

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

MICHAEL L. SHAKMAN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 69 C 2145
	)	Magistrate Judge Sidney Schenkier
COUNTY OF COOK, et al.,	)	
	)	
Defendants.	)	

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

Mary Robinson, *Shakman* Compliance Administrator for Cook County (the “Compliance Administrator” or the “CA”<sup>1</sup>), by and through her attorney, Matthew Pryor, submits this Seventeenth Report pursuant to the terms of the Supplemental Relief Order entered on November 30, 2006 (the “SRO”). The SRO requires the CA to study the existing employment practices of Cook County Government (the “County”)<sup>2</sup>, 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

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<sup>1</sup> “CA” shall refer to the Compliance Administrator and/or her staff.

<sup>2</sup> For the purposes of this and future reports, “Cook County” and “the County” shall refer to the defendant, Cook County and, in particular, to those departments and functions that operate under the direct control of the President. There are three units of County government which, due to developments since entry of the SRO, operate independently of the President for hiring and other purposes relevant to the dictates of the SRO, and separate practices are being implemented for each. Those units will be designated as follows: the Office of the Cook County Public Defender (the “Public Defender”), the Office of the Independent Inspector General for Cook County (“OIIG”) and the Cook County Health and Hospitals System (“CCHHS” or the “System”). Within the first year after entry of the SRO, the Juvenile Temporary Detention Center (“JTDC”) began operating under the authority of a court-appointed monitor and then was recently transferred to the authority of the Chief Judge of the Circuit Court of Cook County. The CA has engaged in no oversight of JTDC since August 2007.

how to resolve issues regarding *Shakman* Exempt positions, and file reports describing the activities of the CA and the County's progress toward achieving Substantial Compliance with the requirements of the SRO.

On March 2, 2017, the CA submitted her Sixteenth Report to the Court wherein she provided updates on the County's progress in addressing the list of outstanding compliance-related matters that the CA believed the County, Public Defender, CCHHS, and OIIG needed to address prior to achieving Substantial Compliance with the SRO. The CA submits this report as a further update on progress made by those offices on those outstanding items in the past two months.

#### **PROGRESS ON OUTSTANDING ITEMS SINCE SIXTEENTH REPORT**

##### **COUNTY**

In the Sixteenth Report, the CA discussed one outstanding issue that she believed the County needed to address pursuant to the SRO and Employment Plan (the "Plan"). This issue concerned the need to allow the CA to monitor recently drafted procedures for conducting disciplinary hearings to foster predictability in process and consistency in outcomes. The County implemented new standard operating procedures ("SOPs") for its third step grievances and Employee Appeals Board ("EAB") hearings and the CA continues to monitor the effectiveness of such implementation. The CA will only raise this issue in future reports if there are significant concerns with its implementation.

##### **PUBLIC DEFENDER**

In the Sixteenth Report, the CA concluded that she did not believe the Public Defender had any outstanding compliance-related matters but the CA would continue to

monitor its intern policy and disciplinary processes to ensure continued compliance. The CA has continued to so monitor and does not have any issues to report at this time.

CCHHS

In her Sixteenth Report, the CA identified six issues that she believed CCHHS needed to address pursuant to the SRO and the CCHHS Employment Plan (the “CCHHS Plan”).

Updates on CCHHS’ progress on those issues are below.

**1. Implement internal candidate preference option**

The CCHHS Plan permits department heads to request that current employees in the department who apply for a posted position be exempted from randomization where the experience of those current employees would be beneficial in carrying out the duties and responsibilities of the position, provided they meet the minimum qualifications of a posted position. Plan § V.B.3. As of the filing of the Sixteenth Report, CCHHS’ Department of Human Resources (“DHR”) had circulated information making the practice available and had received one request for internal candidate preference. That request was subsequently approved. The CA reviewed and had no concerns with the approval. The CA will continue to monitor DHR’s processing of such requests and will address this matter in future reports only if a significant issue arises.

**2. Implement employment verification procedures for non-credentialed positions**

Based on OIG reports wherein selected candidates for non-credentialed CCHHS positions were found to have provided false and/or misleading information concerning their qualifications, CCHHS agreed to implement more robust employment verification procedures to ensure selected candidates are accurately representing their qualifications

and experience. Since the Sixteenth Report, the external vendor that CCHHS hired to conduct these employment verifications began the verification process. The CA is working with DHR to ensure that the CA is permitted to monitor the vendor's process. The CA will provide further updates in her next report.

**3. Implement process to disqualify candidates because of discipline**

The CCHHS Plan requires DHR to review the personnel files of internal candidates (and recent former employees) for open positions and to disqualify any such candidates from consideration if they have been suspended in the 12-month period prior to their applications. Plan § V.J.3.a-b. DHR now electronically tracks all discipline for current employees so that anyone with disqualifying discipline would not be permitted to be considered for any open position. For this process to work effectively, managers and supervisors must report discipline to DHR so it can be properly tracked.

In her Sixteenth Report, the CA noted that a recent CA audit on CCHHS' adherence to disciplinary recordkeeping and reporting requirements showed much room for improvement. The CA shared her findings with DHR and the EPO which resulted in supplemental training by the EPO. The CA has since observed an increase in discipline reported by several departments and will conduct a follow-up audit in the coming weeks to determine whether the problems identified in the first audit have largely been alleviated.

**4. Implement an Ineligible for Rehire List**

The CCHHS Plan requires DHR to create and maintain a list of former employees who are ineligible for employment with CCHHS based on violating one of several specified CCHHS Personnel Rules or Sections 44-54 or 44-56 of the County Code of Ordinances. CCHHS Plan § IV.P. Last week, DHR took the final step needed to finalize the List by

notifying former employees who have been included on the List that they may appeal their inclusion on the List. DHR anticipates providing Plaintiffs' Counsel and CA with the final Ineligible for Rehire List soon. The CA will provide updates in her next report on that process and any appeals, as well as DHR's compliance with the requirement that the List be consulted in determining eligibility of candidates for hire.

**5. Ensure that all Direct Appointment applications are placed on ATAS**

The CCHHS Plan requires that all Direct Appointment hires complete an employment application on ATAS and provide licenses and certifications that demonstrate the hire meets the minimum qualifications for the position. Plan § VIII.G.3. CCHHS must also post all Direct Appointment Job Descriptions on its website. Plan § VIII.G.2. CCHHS has continued to include Direct Appointment hiring applications on ATAS on a rolling basis and recently posted all of its Direct Appointment Job Description on its website. The CA will continue monitoring the posting of Direct Appointment applications on ATAS and will only include this in future reports if significant issues arise.

**6. Finalize, train relevant staff, and implement policies and procedures for non-hiring employment actions such as discipline, transfer, overtime and compensatory time, and others**

In June 2016, the parties and CA agreed to supplemental policies that would cover the following non-hiring employment actions: reclassification, transfer, training, overtime, discipline, interim assignment/interim pay, layoff/recall, third-party provider, desk audit, and demotion. The EPO has trained over 99% of staff tasked with implementing these policies. The CA and EPO are in the process of conducting an audit to determine departmental compliance with the training and overtime/compensatory time policies. The CA is unaware of any department utilizing the other above-listed supplemental policies

since her last report but will monitor any such usage and report on the same in the future.

OIG

The OIG does not have any outstanding obligations under the SRO other than continued adherence to its Plan and Manual.

**OTHER UPDATES SINCE SIXTEENTH REPORT**

In addition to working with the County, Public Defender, CCHHS and the OIG on the above issues, the CA has continued to monitor discipline in the County and Public Defender, the Public Defender's volunteer program, compliance with the Plan and Supplemental Policies in CCHHS, and the performance of the Compliance Officer, EPO and OIG concerning *Shakman* compliance-related duties. Below are updates on other issues discussed in prior Reports or otherwise still outstanding.

OIG Summary Report 14-0080

The CA previously identified concerns with the County's handling of a matter concerning a successful Post-SRO complainant that was detailed in OIG Summary Report 14-0080. Eleventh Report at 20-21. The controversy began with a finding in May 2010 by the Post-SRO Complaint Administrator that the complainant was denied employment as a painter in the Facilities Department as the result of unlawful political discrimination. The means were a classic mix of elements. A BHR supervisor overrode the accurate conclusions of two BHR analysts that a politically connected candidate should be disqualified for failure to produce required credentials. Interview questions were leaked to another politically connected candidate, who gave answers that were verbatim to those drafted by a Facilities supervisor based on a Google search rather than input from a qualified painter, and

interview panelists scored identical answers given by different candidates inconsistently. As a former participant in an apprentice program sponsored by the Facilities Department, complainant was repeatedly asked to make political donations and declined some of the requests, whereas one of the other candidates had made significant contributions. The politically connected candidate was offered employment, and complainant was not.

The complainant pursued relief under the SRO, and entered into a settlement agreement with the County, whereby the complainant would be paid compensation and would be given a position as a painter at Stroger Hospital, so long as he completed all standard processing requirements, including drug testing and criminal background check. In completing an on-line application, complainant disclosed a 1972 felony conviction for theft of a bicycle, but failed to disclose a misdemeanor conviction for driving on a suspended license. Although in seven other instances in the same time frame, CCHHS had given other applicants an opportunity to explain a failure to disclose a conviction and had offered employment to the applicant in at least two of those cases, CCHHS told complainant that he had failed to comply with the terms of the settlement agreement because he did not complete all standard processing requirements and so, would be denied the employment he had been promised. In the process, it was learned that complainant also had a 1985 misdemeanor conviction for assault and battery, which was not required to be reported since it was more than seven years old, but which CCHHS asserted during an OIG investigation disqualified complainant for employment under the Illinois Health Care Worker Background Check Act, although CCHHS had offered employment to an applicant with a more recent conviction for unlawful restraint, which she was required, but failed, to

disclose during the application process, a failure which she was given the opportunity to explain, with the result that the conviction was not deemed disqualifying.

Complainant instituted another post-SRO complaint. After investigation, the OIG found that a preponderance of the evidence demonstrated that complainant did not understand that he was required to report the suspended license conviction and that his confusion was understandable given the way the question was framed. The OIG concluded that Section III.E.8.(2) of the SRO requires the County to act in good faith to remedy identified instances of non-compliance with the SRO, and that by treating complainant differently than other applicants who had not been subjected to unlawful political discrimination, the County fell short of the effort required by the SRO to remedy the effects of that discrimination. The OIG recommended that the County and CCHHS remove the effects of the disparate treatment by giving complainant an opportunity to explain his failure to report the suspended license conviction, and by considering whether the conviction was fairly characterized as disqualifying him from employment.

The County and CCHHS declined to consider complainant eligible for employment as a painter at Stroger Hospital, and when settlement discussions failed, complainant pursued arbitration. At the arbitration hearing, the County argued that the arbitrator did not have jurisdiction to hear the complaint because complainant was seeking enforcement of his earlier settlement agreement with the County, which included a provision that a breach of the agreement would give rise to a cause of action and that the breaching party agreed to subject himself or itself to the jurisdiction of the Circuit Court. The County argued that under that provision, complainant's only option for pursuing relief was to file an action

before the Circuit Court. On March 18, 2017, the Arbitrator agreed, and dismissed the complaint for lack of subject matter jurisdiction.

Over a period of almost seven years since the Post-SRO finding, the County has managed to avoid remedying this classic instance of political discrimination, first through disparate application of procedural requirements, and now through a late assertion of a jurisdictional argument purporting to strip complainant of remedies available under the SRO by the very fact that he had agreed to settle a claim of political discrimination with the County. Apart from the questionable claim that the terms of the settlement agreement actually limit complainant to the remedy of an action in Circuit Court (as opposed to exposing the County to a Circuit Court action as an additional remedy available to complainant), it is disheartening to see the County take the position that it can contract its way out of the terms of the SRO by way of a settlement agreement intended to remedy unlawful political discrimination.

The CA understands that settlement negotiations are again underway. This case cries out for a good faith effort to remedy this very starkly identified and longstanding instance of non-compliance.

*EPO Incident Report 15-035*

On October 18, 2016, the EPO issued an incident report concerning an employee's allegations that her current Grade 24 salary and job description violated the CCHHS Personnel Rules and the CCCHHS Employment Plan because they were not subject to a salary schedule. The EPO, inter alia, found that the CCHHS Personnel Rules required that all positions listed in Appendix B of the Personnel Rules must have a set salary schedule unless they are exempted under Rule 1.04 of the Personnel Rules. Because this employee's

position and over 70 other positions on Appendix B were not exempted under Rule 1.04 and had not been subject to a salary schedule, the EPO found that CCHHS was in violation of the Personnel Rules. Sixteenth Report at 9-10. The EPO recommended that CCHHS DHR “develop a robust written policy and procedure regarding the compensation and salary increases for Grade 24 Positions which are not Exempt under the CCHHS Personnel Rules. That policy and a corresponding procedure for changes and adjustments to Position salaries should be developed and implemented as soon as possible to comply with the Cook County HR Ordinance and CCHHS Personnel Rules.” Id.

The non-compliance with these provisions is a matter of concern for purposes of this case because any institutional disregard of purportedly governing procedures opens the door to employment decisions based on unlawful political discrimination.

Since the EPO’s report, CCHHS and Plaintiffs have had several exchanges on the issues raised in the EPO’s report and on how CCHHS will address those issues. CCHHS recently analyzed the positions listed on Appendix B to determine which remained active CCHHS positions which are not exempted under the Personnel Rules and which do not have a set salary schedule. CCHHS has also retained an outside vendor to review those positions’ job descriptions, conduct market studies and ultimately propose a compensation structure for each position. The CA is encouraged by these developments. The parties will continue to work toward an agreement on the details of these and potentially other corrective measures needed to bring CCHHS in compliance with the above Personnel Rules. The CA will provide any available updates in her next report.

**CONCLUSION**

The CA believes progress is being made by the various offices and will report on further progress in her next report. The CA thanks the parties for their sincere efforts and this Court for its continued guidance on this matter.

Respectfully Submitted,

Mary Robinson  
Cook County *Shakman* Compliance  
Administrator

By: /s/ Matthew D. Pryor  
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