

**PROFESSIONAL STAFF CONGRESS-CUNY  
ELECTIONS COMMITTEE**

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**SUPPLEMENTAL DECISION OF THE  
PSC ELECTIONS COMMITTEE  
ON THE APPEAL FILED BY  
THE CUNY ALLIANCE**

**Introduction**

The CUNY Alliance, in its appeal to the Delegate Assembly, included several new grounds for its protest. Although it is the Committee's view that these additional grounds are untimely, particularly in light of the fact that the Committee held a full hearing ten days after the appeal was filed, we thought it would be more responsible to address the substance of these additional grounds.

**Committee Recommendations**

1. The Election Rules state, at Rule V(I), that "any challenge to the election shall be made in writing to the Elections Committee within five (5) working days of the counting of the ballots." The count occurred on April 25, 2006. The challenge was filed on May 2, 2006. The Committee held a hearing on May 11, 2006 and accepted all arguments, evidence and grounds for appeal raised up through that hearing, which was 16 days post-election. These "additional" grounds were raised on May 24, 2006, 29 days post-election. They are clearly untimely and should be dismissed for that reason.

2. Despite Recommendation No. 1, the Committee investigated each new allegation so that the DA could be fully informed about the issues being raised, and so that no one could

allege that a meritorious argument was ignored. We review below each “additional” allegation made by the CUNY Alliance and make a recommendation as though it were raised in a timely manner.

- A. Allegation: *The CUNY Alliance was not provided equal access to daily counts of the number of ballots returned to the AAA, while the New Caucus was provided such access and information.*

Finding: At the candidates meeting prior to the mailing of the ballots, which a CUNY Alliance representative attended, it was stated that the American Arbitration Association (“AAA”) would be keeping a daily count of ballots received and that it would provide that number to the Election Committee. That was done. No one from the Alliance asked for these numbers prior to the count. On several occasions, a New Caucus person did ask and was given a count of ballots received. No slate or candidate was provided with the information without a request. No Labor Department regulation and no law requires the dissemination of such information. Furthermore, the occasional dissemination of this information cannot have had an impact on the election.

- B. Allegation: *The PSC directed the AAA to mail duplicate ballots requested by certain PSC members by regular mail and directed the AAA to mail duplicate ballots requested by certain other PSC members by overnight mail for arbitrary, capricious and discriminatory reasons.*

Finding: Beginning on April 17, 2006, all ballots sent out as a result of phone requests were sent out by overnight mail. This was done at the direction of the Elections Committee because all ballots had to be returned by April 21, 2006. There was nothing random

or selective about this procedure. In addition, one or two members who called in, and who were about to go on vacation, asked for and had their ballots overnighted to them.

- C. Allegation: *The PSC directed the AAA to mail out approximately 150 or more ballots on or after April 19, 2006 which was long after the deadline for mailing of ballots and which resulted in many PSC members not receiving their ballots in a timely manner, thereby depriving them of the right to vote.*

Finding: After the eligibility list was sent to AAA on April 3, 2006, so that ballots could go out, Diane Rosato at PSC continued to correct the list and look for eligible voters. One large group of LaGuardia and Kingsborough Community College part-timers was discovered. The information that these part-timers were eligible was delayed because those two schools are on a trimester schedule. On April 13, 2006, 136 new names were transmitted by the Election Committee to AAA for the mailing of ballots. Ballots were mailed to all on April 14, 2006. The law only requires that a union make its best effort to keep an accurate list. The Elections Committee, with Diane Rosato's assistance, made such an effort. That effort is complicated particularly by part-timers' movement from one campus to another, and by the fact that part-timers do not work every semester. No rule was violated by the delayed mailing of these ballots.

- D. Allegation: *The PSC directed the AAA, to mail out duplicate ballots requested by certain PSC members and directed AAA, to refuse to mail out duplicate ballots requested by certain other PSC members for arbitrary, capricious and discriminatory reasons.*

Finding: All PSC members who were on the Eligibility List who requested duplicate ballots received them. This allegation is entirely baseless.

- E. Allegation: *The PSC, through the AAA, refused to allow all members who requested duplicate ballots who were not on the eligibility list to vote challenged ballots.*

Finding: If someone called for a duplicate ballot and was not on the Eligibility List, the name was forwarded to the Elections Committee, which did research to determine that individual's status. Certain CUNY employees who thought they were members were agency fee payers. Several individuals joined in January 2006, which was beyond the membership eligibility date. These individuals were not sent ballots. If the Elections Committee could not quickly determine someone's accurate status, he or she was sent a ballot. Three ballots were returned by individuals not on the list and were challenged on April 25, 2006, and not counted. No rule, regulation or law was violated.

- F. Allegation: *The Elections Committee improperly denied the request of the CUNY Alliance for a diskette of all scanned ballot images used in the ballot count, renegeing on its prior decision to allow the CUNY Alliance and the New Caucus to receive a copy of the diskette and despite the fact that the CUNY Alliance challenged the count and the effect of re-programming by the AAA of its computer used to read and tally ballots during the middle of the ballot count.*

Finding: There is no rule, regulation or law which requires that candidates be given a copy of the ballots, which is what is requested here. The law specifically allows candidates to "observe." The Elections Committee never agreed to give anyone a copy of the scanned ballots. The AAA advised the Committee and the slates, at the May 11 hearing, that it had done its own recount as a cross-check and that the count which was observed was accurate. No formal, observed recount was requested by the CUNY Alliance. It is not good policy to distribute copies of ballots so that candidates can engage in their own private counts. No violation is made out by the CUNY Alliance.

- G. Allegation: *The AAA and the PSC improperly denied equal access and participation in all election-related decisions and issues, including the handling of duplicate and additional ballots and instructions to be provided to members regarding their right to request and cast duplicate ballots.*

Finding: There is no rule, regulation or law which requires “equal access and participation in all election-related decisions and issues.” The Constitution gives power over such decisions to the Elections Committee. In fact, to the greatest extent possible, decisions were made in an open, transparent manner.

- H. Allegation: *The AAA and the PSC improperly failed to provide the CUNY Alliance the Certification of Results of the Election until May 8, 2006, after the deadline for filing a challenge to the election.*

Finding: All parties were given the election results on the day of the balloting. The certified copy of those results was handed out on the first day the slates met to discuss how to proceed on the appeal. There was no requirement that it be given out any earlier. The appeal does not state how this “violation” affected the outcome of the election. The CUNY Alliance has had the certification since May 8, 2006 and has failed to assert that it differs in some way with the results given out on April 25, 2006.

- I. Allegation: *The Certification of Results of the Election issued by AAA failed to adequately account for all ballots printed, mailed, returned for incorrect addresses or other reasons, ballots that were remailed, duplicate and additional ballots, challenged ballots, blank, overvoted, and unused ballots.*

Finding: There is no law, rule or regulation which requires that the certified results contain any of this information. After issuing the certification, AAA did supply the information to the Elections Committee, at its request, and let the CUNY Alliance’s attorney

inspect the returned ballots and the logs related to duplicate ballot requests. The law does not require a record of how many ballots were printed. What is required is a method of balloting that assures that the ballots being counted were cast by the member it was sent to. AAA has safeguards in place, including a number assigned to each member, and to his or her ballot, to make sure that ballots come back from the actual member and that the ballots being cast were authentic.

- J. Allegation: *The Certification of Results of the Election issued by AAA is affected by errors due to the failure of the AAA to permit the CUNY Alliance to participate in observing eligibility verification, the refusal of the AAA to test its re-programming and re-programming of its computer during the vote count; and its failure to account for all ballots.*

Finding: The Committee dealt with the eligibility verification in its principal report. As for the ‘refusal’ to retest the re-programming of the way the computer counted slate votes for convention delegate, neither AAA nor the Elections Committee ever received a request from the CUNY Alliance to test AAA’s re-programming.

- K. Allegation: *The receipt produced by AAA allegedly establishing the number of ballots printed and mailed was prepared after the AAA prepared the Certification of Results.*

Finding: The CUNY Alliance fails to explain how the date of the receipt affected the balloting. It does not allege that fraudulent ballots were cast or that counterfeit ballots were used by anyone. Without such an allegation, the Committee finds this complaint wholly irrelevant.

## **Conclusion**

Based on the above-stated findings, the Elections Committee unanimously recommends that the additional grounds for appeal be rejected, for both procedural and substantive reasons, as a basis to re-run the election.

Dated: May 25, 2006

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Paul Sheridan  
Elections Committee Chair