

**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-THIRD 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-Third 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 March 9, 2018, the CA submitted her Twenty-Second 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. *See* Dkt. 5781. The CA submits this report as a further update on progress made by those offices on outstanding items in the past seven weeks.

PROGRESS ON OUTSTANDING ITEMS SINCE TWENTY-SECOND 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 has no concerns regarding the same. Otherwise, there was one outstanding matter identified in the CA's Twenty-Second Report concerning CCHHS' need to resolve issues identified in EPO Incident Report 15-035 that related to 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 response to those findings, 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. In her Twenty-Second Report, the CA noted that the parties were still negotiating the details of those two policies. The CA may now report that the parties have reached an agreement on the policies; CCHHS need only post the same on its website. These policies provide transparency on how the salaries for new Grade 24 Positions' are set and how salaries for existing Grade 24 Positions may be adjusted.

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. The CA can now report that after CCHHS provided information requested by Plaintiffs, this issue has also been resolved.

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-SECOND REPORT

In addition to working with the County, Public Defender, CCHHS and the OIG on the above issues, the CA has continued to monitor the County's, Public Defender's, OIG and CCHHS's compliance with their respective Plans and Supplemental Policies as well as the performances 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.

OIIG Post-SRO Complaint Summary Report 16-0313

On June 29th, 2017, the OIIG 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 OIIG. The OIIG 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 amendments not being 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-Second 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-Second Report, Plaintiffs approved the County's draft memorandum to would-be decision makers during layoffs that stresses 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 requires that certain records be kept and transmitted to allow for review and verification that the positions were not treated differently. This memo will be circulated to relevant personnel if, and when, the County next contemplates a reduction in force. As for procedures to prevent implementation of changes to exempt position descriptions without complying with the Plan, a second instance was uncovered by the OIIG in the audit discussed below which resulted in a change to the Plan designed to address such issues (also discussed below).

OIIG Summary Report 17-0455

Stemming from its findings in 16-0313, the OIIG 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 OIIG issued Summary Report IIG17-0455 recommending that 19 *Shakman* 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 OIIG 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 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.

In response to the OIIG’s Report, 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

³ As the OIIG 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 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.

In the Twenty-Second Report, the CA noted that in response to the OIIG's report, the County had: proposed changes to five of the eight exempt position descriptions identified as not requiring an audit and was 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 were 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."

Since the Twenty-Second Report, the County amended its exempt list to delete the three exempt positions it committed to deleting and addressed the issues raised by the OIIG concerning the minimum qualifications of the Building Code Administrator position. *See* Dkt. 5797 (entered by the Court on March 27, 2018). The County also amended the Employment Plan to allow for the OIIG to initiate changes to the exempt list in certain

situations. *See* Dkt. 5820 (entered by the Court on April 24, 2018). The County completed the remaining desk audits for positions identified in the OIIG report but has not yet provided the CA and OIIG with the findings and any related proposed job description edits (BHR has informed that such reports will come later this week). Finally, while the County did not directly explain why the Business Manager III position description was amended outside the process in the Plan, the CA believes that between the vigilance of the Compliance Officer and OIIG as well as the new process in the Plan that allows the OIIG to initiate exempt list changes when it believes positions are no longer properly exempt, this issue is sufficiently resolved and that the County will follow closely the processes in the Plan for exempt position description changes in the future.

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 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. The OIIG stated that the following week, 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 OIIG that the Official did not instruct the BHR Chief to do anything with the packet, the OIIG 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 OIIG 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 OIIG 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 or complaints be referred to the OIIG 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 OIIG.” *Id.* at 8.

On March 9, 2018, the County issued a response to the OIIG’s report in which it stated that the County Official who was the subject of the OIIG’s findings did not provide the non-exempt employee’s complaint to the Chief of BHR with the intent to effect an employment action; rather, the County Official was merely forwarding the complaint to the applicable department head for review and response. Further, the County stated that under Section III.G of the Plan (“Contact by County Employees Who Are Politically-Related Persons”), the County Official’s forwarding of the complaint to BHR was under the Official’s purview as it was “in line with the [County Official’s] general management duties.” The CA disagrees with this interpretation of the Plan. The employee sought assistance in pressuring her supervisor to reclassify her position, To the extent the County Official in question had general management responsibilities for County government, the Official did not undertake to exercise management authority consistent with the provisions of the

Employment Plan, and instead, having been approached in the Official's political capacity, brought the issue directly to the Chief of BHR, essentially going over the supervisor's head. As the OIIG observed, it is critical that Officials recognize that regardless of their subjective intent, when they weigh in on an issue outside defined procedures, employees will reasonably perceive that political pressure is being exerted. The Official's actions in this matter ran afoul of the types of contacts permitted in Section III.G of the Plan.

The CA is encouraged that the County accepted all three of the OIIG's recommendations⁴ and notes that the OIIG has already been notified by the President's Office of several contacts received concerning employment actions of non-exempt positions. While the processes put in place should prevent similar situations from arising (as such contacts must flow through the Compliance Officer and OIIG), the CA encourages the County to reconsider its conclusion that a senior level County employee who is a politically-related person has the authority to engage with BHR on employee complaints on account of their "general management duties."

CONCLUSION

The CA believes that CCHHS has addressed its outstanding compliance-related matters; the only remaining issue facing the County concerns updates to Shakman exempt position descriptions in connection with the OIIG's Summary Report 17-0176. Drafts are expected to circulate prior to the status scheduled for April 27, 2018. The CA is hopeful that review and resolution of any issues can be accomplished within a few weeks. It appears one more status will be necessary to confirm that all matters have been resolved.

⁴ The amendment to Section III.H as proposed by the OIIG and accepted by the County was included in the amended Employment Plan approved by the Court on April 24, 2018. *See* Dkt. 5820.

Respectfully Submitted,

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