

MEETING OF THE COMMISSIONERS OF ELECTIONS
IN THE CITY OF NEW YORK
HELD ON TUESDAY, OCTOBER 17, 2023 AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: Secretary Rodney L. Pepe-Souvenir

Commissioners Jose M. Araujo, *Michael J. Coppotelli, Carol R. Edmead, Gino A. Marmorato, Jodi Morales, Michele A. Sileo, Frederic M. Umane

Michael J. Ryan, Executive Director

Vincent M. Ignizio, Deputy Executive Director

Michael Corbett, Administrative Manager

Hemalee J. Patel, General Counsel

Raphael Savino, Deputy General Counsel

Steven B. Denkberg, Counsel to the Commissioners

Kenneth Moltner, Counsel to the Commissioners

GUESTS: Emily YueXin Miller

Alan Flacks

*Commissioner Coppotelli appeared remotely, but not at a publicly accessible location, and therefore did not cast any votes.

Mr. Ryan opened the meeting, and introduced Michele A. Sileo, the newly appointed Democratic Commissioner of Richmond County to the Board.

Secretary Pepe-Souvenir on behalf of all the Commissioners and everyone at the Board of Elections welcomed Commissioner Sileo and stated that she and the Commissioners expect that the new Commissioner will love being with the Board as well as the work that is done here at the Board.

Commissioner Coppotelli also welcomed Commissioner Sileo as his new counterpart on behalf of Richmond County and stated how excited he is to work with her. The Commissioner also recognized and thanked Secretary Pepe-Souvenir who generously covered for a while, as well as the former Richmond County Democratic Commissioner Anne Taylor and thanked her for her distinguished service to the Board.

Mr. Ryan noted that at the conclusion of the presentations, there is one individual who would like to speak to the Commissioners and has filled out a notice of appearance form.

Mr. Ryan informed Commissioner Sileo that the weekly minutes are passed by way of no objection. The minutes are announced, and if there is no objection to the minutes, they are adopted.

Mr. Ryan continued with item #1 of the meeting agenda, the approval of the minutes of the October 10, 2023 Commissioners Meeting.

Hearing no objections, the minutes of the October 10, 2023 Commissioners Meeting were adopted.

Mr. Ryan continued with item #2 of the meeting agenda, an Update on the November 7, 2023 General Election.

Mr. Ryan provided the following update on the November 7, 2023 General Election, which includes 9 days of Early Voting:

- There will be a total of 4,592,541 eligible voters for this election.
- 140 Early Voting sites will be open, and 1,222 Election Day sites.
- A total of 82,903 pieces of equipment will be deployed:
 - 14,294 for Early Voting
 - 68,609 for Election Day
- 60 of the Early Voting locations require auxiliary generators, which will be delivered and installed no later than October 26, 2023.
- All voting equipment logic and accuracy testing is on schedule and set to be completed by October 27, 2023.

- The delivery of tables, chairs and privacy booths will begin on October 23, 2023, followed by the delivery of Early Voting equipment on October 26th and 27th, and Election Day equipment on October 30, 2023.
- We have received back, a total of 9,887 absentee ballots:
7,154 have been deemed valid and canvassed.
515 have been deemed invalid, with the cure process ongoing.
The remainder are in the process of being canvassed.
- October 23, 2023 is the last day to apply for an absentee ballot to be mailed.
Reminder: The last day to apply for an absentee in person is November 5, 2023.
- The last day to register to vote for the November 7, 2023 General Election is October 28, 2023. Which under the new law, unless its changed, will always be on the first day of Early Voting.

All timely registrations will be processed and included in the pollbooks for the upcoming election.

- Election Day is Tuesday, November 7, 2023.

The Early Voting period runs from Saturday, October 28, 2023 through Sunday, November 5, 2023. Early Voting hours and poll site locations, including sample ballots are available on the Board's website at www.vote.nyc.

Secretary Pepe-Souvenir stated for clarification, that you can register on October 28, 2023, which is the first day of Early Voting and vote on that day as well once registered.

Mr. Ryan stated for further clarification that the vote would occur by affidavit ballot and not on a voting machine.

Commissioner Araujo inquired about the time period for party enrollment changes.

Mr. Ryan stated that the last day for party enrollment changes has passed; the deadline was February 14, 2023. Mr. Ryan also noted that party enrollment has less applicability for General Elections and more applicability for Primary Elections. For the upcoming General Election, the last day for new registrants is October 28, 2023 and the last day to change party enrollment was in February.

Mr. Ryan also stated that this is substantially shorter than it used to be. It used to be 25 days before the General Election, and not applicable until the General Election the following year. The State Legislature reduced the timeframe, but the idea is to have the party registrations changed in time for the Primary Elections.

This concluded the update on the November 7, 2023 General Election.

Mr. Ryan acknowledged Emily YueXin Miller, who has submitted a notice of appearance, and would like to address the Commissioners Committee.

Ms. Miller informed the Commissioners Committee that she started her campaign under the republican party and collected the required number of signatures, but her registration was challenged for being submitted late. She re-registered on time but was missing a check mark, the application was mailed back to her, which created an issue due to the late update sometime after July 4th. Ms. Miller stated that she recently ran under the Recovery Party and collected the required number of signatures. She visited the Board several times to inquire about the status of her submission and was told that if she did not receive anything she would be on the ballot. Ms. Miller stated that she never received anything from the

Board. She stated that she contacted the Campaign Finance Board, and when she was unable to access or update her records, she was told to follow up with the Board again. Ms. Miller stated that this was her first time running for City Council, in district #7. Ms. Miller stated that as of yesterday she visited the Board and was given a document that states that she is off the ballot due to her failure to respond, but noted again that she has not received any notice from the Board.

Commissioner Umane asked that Ms. Miller have a seat, and instructed the Candidate Records Unit to look into this matter to determine if a notice was mailed.

Commissioner Umane moved to set the date of the next meeting for Tuesday, October 24, 2023 at 1:30 P.M., and in a second motion, Commissioner Umane moved to adjourn the open meeting and convene an Executive Session to discuss Personnel and Litigation. Secretary Pepe-Souvenir seconded the motions, which were adopted unanimously.

Following the Executive Session, the open meeting resumed.

Mr. Ryan stated that there is an issue that needs to be addressed vis-à-vis the ratification of the CWA, Local 1183 contract. By brief way of history, the Office

of Labor Relations (OLR) has been negotiating the contracts on behalf of the Board of Elections since May 18, 1970. On July 24, 2001 there was a resolution passed by the Board of Commissioners indicating that that negotiation was subject to the instructions and policy of the Board established by the Commissioners and carried out and communicated by the Executive Director and his or her Deputy and staff. Mr. Ryan stated that this is an OLR process with Board involvement and ultimate approval. The contract was negotiated upon the pattern that was established by DC37 and has carried its way down through all the different unions, and was overwhelmingly passed by Local 1183., and now it comes to the Board of Commissioners for approval. In summary, the contract commences on January 19, 2021 and terminates on January 19, 2025. The percentage of raise spread out over that time is 16.21% with an additional half percent for one extra month extending the contract, bringing it to 16.2%.

Mr. Ryan stated that at this time unless there is any discussion, a motion would be proper to approve the Local 1183 contract and the pattern established and for that pattern to be applicable to all Board employees.

Commissioner Umame moved that we ratify the contract and have it apply to all Board employees. Secretary Pepe-Souvenir seconded the motion, which was adopted unanimously.

Mr. Ryan stated that this concludes the meeting for this week and asked that the Commissioners Committee revisit the matter with Ms. Miller and Alan Flacks who has also requested to address the Commissioners.

Commissioner Edmead asked that Ms. Miller return to the podium, and Raphael Savino, the Board's Deputy General Counsel reviewed the matter with Ms. Miller.

Mr. Savino stated that the Legal Department looked into this matter with the assistance of the Candidate Records Unit and it was determined that Ms. Miller was sent a non-compliance notice (NCN) because there was an issue with the coversheet. The notice was sent overnight to the address that she listed on the coversheet and the petitions and has the letter and receipt for proof mailing. If someone does not respond to the NCN within three business days, it is essentially a self-executing order, and the Candidate would be off the ballot.

Mr. Savino confirmed for Commissioner Edmead that the basis for the non-compliance was due to the absence of a printed name on the coversheet, the NCN was sent and there was no response from Ms. Miller within the three-day period.

Hemalee Patel, the Board's General Counsel gave additional clarification and informed the Commissioner that the NCN is sent via overnight mail via USPS, and Ms. Miller on her coversheet and petition which was used did not indicate an apartment number and her NCN was eventually returned to the Board because the Post Office deemed it undeliverable for insufficient address.

Mrs. Patel noted that the Board's rules and guidelines do indicate that if a candidate lives in an apartment in a building, especially if it's a large building, they are advised to put their apartment number. Once the notice is sent, if USPS decides not to deliver it, it is beyond the control of the Board.

Commissioner Araujo inquired about the date of the letter. Mrs. Patel informed the Commissioners that the letter was dated May 31, 2023 and can provide the entire tracking history. The scheduled delivery was supposed to be Thursday, June 1, 2023 and it was eventually returned to the Board on Monday, June 5, 2023. USPS made several attempts to determine where in that building Ms. Miller was, and there were multiple days that delivery was attempted.

Commissioner Araujo inquired, if there is no response to the NCN is that the end of it or does it appear in a calendar before the Commissioners to give the

person an opportunity to again come before the Commissioners and point out where they were wrong.

Mrs. Patel informed the Commissioner that on the day that the NCN is sent out the ledger reflects that a notice was sent to the candidate. Any candidate can reach out to the Candidate Records Unit, even if they don't get the mail, to determine whether or not an NCN was sent. Candidates reach out all of the time to get a copy of the daily ledgers. Mr. Savino noted that it is reflected on the ledger, off by Board, on June 7, 2023. Mrs. Patel stated that the NCN is also reflected on the date that it is mailed, and if Ms. Miller had reached out to the Board, the Candidate Records Unit would have told her that there was a NCN; candidates do come down to the Board offices to get copies of non-compliance notices that have not been delivered, or even before they're delivered because they know they're getting one and the Board always hands them a copy if they come in to request one.

Mr. Ryan inquired of Mrs. Patel, noting that Mr. Savino has already indicated that the ledgers are published and made available to the public, what is the timeframe beyond the lack of response to the NCN by which the candidate or proposed candidate would have to bring judicial intervention.

Mr. Savino responded and stated that with an adverse ruling by the Board, meaning that the candidate is off the ballot, they have three days to bring a judicial proceeding. Mr. Ryan stated that that would have been somewhere in or around June 10th or June 11th.

Mrs. Patel stated that the NCN would have been issued by a vote of a bi-partisan team of Commissioners.

Mr. Ryan stated that there is a hearing conducted by the Commissioners, and then the NCN is issued and then beyond that there is still another bite at the apple, so to speak, to get some judicial intervention if there is an allegation that the Board did not act appropriately. Mr. Ryan stated that that timeframe has long since passed and we are now in October. Commissioner Umame noted that essentially there is very little that we can do now.

Ms. Miller stated that she only realized this situation on Friday, October 12, 2023. Prior to that she has been in and out of the Board of Elections several times, and has made calls and had people inquire, but was told not to worry if she did not receive anything, that means that everything is fine.

Mr. Ryan informed Ms. Miller that sometimes when people are engaging in this process for the first time, they learn a tough lesson and a mistake is made that won't be made again in the future and believes that for her this is one of those moments. Where a process is in place, she did not for whatever reason, avail herself fully of that process and now she is in a position where she is off the ballot and there really isn't anything statutorily or discretionarily that the Board of Elections can do. Ms. Miller is off the ballot and will remain off the ballot, and in two years if she wishes to run for City Council again, she can try again and follow the process a little more closely.

Ms. Miller stated that she actually never received this mail, and up to this day there is only one miller there, in a not very large building of maybe 18 families. That address was particularly put there because at her own residential address at 101 West 106th Street there are mail issues that she has complained about a dozen of times to the Post Office, which is why her relatives particularly let her use that particular address at 36th Street.

Mr. Ryan informed Ms. Miller that the Board totally appreciates that, and it is an unfortunate circumstance but there are just times when the sand runs out of the hourglass, and this is one such time. There really is nothing that can be done, the Commissioners do not have the legal authority to change anything at this point

and the statute is very unforgiving in that regard. Mr. Ryan stated that in the future if Ms. Miller wishes to run for election again, she should become familiar with these rules and follow them as closely as she possibly can.

Ms. Miller requested a copy of everything discussed today. Mr. Ryan stated that the Legal Department will speak with her after the meeting is concluded and thanked her for her time.

Mr. Ryan acknowledged Alan Flacks who has requested to address the Commissioners Committee.

Mr. Flacks inquired about the Board's Executive Sessions, when a decision is made, and the Commissioners take a vote it should be announced in public session. Mr. Flacks also noted that the Board has been trying for years legislatively to change the law to ask on petitions to note the apartment number, as it is very helpful to the postal service.

Mr. Ryan informed Mr. Flacks that he can assure him that the only things that are not immediately announced are those actions that are taken with respect to individual employees, and those are the actions that go into the minutes, everything else is announced publicly. The Board's Legal Counsels, Mrs. Patel and Mr.

Savino as well as the Counsels to the Commissioners look at these things with a fine-tooth comb, and is confident despite the protestations of editorials boards, we are confident that the Board has a group of lawyers here, including himself, that are following the law.

Commissioner Umane stated that the other matters addressed in Executive Session are litigation, which is not announced.

Mr. Ryan assured Mr. Flacks that he is confident that the Board is following the law.

Commissioner Umane moved to adjourn the meeting. Secretary Pepe-Souvenir seconded the motion, which was adopted unanimously.

The meeting was adjourned.

The next stated meeting of the Commissioners is scheduled for Tuesday, October 24, 2023 at 1:30 P.M.