is on schedule to meet their deadline. He noted that the VMF Staff is working very hard.

The Commissioners agreed to recess the meeting for five (5) minutes.

After the recess, President Guastella noted that Commissioner Araujo and Ms. Sandow joined the meeting.

Commissioner Sipp moved to adopt the minutes of the March 6, 2012 meeting. Commissioner Araujo seconded the motion, which was unanimously adopted.

President Guastella noted that Commissioners Dent, Schacher, Stupp, Umane, Mr. Richman and Mr. Savino joined the meeting.

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

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

Mr. Richman requested to discuss a 2012 Democratic Presidential Primary matter in public session.

Mr. Naudus presented a new DS200 Scanner screen shot. He distributed copies of his report to the Commissioners. Mr. Naudus reported that during a training class in the Manhattan Office, staff discovered that there is new screen which was added to the Scanner. If a voter marks their ballot by not filling in the ovals, then it will reject the unreadable marked ballot. There is an option from ES&S to either reject the ballot, or to query the voter to either return the ballot or accept the ballot. Mr. Naudus reported that he contacted the State Board to find out if this screen has been precleared by the Department of Justice (DOJ). The State Board will be contacting the City Board with an answer. Mr. Naudus recommended turning the functionality off, which would be set to always accept the ballot, until he receives an answer from the State Board. Mr. Naudus stated that if the function is precleared, then the Commissioners can consider how they want the option to function in the future; always reject the ballot or to query

the voter. Commissioner Araujo recommended for the City Board to contact the DOJ instead of waiting for an answer from the State Board. Mr. Richman stated that he can send a letter to the DOJ via Express Mail. Secretary Umane stated that either way the City Board will get sued because there are strong arguments for the screen options. He stated that it is the State Board's voting machines and their settlement of language, and they should indemnify the City Board when there is a lawsuit. Mr. Naudus stated that this new screen will affect the 2012 Presidential Primary Election. Secretary Umane moved for the City Board to write a letter to the State Board about this matter because it is time sensitive and to table this item until the City Board hears from the State Board. Before a vote, Mr. Naudus stated that the function is defaulted to always reject the unreadable marked ballot, but the Commissioners could consider another option. Secretary Umane reiterated that it is up to the State Board's requirements and regulations. He stated that the software is set a certain way and the Commissioners should take no action until they receive direction from the State Board. Commissioner Araujo asked how the voter will know what the problem is with their ballot if the ballot is rejected. Mr. Naudus stated that the screen informs the voter that their marks cannot be identified which is not a clear message to the voter. Therefore,

instructions for Poll Worker training would need to be revised to have them inform the voter that they need to darken the ovals if that screen pops-up. Ms. Perkins reported that she and Ms. Sandow contacted the State Board today about this matter. The State Board said they will confirm if the screen has been precleared by the DOJ by close of business today. Commissioner Polanco agreed with Secretary Umame to table this item. Secretary Umame directed Executive Management to send a written request to the State Board about this matter. Commissioner Polanco thanked the Manhattan Office Staff for discovering this new screen.

Mr. Thompson presented the Election Day Operations (EDO) proposals for the April 24, 2012 Presidential Primary Election. The proposals follow:

- **Proposal #1** – Retraining all Coordinators and AD Monitors prior to the 2012 Presidential Primary. It would be a three (3) hour class and the focus would be on the firmware upgrade, changes in screen shots, opening and closing the polls, and completing the Return of Canvass. In Queens County, there would also be a focus on the Election Night Return Pilot. The Coordinators and AD Monitors would get paid \$50 for the class. The total cost would be approximately

\$105,000. Commissioner Barrera reminded that the City Board saved approximately \$2.1 million due to combining Election Districts. Mr. Ward re-summarized the Board's cost savings report. Secretary Umane moved to authorize the extra training class to retrain all Coordinators and AD Monitors prior to the 2012 Presidential Primary. He stated that funds would be well spent and it would help facilitate the whole voting process. Commissioner Dent seconded the motion, which was unanimously adopted.

- **Proposal #2** – To place a minimum of one (1) Coordinator in each Election District (ED) per poll site. Currently, there is one (1) Coordinator per two (2) EDs per poll site. The proposal is based on the analysis of the NYPD data on the Return of Canvass procedure. Mr. Thompson stated that there was a significant amount of poll sites that did not complete the Return of Canvass or did not hand it over to the Police Officer. The additional Coordinators would oversee that there are more accurate Return of Canvasses. Commissioner Barrera moved to approve placing one (1) Coordinator in each ED per poll site. Before a vote, Secretary Umane inquired about the cost. Mr. Thompson stated that there would be a total of 692 Coordinators citywide because a lot of poll sites were reduced to

single ED poll sites due to combining the EDs. Secretary Umane stated that he only supports this proposal for the April 24, 2012 Presidential Primary because of the reduced number of EDs due to consolidations. Commissioner Araujo asked if this proposal would be for the April 24, 2012 Presidential Primary Election only. Mr. Thompson replied yes. Mr. Naudus added that this proposal would be helpful for the 2012 June Primary as well due to the Scanners' firmware changes. Commissioner Barrera stated that it will be helpful to have a Coordinator during the June Primary because some Poll Workers would not have that training yet. Commissioner Araujo added that the Poll Workers will not be trained again because they have already been trained for this fiscal cycle. Ms. Sandow noted that Poll Worker training will begin in July. Commissioner Barrera moved to approve placing one (1) Coordinator in each ED per poll site for the 2012 April Primary and the 2012 June Primary. Commissioner Araujo seconded the motion, with Secretary Umane and Commissioner Soumas opposing. The motion was adopted.

- **Proposal #3** – To use a total of three (3) AD Monitor Teams, instead of two (2) Teams, which would target the poll sites that had issues with the Return of Canvass procedure and to oversee the Scanners'

firmware changes. Commissioner Barrera moved to adopt the use of three (3) AD Monitor Teams for the 2012 April Primary. Commissioner Polanco seconded the motion, with Commissioner Soumas opposing. The motion was adopted.

- **Proposal #4** – To revise the Commissioners’ program for non-compliance to add that any ED Table Inspector and their Coordinator that fail to fill out, total, or hand over the Return of Canvass to the NYPD be subject to a \$50 penalty. Mr. Thompson reported that there were over 300 poll sites that did not fill out the Return of Canvass correctly in the past election. Commissioner Stupp requested for clarification. Mr. Thompson stated that results should be filled in for every Scanner in the poll site, the candidates should be totaled, and nothing should be left blank on the Return of Canvass. Ms. Sandow stated that it is very important that the Inspectors give the completed Return of Canvass to the Police Officers. Commissioner Dent recalled that the Commissioners adopted penalties in the past as it relates to certain responsibilities that were not done such as returning the mats. Ms. Sandow stated that those who are penalized should also be brought into the Borough Office to review their errors. Commissioner Polanco moved to adopt

the \$50 penalizing fee. Commissioner Sipp seconded the motion, with Commissioners Schacher and Soumas opposing. The motion was adopted. Commissioner Dent stated that this information has to be given to the District Leaders and Trainers so they can share this information with the Coordinators and Inspectors.

Commissioner Dent stated that the Board is not in the business of taking anything away from anyone. She stated that being a Poll Worker is a job and people have to be held accountable so things are smoother for the voters. Commissioner Dent stated that the Commissioners are happy to have the Poll Workers, Coordinators and Inspectors work for the Board. Commissioner Soumas explained that he opposed the \$50 penalty because he felt that at the end of the very long work day Poll Workers are going to make an assessment if they care or not about the \$50 because they want to go home. He disagreed with the penalty because he feels that a Poll Worker should not get paid for the whole day if they do not comply with the Board's instructions. Commissioner Dent personally felt that if a Poll Worker works a very long work day then it is not fair that they do not get paid at all.

Ms. Vazquez reported that she received a request to participate in the NYS Department of Labor (DOL) Job Fair on April 12, 2012 at the Shirley Chischolm State Office Building in Brooklyn. The DOL anticipates 600 to 1,000 participants at the fair and they thought it would be a good opportunity for the Board to potentially recruit Poll Workers. Ms. Vazquez stated that the DOL requested for the Board to provide them with hire data from the event. She reported that Ms. Rahmouni stated that the Board could code the Poll Worker applications for this particular event and when processing the Poll Worker payroll they could see how many applicants worked. Ms. Vazquez requested authorization from the Commissioners to attend the DOL Job Fair and to provide the hire data to the DOL. Commissioner Schacher inquired about the DOL's presentation at this Job Fair. Ms. Vazquez stated that there will be multiple employers from New York State attending this event and that the DOL will provide a table for the Board at no cost. Secretary Umane asked if the DOL understands that it would not be for full time hires at the Board. Ms. Vazquez replied yes. Commissioner Polanco moved to authorize Ms. Vazquez's request to attend the DOL Job Fair and to provide hire data to the DOL. Commissioner Dent seconded the motion, which was unanimously adopted.

Mr. Richman reported on a 2012 Democratic Presidential Primary matter. He recalled that on February 28, 2012 the Commissioners approved a Prima Facie Report removing one (1) candidate as a Delegate pledged to Barack Obama in the 12th Congressional District in Brooklyn because he did not reside within the Congressional District. In accordance with the provisions of the NYS Election Law, normally the Committee to Fill Vacancies would have ten (10) days to file a substitution. They did file a series of certificates with the Board last week, but in the law creating the Presidential Primary process, Chapter 147 of the Laws of 2011, the Legislature required the Board to deem all references in the statute to a Committee to Fill Vacancies is to be deemed a Committee to Receive Notices, which normally under the statute it does not have the authority to fill vacancies, which is in Section VI. Mr. Richman stated that Section II is conflicting which states that if a candidate declines then a Committee to Fill Vacancies shall substitute the candidate. The Obama Campaign argues that it should be deemed as the equivalent to accept the nomination according to Section II. Mr. Richman stated that they are uncontested positions. The proposed candidate in the 12th Congressional District does live within the district. Mr. Richman asked the Commissioners if they would like to conduct a full briefing on this matter, or schedule a hearing, or

to deem it acceptable. He stated that there are four (4) other similar situations with the State Board and they have accepted. He stated that the statute is badly written. Commissioner Araujo asked Mr. Richman for his recommendation. Mr. Richman recommended for the Commissioners to accept the nomination. Secretary Umane stated that there should be a review of the petitions because they were not in compliance with the statute. Mr. Richman stated that a Committee to Receive Notices on the designating petition or on a Committee to Fill Vacancies is only an option. Secretary Umane was concerned that the Presidential candidates' petitions were done improperly. Mr. Richman stated that those petitions were filed with the State Board and they have accepted them. Commissioner Araujo moved to adopt the State Board's position on this matter to accept the nomination. Commissioner Dent seconded the motion. Before a vote, there was discussion. Secretary Umane stated that the City Board should hold a hearing to determine whether or not any of the delegates are properly appointed. He stated that he would like to research this matter. Commissioner Polanco asked Mr. Richman what was done in the past. Mr. Richman stated that in the past they needed a Committee to Fill Vacancies to properly designate to make a substitution, but the problem is the language in the statute. Mr. Richman stated that the Commissioners

removed the candidate properly and the substitution has been filed timely under the NYS Election Law. Mr. Richman asked the Commissioners if they would like to schedule a hearing to determine if it is a valid substitution. Commissioner Araujo withdrew his motion. Secretary Umane moved to schedule a hearing on this matter. Commissioner Stupp seconded the motion. In a roll call vote, there were five (5) in favor (Polanco, Umane, Schacher, Sipp, Stupp) and five (5) opposed (Araujo, Barrera, Dent, Guastella, Soumas). The motion was not adopted.

Secretary Umane moved to designate a committee of the Brooklyn Commissioners to determine some of the procedures on reporting election results for the March 20, 2012 Special Election in Brooklyn. Other Commissioners can participate as well. The purpose of the committee is to see whether the election results process could be expedited and facilitated in a legal and appropriate manner. Commissioner Araujo seconded the motion, which was unanimously adopted.

President Guastella moved to convene an Executive Session to discuss personnel, litigation and investigations matters, which was unanimously adopted.

Following the Executive Session, the open public meeting resumed and President Guastella reported on the following action that was taken in Executive Session:

- I. The Commissioners unanimously granted an advance of 140 hours of sick leave hours to Thomas Sattie, the Ballot Coordinator in the General Office.

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

The next stated meeting of the Commissioners is scheduled for Tuesday, March 20, 2012 at 1:30 P.M.