

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL L. SHAKMAN, PAUL M.)	
LURIE, KENNETH AYERS, ANN M.)	
KING, INDEPENDENT VOTERS OF)	
ILLINOIS-INDEPENDENT PRECINCT)	
ORGANIZATION, MICHAEL)	
SULLIVAN, DARRYN JONES,)	
STUART MAJERCZYK, RICHARD)	
GRAMAROSSA and CONNIE)	
GRAMAROSSA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 69 C 2145
)	Judge Wayne R. Andersen
COUNTY OF COOK, et. al)	Magistrate Judge Schenkier
Defendants.)	
)	

**SIXTH REPORT OF THE COMPLIANCE ADMINISTRATOR
FOR COOK COUNTY**

Mary Robinson, *Shakman* Compliance Administrator for Cook County, by and through her attorney, Peter Monahan submits this Sixth Report pursuant to the order of the court entered November 30, 2006.

This report is presented pursuant to the terms of the Supplemental Relief Order (“SRO”), entered on November 30, 2006, requiring that the *Shakman* Compliance Administrator (“CA”) study the County’s existing employment practices, monitor the County’s compliance with the provisions of the SRO, assist in formulating a new hiring plan and in establishing training programs on non-political hiring practices, adjudicate claims based upon violations that preceded entry of the SRO, make recommendations to the Court as to how to resolve issues regarding *Shakman* exempt positions, and file an initial report and then semi-annual reports identifying

activity by the CA and progress toward achieving substantial compliance with the requirements of the SRO.

SUMMARY

Progress toward substantial compliance has been erratic. On some fronts, there have been productive, steady efforts that go a long way toward the goal. Those include the substantial work that has gone into the design and implementation process for on-line application software, which is within weeks of being activated for test runs, as well as the coming of age of the Office of the Independent Inspector General (OIIG), which has expanded staff and has shown substantial progress in developing investigative practices and addressing a growing caseload of investigations that span the full range of concerns the OIIG has authority to investigate, including allegations of political discrimination. On other fronts, efforts have been disappointing. One of those fronts is the negotiation of a new hiring plan, which had appeared to be on track, but then the County offered some unexpected proposals in early January, several of which were untenable in the CA's opinion. Another involves ongoing efforts to restructure and professionalize the Bureau of Human Resources. Those efforts got a substantial boost from the President's decision last October to create three new HR positions, but progress came to a standstill because of stalemates on how the positions should be filled, with some progress in breaking the impasse beginning only in May. A third is the absence of any activity toward proposing a list of positions which the County wants included on the exempt list.

Of greater concern is that efforts to frustrate or evade Shakman requirements on particular hiring decisions and other employment actions have not only continued, but escalated, particularly since the February primary. As a result, the CA's staff has had to focus on being alert to violations and attempting to contain what can be contained. Work toward negotiating

and implementing policies and practices for the future seems less and less useful or realistic.

A. Summary of Progress

Per the directive of the Court, this report will begin with a summary of the progress that has occurred since the entry of the SRO, as to both matters previously reported and matters that have transpired since the last report.

Previously Reported Progress. The last (Fifth) report identified the following steps that had been taken toward substantial compliance with the SRO:

1) The Board of Commissioners adopted an ordinance, and the President issued of an executive order, prohibiting illegal political considerations in hiring and other employment actions, requiring county workers to report violations, and prohibiting retaliation against any employee who makes a claim or report.

2) An independent and experienced Chief for the BHR has been retained.;

3) Control of the Cook County Health and Hospitals System (H&HS) has been delegated to an independent nonpolitical Board, including full authority for employment decisions for all H&HS positions.

4) Creation of the OIIG, appointment of an Independent Inspector General (IIG), and funding for retention of a capable OIIG staff have all taken place.

5) There has been resolution and payment of all but two claims alleging political discrimination in employment actions prior to adoption of the SRO.

6) Some practices that once gave politically connected candidates advantages in applying for non-exempt employment have been eliminated.

7) Training on Shakman requirements and procedures for employees involved in employment decisions has been conducted.

8) The County has instituted a requirement that every person who takes part in a hiring sequence for a non-exempt position certifies that that person did not allow political considerations to influence his or her activity.

9) The County funded the purchase and implementation of an on-line application system.

10) There has been substantial work toward developing a new hiring plan.

Recent Progress. Since the last report, the following progress has occurred:

1) The County has provided funding and proposed job descriptions for three new Bureau of Human Resources positions intended to implement hiring practices consistent with the decrees in this case.

2) The OIIG was given funding to expand staff. The Office has investigated and is in the process of investigating a number of matters involving allegations of unlawful political discrimination, in addition to matters involving waste, fraud, and ethics violations. In all but two cases where the OIIG found evidence of violations of the ordinance prohibiting politically motivated employment actions concerning non-exempt employees or positions, the County took disciplinary action.

3) The Board adopted an amendment authorizing the OIIG to initiate investigations of allegations involving elected officials without a sworn complaint.

4) Claims for which the Compliance Administrator was responsible have been fully concluded and the County has paid all approved claims.

5) The Shakman Post SRO Complaint Administrator has completed investigations and made recommendations in regard to 9 post-SRO claims involving the County. Four of the nine claims were sustained. An additional 43 claims have been filed and are the subject of active investigation.

6) Some additional modifications of HR hiring practices that were vulnerable to manipulation for political purposes have been implemented. (see automatic dating of randomized eligibility lists, p. 11, development of screening policies, p. 10)

7) A series of meetings between BHR staff and CA representatives have addressed recurring eligibility screening issues.

8) Training on Shakman requirements and procedures for employees involved in employment decisions has continued, including training for the new H&HS Executive Team and training for Commissioners and their staff members.

9) Design and implementation work on the on-line application software, in which the CA's staff has actively participated, has progressed so that the system can go live within weeks.

10) Some additional work has been done toward finalizing a hiring plan.

B. Summary of Continuing and New Obstacles

Continuing Obstacles. As was true during the last period, while lawyers representing the County and the President along with the BHR Chief have been working toward developing the policies and structures necessary to achieve substantial compliance, others at the County have continued efforts to evade and frustrate policies and practices intended to eliminate unlawful patronage hiring.

1. Issues that have continued to arise in hiring sequences include:

- a. failure to notify the CA of postings, eligibility screenings, and scheduled interviews at all or in time for the CA to arrange to have monitors present;
- b. inconsistencies in requiring candidates to produce what a posting has described as "required" documentation;
- c. inconsistent explanations to the CA about why procedures have not been

followed in a particular sequence;

- d. lowering minimum qualifications for a position without documentation or any apparent *bona fide* grounds;
- e. members of interview panels pretending not to know applicants who are relatives or otherwise known to them; and
- f. hiring packets containing documentation that is contradicted by other evidence.

2. Employees who evade or frustrate Shakman policies appear to suffer no consequences for that conduct, whereas employees who wish to cooperate with Shakman representatives are afraid of losing their jobs.

3. There has been no activity whatsoever toward negotiating a new exempt list, and instead, the President has continued to make unilateral, unauthorized changes to the list despite the requirements of the Consent Decree and despite a promise in April 2007 that no such changes would be made.

4. There was a stalemate between the President and the CA as to how the new BHR positions should be filled until May, when the President agreed that one of the positions should be treated as nonexempt. The three positions identified as critical to the implementation of the SRO remain open. After 21 months in office, BHR Bureau Chief Sova has yet to hire one HR employee himself. One of his two deputies, both exempt employees, was terminated by the President a few months ago, and the other takes direction from the President rather than the Bureau Chief. News stories suggest that the President recently offered a key BHR position to a politically connected individual without substantial relevant experience, another step opposed to the goal of building a professional, independent Bureau.

New Obstacles.

1. Employees are finding ways to evade the authority of the OIIG. In at least one instance, where the OIIG's investigation concluded that a major cause infraction occurred, a politically connected supervisor helped an employee avoid termination by conducting a hearing on the employee's grievance without notice to the OIIG, which resulted in a dismissal of the charges and reinstatement of the employee. The failure to notify the OIIG of the "hearing" ensured that there would be no evidence offered to sustain the charges.

2. The President's commitment to advancing the Shakman agenda and achieving substantial compliance has been erratic, resulting in waste of energy, time and taxpayer money. The primary election for Board President was obviously of great importance to the leadership and distracted it from administrative endeavors, including those involving Shakman. Following the President's primary loss, little occurred for months. Then, in May, the President announced that he intended to bring the County into compliance by July 31, 2010, and brought in a private law firm to assist in that effort. The CA delayed preparation and submission of a report that would have documented the lack of progress, prepared detailed summaries of unresolved issues and work to be done, and participated in meetings with the President, his advisors and representatives of the intended firm.

At these meetings, the CA went to great lengths to explain her position regarding various outstanding issues, and to reiterate that the challenge to reaching substantial compliance was not limited to accomplishing identified steps, but also included the need to reemphasize the message from leadership to all County workers, especially managers, that cooperation with Shakman is required, and that there would be negative consequences for those who aimed at obstructing or evading Shakman initiatives. After an initial flurry of activity, one step was accomplished in that

the President agreed that the new position for Director of Non-Exempt Administration should be non-exempt, but nothing more happened. Information the County promised at the meetings was not provided, no more meetings were scheduled, and the outside law firm was not hired..

3. Since losing his primary bid to run for reelection, the President has aggressively used his legal authority to make unilateral exempt hiring and firing decisions to reward supporters and part company with those who were disloyal. In addition, current exempt workers who expect to be released by any incoming administration are looking for the protection of a nonexempt job. As a result, there has been an increase in the number and intensity of concerns brought to the CA's office by non-exempt employees fearful of being forced out of their jobs to make room for political favorites.

4. In some departments, both exempt and non-exempt employees have expressed their fear of being terminated if they stand in the way of what they perceive to be illegal or unethical activities. Recent news stories report that one long-time worker who is perceived to be a friend of a whistleblower and who was, herself, interviewed in an investigation, was terminated just a few weeks ago.¹

5. The CA has not been able to get information necessary to decipher dozens if not hundreds of unilateral changes to the exempt list by the County, changes that the County has claimed are merely procedural or bureaucratic, but which are not explainable on their face as such. Nor has the County answered requests that it identify who actually authorizes and/or makes the changes to the list and under what circumstances.

6. Among the exempt list issues is one that involves how the President's office has

¹ This is not to say that some County officials are not taking seriously the illegality of retaliation. On June 24, 2010, the President's lawyer issued a memo to Bureau Chiefs and Department Heads as well as Office of the President employees reminding them of their duties, requirements and prohibitions under the Ethics Ordinance, OIIG Ordinance, Unlawful Political Discrimination Ordinance and Executive Order.

used a budget category for “emergency” positions (the County’s 130 account) in order to hire workers into positions funded by grants or programs conceived after the budget has been finalized without complying with Shakman procedures, a practice which is not authorized under any agreement or order governing County hiring practices. An audit of the use of the 130 account is being commenced.

7. Just last week, because of directions from some County representatives that there was not authority to hire into 130 positions without following Shakman procedures, the Emergency Assistance Department sought the CA’s approval of ‘emergency’ hires into positions funded by a Homeland Security grant. Representatives of the President claimed that the hiring was an emergency because the grant runs out in September and the new workers were needed immediately in order to properly complete the grant work. Upon asking to see the applications of the six workers to be hired, the CA found that one was the finance director for the President’s campaign, another is a director of the public relations firm owned by the President’s Deputy Chief of Staff, and another is the wife of a Chicago alderman. Within a week, the CA received an email announcing that those three candidates should be removed.

I. ACTIVITIES OF COMPLIANCE ADMINISTRATOR

Following are the major categories of activity directed by the CA. These activities have been underway since at least spring of 2007. This report summarizes what has transpired in each category since the last report.

A. Claims

As of the last report, only two claim appeals were unresolved, and those two appeals have been decided. Thus all claims for damages due to unlawful political discrimination occurring before November 30, 2006, have been resolved. In the end, the County paid awards totaling

\$3,084,250 to 108 claimants.

B. Monitoring

Eligibility Screening. The CA's office continued to monitor the BHR process of reviewing applications and determining which applicants are eligible for posted positions.²

The last report identified a host of recurring problems in the screening process. As a result, Bureau Chief Joseph Sova called a series of meetings where BHR screeners and CA representatives discussed those issues and developed appropriate ways of addressing them. CA representatives found the discussions candid and productive, and the number and severity of issues observed by the monitors has decreased.

Some, but not all, of the screening function will be accomplished electronically once the Taleo (on-line application) software is implemented. All applicants will be required to apply for positions online and answer a series of questions designed to determine whether they have the minimum qualifications required for the posting. The electronic applications of all applicants who indicate they possess those qualifications and other pre-determined criteria will then be validated by BHR analysts, who will confirm whether the experience and educational information submitted by the applicant matches and substantiates their claims of possession of the minimum qualifications. This validation process will continue to leave room for subjective determinations, and it will continue to be essential that the analysts are appropriately trained and that all policies which govern the decisions they will be making be reduced to writing. The task of developing written policies that will govern the validation of eligibility remains to be done.

Presently, BHR procedures call for two analysts to review each application. When the analysts disagree about whether the applicant is eligible, the application is presented to a

² Posting and eligibility screening for H&HS positions are still handled by the County's BHR and that will continue to be the case until H&HS has put in place the infrastructure to manage these functions.

supervisor to make a final decision. A question has arisen whether it will be necessary to continue to have two analysts review each application once Taleo is implemented. It will be easier to understand exactly what that will mean once the system is operating and we can see how the validation process plays out. For the time being, the CA is inclined to agree to convert to one rather than two analysts only if the County agrees that validation will be done only by non-exempt employees.

That position is informed by a number of incidents where a concern about the possible intentional manipulation of eligibility criteria has arisen. All too often, when the CA's monitors have raised a serious concern about an eligibility determination, at least one of the analysts on the file has been an exempt employee. For instance, a recent report from the Post-SRO Complaint Administrator, Mark Vogel, found that a politically connected applicant who was clearly not eligible for a posting was included on the eligibility list despite the fact that both analysts who reviewed the file found the applicant ineligible, because the exempt supervisor decided to review and overrule their decision. Once eligible candidates have been identified, if there is an overabundance of qualified applicants, a percentage is selected for interview by a random computer sort. The Fifth Report described a posting where a suspicious number of applicants with apparent family relationships made it through the random sort, and identified the concern that the software being used by the County did not allow for an audit to check for manipulation.³ It is also now clear that there are only two BHR employees whose computers

³ At the time of the Fifth Report, the CA understood that six of the 59 candidates selected randomly from a total number of 237 eligible applicants were apparent relatives or colleagues of County employees. Further investigation revealed that 11 of the 59 selected candidates were relatives or former colleagues of then current department employees, several of whom served on the panel that interviewed the candidates, though some recused themselves when their own relatives were interviewed. Seven of the 13 candidates who were eventually hired into the positions were relatives or former colleagues of current employees, and within months of their being hired, the CA received complaints that five of the seven had performance issues that were not being addressed. These events occurred in a department of H&HS, and it was both refreshing and encouraging that H&HS management took immediate

have the randomizer software, and both of them are exempt employees. During this reporting period, in investigating a posting for the Department of Highways, the CA found that two randomized eligibility lists had been generated, and the second included candidates who had been identified as politically connected. The explanation was that after the first list was run, it had been determined that a candidate had been improperly omitted from the pool, so that a second list had to be run after that candidate was included, though the handwritten notes purporting to show which list was first and which second appeared inaccurate. BHR has since instituted programming that assures the date and time a random list is generated will be automatically included on the list.

Discussions are still underway on how the random sort will be done using the Taleo software. It is critical that the solution include auditing capabilities, and that the employees who have the ability to generate the random sort be non-exempt employees.

A disappointing development which occurred recently was the President's Office of Education and Training's (POET) failure to notify the CA that steps were underway to recruit and hire workers for a summer youth program. POET notified the CA only after all of the workers had been selected to ask if the CA wanted to participate in the orientation sessions for those hired, as she had last year. The workers hired were selected without using the usual County HR procedures, in part, because the grant which funds the jobs requires that participants have deficits that would interfere with employability. POET management claimed that the CA was not involved in the selection process for the 2009 summer program until the orientation sessions. That assertion was simply not true, and it is inconceivable to the CA that POET management did not recall the CA's involvement last year because it resulted from several

disciplinary action against the hiring manager who was responsible. The CA has not seen any like response when similar issues have been raised with the County.

meetings involving some substantial differences of opinion. The evasion of Shakman monitoring is particularly troubling in light of the fact that last year's selection process for the summer youth program was subject to substantial criticism in an audit performed by the State Department of Commerce and Education, which is responsible for overseeing the implementation of this particular grant program. Among the issues which the CA raised last year, and which POET evaded last year and this year, was the limited dissemination of information about the availability of the summer jobs. Apparently, these jobs were again publicized only through the offices of elected officials in the municipalities whose residents are eligible to participate in the program and not more generally through the County's Website or other broad-based publication resources. POET has indicated it will provide the CA with information about the procedures it used to select candidates, and that information will be audited. But it is disheartening that the President's Office of Employment Training would once again try to shield this program from the procedures that are intended to assure that it is open to all eligible County residents, and not just those who get an invitation from an elected official.

Interviews and Consensus Meetings. The County is required to provide notice to the CA's office of every interview for a non-exempt position, and CA monitors observe the interviews and the consensus meetings at which interview panelists discuss their assessments of the candidates.

The monitoring function is expensive to the County and the CA regularly assesses whether it can be reduced or eliminated. If anything, it has become more important than ever. The issue with the "random" selection of relatives came to light because of a monitor's observations. An example of the importance of monitor observations discussed in the last report involved a sequence where it appeared that interview questions had been leaked to favored

applicants. When the CA challenged the process, the County resisted the suggestion that anything untoward had occurred. Recently, Post-SRO Complaint Administrator Mark Vogel issued reports in three cases where exactly the same pattern occurred in the same department, involving some of the same employees, but in the context of positions for painters rather than maintenance workers. The monitors' observations of the interviews for the painter positions were critical in establishing the pattern.

In a hiring sequence for the POET Department, the monitor noticed that a supervisor/interview panelist went to great lengths to explain that he had formerly worked with one of the candidates and asked if he should recuse himself from the panel. He was encouraged to stay and participate in the interview. However, the supervisor said nothing before the interview of another candidate whose resume showed she had worked under his supervision at POET in the past. The supervisor acted as though he did not know the candidate, addressing her by title and last name, offering to explain how the Department worked. The monitor later learned that prior to the interview, the CA received an anonymous tip that that latter candidate was the niece of the supervisor and had already been selected for the job. An Internet search found a Facebook picture of the supervisor in a photograph with the applicant and others labeled 'Mi Familia.' When questioned, the supervisor alleged they were actually cousins, not uncle and niece. Although the County halted the hiring process so that the position has not yet been filled, the County declined to take any action against the supervisor based on his statement of relationship because the Ethics Ordinance does not prohibit cousins from participating in interviews of cousins. Coincidentally, in the context of another investigation, the CA learned that there was another candidate in that same sequence who had a relationship with one of the interview panelists, and that panelist, too, pretended not to know the candidate.

Another example of suspect circumstances observed by monitors came about in a Department of Highways hiring sequence. The posting for the driver positions that were available recited that applicants were required to bring a current driving abstract from the Secretary of State to the interview. The monitor observed that the “requirement” was applied inconsistently. Some applicants brought abstracts, others were told it was not necessary. For some reason, the Department decided to ask the CA to agree that it was not necessary to administer driving tests to applicants it wanted to hire. The argument was that it was March, weather was bad, it was hard to schedule the tests, and the Department needed the drivers immediately. Since the positions had been open for over a year⁴ and it was March, not October or November, the CA did not accept the emergency explanation, nor did BHR Chief Sova once he was advised of the request, having not been consulted by the Department before the Department made the request of the CA.. After it was determined that driving tests had to be administered and that the CA would send monitors to observe, the Department delayed notice of the time and place of the testing so that a monitor was present for no more than half the tests. At that point, the CA asked the County to freeze the posting and not allow anyone to be hired until further investigation.

Documents which the CA reviewed in the ensuing inquiry included the application packets for six candidates the Department wanted to hire, each containing a written explanation of why the candidate should be hired. Each of the explanations recited that the applicant had a good driving record, but the monitor’s observations showed that those candidates had never produced driving records. When the CA met with Department representatives to review the files, the representatives acknowledged that their files included no driving records for those three

⁴ This was a sequence discussed in the Fifth Report because the CA had been given inconsistent explanations for why the posting had been pulled once the CA began asking certain questions.

candidates, and the sequence was, again, aborted. The issues that arose in that sequence, only some of which are reported here, demonstrate why monitoring must continue, as well as why trust is difficult.

Of late there have been several instances where departments have delayed notice to the CA's office that interviews are scheduled. In one of those instances, the CA was able to send a monitor for a second day of interviews, and while a few interviews were conducted with the monitor present, the department claimed that four of the scheduled candidates were no-shows, and never scheduled interviews for several others. Departments have been scheduling Shakman monitors for two years, past the time when it is understandable that someone might forget. The CA is concerned that this is just one symptom of a rush to place friends and supporters in jobs before the new administration takes office.

The information developed by the CA's monitors has proven crucial to her in the discharge of her duties. Unfortunately, the cost to taxpayers is not only amounts paid to the Shakman monitors, but also the time wasted by the County employees attempting to circumvent the law. With simple compliance, these costs would not have to be borne by the taxpayers.

C. Current Patronage Investigations

Certain matters that come to the CA's attention through the monitoring function and through concerns voiced to the CA's office by County workers result in investigations aimed at detecting instances of ongoing unlawful patronage practices. In contrast to the work of the OIIG and the Post-SRO Complaint Administrator, the goal in these investigations is not to determine whether an individual has been the perpetrator or victim of illegal practices and so should be disciplined or compensated. Instead, it is to develop better understanding of what unlawful practices continue to exist, how the practices impact individuals and departments, what factors

allow the practices to persist, and what steps might be necessary to contain them.

The most pressing issues that have been brought to the CA in this period of time have been fears by County workers that supervisors are engaged in a concerted effort to force certain employees from their jobs in order to create openings for friends and supporters. In one department where the concerns are most prominent, the CA sent staff to interview all workers, partly to avoid highlighting to management which employees are talking to the CA and partly to see if employees who had not come to the CA would support or undermine the allegations. The levels of defensiveness by management and fear and paranoia by employees were startling. Thus far, no one has lost his/her job since the interviews were conducted, but several employees have been subjected to harassment and minor discipline.

In another department, an employee reported to the CA that other employees who had stood in the way of certain activities involving grant funds had been fired, and the employee in question feared the same because he/she could not in conscience participate. That employee agreed to visit with the OIIG only upon learning that the IIG is not an appointee subject to termination by the President.

D. Training

The SRO requires the CA to assist the County in establishing a “train the trainer” program, to teach supervisors and employees politics-free hiring practices. The County has required that all those involved in the hiring sequences in the departments receive Shakman training before participating in interviewing or evaluating candidates. Until recently, training was being done by the County and the CA, sometimes jointly, sometimes not. The President’s counsel, Laura Lechowicz Felicione, has taken responsibility for developing materials and she herself has participated in many, if not most, of the training sessions. Of late, the County has

indicated its intent to take full responsibility for the training for all departments other than H&HS.⁵ It is an unfortunate coincidence that at about the same time, there was a training session when Ms. Lechowicz-Felicione was not present, and despite the presence of a representative of the CA, the session became a bash Shakman event. Even without the outright hostility displayed at that session by the trainer, it is not uncommon for some County representatives to be sarcastic or dismissive of Shakman requirements. The training cannot be turned over to the County without that issue being addressed.

There was also an effort during May and June to provide information about Shakman requirements for the Commissioners and their staffs. The endeavor was initiated by IIG Patrick Blanchard and coordinated by the President's Counsel, Laura Lechowicz Felicione. One impetus for the initiative was that the OIIG had received a number of concerns about Commissioners contacting department heads or other managers about employment actions involving non-exempt positions. As of this time, not all Commissioners have had an opportunity to attend. The sessions that have occurred thus far appear to have been a valuable endeavor, one that will hopefully bear fruit. One thing that became apparent to the CA is that some Commissioners remain oblivious or steadfastly opposed to the legal principles underlying the Consent Decree and the SRO, viewing constitutional protections for employees and applicants as impediments to the Commissioner's ability to intervene on behalf of constituents in employment actions. That resistance contributes to the difficulty in changing the culture of political hiring as called for by the SRO which was unanimously approved by the Board of Commissioners.

II. DEVELOPMENT OF STRUCTURES AND PROCEDURES FOR ELIMINATING POLITICAL DISCRIMINATION IN EMPLOYMENT PRACTICES

Following is a summary of the progress or lack thereof that has occurred with regard to

⁵ The CA is providing training for H&HS which does not yet have the infrastructure in place to do the training itself.

developing structural and procedural changes needed to bring the County into substantial compliance.

A. Hiring Plan

The Fifth Report proclaimed prematurely that development of a new hiring plan had progressed to an almost final draft. Since then, a combination of distraction by other matters, lapses in responses and new proposals by the County seems to have derailed the project. When the President showed interest in proceeding in May, the CA submitted a list of 19 open issues concerning the hiring plan. Ten of those issues were generated by proposals the County suggested after the last report was filed, including the following which are of particular concern: 1) a proposal to exempt the President himself from provisions requiring logging of contacts by elected officials in regard to hiring or other employment actions, 2) proposals that would remove control of the contents of the exempt list from the Compliance Officer, leaving the ability to add or change entries to the list in the hands of the President without oversight, and 3) proposals to greatly expand the circumstances under which “emergency” hiring, without following regular Shakman requirements, would be allowed.

The above three topics have been highlighted here because each appears to the CA to have arisen based on the personal agenda of the President. There is little hope that a plan for the future can be successfully negotiated as long as this President continues to try to advance procedures that further his personal goals at the expense of meaningful Shakman compliance.

A prime example of this personal approach is found in the President’s proposed changes to the emergency hiring procedure contained in the draft hiring plan. In that proposal, the President seeks to significantly expand the County’s authority to conduct unilateral hiring from circumstances involving “a *bona fide* emergency involving a threat to public safety or health,” to include the receipt of “a new program or grant that was added following the passage of the annual

budget,” and to delete the provision that proclaimed that emergencies do not include a hiring freeze. The proposed changes also seek to expand the use of emergency hiring by (1) eliminating a numeric cap on the number of emergency hires that may take place in any budget year absent certification of identified, extraordinary circumstances; (2) eliminating the cap on the length of time emergency hires may be employed and provide, instead, that the emergency hires be moved into the nonemergency part of the budget at year’s end; and (3) allowing hiring upon certification of an emergency “or other justifiable program needs.”

Recent revelations concerning hiring in the County’s Emergency Management Agency demonstrate how the County would likely implement the proposed emergency hiring provisions. As the CA attempted to decipher shifts in what positions appear on the exempt list (described more fully below), it became clear that a number of new positions in the Emergency Management Agency were included on the exempt list as “130” positions, which is a designation for positions funded through the section of the budget designated for emergencies. Employees had been hired into those positions in January and February 2010, without the positions having been posted and without any Shakman oversight. The County explained that these were emergency hires under a grant that became available after the FY 2010 budget was approved. The amendments to the draft hiring plan pertaining to the emergency hiring procedures were proposed in January 2010, less than a week before the first several of these workers began employment. The proposals, which were not discussed and certainly not agreed to before those workers were hired, align nicely with what the County actually did. Moreover, if accepted, the proposals would have allowed the County to move 15 employees who had been hired without complying with Shakman procedures into permanent non-exempt positions where they would be protected from termination on political grounds.

Although the County’s proposed language would have provided that emergency hires

could not be based upon any political consideration or factor, the CA has no reason to believe that that verbiage was intended to have teeth. Over the last few weeks, the President had six of the emergency hires terminated and sought to replace them with six new employees. Because advisors insisted it was necessary, the President had his representatives ask the CA to agree to the hirings on the theory that the grant funds at issue will run out in September, the six terminated employees were not doing the job, and new workers were needed to do the work to make the grant funds available to needy persons before the funding expired. Among the documents the CA asked to see were the applications of the persons to be hired. Six applications or resumes were forwarded. The first application is from an individual who had been the Finance Director for the President's campaign; the next appears to be from a director of the public relations firm owned the President's Deputy Chief of Staff; and the next is from the wife of a Chicago alderman. While awaiting copies of job descriptions for the positions into which the six were supposed to be hired, the CA received an email indicating that the three candidates described above should no longer be considered candidates, and one new name was added. Position descriptions have still not appeared.

B. Exempt List

The last time the County had an exempt list that complied with the decrees in this case was 1996, when a list was actually approved by the Court. Under the SRO, the CA was charged with resolving claims by nonexempt employees, and she had to determine what employees were exempt and nonexempt. Unauthorized changes to the list since 1996 made that difficult, and in April 2007, the CA and the County agreed that in order to facilitate the claims process, the CA would use the exempt list as the County believed it should read in 2007. In return the County agreed to make no further changes to the list.

But changes continued. Recently, the CA attempted to identify changes since April 2007. An exact count of the changes is not possible because the information given and learned is constantly changing. A spread sheet showing changes since December 2006, including positions added, positions deleted, and positions given new titles or moved to different departments, is 11 pages long. It appears that the total number of positions (not counting emergency hires) did not change over the time period, but that is only one piece of the puzzle. Legally, to be on the list and, thus, not subject to Shakman hiring restrictions, the positions have to qualify as ones where it is important for the President to be able to consider political factors because the position involves policy making or substantial access to highly confidential information. Because there was no observable process for documenting any of the changes, there is no record that assures that any of the added positions or retitled positions meet the legal test to qualify as exempt. Moreover, we do not know what actually happened to the positions shown as deleted from the exempt list: were the positions themselves discontinued, or were they just moved (with an incumbent employee hired because of political affiliation) into a non-exempt status?

In early May, when the President said he was intent on reaching substantial compliance by July 31, 2010, the CA gave the County a list of the changes the CA had tracked since 2007, and the County promised to provide written explanations of every change, with information about who made the change, on what basis, and the names and dates of employment for anyone who had held any of the positions that had changed in any way. The County has now promised that at least most of that information will be provided within days.

Since the primary, there have been flurries of terminations and hirings of allegedly exempt workers, with several of those terminated being employees with decades of tenure. It seems unlikely that this activity represents an endeavor to suddenly address performance issues.

Nor has the administration announced a new direction in policy that would warrant a changing of the guard. The recent activity at the County seems more likely aimed at rewarding friends at the expense of those who are less valued politically, even though the political beliefs or affiliations of those less valued did not get in the way of their ability to do their jobs before the primary. The activity is particularly concerning because of the yet unexplained changes in the exempt list. It is just not that clear what positions belong or do not belong on that list and as a result, the scope of the President's lawful authority to hire and fire employees for those positions is not established.

Contemporaneous with this report, the CA is calling upon the President to cease all terminations and hirings for any position that does not appear on the 1996 approved exempt list. This administration has had several years to address the exempt list issues and has failed to do so. It has been over a year since the President made any proposal to Plaintiffs' counsel to advance the resolution of a new exempt list, and unauthorized changes continue unabated, with no apparent concern for the promise made to halt the changes three years ago. If the President deems it important to address administrative concerns through a termination from or hiring into a position that does not appear on the 1996 list, the concern can be addressed by following the procedures for non-exempt positions.

C. Reforms to Bureau of Human Resources

As noted above, immediately after the filing of the Fith Report, the President agreed, in accord with recommendations in the report, to add three new positions to BHR: a Director of Non-Exempt Administration (who would supervise all processes involved in hiring non-exempt employees), a Director of HRIS and Project Management (who would be responsible for BHR IT functions and needs), and a Compliance Officer (who would oversee compliance with Shakman

requirements by BHR and all County hiring departments). The CA immediately wrote to the President proposing that he agree to have the positions treated as non-exempt, in part because the CA felt that was important policy, and in part so that the positions could be filled by complying with Shakman requirements without waiting while the new exempt list was negotiated. The President's initial position was that all of the positions should be treated as exempt. At a later date, the President agreed that the Compliance Officer should not be an exempt employee, and instead, should have the independence that would be assured by a contract of employment for a term of years. No agreement has been reached on how the Compliance Officer should be selected. In May 2010, after the round of meetings allegedly directed toward getting the County into compliance by July 31, 2010, the President agreed that the Director of Non-exempt Administration, but not the IT Director, could be deemed a non-exempt position.

It appears that the position for Director of Non-Exempt Administration can now be posted, and the CA hopes that will be done immediately. It will be particularly important to bring this Director on board as the transition is made to an on-line application process.

D. Technology/Taleo

At the time the Fifth Report was filed, the County had approved funding for purchase of an on-line application software package, and it projected that once contracts for the purchase of the software and support were executed, the system could be implemented within 6 to 8 months. The project is strikingly on schedule. Once the contracts were executed, BHR Chief Joseph Sova scheduled a series of meetings of Taleo representatives and employees from various County divisions, including the Health and Hospitals System, to design the system to meet the County's needs. The choice of Taleo as the vendor, in part because it was used by the City of Chicago, has proved wise. The Taleo representatives are comfortable with the governmental

context and familiar with Shakman concerns, and the County is getting the benefit of the work done and lessons learned in the City's implementation of its system.

Employment attorney Sherrie Travis, who has been performing legal services for the Shakman Compliance Administrators for the County, the Sheriff and the Forest Preserve District, has been included in all steps of the design process, and the County has been open to her suggestions throughout the process. The County hopes to begin testing the system for a selected group of postings within weeks.

E. Position Descriptions

As part of the Taleo implementation, position descriptions for those jobs most frequently posted were reviewed and reformatted by Taleo representatives so that the statements of minimum and preferred qualifications for the positions are phrased as consistent criteria that will generate the appropriate qualifying questions to applicants. This was a very good beginning toward the goal of updating and revising position descriptions. Considerably more work lies ahead, but it seems clear that the software will cause some of the necessary updates and revisions to occur. Moreover, the software is being programmed so as to limit which employees will have authority to make any change in a position description once the description has been entered into Taleo, and the hiring plan will address what criteria will govern when and how position descriptions may be modified, as well as what documentation will be required to memorialize changes.

F. Office of the Independent Inspector General

The County has continued to provide the resources sought by Independent Inspector General Patrick Blanchard, including a recent expansion of staff. The CA and the IIG and respective staff meet monthly to share information and compare notes on the status of

investigations of allegations of unlawful political discrimination being conducted by either office. There have also been meetings of the full complement of investigators for each office to explore the perspective each office brings to particular investigations and to share insights on context and investigative options. The offices continue to coordinate investigative efforts on some matters, and the CA's staff has made some presentations to OIIG investigators about departmental information learned by the CA over the last several years. In addition, the IIG has been instrumental in formulating requirements and procedures for logging contacts by elected officials and political operatives to County supervisors or managers concerning employment action involving non-exempt workers and positions.

The CA continues to have confidence in the independence, skill and dedication of the IIG and his staff. But that is not to say that the CA and the OIIG share perspective on all things. While recognizing that the OIIG must have hard evidence to support findings of misconduct, the CA and her staff would be more cynical about explanations and justifications offered by County employees and representatives and more inclined to look to circumstantial evidence in some of the investigations of alleged political discrimination. That is one of the reasons for continuing the interchanges between the offices. IIG Patrick Blanchard himself instigated those meetings and is personally and actively involved in the discussions.

For the most part, the County has adopted the IIG's findings and taken disciplinary action in cases involving political discrimination. A glaring exception was the case mentioned above, where the OIIG found that an employee had misrepresented his record of criminal convictions on his application for County employment. The County regularly requires termination when such a misrepresentation has been found to have occurred. In this case, the employee pursued a grievance, and the matter was referred to the Department of Highways for a hearing. The

hearing officer, an exempt employee who was hired into the Highways' position by the President after he had been terminated by H&HS, conducted a "hearing" without notice to the OIIG. As a result, there was no one present to represent the County's position. At the hearing, the employee's attorney (who was acting BHR Chief at the time the employee was hired) testified to a version of the facts that was inconsistent with the OIIG's findings, and the hearing officer concluded that the OIIG's findings were not sustained by the evidence.

Subsequent to that outcome, the County circulated a direction to all employees who serve as hearing officers that they must send notice to the OIIG when a hearing is scheduled. County lawyers investigated options for addressing the particular case, but concluded that no options were available under the personnel rules. The CA believes that the case presents an important example of why it is important that the OIIG have authority to make public the essential circumstances of some cases in which his recommendations are not followed, as the last report recommended. It need not be required that all such cases be described in a publicly accessible way or that names be used. But it is necessary that the IIG have discretion to make public sufficient information about sufficiently important cases so that the efficacy of the Office cannot be undermined by the simple expedient of ignoring or evading his recommendation outside of the public view.

The County has implemented the other structural recommendation made in the last report by adopting the ordinance amendment proposed by the OIIG to allow for investigations of complaints against elected officers without requiring a complainant to verify allegations.

G. Post-SRO Complaint Administrator

In contrast to the OIIG, the Post-SRO Complaint Administrator, Mark Vogel, investigates and makes recommendations on claims by individuals who assert that they have

been the victim of unlawful political discrimination. The first case in which the Post-SRO CA found discrimination was one in which an employee claimed that in retaliation for her having pursued a Shakman claim under Judge Nowicki, she was treated disparately from a politically connected employee in a union reclassification process, she was denied credit for excess furlough days where others were given such credit, and her job duties were given to an exempt employee. The employee feared that she would be fired because she had no work to do. The Post-SRO CA's investigation was delayed and compromised by the fact that certain County employees were resistant to producing documentation and answering questions. After the Post-SRO CA's report issued, the County asked him to retract some of his findings because, it maintained, additional documentation showed the facts to be other than what he had found as to the union reclassification and excess furlough days issues. The Post-SRO CA declined on grounds that he did not believe that to be within his authority and because, as a matter of policy, the County should not be able to release information piecemeal and then ask for different findings based upon information that was not initially produced. Settlement discussions were for naught, and the employee eventually filed suit. *Delores Lewis v. County of Cook d/b/a Cook County Highway Department, Todd Stroger, Rupert Graham, Herbert Schumann, Cecil Marschand, Mark Kilgallon, and Jonathon Rothstein, individually and in official capacity*, 10 CV 1313

It is hoped that some of the difficulties that arose in regard to that investigation will be avoided in the future. It would appear that the employees who were less than cooperative in the course of the investigation may have been operating on their own initiative, rather than pursuant to some concerted plan to impede. Nevertheless, it is discouraging that they seemed to have no concern that their recalcitrance would be frowned upon, and the CA has no indication that

leadership took steps to impress any of them that obstinacy is not acceptable.

What is perhaps most absurd is that months after the report was released, the employee still did not have job duties. While the lawyers fought about the other findings, she sat day after day without work. The supervisor who was supposed to be getting her work was the same exempt employee who served as the hearing officer who failed to give the OIIG notice that a hearing would be held, and the same exempt employee responsible for the Department of Highways driver hiring sequence discussed above at pp. 15-16. The supervisor made intermittent efforts to assign the claimant work, but then assignments would be withdrawn. It is incomprehensible that an employee has to sue the County to be able to work for her pay.

A second series of reports which sustained the claims of three applicants for painters' positions involved less procedural turmoil, but the circumstances that supported the claims were equally troubling. Among the circumstances were that star participants in an internship program designed to develop employment skills for job hopefuls lost out in a competition for permanent employment to interns who barely made it through the program but had political sponsors. One of those who got a job did not meet minimum qualifications, and the two BHR analysts who reviewed her application agreed that she was ineligible. Although policy called for the supervisor to review the decision of the analysts only if they disagreed, this particular application found its way to the attention of the supervisor who overruled the analysts' decision and directed that the applicant be included on the eligibility list. Interviews conducted by the hiring department involved asking the same five technical questions of all applicants, and there was substantial evidence that the questions and answers had been leaked to the connected applicants.

The hiring sequence that led to the painters' claims happened in the same department that generated the incident of leaked questions described in the Fifth Report (pp. 7-8). The County

took no action in response to the concerns raised by the CA concerning that incident. A part of the response at that time was that there was no indisputable proof that the questions had been leaked despite convincing circumstantial evidence. The CA hopes that the County will be impressed with the improbability that it is mere coincidence that the same department generated exactly the same concern. More importantly, there is an injustice here that can be addressed if County leadership cares about the fallout of unlawful political discrimination. The County provided a much needed training program that did what it was supposed to do: gave unskilled workers the opportunity to learn and practice a trade. There were participants who took seriously the promise that they would obtain gainful employment if they worked hard and learned well and proved themselves, but they were pushed aside so that candidates who had demonstrated little to no concern for working or learning, but who had political sponsors, could be given the open jobs. The County's response to these claims will speak volumes about its actual commitment to eradicating political discrimination.

Health and Hospitals System

On June 1, 2010, the County Board voted to make permanent the delegation of authority for administration of the System to the Independent Board, a decision that will greatly facilitate the transition toward substantial compliance with the SRO. With the authority issue conclusively resolved, steps necessary toward that end can be implemented.

The most basic will be the drafting of a hiring plan that addresses the unique circumstances of H&HS. It had been somewhat unclear who had authority to negotiate on behalf of the System, with efforts to do so by the President's office, the Assistant State's Attorneys representing the County, and the System's General Counsel. Much of the plan can and should track what has been negotiated for the County, but there are some substantial areas of difference.

One is that the Independent Board has indicated that it does not intend to retain Shakman-exempt positions, so that the plan needs procedures for hiring top management. Another is that H&HS needs to build pools of qualified medical professionals who have already been partially vetted before specific jobs open up, and whatever procedures are developed for that purpose must work alongside collective bargaining agreements that give present employees the right to bid certain jobs. Other areas have yet to be explored. Substantial active involvement of those responsible for H&HS employment decisions will be required for the plan to effectively address the range of circumstances unique to the System. Other issues that are scheduled to be addressed in the immediate future arise in relation to the new personnel rules recently adopted by the Independent Board for the System.

There has been considerable employment activity at H&HS since the last report was filed. The Independent Board completed the retention of its new management team, and that team met with the CA and the President's lawyer for training in Shakman procedures. The team undertook the first stage of a major reorganization, which resulted in hundreds of positions being eliminated while hundreds of new positions were created. The changes predictably caused some reactions. A number of workers who had been hired as exempt sought protection from their political sponsors, but the System had committed to no political influence on employment actions, and management held firm to the master plan intended to enhance service and increase efficiencies without regard to an employee's or applicant's political affiliations or support. Change causes suspicion. The CA's office continues to monitor all hiring sequences, and has not found support for the suspicion that motives for decisions are in violation of Shakman.

Reorganization of the H&HS personnel function and all human resources positions assigned to particular H&HS facilities is presently underway. The endeavor is providing an

opportunity to implement Shakman procedures for processes that had not yet been transferred from the BHR to H&HS, including the process of screening candidates for eligibility and then determining which eligible candidates will be given interviews. H&HS has taken an active part in the design and implementation of the Taleo software to meet its individual needs, and it will be one of the users of the Taleo application procedures. As noted above, however, there will still be a level of eligibility screening done by employees beyond the initial screening that is accomplished electronically, and procedures must be developed for the steps that will follow the electronic screening.

One H&HS initiative that was very successful was a job fair for nurses organized by the new nursing recruiter, Gina Goodson- Allen, with the goal of greatly expanding the frequently limited pool of applicants for System nursing positions. Ms. Goodson-Allen coordinated with the CA's office to structure procedures to address Shakman concerns, a process that seemed relatively effortless in that the endeavor was so clearly and effectively designed to attract any and all capable candidates, without any strings designed to give preselected candidates an edge. The fair was extremely well organized and well attended, and from the CA's perspective, had the added value of informing the drafting of portions of the hiring plan that should be tailored to the unique needs of H&HS as a public health enterprise.

CONCLUSION

The County is only a shade closer to substantial compliance than it was nine months ago when the CA's last report was filed. What little progress occurred in the development of policies and practices was undermined by the continuing noncompliance with the law and disregard of the Constitutional rights of County employees and taxpayers. To date, the CA has seen little evidence of a culture free from political discrimination and has found the County resistant to

effecting the cultural change contemplated by the SRO. By the same token, precisely because there have been so many incidents of manipulation of procedures apparently intended to benefit politically connected individuals to the detriment of those without connections, it has become evident that changes implemented over the 3 ½ years since the SRO was entered have significantly limited the opportunities for political discrimination. Many of the incidents described in this report came to light before the suspect actions had been finalized as a result of procedures which had been put in place, and because decision-makers took appropriate action in response, several of what appeared to be intended discriminatory actions were halted.

The steps necessary to finalize and implement the policies and practices necessary to accomplish substantial compliance with the SRO are not overwhelming.⁶ If appropriate

⁶ The steps remaining are exactly the same as those announced in the last report, with only the very last step having been accomplished:

1. Hiring Plan:
 - a. Complete the draft of the new Hiring Plan (including any exhibits and listings of covered positions), submit the draft to Plaintiffs' counsel, reach agreement on all critical terms, and finalize and formalize the Hiring Plan.
 - b. Implement structural changes, including funding and staffing any new offices/positions called for by the Hiring Plan; draft and print revised forms that might be required and will be used.
 - c. Draft policies, standard operating practices necessary to implement the Hiring Plan.
 - d. Train HR staff, bureau chiefs, department heads and designated supervisors on the Hiring Plan's provisions.
 - e. Monitor implemented procedures for 3 to 6 months.
2. Finalize and post new exempt and senior manager lists.
3. Reform BHR.
 - a. Reorganize Bureau to create a transparent, consistent and organized hiring process for filling non-exempt positions, and assure that the process is implemented by managers who take seriously their responsibility to eliminate political factors and circumstances from that process.
 - b. Authorize Bureau Chief Sova to fill vacant and restructured HR positions with candidates who have formal HR training and/or experience and who are committed to change within the BHR and the County at large.
 - c. Reform screening function:
 - i. Draft written standard operating practices for making eligibility determinations.
 - ii. Train screeners on interpretation of screening criteria.
 - iii. Develop a system for tracking questionable decisions by individual screeners, reviewing the data for patterns of abuse, and holding screeners and their supervisors responsible for repeated errors.

resources were dedicated to the effort, those steps could be accomplished within a few months. But those steps are not the difficult part of the effort. Sunsetting the SRO cannot be seriously considered until leadership sets a different tone and the County rectifies the pervasive noncompliance discussed in this report.

Respectfully Submitted,

/s/ Mary Robinson
Mary Robinson
Compliance Administrator
Office of the Cook County
Compliance Administrator
69 W. Washington, Suite 840
Chicago, IL 60602

-
4. Update position descriptions to match the duties and qualifications of the positions as they now exist, and redraft descriptions so that terms are used consistently.
 5. Complete the purchase, design and implementation of on-line application software, and monitor its use for 3 to 6 months.
 6. Implement recommendations by the OIIG and consider methods for bringing additional transparency to the actions that are and are not taken in response to the OIIG's recommendations.
 7. Propose specific plans for addressing patterns of unlawful practices revealed through claims reports, monitoring reports, and department reports.
 8. Hold hiring department managers accountable for making questionable hiring decisions, and take specific steps to reform those departments that have a history and pattern of abuse.
 9. Health and Hospitals System.
 - a. Complete the organization and staffing of an independent HR department.
 - b. Negotiate and implement a hiring plan that is tailored to H&HS requirements, and monitor implementation for 3 to 6 months.
 - c. Update and revise position descriptions.
 - d. Implement on-line application function.
 - e. Develop policies and practices that will expand H&HS' autonomy, or have a plan for assuring that if H&HS is returned to the President's control, appropriate procedures will be in place that prevent the loss of the significant gains that have been made.

/s/ Peter A. Monahan

Peter A. Monahan

Counsel to the Compliance Administrator

Office of the Cook County

Compliance Administrator

69 W. Washington, Suite 840

Chicago, IL 60602