

**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.)

COUNTY OF COOK, et al.,)
Defendants.)

Case No. 69 C 2145
Magistrate Judge Sidney Schenkier

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

Mary Robinson, *Shakman* Compliance Administrator for Cook County, by and through her attorney, Matthew Pryor, submits this Eighth 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 entered on November 30, 2006 (the "SRO"), requiring that the *Shakman* Compliance Administrator study the existing employment practices of Cook County Government (the "County"), monitor the County's compliance with the provisions of the SRO, assist in formulating a new hiring plan, assist 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 regular reports identifying activity by the Compliance Administrator and progress toward achieving substantial compliance with the requirements of the SRO.

SUMMARY

Since the Compliance Administrator filed her Seventh Report to this Court on October 13, 2011 ("Seventh Report"), the County has continued to show the commitment to eliminating Unlawful Political Discrimination ("UPD") in employment actions that is necessary to bring about substantial compliance with the terms of the SRO. Specifically, it cleared two significant hurdles in logistical undertakings necessary to achieve that goal, one being the filing of an Employment Plan with this Court on March 19, 2012 (the "Employment Plan" or the "Plan") and the other being a strong start by the County's new Compliance Officer.

The Employment Plan applies to County positions in Offices under the President ("UTP"). The filing of the Employment Plan is a significant milestone in the County's efforts to substantially comply with the SRO as the Plan creates a set of objective and transparent hiring procedures that govern County employees, and, after training, monitoring of compliance with that Plan will commence. The Plan as filed leaves some important topics unaddressed, and it does not govern the Office of the Cook County Public Defender (the "Public Defender"), the Office of the Independent Inspector General (the "OIIG") or the Cook County Health and Hospitals System ("HHS"). As discussed within, there is not yet consensus on whether it is practicable to bring each of those entities (which, for varying reasons, have independence from the Cook County Board President (the "President") in

employment actions) under a single plan with carve-outs for the circumstances unique to each entity, or whether, instead, there should be separate plans for each entity. Resolution of that issue and then development of the appropriate plans and/or provisions must occur before monitoring of employment practices for those entities may commence.

The Compliance Officer, Letitia Dominici, began her tenure just a week before the filing of the Seventh Report. The Compliance Administrator has had the opportunity to work with and monitor the Compliance Officer over the past six months and believes that she has shown the mindset, skills and dedication necessary to perform the role effectively. It appears clear that the BHR staff have become accustomed to consulting with her where appropriate, and she has been effective in remedying issues that have arisen, including many involving the Applicant Tracking and Application System ("ATAS") used by the County. The Compliance Administrator's one concern is that because of a shift in responsibility for human resource functions at HHS, discussed below, Ms. Dominici has become the *de facto* Compliance Officer for both UTP (with 1,653 employees¹) and HHS (with 5,568 employees); whereas it was previously agreed that HHS would have a separate Compliance Officer. The Compliance Administrator does not intend to interfere in the County's internal resolution of who will manage HHS' human resources functions. However that is resolved, one person cannot satisfy the Compliance Officer's duties and responsibilities effectively for both UTP and HHS, and a solution must be reached as quickly as possible.

¹ All figures regarding personnel numbers in this report are based on information provided by the Cook County Comptroller's Office during the drafting of this report. Actual numbers may vary due to personnel changes since the original information was provided.

For purposes of the future, an observation made in the last report bears repeating: efforts have improved dramatically under the leadership of President Preckwinkle, and issues that slow the process seem to have more to do with disorganization or inadequate training or staffing than intentional foot-dragging. The Administration has put considerable effort into building and/or reorganizing infrastructure necessary to implement effective employment practices. That work is absolutely necessary for this process to succeed, but it cannot be completed overnight. Vestiges of inherited disorganization, along with inadequate training and staffing of some employment functions, continue to slow the County's momentum. In particular, issues with either the functioning or the use of ATAS arise on a regular basis, and the Compliance Administrator decided to escalate monitoring of the County's implementation of that system during this reporting period. Still, the dramatic decrease in UPD complaints led the Compliance Administrator to trim down other monitoring and investigative activity, resulting in a reduction in her Office's average monthly invoice by around 35% since September 2011.

The ATAS problems noted above were particularly frequent and troublesome at HHS where the volume of hiring activity is consistently high. For far too long a period of time, far too few employees were trained on ATAS, and those who were trained regularly managed to put up postings that did not accurately reflect minimum qualifications. Concerns about the ATAS issues expressed by the Compliance Administrator for many, many months were not addressed until after the new HHS Chief Executive Officer ("HHS CEO"), Dr. Ram Raju, took office. Dr. Raju has restructured the HHS Human Resources Department, and on January 23, 2012, the County's Chief of BHR, Maureen O'Donnell, took over an additional role as HHS' Interim System Chief of Human Resources, with Gladys

Lopez of HHS appointed as Interim System Director of Human Resources. The new Human Resources leadership faced a considerable hiring backlog along with staffing and training deficits. Many of the backlogged openings were deemed critical to patient care, and the Compliance Administrator, Compliance Officer and HHS developed procedures to expedite the hiring process for those positions, procedures which the Compliance Administrator hopes can form the basis for creating hiring pools for medical positions. Besides filling the critical care positions in reduced time frames, the new leadership has made progress in addressing the staffing and training issues. For purposes of achieving substantial compliance, the HHS human resources functions constitute an important part of the infrastructure which will require continuing attention.

Beyond the continuing efforts to address infrastructure, what remains to be done is a mixture of finalizing plans and policies, training, and finally monitoring of the implementation of those plans and policies. Finalizing the plans and policies will require the diligent attention of the parties' lawyers and agreement between the Office of the President and the independent entities as to whether there will be one Employment Plan with special provisions or separate plans for each entity, an issue which will involve the extent to which those independent entities are willing to cede some employment authority to the appointees of the President. The Compliance Administrator has these concerns: 1) it is her belief that an early proposal for a single plan by the President would compromise the independence of the OIG, and 2) the proposal to bring all entities under a single plan assumes that all will be bound by policies not yet developed, including policies for promotions, demotions, transfers, discipline, layoffs and recall. Thus, a critical first step is

the development of those other policies, and then the parties should turn to finalizing plan(s). With focused effort, that can all be accomplished within the next three months.

Training on the additional policies and procedures will take some time because of the number of employees requiring training. The County has demonstrated it has the resources and will to train effectively and efficiently; what will remain is monitoring of all written plans and policies, continued monitoring of the work of the Compliance Officer and the OIIG, and monitoring of the County's responses to reports of UPD, if any. A more detailed description of the remaining steps appears in the Conclusion of this Report.

SUBSTANTIAL COMPLIANCE

The SRO defines substantial compliance as:

1. The County has implemented the New Plan, including procedures to ensure compliance with the New Plan and identify instances of non-compliance;
2. The County has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence;
3. The County does not have a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions;
4. The absence of material noncompliance which frustrates the 1994 Consent Decree and the SRO's essential purpose. The CA and the Court may consider the number of Post-SRO complaints . . . found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the County is not in substantial compliance; and
5. The County has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the County.

(SRO, III.E.8).

1. The County has implemented the New Plan, including procedures to ensure compliance with the New Plan and identify instances of non-compliance.

As previously noted, substantial compliance is predicated on the County's

development and implementation of transparent procedures for employment actions. The importance of transparent procedures that allow all parties to be held accountable cannot be overstated. Also key is proper enforcement and oversight of those procedures. ATAS supports the County's efforts in this regard as it allows applicants to apply for positions in a manner that may be easily audited to ensure political reasons and factors are not being considered in the application process. Finally, while most employment positions in the County may not be affected positively or negatively based on political reasons or factors, positions exempt from *Shakman* protections must be clearly defined and agreed to by both Class Counsel and the County.

A. Development of Plan and Procedures

On March 19, 2012, the County filed the Employment Plan with this Court, a document which was the product of years of discussions between the parties. The filing of this Employment Plan is a significant step in achieving substantial compliance, one which the Compliance Administrator had hoped was within weeks of fruition when she filed her last report on October 13, 2011, when most substantive issues had been agreed upon. The fact is that other matters absorbed the attention of the representatives of the County who were responsible for finalizing the Employment Plan. Some of those other matters included attention to infrastructure necessary to implement the Plan; some involved other *Shakman*-related issues; and some involved the pressing issues that will always absorb County leadership, including the annual budgeting process. The Compliance Administrator fully understands that those diversions will occur, but believes the work remaining to be done on the Plan was doable within a shorter period of time and, in the opinion of the

Compliance Administrator, warranted prioritized attention so that other steps awaiting the finalization of the Plan could have commenced.

County officials have repeatedly voiced concerns about the length of time it has taken and the financial costs associated with the effort to reach substantial compliance. The Compliance Administrator has no doubt that the present Administration is committed to achieving that goal, and indeed, the absence of obstructive activity by this Administration has made it possible for the Compliance Administrator to substantially reduce her monthly invoices. Nevertheless, this delay in finalizing a plan was unnecessary; it inhibited progress and it increased financial costs to the taxpayer.

Despite the delays, the resulting document contains the transparency and objectivity previously absent in Cook County hiring. The Compliance Administrator recognizes that this document is neither perfect nor complete², and she anticipates that it will have to be amended over time to address issues not foreseen.³ The benefits of having the current Employment Plan, however, are numerous.

The Employment Plan provides a framework within which the County must operate when hiring new employees. This structure is designed to ensure the hiring of qualified applicants without consideration of unlawful political reasons or factors. The Compliance Officer (and the Compliance Administrator, while acting) has been given significant opportunities for access and oversight so that instances of non-compliance may be

² For example, the "Agreed Order to Approve Employment Plan" contains a deadline by which the parties must agree to a Senior Manager hiring process, along with an initial list of Senior Managers, and file the same with the Court by June 1, 2012 because the parties were unable to reach such an agreement prior to filing the Employment Plan. Further, Section IX of the Employment Plan ("Professional/Technical Hiring Process") is currently blank because the parties did not agree to a procedure prior to filing the Plan.

³ The Compliance Administrator notes that Section XIV ("Employment Plan Amendments") describes the exact process by which the Employment Plan may be amended, both before and after the Court finds the County in substantial compliance with the SRO.

identified and remedied. Because the Employment Plan requires all new Non-Exempt vacancies to be posted on ATAS, a detailed and transparent electronic record of critical steps of the hiring process is assured. This level of transparency was non-existent or sorely lacking in past administrations where applications were submitted by hand and recordkeeping practices were unreliable, at best.

There is much to be done to implement the Employment Plan. First, the County must post the Employment Plan on its website. The County's BHR and Compliance Officer must also train personnel within BHR, as well as the Supervisors and others who will serve as interviewers in hiring actions. Finally, all employees must be trained on the Employment Plan as well as on Unlawful Political Discrimination.

The Compliance Administrator has reviewed and commented on training materials prepared by the Compliance Officer and Tom Conway, the newly appointed Manager of Training and Development, to be used in some of the required training sessions. These materials were also shared with the OIG and Class Counsel. Last week, the Compliance Officer conducted the training sessions for BHR and the Compliance Administrator was pleased with both the presentation and the degree to which the trainees were engaged. The Compliance Officer also provided dates for training sessions for supervisors and interviewers in May 2012 and general employees in June 2012, with possible make-up dates in July 2012. The Compliance Administrator and OIG will continue to actively participate in all of these training sessions to ensure that they are as effective and comprehensive as possible.

The quality of these training sessions is vital for the speed and effectiveness of the County's implementation of the Employment Plan. Ensuring that personnel in BHR clearly

understand their duties and responsibilities under the Employment Plan and consult the Compliance Officer when they are unsure is fundamental to the Employment Plan's success. BHR staff is limited and cannot attend every new hire interview, so it is equally important to have supervisors and interviewers – across all County departments – who understand their duties and responsibilities under the Plan and carry them out. The better trained the employees in charge of implementing the Employment Plan are, the less likely violations of the Plan will occur. While instances of non-compliance are inevitable, time and care spent training on the front end will drastically reduce mistakes after implementation.

The Employment Plan filed last month governs employment actions involving the 1,653 employees in positions in UTP. The Public Defender, HHS, and OIIG all require separate treatment in that each has authority independent of the President in employment matters. All parties seem to agree that there are two options regarding bringing these additional entities into the fold – either allow them to have individual Employment Plans or add them to the County's Employment Plan and include exceptions to the general hiring process specific to each entity's unique operations and positions. Currently, these three entities have reached different conclusions on this issue.

Although by law the Public Defender has the sole decision-making authority for hiring and firing decisions, *see* 55 ILCS 5/3-4008.1, that Office does not have the resources to operate its own human resources department and historically has depended upon the County's BHR for hiring and other employment action support. The Public Defender recently indicated a willingness to be included in the County's Employment Plan, with the apparent intention of submitting to the authority of the President's BHR appointees and all personnel policies governing employees under the President, provided the adoption of an

amendment allowing the Public Defender to make "direct appointments" for a certain group of high-level positions. Class Counsel, the State's Attorney's Office, Counsel for the President and the Compliance Administrator met in early April to discuss this proposed exception and, while an agreement was not reached, discussions remain active.

By ordinance adopted on February 29, 2008 (the "HHS Ordinance"), HHS was designated as a separate and independent entity, distinct from UTP, operating under the authority of a Board of Directors responsible for carrying out the eight-part mission of HHS. That mission includes "ensuring that all operations of the [HHS], especially contractual and personnel matters, are conducted free from any political interference and in accordance with the provisions of the [SRO] and Consent Decree established in. . . . *Shakman, et al. v. Democratic Organization, et al.* and applicable law." Cook County, II. Ordinance § 38-74(a)(7).

Prior to the HHS Ordinance, HHS relied on the County's BHR to carry out HHS' human resource functions. Shortly after the passage of the HHS Ordinance, HHS created an independent Human Resources Department to handle the majority of the human resources functions of HHS with only limited reliance on BHR. In her Seventh Report, the Compliance Administrator noted she was working with HHS on developing its own Employment Plan. Since then, there has been significant disruption in the HHS Human Resources Department. The then-Director of HHS' Human Resources Department resigned effective January 2012, not long after HHS' new CEO, Dr. Ram Raju, began his tenure. In early 2012, the County's Chief of BHR, Maureen O'Donnell, took over as Interim System Director of Human Resources. Since then, almost all human resources efforts involving HHS have been

directed toward filling vacancies for hundreds of medically critical positions; work on an Employment Plan ceased.

The Compliance Administrator has been informed that those in charge are considering wrapping HHS into the County's Employment Plan with exceptions drafted to cover circumstances unique to HHS, rather than having a separate plan for HHS. The Compliance Administrator is open to either path, and recognizes that the appropriate option will depend in large part on whether the County and HHS determine to structure the HHS human resource function as a shared service centralized under the authority of the President or as an independent department of HHS. It has been the position of the Compliance Administrator that HHS' independence is important to achieving substantial compliance, but in view of protections that have been implemented by the County, the Compliance Administrator no longer believes that independence is mandatory. Still, it would be helpful to get the issues resolved and to make some progress on getting a Plan in place. To advance that goal, the Compliance Administrator has offered to have her staff draft provisions intended to support the unique hiring needs of HHS, provisions that could be included as HHS exceptions in the County Plan or as part of a separate HHS Employment Plan. Drafts will be ready for circulation shortly, and it is the sincere hope of the Compliance Administrator that the County and HHS will resolve enough of the structural and authority issues to decide who should be at the table when these provisions are discussed.

The Independent Inspector General ("IIG") has unique authority over employment-related actions under its Enabling Ordinance. Specifically, the IIG has "the sole power to appoint, employ, and remove such assistants, employees and personnel and establish

personnel procedures as deemed necessary for the efficient and effective administration of the OIIG." Cook County, Ill. Code § 2-284(12). Additionally, one of the goals of the OIIG described in the Enabling Ordinance is to be "sufficiently independent to assure that no interference or influence external to the office adversely affects the independence and objectivity" of the OIIG. *Id.* § 2-281. The OIIG has duties specified in the Employment Plan. Those duties continue beyond the SRO's sunset and replace many of the audit and monitoring functions of the Compliance Administrator. To effectively carry out these duties and ensure the County's long-term compliance with the Employment Plan, the Compliance Administrator believes the OIIG must remain as independent as possible.

Given this requirement of independence, the OIIG has, with the assistance of the Compliance Administrator, drafted a separate Employment Plan for the OIIG that was modeled after the County's Plan. On February 2, 2012, the IIG shared a copy of this proposed plan with the necessary senior staff at the County soliciting feedback. On March 27, 2012, the County proposed instead to incorporate the OIIG into the County Employment Plan rather than have a separate plan covering the OIIG. Efficiency arguments can be made in favor of such a proposal, and the County's proposal properly recognizes the OIIG's independent authority to some extent. Nevertheless, the Compliance Administrator believes that the authority granted the IIG in the Enabling Ordinance would be compromised and confused if the County's present proposal were adopted because the proposal would give the President and her appointees authority to control aspects of the OIIG's hiring process in ways that could conflict with its independence and the authority granted in the Enabling Ordinance. Further, the County's proposal would allow only BHR, and not the OIIG, to initiate changes to the OIIG's hiring process and it would allow the

County's Compliance Officer to have oversight of the OIIG, whereas the Court-filed Employment Plan intentionally provides the OIIG with oversight of the Compliance Officer.

The Compliance Administrator communicated her concerns to all parties shortly after receiving the County's proposal and hopes that this impasse will be resolved by the parties soon; if not, the matter should be taken before the Court in a timely fashion for discussion and resolution. A final decision on the hiring processes for the OIIG is necessary so the OIIG may hire for the two vacant investigator positions intended to help the OIIG fulfill its *Shakman* duties. Further delay in resolving this issue will only lead to further unnecessary costs and delay the County's ability to substantially comply with the SRO.

B. Compliance Officer

Just before the Compliance Administrator filed her Seventh Report to the Court, the County hired the Compliance Officer, Letitia Dominici. The Compliance Administrator has monitored the Compliance Officer very closely over the past six months and commends her efforts thus far. The Compliance Officer has been transparent with the Compliance Administrator concerning her actions and submits a weekly activity report to the Compliance Administrator. Counsel for the Compliance Administrator meets regularly with the Compliance Officer, and the Compliance Officer has been engaged and responsive to issues in those meetings and in less formal communications.

The Compliance Officer was appointed by the President and operates within BHR. Her role is to take the lead in assuring that BHR staff and all other County employees involved in employment actions rigorously abide by all policies intended to prevent UPD. The Compliance Administrator is aware that in some other governmental units, concerns have arisen that a Compliance Officer embedded in a human resources department

becomes too enmeshed in internal issues to be effective, but that has not been the experience in the County thus far. Being embedded means the Compliance Officer has easy and regular access to all important human resources activities and functions, and it also means she is easily accessible to human resources staff looking for direction. The County's Compliance Officer has developed a good working relationship with BHR personnel and encourages consultation with her, but she has not shied away from disagreeing with plans or insisting on corrections to actions that she determines would be inconsistent with the Employment Plan and good practice. The OIG performs the more independent investigative and auditing roles which are also necessary to assure compliance. Some of the myriad duties assigned the Compliance Officer include:

- Reviewing documentation prior to a position being posted on ATAS;
- Confirming BHR's applicant validation determinations;
- Ensuring that randomization of applicant and candidate lists are done according to the Employment Plan;
- Monitoring new hire interviews when possible;
- Investigating potential violations of the Employment Plan not involving UPD and preparing Incident Reports of findings;
- Drafting training materials and training all personnel on the Employment Plan;
- Handling calls from candidates regarding proper employment procedures;
and
- Meeting regularly with BHR staff and separately with Counsel to the Compliance Administrator to discuss compliance issues.

The main concern regarding the Compliance Officer is the fact that she is overextended. Although the Compliance Officer was hired to serve UTP (currently with 1,653 employees), now that the BHR Chief is also the Interim Chief of the HHS Human Resources Department, the Compliance Officer is also regularly asked to address issues occurring in HHS (currently with 5,568 employees). HHS was supposed to have its own Compliance Officer, and indeed, had posted the position on ATAS and accepted applications several months ago. The plan for an HHS Compliance Officer has experienced the same fate as the effort to develop an employment plan for HHS: it is in limbo. While the County and HHS recently agreed to the hiring of a Deputy Compliance Officer who would report to the County's Compliance Officer but be assigned primarily to HHS, the position still lacks a job description and has not been posted. The Compliance Administrator would appreciate being included in the discussions, and urges the County to quickly work through whatever issues of authority and structure are preventing posting of the position. One Compliance Officer cannot effectively address the responsibilities of the position for both UTP and HHS. Further delay in resolving this issue will only delay achieving substantial compliance.

C. Exempt List and Other Listings of Positions for Special Procedures

In her last report, the Compliance Administrator noted the efforts undertaken at the end of the last administration to revise the list of *Shakman*-Exempt positions. Over several prior years, unauthorized changes had been made to the list, and in November 2010, the parties came to agreement on what positions were properly included in the list and on procedures for making future changes. An updated Exempt List including some positions which had been added or changed by following those procedures for making changes was attached to the Employment Plan. The Compliance Administrator believes the negotiation

process earlier agreed to by the parties (and memorialized in the Employment Plan) worked well and hopes it will continue to do so in the future.

Some Exempt List-related issues have yet to be resolved by the parties. They include the issue of how to treat formerly Exempt Positions into which employees were hired for political reasons and which were later unionized, effectively protecting the worker from political firing by a subsequent administration. At the conclusion of the Stroger administration, petitions were filed to unionize a number of positions which had previously been treated as Exempt by the previous administration. In response to concerns voiced by several complainants that the purpose of the unionization was to protect the jobs of Stroger appointees, the Compliance Administrator made multiple inquiries about the process for unionization, but the inquiries were largely ignored or rebuffed by the lawyers for the County. Since the process remained substantially obscure, efforts to monitor or investigate the unionization of Exempt Positions were effectively frustrated.

Moreover, in a Summary Report issued to the President in December 2011, the OIIG reported that two vacancies within the Department of Environmental Control were improperly filled as *Shakman* Exempt because both positions had been unionized prior to the hiring of the two workers. The OIIG recommended that the President post these positions in accordance with the applicable Collective Bargaining Agreement (CBA), as should have been done in 2008 when the two workers were hired. In response, the President asserted that the County could not terminate these employees, because: (1) the CBA required progressive discipline in order to terminate an employee unless there is a

major cause infraction of the rules⁴; and (2) these positions are listed in the November 9, 2010 Court Order pursuant to this litigation which notes that the positions were once *Shakman* Exempt, are now unionized, and that the disposition of how to treat these positions would be dealt with at a later time. The President indicated that the positions would be posted once the current employees vacate them.

The Compliance Administrator is wary of such a response and continues to be concerned about the interactions between the County and the unions. The November 9, 2010 Order did not purport to protect employees in the positions reserved for further treatment. While the President's declination to act does not violate the Order, she could take a proactive stance and remedy a clearly illegal action by her predecessor. Having been hired as Exempt, the employees likely signed resignations which would undermine any claims they might have to the protections of the CBA.

One wonders whether the union was aware of this attempt to circumvent the SRO and did nothing to bring it to light. It is consistent with a repeating complaint the Compliance Administrator has heard from County employees that the unions cut their own deals with the politicians, not uncommonly to the detriment of politically unconnected union members.

That context made it even more frustrating when the Compliance Administrator's recent efforts to monitor the County's disciplinary hearings conducted pursuant to various CBAs to ensure that political reasons or factors were not being taken into consideration were met with stiff resistance from union leadership. The Compliance Administrator's December 2011 request that the County resolve this issue with the unions remains

⁴ It is unclear to the Compliance Administrator why an employee not hired in compliance with the CBA can claim the protections of the CBA.

unanswered.

Other unresolved issues include how the term "Senior Manager Position" will be defined in the Plan and which positions should be included on a Senior Manager List, an issue upon which the Seventh Report commented that, "the Compliance Administrator and the County have been going in circles for some time." Seventh Report at 11. In the Agreed Order entering the Employment Plan with the Court, the parties stipulated that on or before June 1, 2012, a Senior Manager hiring process will be agreed to as well as an "initial list of Senior Managers". See *supra* at 8 n.2. The "initial list" will provide the Compliance Administrator an opportunity to monitor the Senior Manager hiring process in action while the County completes the necessary paperwork to submit a complete Senior Manager List.

HHS, the Public Defender and the OIG have all indicated that they do not consider any of their employees to be *Shakman* Exempt. However, HHS, the Public Defender and the OIG have also expressed their desire for "more flexible hiring procedures" for top-tier executives and certain professional positions and executive assistants. The Public Defender and OIG shared their proposals for more flexible hiring procedures, and both are being reviewed by the Compliance Administrator and the parties. The Compliance Administrator hopes her next report will include news that parties reached an agreement regarding these more flexible hiring procedures and the same were entered by this Court so that monitoring may commence.

D. Applicant Tracking and Application System

The proper functionality of ATAS is a vital part of the County's new Employment Plan. Last October, the Compliance Administrator reported that while ATAS was operative and generally functional, there remained problems that required resolution. Unfortunately,

these problems remain predominantly unresolved.

ATAS continues to be limited. It does not allow for: (1) the inclusion of an electronic No Political Consideration Certification in appropriate places; (2) built-in randomization of applicant lists; or (3) automatic validation based on preferred qualifications. Also, BHR and the Compliance Administrator's Office recently discovered that when job templates are edited, old postings that used the same templates are sometimes changed as well, which makes auditing of the old posting much more difficult. These concerns must be addressed either within ATAS or through additional procedures. The most glaring ATAS issue, however, is the lack of training on the proper use of ATAS.

As noted in the summary, problems that developed in HHS' postings made it clear that few people in HHS had been trained on ATAS, and those who had some training were repeatedly making errors in postings which affected the validity of the hiring pools. The Compliance Administrator's concerns about those errors were repeatedly met with responses that ranged from blaming the software to expressing institutional resignation that mistakes will be made, with little to no recognition of how ignoring those mistakes would facilitate discrimination in hiring. Eventually, instances of apparently intentional misuse of the software surfaced and led to an investigation by the OIG.

Since the reorganization of HHS' Human Resources Department, employees who appeared unwilling or unable to use the ATAS software properly have been released. In order to process the critical fill positions, BHR trained several HHS employees on ATAS and assigned BHR employees competent in ATAS to assist in posting positions and validating eligible candidates. At the same time, there were multiple positions which had been posted before the reorganization, but where the hiring sequence had not been completed. Review

of those postings revealed rampant issues with how the postings had been constructed and how the lists of eligible candidates had been created and maintained. The Compliance Administrator informed BHR and HHS of the issues, and asked that prior to moving forward with any of those backlogged postings, BHR or HHS provide the Compliance Administrator with an opportunity to discuss her concerns. As of the filing of this report, the Compliance Administrator, HHS, BHR and Compliance Officer are still working through those issues. Several have been reposted because the issues could not be addressed in hindsight.

One sign of hope in solving some of the ATAS issues is the County's creation of a new position in its Human Resources Information Systems (HRIS) that will focus solely on providing technical support for County employees using ATAS and working with the ATAS software provider to correct problems. Hiring someone with the technical expertise in the County's specific ATAS system will hopefully help solve some of the above issues and free up BHR employees who have been working as ATAS troubleshooters.

2. The County has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence.

In addition to creating transparent employment procedures, the County must demonstrate that it has acted in good faith to remedy instances of non-compliance that have been identified and prevent a recurrence. The County may demonstrate this good faith effort by responding swiftly and effectively to findings of violations of its Employment Plan by the Compliance Officer and recommendations of the OIIG and the Post-SRO Complaint Administrator. In addition, supporting the use of the political contact log and the role of the OIIG in preventing and remedying non-compliance are critical.

A. Violations of Employment Plan

While the County filed its Employment Plan on March 19, 2012, training will have just begun by the time this Report is filed with the Court. After the County completes the requisite training sessions, the Employment Plan will be implemented. Future reports will focus attention on Employment Plan compliance. While the Compliance Administrator expects instances of non-compliance to occur in the early stages of implementation, she hopes violations are caught by the Compliance Officer or County personnel and immediately rectified. Because prompt resolutions have been the Compliance Administrator's experience thus far with the BHR Chief and Compliance Officer, the Compliance Administrator expects the same will hold true in the future.

B. The OIIG

1. OIIG Reports and Recommendations

The Compliance Administrator continues to be encouraged by her review of the OIIG's Summary Reports on claims of UPD and many of the County's responses to the OIIG's findings and recommendations. For the most part, the County has responded to the OIIG's recommendations in a timely and effective manner; however, the OIIG is still awaiting two outstanding responses from the County. The Compliance Administrator will continue to closely monitor the County's responses to ensure that the OIIG is effective at bringing *Shakman* violations to light, and to ensure the County is taking appropriate corrective action when necessary in compliance with the *Shakman* Decrees and Orders.

Since the last report, the OIIG issued 10 Summary Reports concerning claims of UPD and BHR policy and procedure violations. Four of these investigations stemmed from one investigation into the HHS Human Resources Department. After an extensive

investigation, the OIG reported its findings to the HHS CEO. The OIG recommended significant discipline, up to and including termination, for the employees based on findings of misconduct and/or negligence. The CEO accepted the resignation of one of the employees, initiated disciplinary proceedings for the two other employees, and initiated an investigation of the hiring of a contractor working with HHS' Human Resources Department. The disciplinary proceedings led to the termination of the two employees. The HHS CEO also terminated the contract of the HHS contractor and pledged to review the HHS contractor retention process. The Compliance Administrator is encouraged by the HHS CEO's timely and decisive response to the OIG's Summary Reports.

The remaining six Summary Reports issued by the OIG concerned claims of UPD and violations of BHR policy and procedures within UTP; the County has not yet responded to three of these Summary Reports. The Compliance Administrator looks forward to reviewing the County's responses, which will be viewed as an indication of the County's commitment to address and remedy instances of UPD in County employment. The County's response to the OIG's Summary Report concerning unionized Exempt positions was discussed earlier. *See supra* at 16-17.

In the remaining report provided to the County in January of this year, the OIG found that two *Shakman* Exempt employees within a County department performed the work of one full-time employee, received take-home vehicle privileges without a sufficient justification, and received overtime pay, which is contrary to provisions of the Cook County Personnel Rules. Just recently, the County responded that over the last few months, the work of these two employees increased sufficiently to justify several more employees. In addition, although the County did not agree with the OIG's conclusion

regarding the use of take-home vehicle privileges, it acknowledged a problem and advised the department to put those vehicles into a pool for employee use as duties necessitate. Finally, the County delayed a direct response to the overtime issue and indicated that it will adhere to whatever countywide overtime policy BHR implements. In the meantime, the County indicated a manager in the department will be assigned to oversee all overtime issues and determine what course of action to take. The OIIG is in the process of formulating its reply to the County, and the Compliance Administrator eagerly awaits that reply and any subsequent County response.

Over the last six months, OIIG Summary Reports indicate a general trend toward cooperation by the County and its employees, as well as by elected officials. In particular, high level County administrators, employees, and directors have been available and provided requested documentation to the OIIG so that appropriate determinations could be made. The last few reports have also concluded that a number of employees have lied during OIIG interviews, which is a violation of the OIIG Enabling Ordinance and the County's Personnel Rules. The OIIG appropriately recommended discipline for the employees' lack of truthfulness. While HHS swiftly adopted the OIIG recommendations and terminated the individuals who lied to the OIIG, the County has yet to respond to the OIIG's recommendations regarding similar violations within UTP. The Compliance Administrator looks forward to the County's response.

2. The Political Contact Log

Since the Seventh Report, the County has utilized the political contact log as intended, and the OIIG has carefully maintained and investigated contacts reported. Department heads and senior-level BHR staff have reported political contacts as required

in a timely manner. The OIIG has only issued one report of an Unlawful Political Contact which the County must analyze and act upon. Therefore, it is premature to determine whether the OIIG's conclusions and recommendations will be taken seriously. As noted above, however, the County has been receptive to the recommendations of the OIIG, and has no reason to believe that the County will deviate from that trend.

Since the last report, the OIIG received ten Political Contact Logs from various sources, including the Compliance Officer, BHR and HHS. Three of the contacts were written letters of recommendation based upon a politician's personal knowledge of the applicant, three of the contacts were from politicians asking about the proper procedure to apply for a position, and one contact was in reference to the budgetary process. These seven reported contacts did not require action by the OIIG other than to remind two Commissioners to provide their recommendations for an employee in writing to BHR. The final three contacts are currently under investigation by the OIIG and will be reported in the Compliance Administrator's report.

In March, the OIIG completed an investigation of a political contact that was made prior to the Seventh Report. The OIIG concluded that a Cook County employee attempted to use political reasons or factors to influence the conditions of his Cook County employment by soliciting assistance from a Cook County Commissioner for whom he previously volunteered during a recent campaign. The OIIG also concluded that there was an Unlawful Political Contact made by that Commissioner and a member of that Commissioner's staff on behalf of the County employee. The OIIG recommended a 25-day suspension for the County employee and training for the Commissioner and his staff. While the County has not formally responded to the OIIG's recommendations as of the date of this

report, the Compliance Administrator was recently informed that the subject County employee received a 30-day suspension for the underlying conduct. The Compliance Administrator will comment on the County's response in the next report.

B. The Post-SRO Complaint Administrator and Post-SRO Complaints

The SRO was entered by the Court on February 2, 2007, and it has governed the investigations of current Post-SRO Complaints ever since. Section V of the SRO mandates that the OIIG investigate all Post-SRO Complaints, but a footnote allowed for Class Counsel to move to substitute the OIIG with a Post-SRO Complaint Administrator if Class Counsel objected to the currently serving IIG. On February 12, 2009, the Court entered an Order appointing Mark Vogel as the Post-SRO Complaint Administrator in accordance with that footnote.

As the County continues toward substantial compliance with the SRO, it is important to confirm that the OIIG is equipped to effectively investigate and recommend action based upon violations of the Employment Plan and County Ordinances. Therefore, on February 22, 2012, the Court entered the *Agreed Order Modifying Appointment of Post-SRO CA for Cook County and the Forest Preserve District* (the "Transition Order"). The Transition Order requires all Post-SRO Complaints filed on or after February 22, 2012, to be investigated by the OIIG as originally contemplated during the drafting of the County's SRO.

The Post-SRO Complaint Administrator will continue his investigations and reporting until all complaints filed prior to February 22, 2012, have been fully investigated. His authority will terminate on November 30, 2012, unless otherwise ordered by the Court. Between February 22, 2012, and November 30, 2012, the OIIG will provide copies of any Post-SRO Complaints to the Post-SRO Complaint Administrator and may request

information or assistance from the Post-SRO Complaint Administrator with any such investigations. *See generally*, Transition Order.

Since the Seventh Report, the Post-SRO Complaint Administrator has received an additional 15 Post-SRO Complaints, three of which were received after February 22, 2012, and were forwarded to the OIG in accordance with the Transition Order. This brings the total number of Complaints received by the Post-SRO Complaint Administrator, which he has the authority to investigate, to 105. The Post-SRO Complaint Administrator has issued 14 reports since October 2011, two of which have been sustained. The County reached a settlement agreement with the Complainant in one matter and is in the process of negotiating a settlement with the other Complainant in the other. Both sustained findings were for Complaints pertaining to HHS for actions that predate 2009. There are 55 investigations that remain pending with the Post-SRO Complaint Administrator, five of which are under joint investigation with the OIG.

In the Seventh Report, the Compliance Administrator noted that the Post-SRO Complaint Administrator had issued four sustained reports during the prior administration, one of which was settled. The three remaining matters, which were consolidated into one, had yet to be resolved. Although these three matters have since begun the Post-SRO arbitration process, they have yet to receive an arbitration date or settle the matter as of the date of this report. The Compliance Administrator will update the Court on the resolution of these matters in the next report.

As reported last October by the Compliance Administrator, the Post-SRO Complaint Administrator experienced delays in completing its investigations within the prescribed 180 days of the filing of a Complaint due to caseload volume and lack of cooperation by the

County. Although case volume is decreasing and the County has been very cooperative over the last several months, delays continue. Layoffs, terminations, retirements and administrative and medical leaves have made witnesses difficult to locate or slow to cooperate. The Post-SRO Complaint Administrator has had to resort to the lengthy process of issuing subpoenas in order to obtain witness testimony. The County has been responsive to the Complaint Administrator's requests for information, and the Compliance Administrator has been assured that the Complaint Administrator will meet the deadline set for the completion of his investigations in the Transition Order.

Finally, the OIG is now tasked with investigating Post-SRO Complaints pursuant to the Transition Order entered by the Court on February 22, 2012. To date, the OIG has received three Post-SRO Complaints from the Post-SRO Complaint Administrator. These investigations are in process, and the Compliance Administrator will comment on their status in future reports.

3. The County does not have a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions.

As noted throughout her Seventh Report, the Compliance Administrator believes the current administration is generally working toward changing the culture concerning UPD. The efforts described in this report are aimed at creating long-lasting change in the culture so that all employees and applicants may be judged on merit and not on political connections. The training and implementation of the Employment Plan will go a long way toward helping ensure political reasons and factors do not affect the hiring for Non-Exempt positions, and supplemental procedures will help ensure the same for promotions, demotions, discipline, transfers and other employment actions. The Compliance Administrator will continue to monitor the implementation of these procedures to ensure

their effectiveness. After the appropriate training sessions occur, the Compliance Administrator will be able to monitor the County's implementation of the Employment Plan and will be in a position to report on its resulting degree of success in her next report.

4. **The absence of material noncompliance which frustrates the 1994 Consent Decree and the SRO's essential purpose. The CA and the Court may consider the number of post-SRO complaints . . . found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the County is not in substantial compliance.**

Employees and former employees continue to file Post-SRO Complaints, particularly with regard to recent layoffs, but the Compliance Administrator does not find the number or substance of those complaints to be concerning. Moreover, a low percentage of Post-SRO Claims have been sustained. The Compliance Administrator will continue to monitor the Post-SRO Complaint Administrator's findings as well as the County's responses to any sustained findings to make sure noncompliance is taken seriously.

5. **The County has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the County.**

The County must demonstrate that it has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment. While the County took a big step forward with the filing of the Employment Plan, much work remains to be done. That work includes implementing the Employment Plan, finalizing transparent and effective hiring procedures to cover HHS and the OIIG, and drafting and implementing procedures for promotions, transfers, discipline, discharge and other employment actions. Additionally, BHR staff, supervisors and all County employees must be trained on the Employment Plan and supplemental procedures

and improvements must be made to the functionality of ATAS. The Compliance Administrator encourages the County to tackle these projects soon.

CONCLUSION

In this second report period since the present Administration took office, the Administration has continued to demonstrate a commitment in principle to the goal of achieving substantial compliance with the terms of the SRO and to the tasks of building and reorganizing infrastructure necessary to make that possible. Those tasks were daunting and could not be accomplished overnight. The logistical steps necessary to document and implement policies that can be monitored so as to bring about the end of the SRO are considerably less difficult, and now that the Employment Plan has been filed, the Compliance Administrator is hopeful that the County will be able to march through the remaining steps at a quicker pace.

The Compliance Administrator plans to file quarterly reports in the future. It is our sincere hope that by the time she files her next report in July 2012, the following steps will be accomplished:

1. Completion of training on the Employment Plan and agreement on protocols for the Compliance Administrator's monitoring of compliance with the Plan;
2. Hiring of a Compliance Officer responsible for overseeing compliance in HHS;
3. Adequate staffing of and training for appropriate and efficient use of ATAS;
4. Agreement on the definition of Senior Manager and a preliminary Senior Manager List filed with this Court;

5. Agreement on whether there will be a special employment category for Professional/Technical employees and, if appropriate, a preliminary Professional/Technical List filed with this Court;
6. Finalization of policies and procedures for transfers, promotions, demotions, discipline, layoff/recall, and trainings. (Because the County's plan to have the Public Defender, the OIG, and HHS operate under a single employment plan would result in those entities being bound by all County personnel policies, the Compliance Administrator believes those policies should be in place before the entities are asked to agree to be bound by them);
7. Agreement on whether the Public Defender, the OIG, and HHS will have separate employment plans or will be subject to a single County Employment Plan with special provisions which address the unique needs of each entity; and
8. Agreement on provisions that will be unique to the Public Defender and to the OIG (drafts are already in circulation); progress in identifying provisions appropriate to HHS.

Additional steps that would remain are:

1. Monitoring of compliance with policies and procedures outside of the Employment Plan, including disciplinary proceedings, which will require some resolution of union objections to the Compliance Administrator's monitors;

2. Finalization of separate plans or additions to the County's Employment Plan for the Public Defender, the OIIG, and HHS, and monitoring of compliance with those plans or additional provisions;
3. Monitoring of provisions concerning the hiring of Senior Managers and, if applicable, Professional/Technical employees;
4. Continued monitoring of the County's responses to Post-SRO Complaint findings by either the Post-SRO Complaint Administrator or the OIIG; and
5. Continued monitoring of the County's Compliance Officer and the individual hired to perform the Compliance Officer functions for HHS.

The Compliance Administrator thanks the parties for their sincere efforts and this Court for its continued guidance in this matter.

Respectfully Submitted,

Mary Robinson
Compliance Administrator

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