

**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.)	

**COMPLIANCE ADMINISTRATOR’S OPINION
ON SUBSTANTIAL COMPLIANCE**

Mary Robinson, *Shakman* Compliance Administrator for Cook County (“CA”), by and through her attorney, Matthew Pryor, submits this Opinion on the County’s compliance with the terms of the Supplemental Relief Order entered on November 30, 2006 (the “SRO”).

After almost twelve years of intense oversight by the CA’s office and profound transformation on the part of the County, we are pleased to report that, in our opinion, the County has achieved “Substantial Compliance” as defined by the SRO. During the time since the SRO was entered, the County has adopted rigorous practices controlling employment decisions for all Offices Under the President (hereinafter referred as “the County”), and for three units which have been defined since entry of the SRO as independent of the President (the Office of the Cook County Public Defender, the Cook County Health and Hospitals System (“CCHHS”), and the Office of the Independent Inspector General (“OIIG”)). Just as importantly, the County, the Public Defender, CCHHS and the OIIG have all demonstrated sustained reliable adherence to the adopted practices. The OIIG, the Compliance Officer for the County, and the Employment Plan Officer for CCHHS have been given the necessary

authority and resources, and have demonstrated both the independence and the capability to provide effective ongoing oversight and enforcement of the adopted practices.

As a result, we can today jointly recommend to the Court that external oversight of the County's hiring and employment practices be ended.

1. The Inception

At the time the SRO was entered, the County had recently adopted an employment plan, but early monitoring revealed that practices were erratic, largely undocumented, and easily and frequently manipulated to favor politically-sponsored candidates and employees. Employment opportunities were posted only at County facilities. Only paper applications were accepted, and they had to be hand-delivered personally (not through an agent) to the HR Office on the eighth floor of the County Building. The applications were date and time stamped, and the practice was to give interviews to the first seven candidates to deliver their applications who were found minimally qualified for the position. Favored candidates were often given advance notice of the posting and were therefore assured passage through the first major hurdle of the process. Applications and supporting documents for unfavored candidates were frequently misplaced. Screening for eligibility was regularly manipulated. Plainly unqualified candidates were passed through; minimum qualifications were changed mid-stream; credentials were not verified so that candidates who lied about their qualifications got jobs; test scores were altered; and postings were pulled and then reinstated to allow favored candidates to develop required experience.

Once monitoring was in place, the manipulations had to evolve, but they continued. Preset interview questions intended to standardize procedures (and the scripted preferred answers) were leaked to favored candidates. A computer-generated randomization of

qualified candidates to determine who would get interviews was entrusted to a single *Shakman* exempt HR employee and had no audit trail, resulting in an uncanny favoritism toward relatives and friends of elected officials. The Highways Department asked to be able to forego driving tests because the March weather made them difficult, and then, when hiring sequences were halted before driving tests were administered because of a series of irregularities, hiring packets for six candidates were found to already include justifications for their selection, including attestations that each had a good driving record despite the fact that four of the six had not provided a driving abstract.

As part of the SRO, the County and the Plaintiffs agreed upon a list of 500 exempt positions, and the County agreed to make no unilateral changes to the list. Nevertheless, dozens upon dozens of changes were made, and efforts to get information necessary to trace the changes were rebuffed. Experience showed that many of the 500 positions had no policy-making or confidentiality attributes that would qualify them for exempt status.

Employees regularly complained of being unable to know which of their fellow employees were exempt and the County resisted efforts to publicly identify who occupied exempt positions. Nonexempt employees were required, without compensation, to work outside their job descriptions and to do the work of exempt employees in higher positions who were either not qualified to do the work or disinterested in doing it. Particularly after the 2010 primary election, when the former Cook County Board President saw that he would not continue in office, there was a flurry of activity terminating nonpolitical workers so that exempt employees could be moved into those vacated nonexempt positions and be protected from political firing by the President's successor.

The CA also found patterns of nonpolitical employees unfairly selected when layoffs were ordered, passed over for promotions, and getting less favorable reviews, harsher discipline and less desirable work assignments as compared to their politically-connected (but also purportedly nonexempt) colleagues.

Personnel files were incomplete and scattered about different offices and departments, or completely missing. Job descriptions were outdated if they existed at all, and frequently did not match actual duties of the workers who held the jobs.

The Bureau of Human Resources (“BHR”) was run by a director and two deputies. Even after a new, independent director was hired, the deputies maintained iron-fisted control of hiring procedures and took direction from the President, not the new director, who was denied authority to hire into vacant supervisory positions.

2. Structural Changes Affecting Organization of County Government during SRO.

At the time the SRO was entered, there was a single BHR that was responsible for hiring and other employment actions in all departments under the authority of the President, which then included CCHHS. Subsequently, the County Board determined to create an independent board to oversee CCHHS, a move made permanent effective June 1, 2010. The independent board took control of all CCHHS employment actions, and CCHHS created its own Department of Human Resources (“DHR”).

The OIIG was formalized after the entry of the SRO, and that office was appropriately given authority independent of any elected official, requiring that the OIIG have its own employment policies and its own responsibility and authority for enforcement of those policies.

An Appellate Court decision in 2009 affirmed that under the State Public Defender Act, the County Board President does not have authority over hiring and other employment decisions for the Public Defender's staff. As a result, the Public Defender also needed its own policies and enforcement authority.

Another unit of County Government, the Juvenile Temporary Detention Center ("JTDC"), was under the jurisdiction of the County Board President at the time the SRO was entered by the Court. Subsequently, jurisdiction over the JTDC was transferred by statute to the Office of the Chief Judge of the Circuit Court of Cook County. By agreement of the County and Plaintiffs, the JTDC is not included in the Motion for Substantial Compliance and Dismissal of the County of Cook. The JTDC was subject to a different Federal Court decree, with its own court-appointed monitor. Consequently, the CA has not exercised oversight over the JTDC and has not rendered any opinion as to the status of the JTDC.

3. Claims

The SRO provided for adjudication by the CA of claims by class members asserting violations of the 1994 Consent Decree alleged to have occurred after August 28, 2004, and prior to entry of the SRO (November 30, 2006). Of 209 claims filed, 108 were found to be compensable. Violations included claimants being denied jobs which were given instead to politically-connected applicants, nonexempt employees being required to work outside their job descriptions without compensation (often performing duties assigned to exempt employees who were not qualified or interested in performing their jobs), politically-motivated denials of overtime, transfers and promotions, layoffs administered to protect politically-connected employees, and retaliation for challenging an employment action as politically-motivated. After appeals, a total of \$3,000,000 was paid out to claimants.

4. Remedial Measures

The process of reforming employment practices to curtail unlawful political discrimination required multi-faceted measures. Clear written procedures, structured to minimize the opportunities for manipulation, were an important first step. Equally important was commitment by leadership to implement those procedures and to impose consequences for violations. Finally, empowerment of agents responsible for oversight and enforcement was critical. To those ends, the County did the following:

- Adopted employment plans for the County (which also covered the Public Defender), CCHHS, and the OIIG. The first plan adopted was for the County, filed March 19, 2012. The OIIG plan was filed May 8, 2013, and the CCHHS plan was filed October 23, 2014. Largely uncontroversial amendments have since been made to the County and CCHHS Plans. The commitments of the chief executive and the HR directors of each unit were the factors most essential to moving each plan to a final form.
- Purchased and implemented software to allow for online employment applications, computer facilitated screening for minimum qualifications, retention of all hiring data, and recording of all actions taken in hiring sequences for all nonexempt positions. Effective use of the software required review of and revisions to most job descriptions. The County also agreed to maintain data concerning exempt positions through the software, enhancing both the transparency and the accuracy of records concerning those positions and the individuals who hold them.

- Adopted supplemental policies governing overtime, discipline, interim assignments, layoffs and recalls, reclassifications, training and transfers for each unit, as well as forms structured to ensure compliance with each policy.
- Created the OIIG and agreed to a process designed to maximize independence for selection of the first Inspector General. Importantly, in the years following its creation, the OIIG has been funded and appropriately empowered to conduct its work with the necessary independence.
- Created a Political Contact Log and required all employees to report contacts from any elected official concerning an employment action (whether appropriate or not) to the OIIG.
- Created positions for a County Compliance Officer (“CO”) and Employment Plan Officers (“EPO”) for CCHHS and the OIIG responsible for monitoring employment actions and ensuring compliance with the employment plans. The CO reports directly to the President, the EPOs report directly to the CEO of CCHHS and Inspector General, respectively. Each has protections that limit exposure to termination. The officers have responsibilities for training and for monitoring compliance with policies.
- Required that each and every County employee responsible for any step in any employment action involving a nonexempt position execute a certification acknowledging understanding that political reasons or factors may not enter into any decision or action involving the employment action at issue and averring that no political reasons or factors had been considered.

- Adopted County Ordinances and Executive Orders prohibiting unlawful political discrimination, including retaliation against any employee who complained of political discrimination.
- Amended a County Ordinance purporting to allow elected officials to recommend candidates for employment by requiring that the official have personal knowledge of the candidate's qualifications for the position and that any recommendation be reduced to writing and submitted to HR.
- Provided annual training for all staff on the principles prohibiting political considerations in nonexempt employment actions and on the basics of the employment plans and supplemental policies. Records were kept to verify that every employee attended training, and consequences were imposed upon the very few who did not.
- Redesigned training for department employees involved in hiring processes, both for purposes of implementing *Shakman* related requirements and for purposes of implementing best practices under HR principles and other employment laws.

5. Exempt List

As experience under the SRO progressed, it became apparent that there were myriad irregularities in the list of positions deemed to be exempt because they involved policy-making duties and/or significant access to confidential information. In 2008, the CA and the County undertook an analysis aimed at identifying what positions had impermissibly been included without following procedures dictated by the Consent Decree or the SRO, and those positions were deleted from the list, while agreements were reached as to how to treat employees holding deleted positions so that the incoming Administration would not be

saddled with political appointees in nonexempt positions. Significant additional modifications to the list were made to accommodate reorganization of County departments by the new administration.

In addition, many positions were removed from the exempt list after the CCHHS independent board determined that as a medical facility, it had no need to retain exempt positions where hiring could be influenced by political factors. A new classification of management positions designated as Direct Appointments was created to allow the CEO to appoint top management without going through the hiring process for less senior positions, though with the explicit requirement that political factors could not be considered in the appointments. The Public Defender also agreed to proceed without exempt positions and to use the Direct Appointment process for senior management.

The exempt list was honed considerably by those steps, but it continued to include positions that did not belong either because the duties of the position as defined did not qualify for exempt status or because the incumbent was not performing the job as described and the incumbent's actual duties did not qualify for exempt status. Recently, the OIIG performed an audit of select positions to identify those that did not qualify for either reason. The audit led to recommendations to consider removing several positions. After careful study, including several desk audits, and much negotiation, the parties reached agreement on all of the recommendations.

As a result, the present list of 299 exempt positions is considerably leaner and more closely aligned with principle. Of necessity, the list itself will change over time as department needs and structures shift, and there will always be the potential that individuals will fail to perform the essential functions of a position that cause it to qualify as exempt. The

Employment Plan has appropriate procedures for making amendments at the instigation of the President (a procedure that has been used effectively on multiple occasions over the last several years), and the Employment Plan was recently amended to authorize the OIIG to audit exempt positions and how they are being performed and recommend changes.

6. Reliability of Remedial Measures into the Future

Substantial compliance requires more than policies and structures. It requires a change in culture, and one that is sufficiently ingrained to allow the Court to conclude that it will continue into the future. The most important tool for measuring the reliability of change has been the CA's ability to monitor County employment actions. Over the course of the SRO, the CA's office monitored thousands of discreet activities that make up hiring sequences: posting of openings, screening of eligibility, selection of what candidates get interviewed, the interviews themselves, the composition of interview panels, the interview questions, the panels' deliberations, the eventual decision to hire, and documentation of each step in the process.

Early monitoring exposed weaknesses in policies, as well as tactics used to evade the adopted policies. As time went on and leadership committed to change, monitoring identified deficits in training, unforeseen weaknesses in policies and practices, and a few bad apples still committed to the old ways. For the most part, it became clear that employees and supervisors understood that they were expected to comply, they understood that it was safe to, and expected that they comply, and they understood that there would be consequences for failure to comply. Both HR and department employees have become proficient in the practices required under the employment plans. Even neutrally-motivated errors have become much less frequent.

That said, it is clear that, going forward, monitoring, investigation of alleged violations, and responsibility for securing remedial action when violations occur are critical to ensuring that unlawful political discrimination will be contained. Substantial compliance requires not only the creation of offices responsible for those functions, but also a sustained showing of independence and proficiency by each. The offices created for those purposes include the Office of the Independent Inspector General, the Cook County Compliance Officer, and the CCHHS Employment Plan Officer. The CA was actively involved in crafting the structure of the CO and EPO offices and in the selection of the OIIG, the CO and the EPO, and worked closely with the appointed officers as they developed practices and hired and trained staff. As each became positioned to perform the duties of the respective office, the CA handed off investigative and monitoring responsibilities that had been conducted under the SRO by the CA staff. Over the course of the years in which each operated, the CA collaborated with each in conducting investigations and, on a regular basis, consulted with each about the appropriate resolution of specific concerns. The CA monitored the work of each office, receiving notice of and reviewing all formal reports of investigations and findings issued by all three offices, as well as the day to day monitoring of employment actions for which the CO and EPO are responsible.

As the County's first Independent Inspector General, Patrick Blanchard has built an office staffed with capable and diligent investigators and has established credibility with Cook County actors. Employees and job candidates with concerns know where to find the OIIG, and they appear to trust that their complaints will be thoughtfully pursued and that they do not risk their jobs by airing concerns. In the early years of the SRO, the CA investigated complaints of unlawful political discrimination and not infrequently initiated

inquiries into particularly troublesome departments. For the last five or so years, the CA has deferred to the OIIG's assumption of responsibility for such investigations, and has found the OIIG investigations to be thorough, practical and well-reported. The reports clearly state recommendations for remedial measures, and the OIIG regularly follows through on securing the County's responses to recommendations and verification that remedial measures promised are carried out.

For day-to-day enforcement of the employment plans and supplemental employment policies and investigations of departures that are not alleged to involve unlawful political discrimination, reliance is placed in the hands of the County's CO, Letitia Dominici, and CCHHS Employment Plan Officer, Carrie Pramuk-Volk, and their respective staffs. Both are responsible for regular monitoring of employment activity as well as investigation of complaints of violations. An early decision was made to embed those offices in the County and CCHHS, rather than making them divisions of the OIIG, and experience has confirmed the wisdom of that decision.

Both the CO and EPO have maintained the independence necessary to be trusted watchdogs. In their oversight of employment actions, they have been effective in identifying issues while those issues can be addressed without waiting for a bad result. At the same time, because of their regular interactions, they have proved to be valuable resources to the HR staff and to department supervisors looking for guidance in understanding and implementing policies. The County CO was invaluable in assuring continuity of compliance through several transitions in leadership in BHR.

As is true with the OIIG, the CO and EPO have made their presence known to those with concerns to be reported, and they are trusted to investigate capably and to ensure

protection against retaliation. By mid-2016, the CA had transitioned to the County CO regular monitoring responsibilities for all County departments. Full responsibility for interview monitoring for CCHHS was transitioned to the EPO and her staff in December 2017; all other monitoring was transitioned in May 2018. The CA has full confidence in the ability of these officers to identify and address violations of the Employment Plans and supplemental policies adopted to prevent unlawful political discrimination.

The County deserves considerable credit for having provided not only sufficient independence, but also adequate funding to allow these watchdog offices to perform their roles. Just as importantly, the individuals chosen to fill each role deserve considerable credit for constructing respected and effective operations.

CONCLUSION

As we have been reminded throughout this endeavor, “Substantial Compliance” does not require perfection. It is impossible to eliminate all opportunity for violations of policies and practices adopted to curtail unlawful political discrimination. Nevertheless, as required under the SRO, the County, CCHHS, OIIG and the Public Defender have adopted detailed and robust policies and enforcement mechanisms; acted in good faith to remedy instances of non-compliance; eradicated previous policies and practices of making employment decisions based on political factors; not engaged in material noncompliance with adopted Plans and policies; and implemented procedures intended to effect long-term prevention of unlawful political discrimination. As a result, it is our opinion that continued court oversight and active monitoring by the CA is no longer necessary.

Respectfully submitted this 31st day of August, 2018.

/s/ Mary Robinson
Compliance Administrator

/s/ Matthew Pryor
Counsel to the Compliance Administrator