

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON TUESDAY, FEBRUARY 26, 2013
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: Secretary Gregory C. Soumas

Commissioners Araujo, Barrera, Dent, Guastella, Michel, Shamoun, Sipp

Dawn Sandow, Deputy Executive Director
Steven H. Richman, General Counsel
Raphael Savino, Deputy General Counsel
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
John O'Grady, Chief Voting Machine Technician
Daniel Lavelle, Associate Staff Analyst, Phone Bank/Front Counters
John Naudus, Director, Electronic Voting Systems
Stephen Thompson, HAVA Training Specialist, EDO
Giacomo Kmet, Temporary Contract Attorney, OGC
Anibal Luque, Temporary Contract Attorney, OGC
Kenneth M. Moltner, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Kate Doran, LWV
K. Loving, CFB
K. James
Rachael Fauss, Citizens Union
John D. Smith
Cathy Gray
Myna Littlewort
Alex Voetsch
Brigid Bergin, WNYC

Secretary Soumas called the meeting to order at 1:30 P.M.

Ms. Sandow requested to add an item to the agenda concerning the 2013 Run-off Primary Election.

Commissioner Barrera moved to adopt the minutes of the February 12, 2013 meeting. Commissioner Araujo seconded the motion, which was unanimously adopted.

Mr. Richman presented the draft of the 2013 Recommended Revisions to the New York State Election Law – Part 1 package, including the cover letter, summary and text of the proposals. These legislative proposals are necessary to enable the Board to continue to conduct elections in a more efficient and effective manner while ensuring the integrity of the process. The changes address the urgent need for immediate legislative modifications demanded by the new voting system introduced in 2010. The major concerns outlined are:

- Mandated minimum funding allocation;
- Election administration;
- Improving the design of the ballot to better serve the voters;

- Modification of statutory procedures upon the close of the polls;
- Enhancing Election Day Operations and related activities;
- Modifications to improve and enhance the efficiency and effectiveness of Board operations.

Mr. Richman provided a brief summary of the proposals. Commissioner Barrera stated that every year the Board submits Recommended Revisions to the Legislature and questioned why nothing is ever passed. Mr. Richman stated that the Board can only educate and inform the Governor and the Legislature. He stated that the Board will once again present the 2013 Recommended Revisions package at the upcoming State Government Education and Information Day in Albany. Mr. Richman requested the Commissioners to authorize the transmission of the Part I package as distributed to the Governor and Members of the New York State Legislature. He noted that Part II will consist of any proposals relating to the 2013 Primary/Run-off Primary Elections that are approved by the Commissioners, following the presentation at the next Commissioners' Meeting. Secretary Soumas asked if President Umane's comments from his email were incorporated into the draft. Mr. Richman noted that they

related to the 2013 Primary/Runoff and would be included in next week's presentation.

Secretary Soumas noted that Commissioner Sipp joined the meeting.

Commissioner Guastella stated that she has an issue with Proposal #13-14 which concerns creating Election Districts with up to 4,000 active registrants. She felt that 4,000 is too high and would abstained on this proposal. Mr. Richman recalled that the State Board adopted 4,000 as the maximum amount of voters per scanner.

Secretary Soumas moved that the Board adopt the draft Recommended Revisions to the New York State Election Law – Part 1 package as submitted. Commissioner Barrera seconded the motion. The motion was adopted by a vote of 6 in favor and 1 abstention – Commissioner Guastella.

Secretary Soumas noted that Commissioner Dent joined the meeting.

Mr. Naudus provided an update on the preliminary unofficial Election Night Results Report for the February 19, 2013 Special Election in the 31st Council District in Queens. He distributed copies of his report to the Commissioners. Mr. Naudus stated that Board Staff implemented the new election night results process and the unofficial results files were transmitted to the Executive Office. Two (2) Police Precincts were utilized. A total of 77 Data PMDs were used and 100% were returned to the Police Precincts. The first PMD results file was received at 9:26 P.M. and the last PMD results file was received at 11:15 P.M.

Mr. O'Grady provided an update on Election Day voting equipment data and issues for the February 19, 2013 Special Election in the 31st Council District in Queens. The total amount of equipment deployed and issues that arose on Election Day follows:

- 77 Scanners;
- 28 Ballot Marking Devices (BMDs);
- 70 ED Supply Carts;
- 317 Privacy Booths;
- 501 Chairs;
- 85 Tables;

- 3 BMD problem calls. 1 BMD was replaced;
- 9 Scanner problem calls. No Scanners were replaced.

Mr. Lavelle provided an update on the Call Center's Election Day Emergency Response System data for the February 19, 2013 Special Election in the 31st Council District in Queens. There were a total of 44 phone calls received and the breakdown follows:

- 18 – Supplies;
- 8 – Scanners;
- 8 – Poll Workers;
- 4 – Poll Sites;
- 1 – ED Supply Cart;
- 3 – BMDs;
- 1 – Accessibility;
- 1 – Other.

The total amount of resolution time to address these issues was 57 minutes.

Mr. Thompson provided an update on the poll workers assigned for the February 19, 2013 Special Election in the 31st Council District in

Queens. A total of 653 poll workers were assigned to work. A total of 584 poll workers (90%) showed up to work. There was 100% attendance for AD Monitors, Coordinators, ENR Clerks, Information Clerks, and Spanish Interpreters. All poll workers that were assigned were trained and passed the test.

Mr. Ward reported on the Comparative Expenditures Report dated February 19, 2013. A copy of the report is in the agenda.

Mr. Ward reported on the Vacancy Report dated February 26, 2013. A copy of the report is in the agenda.

Ms. Sandow reported on the 2013 Run-off Primary Election. She recalled that since 2011, the Board made it clear that modifications to the current election calendar are required due to the implementation to the new electronic voting system. Under the current State Law, there is insufficient time for adequate judicial review of the election process. Failure to modify the election calendar jeopardizes the Board's ability to conduct successful elections and threatens timely delivery of military, federal and absentee ballots which reflects the names of the candidates who will actually appear

on the Election Day ballot once all potential legal action has been concluded. The Board repeatedly stated in their Testimony before the City Council and the Assembly, and at meetings with government officials, that the calendar should be modified to provide 60 - 70 days between each election, especially when there is a potential Run-off Primary which must be conducted two (2) weeks after the Primary. Ms. Sandow stated that it is virtually impossible to certify the results of the Primary and to prepare for the Run-off Primary in two (2) weeks without a significant increase of resources, changes to the established certification process, and the mandated testing requirements of the Scanners. Ms. Sandow stated that moving the date of the Primary Election appears that it will not be accomplished. Board Staff worked feverishly last year on options to conduct the election in a short period of time. She recalled that there was an outline containing a wide range of options hoping that one would enable the Board to conduct the election. The options were narrowed down with the help of the Commissioners and were further analyzed. Several of those options are unlikely to be implemented because it appears that the statutory changes that would allow an Instant Run-off will not be made this year. Board Staff continued to move forward with options that do not require statutory changes. Ms. Sandow reported that there were

discussions with the State Board Staff and they suggested that it may be possible to modify the mandated testing requirements of the scanners that will allow a shorter time frame. The City Board will be working closely with the State Board. Ms. Sandow stated that Board Staff is finalizing a revised draft Contingency Plan for the 2013 Run-off Primary. The revised plan could be presented to either a Commissioners' Committee on Friday, March 1, 2013 or at the next Commissioners' Meeting on Tuesday, March 5, 2013. Commissioner Guastella asked that all elected officials and good government groups be notified about the upcoming discussion on the revised draft Contingency Plan. She recalled that some of them expressed concern about this draft plan in the past. It was noted that the discussion will be held in public session. Mr. Richman stated that four (4) options will be discussed. Secretary Soumas recommended that the staff present the revised draft plan at the next Commissioners' Meeting on Tuesday, March 5, 2013.

Secretary Soumas requested to discuss a Manhattan personnel matter in public session. In November 2012, Secretary Soumas and President Umane conducted a disciplinary hearing for Sheryl Logan, an Administrative Assistant in the Manhattan Office. The Committee

recommended placing Ms. Logan on one (1) year probation retroactive to the date of the hearing. The report of the Manhattan Commissioners' Committee was unanimously adopted.

Commissioner Sipp sought to clarify that the Commissioners will be discussing the revised Run-off Primary contingency options at the next meeting and not making any final decisions.

Commissioner Dent moved to convene Executive Session for purposes of personnel matters. Secretary Soumas seconded the motion, which was unanimously adopted.

Following Executive Session, the open public meeting resumed and Secretary Soumas reported on the actions taken in Executive Session:

- I. The Commissioners unanimously adopted the following as a Board Policy and Procedure:

The position (budget allocation, line & title) of an employee who is appointed to a position assigned to the Executive Office and is subsequently reassigned by the Commissioners to another Board Office/Facility,

shall be automatically reassigned back to the Executive Office upon the termination of that individual's employment with the Board;

- II. Pursuant to Section 3-212(5) of the NYS Election Law, the Commissioners unanimously adopted a motion that the full Board of Commissioners delegate their powers to appoint and remove any temporary employee and newly appointed permanent employee within their one (1) year probationary period to the respective Borough Commissioners' Committee for any position assigned to that Borough's Office and/or Voting Machine Facility;
- III. The Commissioners unanimously authorized the assignment of Robert Pataky, an Administrative Associate assigned to the Queens Office, and upon his vacating that position, that Administrative Associate's position shall be reassigned to the Executive Office.

Commissioner Dent moved to adjourn the meeting. Secretary Soumas seconded the motion, which was unanimously adopted.

The next stated meeting of the Commissioners is scheduled for Tuesday, March 5, 2013 at 1:30 P.M.