

**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-FOURTH 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-Fourth 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 April 25, 2018, the CA submitted her Twenty-Third 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. 5821. 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 POLICY AND PROCESS ITEMS
SINCE TWENTY-THIRD REPORT**

COUNTY

The County has adopted and implemented all required policies and processes. The CA has continued to monitor passively the County's compliance with its discipline policy 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

CCHHS has adopted and implemented all required policies and processes. The CA has continued monitoring CCHHS' disciplinary processes and has no concerns regarding the same.

OIIG

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

OTHER UPDATES SINCE TWENTY-THIRD REPORT

Below are updates on 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 (Dkt. 5109) at 8-9.

As of the CA’s last report, the County had adopted certain remedial measures, including removal of the position from the exempt list; adoption of policies to be transmitted to supervisors when layoffs are being contemplated, requiring that supervisors analyze *Shakman* exempt positions 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; and adoption of an amendment to the Employment Plan that gives the OIIG authority to initiate changes to the exempt list upon a determination that the position description does not meet proper criteria or that the person in the position is not consistently performing duties that qualify the position as exempt. The County had terminated the exempt employee for reasons

unrelated to the OIIG report, and it reported at the last status that it had settled the claim filed by the non-exempt employee who was laid off.

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 (Dkt. 5723) at 5-8. The OIIG also recommended, *inter alia*, 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 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, with respect to the 19 exempt positions the OIIG recommended for removal from the exempt list, the County has: (1) removed four exempt positions from the exempt list; (2) proposed changes to seven exempt position descriptions

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.

aimed at ensuring the descriptions satisfied exempt status requirements (these changes were later approved by the OIIG and Plaintiffs' Counsel); (3) conducted desk audits of eight exempt positions to determine whether position description changes are needed and/or they should be removed from the exempt list; (4) based on the desk audit findings and feedback from the OIIG and Plaintiffs' Counsel, updated four exempt position descriptions (approved by the OIIG and Plaintiffs' Counsel) and agreed to remove an additional two positions from the exempt list; and (5) as noted above, amended the Employment Plan to include a process by which the OIIG may 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." *See* Dkt. 5820 (entered by the Court on April 24, 2018). What remains is resolution concerning two of the 19 exempt positions recommended for removal in the OIIG's Summary Report 17-0455.

Since the Twenty-Third Report, the parties and OIIG have met to discuss these two positions and last week the County provided additional documentation concerning the duties of these two positions. The OIIG and Plaintiffs' Counsel are reviewing this documentation and the CA expects a response in the coming week or two.

CONCLUSION

Resolution of the appropriate designation of the two challenged exempt positions is the only outstanding matter. The parties have worked hard, promptly, and with good will to resolve the issues raised by the OIIG audit, having come to agreement on 17 of the 19 challenged positions. Discussions will proceed, and if agreement is not reached,

procedures for resolving disagreements over exempt positions exist both under the SRO and, post-termination of the SRO, under the Employment Plan. The CA recommends that at the status scheduled for June 1, 2018, the parties discuss with the Court options for resolving the disagreements concerning the two challenged exempt positions and the positions of the parties on the status of substantial compliance.

Respectfully Submitted,

Mary Robinson
Cook County *Shakman* Compliance
Administrator

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