

**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

**NINTH REPORT OF THE *SHAKMAN* COMPLIANCE ADMINISTRATOR
FOR COOK COUNTY**

Mary Robinson, *Shakman* Compliance Administrator for Cook County (the "Compliance Administrator" or the "CA"), by and through her attorney, Matthew Pryor, submits this Ninth 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 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 CA and progress toward achieving Substantial Compliance with the requirements of the SRO.

SUMMARY

In the CA's last Report to this Court filed on April 30, 2012 (the "Eighth Report"), the CA noted several positive developments in the County's movement toward Substantial Compliance with the SRO:

- The County had recently filed with the Court an Employment Plan (the "County Employment Plan" or the "County Plan") governing Offices under the President, and had hired a Compliance Officer to train employees on and ensure compliance with that Plan.
- The County's Bureau of Human Resources ("BHR") was working diligently with newly-appointed senior leadership at the Human Resources Department for the Cook County Health and Hospitals System ("CCHHS" or the "System") to address a backlog of patient care positions that needed to be filled and to correct inefficient and inappropriate practices in the hiring process.
- The County had committed to address issues in its online applicant tracking and application system ("ATAS").

In that report, the CA identified the following areas requiring action:

- The units of County government which are independent of the President for hiring and/or other purposes, including the Public Defender, CCHHS, and the Office of the Independent Inspector General ("OIIG") all still lacked employment plans.

- The County Employment Plan lacked hiring procedures for Senior Manager and Professional/Technical positions, and it was still necessary to draft, negotiate, and implement supplemental policies covering non-hiring Employment Actions such as demotion, discipline, layoff/recall, promotion, training, and transfer.
- The hiring of a Compliance Officer to oversee CCHHS was necessary in order to assure effective implementation of all employment procedures adopted for CCHHS and in order to relieve the County's Compliance Officer of attempting to cover the needs of both the Offices under the President and CCHHS, which is too large an undertaking for a single individual.

Since the Eighth Report, the County has made some progress on the above issues while other issues remain unresolved. This report will serve as an update on the progress made on the above issues since the Eighth Report was filed.

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.

A. Development of Plan.

A vital step toward Substantial Compliance is the development and implementation of transparent procedures for employment actions as well as effective enforcement mechanisms to ensure accountability. As previously reported, the County filed the County Plan with this Court on March 19, 2012.¹ More recently, important segments that had not been resolved as of the original filing have been added to the County Plan by amendment through agreement of the parties. Originally characterized as procedures for hiring Senior Managers and Professional/Technical staff, the section filed by agreement on November 26, 2012, combines the two concepts under the designation "Actively Recruited Positions," and provides a procedure giving hiring managers more discretion in determining which applicants will be interviewed for positions with greater responsibilities and/or greater required skills and education. A list of positions covered by the Actively Recruited hiring process was filed in conjunction with amending the County Plan to include that procedure.

In addition, a Direct Appointment hiring process was developed to allow the Public Defender (whose Office has no *Shakman* Exempt positions) to handpick high-level

¹ Additionally, the Employment Plan was amended on June 20, 2012 to align it with ordinances under which the Cook County Board President appoints certain officials including, the County's Public Defender, Medical Examiner and Independent Inspector General.

managerial staff without following all of the steps in the County Employment Plan's normal hiring process, but with the proviso that political reasons and factors may not be considered in the selection process. The Direct Appointment hiring process and list of positions covered by that process were filed with the Court on July 20, 2012, and with that addition, the Public Defender agreed to be subject to the County Employment Plan.

The finalization of the Actively Recruited and Direct Appointment hiring processes was also important in moving CCHHS and the OIG closer to finalizing their own individualized Employment Plans, which will be appended to the County Plan.

Accordingly, the parties have agreed to the adoption of a Direct Appointment hiring process for identified high-level management positions within CCHHS. That process and the list of CCHHS Direct Appointment positions were filed with the Court on December 12, 2012. Thereafter, CCHHS General Counsel, Elizabeth Reidy, and recently appointed CCHHS Chief of Human Resources, Gladys Lopez, (who served as Interim System CCHHS Director of Human Resources for most of the time period covered by this report), have drafted the remaining portions of the CCHHS Employment Plan, which is modeled on the County Employment Plan but incorporates modifications important for the System. They received substantial assistance from Sherrie Travis, the CA's employment counsel who has been instrumental in the development of plans for multiple units of County government. That draft should be ready for submission to Class Counsel in this case ("Class Counsel" or the "Plaintiffs") within weeks. Similarly, the Employment Plan for the OIG is in the final stages of review by all parties, and could be filed shortly.

B. Implementation of the County Employment Plan

Since the filing of the County Employment Plan, the County has taken several steps towards its implementation:

Publication. First, the County posted the Plan on its website to provide the general public with notice of the Plan's contents, an important step toward bringing significantly enhanced transparency previously lacking in the County's past hiring practices.

Training. The County Compliance Officer, Letitia Dominici, then trained all BHR employees on the intricacies and general principles of the Plan to assure that those responsible for implementing major portions of the Plan were familiar with its requirements. Next, Ms. Dominici and Tom Conway, the County Manager of Training and Development, with the participation of the OIG, conducted dozens of training sessions for supervisors and employees who might act as interviewers in hiring processes for their departments. Those sessions were followed by training sessions for all other County employees, in which the OIG joined as a presenter. Topics covered included unlawful political discrimination and unlawful political contacts, as well as the history of the *Shakman* litigation.

In total, over 60 training sessions have been conducted, and at this time, 99 percent of the employees in Offices under the President and the Public Defender have been trained on the Plan, and 100 percent of the supervisors in the Offices under the President and the Public Defender have received the required interviewer-specific County Plan training.²

The Office of the Compliance Administrator monitored many of these training sessions and was impressed with the integrity with which they were conducted. Training

² To demonstrate how seriously the County is taking its Employment Plan training, certain departments have initiated discipline against employees who have repeatedly missed Employment Plan training sessions.

under former administrations had often included sarcastic and dismissive remarks about the *Shakman* decrees and personnel, whereas these training sessions made it clear that the current administration embraces the provisions and principles that were the subject matter of the presentations. Emphasis was placed upon the responsibility of all County employees to report not only gross instances of political discrimination, but also any violations of the County Employment Plan, with clear directions about where and to whom reports could be made. Feedback from employees who were trained included several expressions of appreciation that hiring practices were being explained for the first time in the employees' (oftentimes lengthy) careers in Cook County Government. One employee volunteered that he had been given a position under circumstances apparently not authorized under the Plan, and the position was promptly retracted.

The Compliance Officer recently reported that future annual County Plan training will be conducted online. Given the great time and expense that comes with personally training thousands of employees, the CA is supportive of this initiative and has reviewed drafts of the training modules. The County anticipates beginning the 2013 annual training in April.

ATAS. The use of ATAS has greatly enhanced the transparency and reliability of the County's hiring processes, though, as noted in previous reports, there were some substantial difficulties in the functionality of the system chosen by the County, and the vendor was not helpful in addressing them. The County took a giant step forward in addressing these problems when it hired Barbara Pryor as Director of Human Resources Information Systems ("HRIS"). With her arrival, there is now someone on staff in BHR with the knowledge and responsibility to address information system problems, and, for ATAS,

Ms. Pryor has taken on the tasks of dealing with the vendor and implementing internal practices that make best use of the available functionality. Moreover, the value of adding a Director of HRIS far transcends implementation of ATAS for purposes of achieving Substantial Compliance. Under the previous administration, BHR's computer needs were handled by one Exempt employee who did not appear to believe that he answered to the Chief of BHR and who was frequently unhelpful in addressing system problems and particularly unhelpful in accessing information that was stored in outdated and technically daunting systems. All BHR functions will operate more transparently and predictably with a Director of HRIS who answers to the Chief of BHR.

Ms. Pryor has resumed a practice the CA encouraged in the past: she hosts regular meetings with the primary ATAS users in the County, County Forest Preserve District, and County Sheriff's Office, along with representatives from other offices hoping to join in using ATAS (the County Juvenile Temporary Detention Center, Recorder of Deeds) to discuss implementation issues and brainstorm potential solutions. Ms. Pryor has provided the CA with updates from these meetings, which include a detailed list of quality assurance issues the group is attempting to resolve, with various items noted as "*Shakman* concerns" to highlight their importance. Finally, the County requested and received funding from the Board of Commissioners for an ATAS consultant to help Ms. Pryor troubleshoot quality assurance and efficiency issues (including those noted in previous CA reports). The CA hopes the ATAS consultant will help Ms. Pryor move the County even closer to Substantial Compliance by increasing the integrity and reliability of ATAS.

The CA continues to carefully monitor the County's use of ATAS and can report that there have been significant improvements on several fronts. Chief of BHR Maureen

O'Donnell and Deputy Chief of BHR Chief Theresa Larkin have restructured duties and carefully retrained BHR staff members to ensure they are now using ATAS effectively. A year ago, instances in which the CA monitors questioned decisions made or actions taken in connection with ATAS were frequent, and while not necessarily bearing indicia of illegal motivation, the frequency and types of issues were cause for concern. Those issues have decreased considerably and the County's responses to the CA's concerns are consistently appropriate and remedial in nature.

The issues arising in CCHHS' usage of ATAS as discussed in the Eighth Report were particularly concerning. They included numerous postings that did not accurately incorporate the minimum qualifications for positions, contained fairly frequent validation errors (either excluding qualified candidates or including unqualified candidates), and failed to include required documentation. As reported at the last filing, the CCHHS Chief Human Resources Officer had resigned in January of 2012 shortly after the arrival of the System's new CEO, Dr. Ram Raju. While the System remains independent of the President, the President offered the assistance of BHR Chief Maureen O'Donnell, who Dr. Raju named Interim CCHHS Chief Human Resource Officer. Dr. Raju also appointed Gladys Lopez as the System's Interim Director of Human Resources.

Ms. O'Donnell and Ms. Lopez inherited a daunting backlog of unfilled direct patient care positions, with staff that did not understand how to use ATAS. Between personnel changes, training, and rigorous demands, the new leadership managed to fill 346 vacancies by the end of 2012 and 145 vacancies thus far in 2013. The combined, steady efforts of County BHR and CCHHS Department of Human Resources have substantially reduced the issues that had caused concern in the past. One of the remaining challenges is for CCHHS to

hire employees to take over the other Human Resources functions that County BHR employees have been supporting. Toward that end, Ms. Lopez was promoted to CCHHS Chief of Human Resources in February of 2013 and the additional positions needed have been budgeted. Ms. Lopez and the staff she assembles will face the challenge of correcting continuing inconsistencies and errors in the validation process. While progress has been made, more needs to be accomplished. The CA is confident this problem will continue to be addressed and resolved given the dedication of the newly assigned professional human resources personnel.

Interviews, Hiring Decisions, Documentation. The CA continues to monitor interviews for positions in Offices under the President, in the Public Defender's Office, at CCHHS and for OIG employment. As the incidence of issues continues to decline, the monitoring has been reduced, with most departments being monitored on a random basis. Still, for departments where multiple violations had occurred (Highways, Facilities, Environmental Control, Medical Examiner and Public Defender), and for BHR, where the hiring decisions are so directly important to achieving Substantial Compliance, all interviews and selection meetings are monitored.

In general, monitoring has shown that the hiring process is operating without unlawful political discrimination. Since the last report, there have been no hiring sequences monitored which appeared to involve inappropriate consideration of political affiliation. The goal, though, is more aggressive, and that is to eliminate opportunities for unlawful political discrimination by requiring rigorous adherence to the procedures of the Plan. Even that more aggressive goal is largely being achieved. Where potential departures from County Employment Plan procedures have occurred, it is increasingly the

County's Compliance Officer rather than CA monitors who catches the issue, and the County's responses have been consistently appropriate.

Compliance Officer. The CA has continued to monitor and confer regularly with the County's Compliance Officer, Letitia Dominici. In addition to the very extensive training initiative discussed above, the Compliance Officer has diligently undertaken responsibility for assuring the County's compliance with the County Plan through monitoring of the various stages of hiring process, meeting regularly with BHR employees responsible for performing various activities in the hiring process, and fielding questions from departments.

Several observations are warranted. First, it seems apparent to the CA that Ms. Dominici has established an effective and balanced presence. As the result of her personal participation in the training sessions and her appearances in monitoring capacities, BHR and departmental staff who participate in the hiring process understand that the Compliance Officer is keeping careful watch. At the same time, because Ms. Dominici is approachable and responsive, employees are developing the habit of consulting with her as issues arise. Second, Ms. Dominici is meticulous in striving for full compliance with every detail of the Plan, and her commitment is setting the tone for others. She does not discount any Plan provision as unimportant, and does not look past any instance of noncompliance. Third, Ms. Dominici has, as much as any one individual could, effectively assumed the various monitoring roles which the CA's staff has been performing under the SRO, and her responses to issues have been consistently reliable.

On occasion, the CA has observed the Compliance Officer feel pressed to agree to allow for an exception in the interests of expediency, under circumstances where errors or

omissions do not appear to have any illegal or otherwise inappropriate motivation. History has taught us, however, that apparently neutral exceptions have been used to mask illegally motivated decisions that are not apparent in the moment when the exception is allowed. The CA appreciates the Compliance Officer's refusal to agree to the requests for one-off exceptions and for instead exhibiting fortitude in holding firm to literal compliance with the Plan, which is necessary in order to avoid the problems of the past.

The Compliance Officer filed the semi-annual reports she is required to prepare, the first on September 14, 2012, and the second on March 15, 2013. *See* County Employment Plan at § IV.C.1. The Reports accurately depict what the CA has independently observed in terms of the scope and detail of Ms. Dominici's activities as well as the approach she takes to issues. The CA concurs in Ms. Dominici's conclusion that implementation of the County Employment Plan is going well, and appreciates her announced intention to increase oversight and accountability to ensure that Plan compliance remains a top priority for the County. In her Eighth Report, the CA observed that her "main concern regarding the Compliance Officer is the fact that she is overextended." Eighth Report at 16. Unfortunately, this reality remains unchanged, particularly because in the absence of a Compliance Officer dedicated to CCHHS (which has approximately 5,700 employees as compared to the roughly 2,000 employees in the Offices under the President and Public Defender), Ms. Dominici has been asked to oversee the CCHHS hiring processes. As of the writing of this report, CCHHS is preparing to interview candidates for the position of CCHHS Employment Plan Officer, which will take this additional responsibility off the shoulders of the Compliance Officer. *See infra* at 14.

C. Remaining Tasks.

Plans. The Employment Plan for the OIIG must be finalized and filed with the Court, and the draft of the CCHHS Employment Plan must be completed for purposes of review by Plaintiffs, and then negotiated for final content. Each of those undertakings could be completed within weeks. The CA also understands that the Public Defender will be asking for certain amendments to provisions in the County Plan as they affect the Public Defender.

Supplemental Policies. In addition to the Plans that govern hiring practices, the County (and independent units) must develop procedures for other employment actions such as the award of compensatory time or overtime, demotion, discipline, layoffs/recall, promotion, reclassification, training, and transfer. Drafts of the County's proposed policies to address those issues are presently under consideration.

In addition, it will be necessary to develop supplemental policies for the OIIG, Public Defender, and CCHHS. Presumably, the Public Defender will sign onto the County's policies in whole or in substantial part unless it deems specific revisions to be necessary because of something unique to that Office. The CA has been advised that the OIIG and CCHHS intend to develop their own sets of policies.

Exempt and Other Lists. Since the CA's last report, there have been several amendments to the Exempt List filed with this Court. Those amendments went through the agreed process, which includes required review and approval by Class Counsel, the CA and the OIIG. The CA believes this process is working well and has every reason to believe it will continue to do so. The remaining Exempt List-related issues discussed at length in the CA's Eighth Report, *see* Eighth Report at 16-19, remain unresolved and will require attention by the parties prior to the SRO's sunset.

In addition, lists have been filed for (1) Direct Appointment positions in the Public Defender's Office and CCHHS, and (2) Actively Recruited positions for Offices under the President and the Public Defender. The CA anticipates that both the CCHHS and OIG Plans will include Actively Recruited processes; it will be necessary to finalize lists of these positions as well.

Implementation. CCHHS needs to fill its compliance officer position (which it has designated the "CCHHS Employment Plan Officer" in order to differentiate it from the CCHHS Compliance Officer) responsible for assuring compliance with its Employment Plan, and as noted above, steps are underway to get someone in place. That individual will be responsible for implementing the training that will be required once the CCHHS Employment Plan is finalized.

CCHHS is facing immense challenges in addressing demands upon its Human Resources Department. In addition to the backlog of unfilled patient care positions noted above, the System must: (1) hire over 250 new employees in order to implement commitments pursuant to a waiver which gives the System an 18-month jump start in signing up patients under national health care initiatives, a move which System CEO Dr. Raju believes will make CCHHS competitive and essentially self-sustaining without taxpayer support; (2) hire over 100 medical professionals to comply with a court decree governing the Cermak Health Services (the CCHHS medical facility serving inmates of the Cook County Jail), and (3) hire an additional 100 medical professionals to address accreditation issues raised by the Joint Commission. The CA has worked with CCHHS to develop procedures that accommodate those extraordinary demands while preserving the integrity of the process to preclude opportunities for unlawful political discrimination.

That undertaking has been feasible because of the commitment of the CCHHS Board and executives to eliminating political influence in hiring decisions, and the CA proceeds with no concern that the commitment is not there. By the same token, this is a very large entity with a history of political influence facilitated by a level of institutional chaos. The CA's concerns are focused on reversing that history by eliminating the vestiges of institutional chaos. During the CA's tenure, leadership has made immense progress toward that goal by not only eliminating opportunities for political influence, but also by significantly improving management.

The CCHHS Employment Plan Officer will play an important role in eliminating vestiges of chaos both through training of the roughly 5,700 CCHHS employees and managers and through careful oversight of compliance with policy.

D. 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 establish a track record of effective remediation of instances of noncompliance with the terms and goals of the SRO. Opportunities for assessing the County's compliance with this criterion typically arise in the following circumstances: (a) when the CA raises concerns that actions observed by monitors or information learned by investigators shows a potential violation of the County Employment Plan and/or unlawful political discrimination; (b) when the Compliance Officer finds a violation of the County Plan and recommends action; (c) when an OIG investigation results in a finding of unlawful political discrimination and a recommendation that action be taken; and (d) when the Post-SRO Complaint Administrator's investigation of a claim by an individual results in a finding that

the claimant suffered damages as a result of unlawful political discrimination and a recommendation that the claimant be compensated.

Issues Raised by the CA. Since President Preckwinkle took office, there have been few issues, none serious, and any concern the CA has raised has been addressed promptly and with appropriate recognition of how the issue can impact upon the County's ability to come into compliance with the letter and spirit of the SRO. Issues tend to involve procedural missteps unaccompanied by evidence of unlawful political motivations. One of the more telling differences between the past and former administration is that BHR Chief O'Donnell has authority to, and without fail, *does*, address the CA's concerns without having to check in with politicians, and her decisions never appear to be motivated by protecting any political interests. The CA believes that the commitment of BHR to doing things right, and the fact that the President has put a very capable Chief in place and given her authority to do things right, is the most important and reliable evidence of the County's good faith in remedying decades of unlawful political influence and preventing recurrence.

Issues identified by the Compliance Officer. The CA is unaware of any instance where an issue raised by the Compliance Officer went unaddressed. Much of the Compliance Officer's oversight occurs as hiring sequences are proceeding, and the fact that her concerns are heeded prevents hiring decisions tainted by error or ill motive. It seems that BHR employees and employees involved in hiring efforts in the various departments honestly appreciate the Compliance Officer's intervention when she is able to raise concerns before a sequence has moved to another stage. It is harder for anyone to appreciate intervention when it requires starting again or repeating a stage, but much to

her credit, the Compliance Officer moves past that discomfort on a regular basis, and BHR leadership assures that her concerns get addressed even when remarkably inconvenient.

OIG Investigations of Complaints of Unlawful Political Discrimination.

The OIG has authority under County ordinance to investigate complaints of unlawful political discrimination (in addition to complaints of fraud, waste and abuse), and to recommend action by the County based upon its findings. To date, the OIG has completed investigations of allegations of unlawful political discrimination and tainted employment practices in 84 matters. In 23 of those, the OIG found that the evidence sustained the allegations and recommended action.

Most of the politically discriminating conduct occurred under the former administration. The incidents under the present administration included five where Commissioners sought to intervene in hiring or other employment actions, though in several of these, the Commissioners mistakenly assumed that CCHHS positions for which they recommended candidates were *Shakman* Exempt. All of those incidents were reported to the OIG as political contacts, and none actually impacted an employment action. The experience in these instances provides solid evidence that the Political Contact Log procedures are being followed and are effective.

Two other matters involved repeated violations of hiring procedures by CCHHS Human Resources Department employees. There was no indication that the violations were motivated by unlawful political discrimination. Nevertheless, the CCHHS CEO recognized the seriousness of the infractions and the significance of human resources employees evading procedures intended to prevent unlawful political discrimination, and the employees in question have appropriately been separated from County employment.

The incidents that present some concerns involve the present administration's responses to conduct that occurred either under the Stroger administration or under a different elected official. The two matters that involve illegal conduct occurring under the prior administration arose in departments that have a long and storied history of unlawful political discrimination: the Highway Department and the Department of Environmental Control (DEC). In the Highway Department, the OIG found that under the Stroger administration, two Exempt employees were assigned to duties formerly performed by one Exempt employee, but that the actual duties did not warrant two full-time positions. The OIG recommended that the President restore the duties to one position, but the present administration has taken the position that the duties in question warrant two full-time employees. Without conducting an independent investigation, the CA is not in a position to opine who has the better argument on this disagreement. The County's rejection of the OIG's findings does not offer any detail that would shed light on why there is a disagreement. It would have been helpful had the County offered a more careful response, one that would attempt to explain why there was room for honest disagreement.

In the other matter, there were two formerly Exempt positions, one in the Highway Department and the other in DEC, that were unionized in 2007. In 2008, the positions were given to two politically-connected individuals as though the positions remained Exempt, evading the requirement of the applicable Collective Bargaining Agreement (CBA), which required the positions to be filled through a competitive posting process free of political influence.³ Thus far, the County's response has been that it will not separate those

³ It is concerning, but consistent with complaints the CA has heard from County workers, that SEIU did nothing to oppose the illegal political appointments of these employees.

employees from their positions because the terms of the CBA do not allow for such a termination, but that once the positions are vacated by the current employees, they will be filled through the competitive posting process outlined in the CBA. The legal strength of the County's position seems doubtful. The CA has no doubt the employees might try to make the argument if the County would take steps to terminate them, but the County is missing an opportunity to take a principled stand to correct hiring decisions that were clearly illegal.

These same incidents have recently been the focus of two reports from the Post-SRO Complaint Administrator recommending that claims be paid. Further discussion about the significance of these incidences and the County's response appears below.

The third incident of concern arose because the President recently awarded an Exempt position to a former employee of the Recorder's office who the OIIG found yielded to political pressure to halt the hiring process for a Non-Exempt vacancy in the Cook County Recorder of Deeds due to pressure from the Democratic candidate hoping to succeed now-former Recorder Eugene Moore. The OIIG recommended that to the extent that the employee's duties in her new Exempt position in the Department of Revenue entailed the hiring, promotion, demotion, transfer and discharge of Non-Exempt staff, such duties should be removed. The County rejected the recommendation, opting instead to retrain the employee on *Shakman* hiring principles. The actions taken by the employee while still employed by the Recorder provoked a fair amount of publicity and became a significant hurdle to forward progress in the effort to bring the Recorder's Office into substantial compliance. As a result, the Plaintiffs have expressed concern that President Preckwinkle's decision to give this employee a position in the face of her prior conduct

undermines their faith in the President's dedication to eliminating unlawful political discrimination. The President's rejection of the OIIG's reasonable recommendation that any duties involving employment actions be removed has only added fuel to that fire.

The Post-SRO Complaint Administrator and Post-SRO Complaints. The Post-SRO Complaint Administrator is responsible for investigating complaints by individuals alleging that they have suffered damages because of unlawful political discrimination and determining whether the evidence sustains the individual's claim of harm. As noted in the last report, these duties are being transitioned to the OIIG pursuant to an order entered in February 2012.

As has been true for much of the time in which the Post-SRO Complaint Administrator has been reviewing claims, few of the claims have been deemed to qualify for any relief. Many have been found to be legally unfounded (e.g., because filed after the limitations period provided under the SRO or because the person complaining was Exempt and thus did not have standing to complain). For many others, the evidence was found insufficient to support the claim.

Since the last CA report, three claims have been sustained. In one, the Post-SRO CA found that a CCHHS employee suffered retaliation because she had filed a complaint about a suspicious hiring sequence. CCHHS had terminated a director-level employee as a result of the information brought to light by the Complainant, but then, less than a week after that director was terminated, the assistant director took away the supervisory duties of the Complainant. The Post-SRO Complaint Administrator found that the removal of duties occurred in retaliation for the Complainant's having caused the director's termination. The County has had the report since July of 2012; to date, the County has not informed the CA of

any resolution to the Complainant's claim or taken action against the assistant director who took away her supervisory duties.

The other two sustained findings by the Post-SRO Complaint Administrator also arose in the Highway Department. Both overlap with some of the OIIG findings described above. In one, the Post-SRO Complaint Administrator found that the Complainant suffered political discrimination in a Highway sub-department where the OIIG found that two Exempt employees had been assigned duties previously handled by one employee. That sub-department has a history of systemic abuse of resources based upon political influence. The Post-SRO Complaint Administrator also found that a Complainant from a different Highway sub-department was receiving significantly lower pay than politically-connected workers who were doing substantially the same work. The other sustained finding concerning the Highway Department involved a Complainant who was frequently required to perform duties assigned to an Exempt employee who simply failed to perform but who, despite that failure, had managed to suffer no adverse consequences over the course of many years. The employee is understood by many other employees in the Department to have strong political ties, and it is widely perceived that he continued to be protected because of those ties.

Unfortunately, the CA has not been able to obtain information from the County that would allow her to report the status of the action taken by the County in response to the Post-SRO CA's reports. The SRO requires that the County provide the CA with copies of the following Post-SRO Complaint-related documents: any executed settlement agreements, any written Requests for Arbitration, and the decision of any arbitration hearing. SRO at 23-25. Additionally, when a matter has proceeded to arbitration, the arbitrator must

provide the CA with notice of his or her selection and a proposed schedule for the arbitration process. *Id.* at 25. On several occasions, the CA has made requests of the State's Attorney's Office for the above documentation but has not yet received the same.

Discussion.

The CA has no hesitation in stating that since present BHR and CCHHS DHR leadership took charge, the County has consistently and effectively addressed instances of noncompliance that have come to light in the hiring process for all units of County government bound by the SRO.

The harder question is how to assess the County's performance in addressing employment issues that are remnants of the past. In many respects, it has been stellar. Immediately upon taking office, President Preckwinkle asked for input on individuals who were known to have been active in accomplishing or enabling violations, and she immediately terminated those individuals, sending a message that was heard loud and clear by County employees who had become accustomed to a reality where SRO violations were ignored and the perpetrators faced no consequences. As new leadership took hold, department heads reorganized the most troubled divisions and parted company with many employees who were not performing their jobs or whose jobs had become unnecessary. The CA has seen no evidence that political favoritism played any role in those efforts. Jobs that had become obsolete and workers who were not doing the job are gone, regardless of whether the employees affected had connections.

The administration has recognized that the Highway Department needs attention, and in fact, substantial work has been done to clean it up and to make the Department relevant to actual needs and challenges it should be able to address. In terms of the

findings of the OIIG and the Post-SRO CA concerning political discrimination in the Highway Department, it has been a challenge to identify which parts of the noncompliance are continuing and what should be done about past conduct that never should have been tolerated. Plaintiffs have been quick to assume that the present administration is culpable, in some cases, despite the absence of evidence supporting the assumption. Plaintiffs want more employees disciplined and more severe discipline of those employees than the County has been willing to impose. The County seems to have made retraining of employees a default position, without convincing reasons in some instances for asserting that retraining is an effective response to the conduct at issue.

There may be no right answer to the question of what level of response by the County to evidence of past violations shows good faith. Where the employees in question have career service protections, the County has some responsibility to choose actions that are not destined to result in litigation and damages. By the same token, the County could show more faith in the legal validity of disciplinary actions grounded in a commitment to eliminating illegal political discrimination. The retraining option may be sufficient in circumstances where an employee had an honest misunderstanding of what the law required, but not where an employee's conduct was obviously wrong, and can be explained only by the fact that it was once tolerated.

The CA is not prepared to doubt the good faith of this administration because it has not finished its work, and hopes that the County will see these concerns as opportunities. The County could increase the CA's confidence in its dedication to eliminating unlawful political discrimination with stronger responses to OIIG and Post-SRO CA findings and recommendations.

One dynamic that is complicating the resolution of these particular incidents is that it is human nature to react defensively when accused. Reports that include findings of wrongdoing provoke reactions different than issues of what is appropriate ongoing conduct. The County has consistently shown good faith in choosing the right course when responding to issues that arose under its watch, but its reaction when accused of past misconduct tends to be somewhat defensive. The response is exacerbated when the accusations of wrongdoing do not differentiate between issues for which the present administration is responsible from issues this administration inherited, and when demands for certain action are not well grounded in fact.

The CA has confidence that the good faith of all involved in this venture and our shared dedication to succeeding will lead to wise and effective resolution of these difficult issues.

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

The implementation of the County Employment Plan, while still in its infancy, has helped change the culture concerning unlawful political discrimination in the County. Employees seem to be grasping the parameters and details of the County Plan with increasing understanding and are comfortable turning to the Compliance Officer for interpretation and guidance when necessary. Continued County Plan implementation, course-correction by the Compliance Officer, and increasing the utility of ATAS will all go a long way in ensuring the County satisfies this prong of Substantial Compliance. Employment Plans in CCHHS and OIIG are still lacking as are negotiated and Court-filed supplemental policies aimed to help ensure unlawful political discrimination will not be a factor in other employment actions such as promotions, demotions, discipline, and

transfers.

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.**

But for the Highway Department and DEC issues addressed above, the CA can report that there has been an absence of material noncompliance since her last report. The concerns addressed in the reports of the Post-SRO CA and the OIIG are not technical, and because of the storied history of the departments involved, they cannot be said to be isolated. Still, because the violations identified began a long time ago, because the present administration has made such significant strides in correcting past practices in other departments, and because the administration is presently engaged in ongoing efforts to rectify historical problems in the Highway Department and DEC, the CA has faith that these issues will be appropriately addressed and that instances of material noncompliance will soon be over.

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's fulfillment of this final criterion of Substantial Compliance is still in progress because there are several fronts, addressed above, where procedures have not been finalized (most notably Employment Plans for the OIIG and CCHHS and supplemental policies addressing promotions, transfers, discipline, discharge and other employment actions for all units subject to this SRO). Nevertheless, it bears observing that the procedures that have been put in place have proven effective in eliminating unlawful political discrimination, and based upon the experience thus far, the CA has confidence that

those procedures will survive the test of time and changes in personnel so as to assure long-term prevention.

It has taken longer than anyone hoped to get the final procedures in place. That is not because of any major disagreements, and it seems, instead, attributable to the fact that County representatives get distracted by the pressure of their regular responsibilities and the various crises they must address. We are very close on all of the remaining procedures, and with genuine efforts to stay on task all unfinished plans and supplemental policies could be filed within a month or two. The CA has organized the resources that will be needed to monitor those procedures once in place, and with continued cooperation from the County, the viability of those procedures can be tested.

CONCLUSION

While progress on some fronts has been slower than we hoped, the experience during this period has been reliably positive. The County has scrupulously followed procedures that have been agreed upon, those procedures have proven effective, the regulatory officers (OIIG and Compliance Officer) are accomplishing the roles envisioned for them with the utmost competence and diligence, and the culture that this administration inherited has changed. The one significant hurdle involves addressing the remnants of the past, and the CA has confidence that the parties will find answers that move this effort toward conclusion. A final push to get the remaining procedures in place, to train on those procedures, and to monitor their effectiveness can be accomplished within the next six months.

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

Respectfully Submitted,

Mary Robinson
Cook County *Shakman* Compliance
Administrator

By: /s/ Matthew D. Pryor
Matthew D. Pryor
Her Attorney

Matthew D. Pryor
(matthew.d.pryor@gmail.com)
Counsel to the Compliance
Administrator
69 West Washington, Suite 840
Chicago, IL 60602
Telephone: (312) 603-8911
Fax: (312) 603-9505

