

**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.)	

**TWENTY-FIRST REPORT OF THE *SHAKMAN* COMPLIANCE ADMINISTRATOR
FOR COOK COUNTY**

Mary Robinson, *Shakman* Compliance Administrator for Cook County (the “Compliance Administrator” or the “CA”¹), by and through her attorney, Matthew Pryor, submits this Twenty-First 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”)², 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

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

² 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 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 November 16, 2017, the CA submitted her Twentieth 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 OIG needed to address prior to achieving Substantial Compliance with the SRO. *See* Dkt. 5570. 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 TWENTIETH REPORT

COUNTY

The CA has continued to monitor the County's disciplinary processes and does not have concerns regarding the same.

PUBLIC DEFENDER

The CA has continued to monitor the Public Defender's intern policy and disciplinary processes and does not have any concerns regarding implementation of either.

CCHHS

In her Twentieth Report, the CA identified two 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 process to disqualify candidates because of discipline

To determine whether departments were complying with CCHHS' disciplinary policy, the CA and Employment Plan Officer ("EPO") conducted three audits in 2017 which showed increasing departmental compliance with the policy (especially after the CCHHS CEO suspended multiple heads of noncompliant departments). During those audits, the CA and EPO discovered some noncompliance with the recordkeeping and reporting requirements in the policy. The CA and EPO have been working with the noncompliant departments to ensure corrective actions are completed. The CA can report that nearly all corrections have been made and anticipates that outstanding corrections will be made in the coming weeks.

2. Resolve issues identified in EPO Incident Report 15-035 concerning Grade 24 salary schedules

On October 18, 2016, the EPO issued an incident report finding that CCHHS was in violation of the CCHHS Personnel Rule 1.04 by not having a set salary schedule for certain non-exempted Grade 24 positions, an omission which threatened inequities for certain employees. *See* Eighteenth Report at 6-7. Over the fifteen months since that report, the parties, OIG and CA have met multiple times to discuss the EPO's findings and to hear CCHHS' proposed resolutions to issues identified therein, and the parties appear to be inching toward a final solution.

CCHHS recently took one of the steps recommended in the October 2016 incident report by amending its Personnel Rules so that no Grade 24 positions (which are typically reserved for high-level employees who should not expect scheduled salary increases) remain on the list of positions for which salary schedules are required. In June 2017, CCHHS proposed policies to cover how Grade 24 salaries are classified and how those

salaries can be adjusted, and in a July 27, 2017 meeting, Plaintiffs' Counsel, the OIG and the CA provided comments to those policies. Only a few days ago, CCHHS circulated revisions based on those comments, and Plaintiffs' Counsel, the OIG and the CA will now review the revisions to determine if they address the issues raised.

As the final component of addressing the issue, CCHHS committed to provide Plaintiffs' Counsel, the EPO and CA with an audit of salary histories of a representative sample of reclassified positions by the end of 2017. The day before the draft of this report was to be circulated, CCHHS provided some data, perhaps preliminary, but at least a step toward the analysis that must occur. Plaintiffs' Counsel, the OIG, and the CA will seek some supporting documentation, verify that the data is responsive and ask for any additional data important to a review. It seems possible that within weeks, this audit could be completed and agreement reached on whether its results warrant remedial measures.

OIG

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

OTHER UPDATES SINCE TWENTIETH REPORT

In addition to working with the County, Public Defender, CCHHS and the OIG on the above issues, the CA has continued to monitor and audit certain Employment Actions as well as the performance of the Compliance Officer, EPO and OIG Compliance Officer 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 who, having been offered employment at CCHHS as a painter in settlement of his claim, found himself disqualified from that employment on grounds not enforced as to other candidates, as detailed in OIG Summary Report 14-0080. *See, e.g.,* Eleventh Report at 20-21; Seventeenth Report at 6-9. The CA anticipates this former employee's rehire at CCHHS will be finalized in the coming weeks which will close out this issue.

OIG Post-SRO Complaint Summary Report 16-0313

On June 29th, 2017, the OIG issued a report finding that impermissible political factors were considered in the December 2017 layoffs of two non-exempt Cook County Bureau of Human Resources ("BHR") employees while the Chief of BHR reassigned and permitted a *Shakman* exempt employee who is related to a Cook County Commissioner to assume some duties of the laid off employees. *See* Eighteenth Report at 8-9. The reassignment required amendments to the exempt position description both in terms of position duties and reporting obligations, which, under the Plan, required the concurrence of the OIG. The OIG objected to the proposed amendments, but the County proceeded with the reassignment and amended description without responding to the OIG's request to meet to discuss the objections, and despite the amendments not being authorized. As a result, the OIG found that the County did not abide by the Plan's requirements regarding amending Exempt List position descriptions. In addition, the OIG found that the revised exempt position description failed to meet the legal standard for exempt positions. On September 20, 2017, the County issued a response to the OIG Report wherein it denied

using political reasons or factors in connection with the layoffs and declined to implement three of the OIIG's four recommendations, including that the County formally reconsider its RIF methodology and implement safeguards to assure that exempt and non-exempt employees are treated the same. The County initially agreed to meet with the OIIG to discuss the OIIG's objections to the County's proposed changes to the position that was at issue, and later agreed to remove the position from the Exempt List, while still seeking to pursue a basis for retaining the employee who had avoided layoff by being put in the position. Since the Twentieth Report, BHR terminated that employee for reasons unrelated to the OIIG's report.

While the issues involving the position itself and the particular employee have been resolved, the CA continues to believe it to be critical that the County clarify its practices for treatment of exempt positions during layoffs so that employees in *Shakman* exempt positions are not insulated from layoffs to the detriment of employees in non-exempt positions, and that it demonstrate that it has implemented procedural changes that will prevent implementation of modifications to the exempt position descriptions that have not been properly accomplished in accord with the procedures dictated by the Employment Plan. As noted in the discussion of OIIG Summary Report 17-0455 (below), an OIIG audit recently disclosed yet another position filled by political appointment where changes were made to the position's duties and reporting requirements without following the requirements of the Employment Plan. The County must find and implement a mechanism that will preclude changes to Exempt List positions without full compliance with the Plan.

OIG Summary Report 17-0455

Stemming from its findings in 16-0313, the OIG initiated a limited review of 35 presently *Shakman* exempt positions to determine whether they were appropriately exempt under the standard set forth in *Branti v. Finkel*, 445 U.S. 507 (1980),³ both on the face of the position descriptions and as the positions are presently performed by the incumbent employees.

On January 11, 2018, the OIG issued Summary Report IIG17-0455 and found that Cook County “is utilizing Shakman exempt employees in ministerial or administrative roles which are inconsistent with the requirements for Shakman exempt status.” IIG17-0455 at 1. In its limited review of *Shakman* exempt position descriptions, the OIG concluded that eight position descriptions “are not appropriately designated as exempt because the position descriptions fail to demonstrate that the positions and associated duties satisfy” the standard in *Branti*. After interviews with employees in other exempt positions, the OIG concluded that an additional 11 exempt positions were not appropriately designated as exempt because the duties performed by the incumbent employees do not justifiably require political affiliation for successful discharge of the duties. *Id.* at 6-9.

The OIG made five recommendations: (1) the County remove the above 19 positions from the Exempt List; (2) the County perform desk audits of the employees in those 19 positions in order to make the job descriptions accurate and assign appropriate grades and titles to the positions; (3) BHR examine one position identified by the OIG to determine whether the minimum qualifications on the position description were adequate;

³ As the OIG explained in its report, the Supreme Court in *Branti* “held that the ultimate inquiry in determining whether government positions are exempt from First Amendment protections is not whether the label ‘policymaker’ or ‘confidential’ attaches to a position, rather the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public duties involved.” *Id.* at 2.

(4) the County determine why the duties and reporting requirements of one identified exempt position were amended outside of the process in the Cook County Employment Plan; and (5) the County amend the Plan to include a process allowing the OIIG to unilaterally “decertify” positions designated as exempt in two situations: when “(a) an exempt position description fails to substantially support such designation and/or (b) when the duties actually performed by an incumbent holding an exempt position bear little or no relationship to the duties set forth in the position description.” *Id.* at 13-14.

The CA is hopeful that the County will prioritize the response to this report. The issues raised must be resolved prior to the CA supporting any motion for substantial compliance.

CONCLUSION

There are significant topics needing resolution: the CCHHS Grade 23/24 salary schedule issues, the status of the 19 County exempt positions challenged as ineligible for that status by the OIIG, and assurances that the County has implemented practices that will both eliminate favoring exempt employees over non-exempt employees during layoffs and eliminate implementation of unauthorized amendments to the exempt position descriptions (whether those amendments occur in connection with or independently of a reduction in force). These are not insurmountable hurdles and they can be addressed within a reasonable time frame through immediate and diligent effort.

The practice of frequent status appearances which began in May 2016 has been of great assistance in moving this effort toward a finish line, but the practice seems to have grown some unhelpful traits. Of late, there has been a pattern of nothing happening for the first five weeks or so after a status, followed by a flurry of activity immediately prior to the

next status date. And we cannot ignore that it has now been almost two years since the frequent status practice was implemented.

It is time to finish. While the CA is confident that there remain disagreements about how specific issues will be addressed, there has been no diminishment in good faith on the part of any of the participants in this effort. The CA is hopeful that the parties will dig in with renewed energy and consistent effort to address the outstanding issues within a period of no more than three months. The CA thanks this Court for its continued guidance on this matter.

Respectfully Submitted,

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Administrator

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