

**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-SECOND 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-Second 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 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 January 18, 2018, the CA submitted her Twenty-First 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. 5723. The CA submits this report as a further update on progress made by those offices on 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 any concerns regarding the same.

PUBLIC DEFENDER

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

CCHHS

The CA has continued monitoring CCHHS' disciplinary processes and corrective actions concerning findings of a joint audit conducted by CCHHS' Employment Plan Officer ("EPO") and the CA. The CA has no concerns regarding the same. Otherwise, there was one outstanding matter identified in the CA's Twenty-First Report needing to be addressed by CCHHS, as discussed in the following section.

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. *See* Eighteenth Report at 6-7. In the nearly year and a half since that report, the parties, OIIG and CA have met multiple times to discuss both the EPO's report and CCHHS' proposed resolutions to issues identified therein. CCHHS amended its Personnel Rules so that no Grade 24 positions remained on a list that requires set salary schedules. CCHHS also proposed two new policies that would cover how Grade 24 salaries are classified and how those salaries could be adjusted. On July 27, 2017, Plaintiffs' Counsel, the OIIG and CA provided comments to those policies during a meeting with CCHHS. CCHHS provided updated policies in early January 2018 just prior to the CA filing her Twenty-First Report. On January 24, 2018, the CA provided her feedback to the latest draft policies; unfortunately, CCHHS responded this week and the CA, Plaintiffs' Counsel and OIIG are reviewing the same. The policies at issue are neither complex nor controversial. The parties are scheduled to discuss the same today and, with appropriate attention, the policies could, and should, be finalized in the coming weeks.

CCHHS also committed to resolve another issue raised by the EPO's findings in Incident Report 15-035 related to the reclassification of certain positions from Grade 24 to 23 by providing Plaintiffs' Counsel, the EPO and CA with an audit of salary histories of a representative sample of reclassified positions. CCHHS provided that analysis on January 18th, 2018 and CCHHS, the CA and Plaintiffs have been in discussions about the analysis and whether any additional information is needed to resolve whether corrective action is required. The parties and CA are scheduled to meet on this issue on Friday, March 9th so

the CA will update the Court on progress toward resolving this issue at the status hearing scheduled for March 12th, 2018.

OIG

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

OTHER UPDATES SINCE TWENTY-FIRST 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 Compliance Officer concerning *Shakman* compliance-related duties. Below are updates on other issues discussed in prior Reports or otherwise still outstanding.

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 had objected to the proposed amendments, but the County proceeded with the reassignment of the employee to the position under the amended description

without responding to the OIIG's request to meet to discuss the objections, and despite the fact that the amendments were not authorized. As a result, the OIIG found that the County did not abide by the Plan's requirements regarding amending exempt list position descriptions. In addition, the OIIG found that the revised exempt position description failed to meet the legal standard for exempt positions.

On September 20th, 2017, the County issued a response to the OIIG 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 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 Administrative Assistant IV 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 lay-off by being put in the position. BHR then terminated that employee for reasons unrelated to the OIIG's report.

The CA noted in her Twenty-First Report that the County still needed (1) to ensure that *Shakman* exempt positions are not insulated from layoffs to the detriment of employees in non-exempt positions and (2) to demonstrate that it has adopted procedures 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. Since the Twenty-First Report, the County has drafted a memorandum to would-be decisions makers during layoffs that would address the first issue by stressing that when supervisors make recommendations for layoffs, *Shakman* exempt positions must

be analyzed under the same principles as those applied to *Shakman* covered positions and requiring that certain records be kept and transmitted to allow for review and verification that the positions were not treated differently. The OIG has approved the draft and Plaintiffs' Counsel is currently reviewing the same; the CA is confident that an approved draft can be finalized shortly. As for procedures to prevent implementation of changes to exempt position descriptions without complying with the Plan, a second instance was uncovered in the audit discussed below, and the CA will await the County's explanation of how that second instance occurred before expressing any further opinions on the subject.

OIG Summary Report 17-0455

Stemming from its findings in 16-0313, the OIG reviewed 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 description and as the position is presently performed by the incumbent employees. On January 11, 2018, the OIG issued Summary Report IIG17-0455 recommending that 19 exempt positions be removed from the exempt list because either the position descriptions did not meet the standard in *Branti* or because the duties performed by the incumbent employees did not justify political affiliation as a requirement for job performance. See Twenty-First Report at 5-8. The OIG also recommended that: 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; BHR examine one

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.

exempt position (Building Code Administrator) to determine whether the minimum qualifications on the position description were adequate; the County determine why the duties and reporting requirements of one identified exempt position (Business Manager III) were amended outside of the process in the Cook County Employment Plan; and the County amend the Plan to include a process allowing the OIIG to unilaterally “decertify” positions designated as exempt when the position description or the incumbent employee’s performance does not satisfy the *Branti* standard.

The morning the CA filed her Twenty-First Report, the County issued a response to the OIIG’s Report. Between that response and subsequent developments, the County committed to the following actions concerning the 19 exempt positions the OIIG recommended for removal from the exempt list: (1) removing three exempt positions from the exempt list; (2) analyzing and proposing changes (where necessary) to eight exempt position descriptions to ensure they satisfy exempt status requirements; (3) conducting desk audits of the remaining eight exempt positions to determine whether position description changes are needed and/or they should be removed from the exempt list; (4) reviewing the minimum qualification of the exempt position identified by the OIIG that needed consideration and (5) amending the Employment Plan to include a process by which the OIIG could initiate changes to the Exempt List when an investigation or audit reveals cause to do so. The County did not respond directly to the OIIG’s recommendation that the County determine how and why the Business Manager III position description was amended outside the process in the Plan.

Over the six weeks since the County’s response to the OIIG’s Report, the County has made significant headway toward the above commitments for corrective action but more

work remains. The County has made progress on the second, third and fifth issues above. In the past two months, the County has: proposed changes to five of the eight exempt position descriptions identified as not requiring an audit and is in the process of responding to OIIG feedback on the same; conducted audits of seven of the eight positions identified for audit (BHR's analysis and determinations of any changes to those position descriptions are ongoing); and reached agreement with Plaintiffs' Counsel, the OIIG and CA on a Plan amendment that allows the OIIG to initiate changes to the exempt list if it determines that an exempt position description does not meet proper exempt "designation or if the person in the position is not consistently performing the duties of the Exempt Position in a meaningful manner as provided in the Exempt Position description." The CA expects the County will soon file an amended Plan with the above process amendment.

The County has not yet amended its exempt list to remove the three positions it agreed to remove and has not provided follow up on the OIIG's concerns regarding the minimum qualifications of the Building Code Administrator position. The County must also respond to the OIIG's recommendation that the County determine how and why the Business Manager III position description was amended outside the process in the Plan.

The CA is pleased with the progress made by the County on addressing issues raised by the OIIG's audit and encourages the County to complete its audits, issue revised position descriptions for all remaining exempt positions noted in the audit, and ensure all outstanding issues raised in the audit receive direct responses within the next month.

OIIG Summary Report 17-0176

On March 7, 2018, the OIIG issued a report concerning allegations that a *Shakman* covered employee met with a County Official at the Official's political office in order to gain

the Official's support for the employee's efforts to obtain a job reclassification and back-pay she had been pursuing unsuccessfully with her supervisor and department head for months.⁴ The OIG stated that the Monday after the Official met with the employee, the Official hand-delivered to the Chief of BHR a packet of information the employee had provided the Official concerning the reclassification request. While the Official and BHR Chief told the OIG that the Official did not instruct the BHR Chief to do anything with the packet, the OIG concluded that "when a public office holder having no official role in an employment action seeks to facilitate an employment action by hand-delivering documentation of this nature which identifies a specific person and outcome, 'influence occurs.'" IIG17-0176 at 7. The OIG acknowledged that the Official's motivations were not political and were instead aimed at providing a "constituent service"; however, when the Official hand-delivered the documentation from the employee to the Chief of BHR, the OIG concluded the Official violated Section 44-56 of the Cook County Code which prohibits "a public office holder having no personal knowledge of the employee [from] directly or indirectly influenc[ing] an employment action involving a non-exempt employee." Id. at 7.

The OIG made three recommendations: (1) the County fully implement a recent County proposal to the Compliance Officer that, in part, would require the Office of the President to forward to the Compliance Officer any employment action-related complaints or requests for *Shakman* covered positions made to the Office of the President; (2) the County communicate to the Compliance Officer that any such employment action requests

⁴ On February 15, 2018, the Compliance Officer issued an Incident Report (17-008) finding that the employee violated the County's reclassification policy by pursuing the meeting with the County Official and faxing documents directly to the BHR Chief in an effort to assist her reclassification efforts. The Compliance Officer did not explore the impact of the Official's role in the meeting or any elements of UPD as the County's Plan (and the OIG Enabling Ordinance) assigns the OIG with the authority to investigate such allegations.

or complaints be referred to the OIG as well; and (3) the County support an amendment to Section III.H of the Plan (Contact of Politically-Related Person by County Employees) “to require that all contacts and related information be immediately forwarded to the OIG.” *Id.* at 8. As the report was filed yesterday, the County has not issued a formal response; however, the President’s Office has indicated support for all three recommendations.

CONCLUSION

While there was little progress in resolving the outstanding CCHHS Grade 24 issues, the County dove into efforts to address the issues raised by the OIG concerning the 19 exempt positions and with substantial and sustained effort, made significant progress in addressing the concerns. It appears feasible that all outstanding issues could be addressed with one more status.

Respectfully Submitted,

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Administrator

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