

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MICHAEL L. SHAKMAN and	)	
PAUL M. LURIE, <i>et al.</i> ,	)	Case No. 69 C 2145
Plaintiffs,	)	
	)	Wayne R. Andersen
v.	)	United States District Court Judge
	)	
DEMOCRATIC ORGANIZATION OF	)	Sidney I. Schenkier
COOK COUNTY, <i>et al.</i> ,	)	United States Magistrate Judge
Defendants.	)	

**JULY 16, 2009 REPORT OF THE MONITOR REGARDING STATUS OF CITY'S  
SUBSTANTIAL COMPLIANCE**

On March 30, 2009, the Court ordered that the Executive Director of the Office of Compliance and the Commissioner of the Department of Human Resources submit by June 1, 2009 the first in a series of Progress Reports regarding the City of Chicago's status with respect to its goal of reaching Substantial Compliance. Thirty days thereafter, the Monitor was to file a Report providing her view of the City, the Office of Compliance and the Department of Human Resources' progress towards Substantial Compliance and any recommendations of areas requiring further action. This Report addresses those items and further comments on the recent activity by the City of Chicago and how those activities bear upon reaching Substantial Compliance. This Report also addresses the status of the City's progress in responding to recommendations made by the Monitor's Office in November of 2008.

**I. OFFICE OF COMPLIANCE'S ROLE IN SUBSTANTIAL COMPLIANCE  
WITH THE *ACCORD***

In order for the City to establish Substantial Compliance with the *Agreed Settlement Order and Accord* entered on May 31, 2007, (the "*Accord*," ) it must "implement procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment." The parties envision that the Office of Compliance ("OCX") will assume the Monitor's Office role and function in monitoring the City's employment practices after the *Accord* sunsets. Towards that end, the Monitor's Office has been transitioning some of its duties and responsibilities to OCX. The future effectiveness of OCX is grounded in four principles. First, OCX must have the authority and knowledge necessary to implement effective monitoring of the City's employment practices. Second, it must establish a record of

success in identifying potential hiring compliance problems, addressing compliance problems and adapting to emerging hiring compliance issues. Such a record will be essential to demonstrating to the Court and the Plaintiffs that the City has or has not reached Substantial Compliance. Third, OCX must be able to effectively monitor the City's employment practices but still maintain its independence from the Mayor's Office and/or Law Department. Finally, OCX's reports and recommendations must be both documented and transparent. Without a significant level of transparency in OCX's functions, the Court, the public, city employees, and applicants will not be able to assess the effectiveness of the office.

#### **A. Increase in Authority and Reliance Upon Office of Compliance**

In November of 2008, the Monitor's Office (and OCX) had serious reservations as to whether the City vested OCX with the authority mandated by the Hiring Plan that would allow it to successfully monitor the City's employment practices after the *Accord* sunsets. At that time, and dating back to January 2008 (the date of the creation of OCX), the Monitor's Office observed a significant resistance on the part of certain City departments to accept the independence and authority of OCX. Accordingly, at the request of the City, the Monitor's Office made a series of recommendations in a November 25, 2008 Memorandum that would assist the City's ability to achieve Substantial Compliance. *See* November 25, 2008 Memorandum from Monitor's Office to various City officials, attached as Ex. A. The November 25, 2008 Substantial Compliance Memorandum included the following recommendations:

- Achieve a fully functioning and integrated Office of Compliance with both the authority and independence envisioned (as explained in the City's various Court filings) during the negotiation of the Hiring Plan. *See* November 25, 2008 Memo, para. 3.
- Create system for ensuring [Office of Compliance's] independence from the Mayor's Office and Department of Law. *See* November 25, 2008 Memo, para. 5.A.
- Encourage all City departments to work cooperatively with the [Office of Compliance] and utilize expertise of that office. *See* November 25, 2008 Memo, para. 5.E

Similarly, in our March 2009 Report, we noted:

By merely allowing the Office of Compliance to perform the functions it was created to perform, the City will make substantial movement towards satisfying the requirements of the *Accord*. *Id* at 9.

As noted in the June 1, 2009 Office of Compliance Report filed with the Court, the City has made significant progress on recognizing the authority and expertise of the Office of Compliance. Specifically, OCX has assumed (among others) the duties of:

- 1) exercising primary authority for proposed Hiring Plan revisions and the negotiation of same with Monitor's Office and Plaintiffs;
- 2) meeting with individual departments regarding Hiring Plan compliance;
- 3) conducting reviews of potential Hiring Plan violations;
- 4) working with the Mayor's Office regarding compliance programs and to address deficiencies.

This increased authority is partly attributable to a favorable shift in the Mayor's Office's approach to the Office of Compliance. Notably, OCX's Executive Director has now established regular meetings with the Mayor's Chief of Staff and the Mayor's Office seeks compliance guidance and advice from OCX on a regular basis. OCX also often acts as an intermediary between the Monitor's Office and the Mayor's Office (and other departments), which facilitates positive communication. In addition, over time OCX has developed relationships with the various City departments that increase a department's likelihood to rely on OCX for compliance recommendations and advice. In sum, the increased duties and authority accorded to and exercised by OCX mean it is better equipped to assume the duties and role of the Monitor's Office.

While we applaud the City's progress on this front, the authority and role of OCX should be more explicitly documented and detailed. According to the Hiring Plan, OCX is charged with "overseeing the [Hiring] Plan's compliance and governance system." Moreover, in the Ordinance creating the office, the Executive Director is vested with a variety of powers and duties. In order to best ensure this authority going forward, we have recommended that the City:

Draft Memorandum of Understanding detailing OC's authority to "oversee[] the New Plan's compliance and governance system." *See* November 25, 2008 Substantial Compliance Memo, para. 5.D.

Although both the Hiring Plan and the Ordinance vest the Office of Compliance with a variety of powers, those powers are, in some instances, undefined. In order to clarify OCX's responsibilities and powers, those items should be better detailed. Moreover, such clarification is needed to ensure that OCX's duties do not conflict with the duties and role of the Inspector General's Office.

## **B. Establishing a Record of Success in Monitoring City's Employment Practices**

Over the past eighteen months, the Office of Compliance has continued to increase its level of sophistication regarding employment practices in the City of Chicago. As we have repeatedly noted, traditional notions of "best practices" in employment do not necessarily apply to public employment, especially where there is a history of abuse, as there is here. As we have previously stated:

In assessing any compliance group's ability to be successful in ensuring compliance with the New Plan, one must recognize that compliance with hiring rules is often at odds with the hiring department's desire to make its own hiring selections. Robust compliance will inevitably frustrate an individual or department's goal to "get things done." Ensuring real compliance will require the ability to withstand pressure from departments and individuals who may view particular rules or requirements as obstacles to their work.

*See* Monitor's Report and Recommendations Regarding City of Chicago's Proposed New Plan, filed September 27, 2007. As demonstrated in the Office of Compliance's June 1, 2009 Report, OCX also recognizes that true compliance in this context requires a heightened level of scrutiny of employment practices that may conflict with "best practices" and/or hiring efficiencies. This recognition is crucial to OCX's success in ongoing monitoring.

Although OCX has been assuming some Monitor duties over the past 18 months, there has been a marked increase in the transitioning of duties due to: 1) OCX's increase in authority; and 2) OCX's increase in ability to identify and address potential compliance problems. In particular, OCX has assumed the following tasks:

- 1) Training for elected officials on *Shakman* procedures and potential violations;
- 2) Providing Code of Conduct training for all City employees regarding a variety of compliance measures (ongoing);
- 3) Providing remedial training for individuals identified as involved in irregular employment practices;
- 4) Facilitating negotiation of the Fire and Police hiring plans;
- 5) Recommending revisions for entire Hiring Plan;
- 6) Meeting with departments with specialized hiring needs;
- 7) Responding to requests for specialized hiring processes (e.g., Youth Programs, Volunteer Programs);
- 8) Receiving complaints regarding hiring/employment improprieties;
- 9) Recommending corrective action for violations;
- 10) Auditing and enforcing the City's Acting Up Policy; and

#### 11) Auditing and monitoring student intern hire process.

Thus, a number of functions previously performed by the Monitor's Office have been fully transitioned to OCX. The Monitor's Office continues to review OCX's performance of these functions to help establish a record of effectiveness.

In addition, there are a number of duties currently performed by both OCX and the Monitor's Office. For example, both offices have a full time monitoring presence in the Department of Human Resources for reviewing referral lists, hire packets and other job actions. This allows for real time collaboration between the offices and also provides a resource for DHR employees to ask questions or seek advice on a particular hiring sequence or policy. Moreover, senior members of the Monitor's Office and OCX meet weekly to discuss compliance issues, share information regarding complaints and/or concerns, provide updates on ongoing investigations, and discuss recommendations for violations. Through this process, both offices are able to help create a record of OCX's effectiveness for purposes of the City's effort to reach Substantial Compliance. More importantly, it is an opportunity for each office to identify potential roadblocks in OCX's enforcement efforts post-*Accord* and address (or try to address) those roadblocks now.

#### **C. OCX's Need to Maintain Independence from Mayor's Office**

When the City initially proposed the creation of the Office of Compliance, the Monitor objected to placing the Hiring Process Compliance Manager ("HPCM") in that office, in part because of concerns that the Office of Compliance could be both effective and independent. In the Monitor's Report and Recommendations Regarding City of Chicago's Proposed New Plan, filed September 27, 2007, we noted:

Independence from the Mayor's Office, the Department of Law and the other operating departments is fundamental to the success of the [Office of Compliance]. The ability to provide a full and accurate assessment of all detected problems, even when pressured to minimize or downplay such problems, is indispensable for an effective compliance system under the New Plan. Readiness and willingness to provide a full and accurate description of any problems detected is essential if compliance is to be achieved. *Id.* at 8.

On the one hand, OCX requires the cooperation of the Mayor's Office to *maximize* its effectiveness. On the other hand, it requires independence from the Mayor's Office to be fully capable of addressing compliance issues without constraints.

Thus far, OCX has been mostly successful in managing this potential conflict. For example, in its June 1, 2009 Report, OCX identified deficiencies in the leadership of the Department of Human Resources and the Department of Streets and Sanitation. Moreover, in its

June 20, 2009 Report, OCX found that the items raised in the Monitor's March 2009 Report were in fact violations of the Hiring Plan. Finally, as discussed more fully below, OCX conducted an audit of the City's use of contractors and 501(c)(3) affiliates and identified 290 current *Shakman* violations. Notwithstanding this record, the Monitor's Office has concerns about OCX's ability to remain independent *and* effective in the future because much of OCX's increased authority and cooperation from City departments is a direct consequence of the Mayor's Office support. If OCX were to lose that support, it would certainly impact its effectiveness. Although there is no (apparent) resolution to this potential conflict, it is worth noting and requires further discussion. To be clear, this observation is not intended to criticize OCX or the Mayor's Office, but merely to raise the potential for future conflicts.

#### **D. Transparency of OCX's Reports and Recommendations**

The Hiring Plan requires that the Hiring Process Compliance Manager receive complaints regarding the hiring process; receive and review escalated matters; review and audit key processes in the Hiring Plan; monitor and report on complaints received; and monitor specific points in the hiring process. Hiring Plan XIII C., D., E., and G. Additionally, she is required to report to the DHR Commissioner and Corporation Counsel regarding the outcome of the quarterly audits and on the outcome of all escalated matters. Hiring Plan XIII I. Finally, she is empowered to make recommendations for corrective action and, if there is non-compliance with any hiring rules, policies, or procedures, to notify and make recommendations for appropriate action to the DHR Commissioner, Corporation Counsel and the Inspector General, where appropriate. Hiring Plan XIII J.

These duties and powers were included in the Hiring Plan to ensure that instances of non-compliance, and reports regarding the same, will be well documented, transparent and create a record for future members of OCX. Another benefit of these requirements is to build the credibility of the office so as to be able to effectively exercise OCX's authority. The documentation of findings is crucial because the types of non-compliance are often recurring, as are the individuals involved. Absent a written record, it would be difficult to identify repeat offenders and/or recurring violations or issues. Obviously, documentation is also necessary for purposes of creating a record for future employees in OCX.

To date, OCX has conducted a number of reviews of potential violations and escalated matters and reported on those outcomes. On limited occasions, we have found that OCX's reports have not been distributed and/or finalized after its review of a potential violation. On those occasions, after bringing the matters to the attention of OCX, the issue has been corrected. We urge OCX to continue to document all of its reviews of potential violations, especially when the review results in a recommendation for corrective action.

## **E. Other Office of Compliance Initiatives**

### **1. Anti-patronage policy**

In the Monitor's November 25, 2008 Substantial Compliance Memo, this office recommended that the City develop an anti-patronage policy. Recently, the Mayor's Chief of Staff directed the Office of Compliance to develop an anti-patronage policy prohibiting patronage considerations in employment actions. The Office of Compliance has circulated the proposed policy to the Monitor, the Department of Law, the Mayor's Office, and the Plaintiffs for comments. The policy has not yet been implemented, but the Mayor's Office and the Office of Compliance's action in responding to the Monitor's recommendation is a positive sign.

### **2. Remedial Training**

In addition, as reported in the Office of Compliance's June 1, 2009 Report, OCX has developed a policy for non-disciplinary corrective action for *Shakman* violations going forward. The Office of Compliance has developed a three-step Corrective Action Plan for remediation that begins with training and ends with disbarment from the hiring process. The Office of Compliance has already started implementing this policy, conducting two trainings in June for individuals who have violated the Hiring Plan.

### **3. Hiring Plan Gaps**

The Office of Compliance has also made progress in recent months in filling gaps in the current Hiring Plan. The following items are the in process of development: Chicago Police Department Hire Plan, Chicago Fire Department Hire Plan, Professional Hire Plan, Senior Manager Hire Plan, and Student Hire Plan. The Office of Compliance has also worked on the following policies that will become part of the Hiring Plan: Detailing (preventing employees from being sent to work in another department to circumvent the Hiring Plan), Transfers (ensuring that inter-department and intra-department transfers comply with the Hiring Plan), Reclassifications (preventing reclassifications from being used to circumvent procedures regarding promotions), and Job Assignments (ensuring that job assignments are made on a non-political basis).

Despite this progress, there are issues that still need to be addressed in the Hiring Plan. For example, the Monitor has started examining the use of settlement agreements and side agreements with Unions that serve to override rules in the Hiring Plan. Several months ago, the City provided a draft agreement to the Monitor that would give Asphalt Helpers and Cement Mixers in the Department of Transportation bidding rights to Construction Laborer positions in the Department of Water (after primary bid lists had been exhausted in filling these positions). The City maintained that it was giving preference to Asphalt Helpers and Cement Mixers because individuals in other positions City-wide would be unable to perform the duties of a

Construction Laborer, despite the fact that this is a “willing and able” position. This assessment was not made by Department of Human Resources analysts experienced in classifying titles, but by union representatives and managers in Water and CDOT. The agreement would have served to change the minimum qualifications for the Construction Laborer position, which simply requires a willingness and ability to work. In addition, it ignored the familiarity of Laborers in other classifications, such as Sanitation Laborers in Streets & Sanitation and Laborers in Aviation, with Construction Laborer work. It also provided a benefit to employees who have historically received preferential treatment.<sup>1</sup> The Monitor’s Office has raised a series of objections to this side agreement and has encouraged the Department of Human Resources and Office of Compliance to police these proposed agreements more closely in the future, as they are opportunities for avoiding the requirements of the Hiring Plan and manipulating the hire process in favor of certain groups.

On the whole, the level of cooperation between the Monitor’s Office and the Office of Compliance is (and has been) excellent. The Office of Compliance’s commitment to fair, non-political employment practices within the City of Chicago is strong. Both the Monitor’s Office and the Office of Compliance recognize that reaching Substantial Compliance requires continued communication and cooperation.

## **II. DEPARTMENT OF HUMAN RESOURCES’ ROLE IN SUBSTANTIAL COMPLIANCE WITH THE *ACCORD***

The hiring procedures detailed in the Hiring Plan were designed to inject transparency and fairness into the City’s hiring system. To achieve that end, the Plan contemplates a “robust DHR which shall oversee employment actions and shall monitor compliance with hiring processes and procedures.” The Plan’s mandate requires that DHR’s leadership and employees have a comprehensive understanding of the (often complicated) rules and procedures pertaining to City hiring. The employees at DHR must then serve as “gatekeepers” to the City’s hiring system and have the expertise to identify and block attempts to deviate from or manipulate the rules pertaining to City employment. On August 7, 2008, the Monitor issued a Report (the “August 2008 Report”) that detailed numerous instances in which DHR failed to implement, and in some cases violated key provisions of the Hiring Plan. These failures were significant because they demonstrated that some DHR managers lacked a basic understanding of the rules they are charged with protecting.

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<sup>1</sup> For example, Asphalt Helpers have often been allowed to work as Field Vehicle Investigators and Motor Truck Drivers in the winter months to allow them to work year-round, unlike other employees who are left without work for several months of the year.

Over the past year, many of DHR's employees have exhibited an increased understanding of and compliance with the Hiring Plan. In addition, many DHR employees have sought to work collaboratively with the Monitor's Office, which serves to avert potential violations. This increased role in ensuring compliance with the Hiring Plan was demonstrated in recent months when numerous DHR employees independently and successfully performed their "gatekeeping" responsibilities and either identified and reported potential *Shakman* violations to the Monitor and the Office of Compliance or assisted those offices in investigating potential violations.

In addition, as detailed in DHR's June 1, 2009 Report (the "DHR Report"), DHR has begun working on many of the recommendations contained in the Monitor's November 2008 Memorandum and in the August 2008 Report. For instance, after the August 2008 Report highlighted the City's failure to conduct a job analysis as required by the Plan, DHR organized a city-wide job analysis that, thus far, has been quite successful.

While these achievements are significant, there are still serious problems in DHR that must be addressed by DHR's leadership before the City can reach Substantial Compliance. For instance, although an increased number of DHR employees are reporting violations, many of these individuals expressed concern about potential retaliation for cooperating with the Monitor's Office or the Office of Compliance. On more than one occasion, DHR employees reported that they felt that DHR leadership discouraged employees from working collaboratively with the Monitor's Office and the Office of Compliance. The Monitor's Office is committed to working with DHR's new Commissioner and DHR's employees to create a culture that encourages *and requires* employees to know the rules and report potential violations.

## **A. Examples of New DHR Initiatives**

### **1. The Job Analysis**

As detailed in the August 2008 Report, the Hiring Plan requires the City to facilitate an independent job analysis of all current job titles to ensure that the City's job descriptions contain accurate job duties, appropriate minimum qualifications and screening/hiring criteria. The purpose of the job analysis is to prevent hiring departments from changing a position's qualification requirements to fit a pre-selected candidate. A job analysis limits potential manipulations because all changes in minimum qualifications, screening criteria, hiring criteria, duties, tests, or other qualifications can be analyzed against the pre-existing data from the analysis. This data will provide DHR with the information it needs to meaningfully question any requests to change job descriptions and duties.

After lengthy negotiation and numerous stops and starts, the City agreed to conduct the job analysis and retained Valtera Corporation to assist. Initially, DHR Leadership and the Monitor's Office disagreed about the universe of titles to be included in the analysis, the level of

the Monitor's involvement, the methodology used to compile the information and the time-line associated with the project. Eventually, DHR leadership delegated responsibility for the project to a team of DHR employees, led by DHR's Testing Manager and including DHR's classification analysts. This shift in responsibility eventually led to a largely productive working arrangement between Valtera, DHR, the Monitor's Office and the Office of Compliance.

A total of 850 titles were involved in the analysis. DHR and Valtera gathered information from randomly selected individuals in each title regarding the individuals' day-to-day duties and the level of expertise required to perform those duties. The survey was created largely based on input from the City's classification analysts.

After the surveys were submitted, Valtera conducted an analysis of the information and revised the existing job specifications as necessary. DHR's classification analysts reviewed the revised specifications and DHR has agreed not to finalize the specifications until the Monitor's Office and Office of Compliance review and approve the documents. During this process (which is not yet complete) DHR has had to overcome significant challenges to ensure that the analysis is comprehensive, representative and accurate. DHR has worked collaboratively with the Office of Compliance and the Monitor's Office to resolve these challenges.

## **2. Automatic Escalation Procedures**

In the August 2008 Report, the Monitor identified two instances in which two different departments changed a position's minimum qualifications which, in turn, permitted an otherwise unqualified candidate to apply. In both cases, DHR allowed the change. Moreover, although changes to minimum qualifications were supposed to be tracked by the City's computerized application system, the system failed to track the changes and was, in fact, unable to track these revisions at all. These failures highlighted the need for an escalation procedure designed to automatically notify the HPCM when job descriptions, minimum qualifications and screening/hiring criteria are modified.

As detailed in the DHR Report, DHR recently developed an automated system which generates a notification whenever changes are made to a title's minimum qualifications or when new screening criteria are added to the title's pre-existing library of criteria. This system is a vast improvement over the previous method—which failed to track any changes to minimum qualifications or screening criteria. While this system has been useful in many respects, its effectiveness could be improved by including a component that identifies the *individual* who actually made the changes and by tracking changes from one budget year to the next.

## **B. Identification of Candidates Previously Fired for Cause**

In early January of 2009, the Monitor's Office learned that several Pool Motor Truck Drivers were rehired for the winter season, despite the fact that they had been previously terminated from the City "for cause." Upon further review, the Monitor learned that DHR took over the terminated for cause ("TFC") investigation function from the Office of Compliance at the end of 2007 and that few, if any, TFC investigations had been completed for rehired employees. DHR subsequently conducted investigations for all employees rehired from 2008 to present, and the City terminated five rehired Pool MTDs based on the results.

In response, DHR developed training for its staff on the TFC investigation process. Recruiters and Analysts are now required to complete TFC investigations once hire packets are submitted and former employees can be positively identified with a social security number match to a TFC employee report. If a match is found, the Recruiter must request termination paperwork from the department to determine whether the employee should be eligible for reemployment. The Commissioner of DHR then approves or denies the Recruiter's recommendation, and the former employee is informed of his status by letter.

This precise issue had been previously raised in the Monitor's 2006 Annual Report and was purportedly addressed by the City through instituting a no re-hire policy for individuals terminated for cause. Although it appears that the City followed this policy from the end of 2006 through 2007, it ceased to do so beginning in 2008. DHR is now following the policy, however, the consistent application of this policy going forward still depends on the individual Recruiter searching for all selected candidates on the TFC report. To ensure future adherence to this policy, we recommend that it be incorporated into the City's automated hiring system. In addition, we recommend that DHR and OCX develop guidelines for reemployment eligibility.

## **C. Other Notable Improvements at DHR**

The City's Department of Human Resources is comprised of over 100 individuals, the vast majority of whom seek to cooperate with the Monitor's Office and whom provide invaluable information. For example, Information Services' employees have readily and fully responded to the Monitor's requests for information. Likewise, the Testing group has been strengthened, as testing continues to improve. The Classification Analysts have provided valuable knowledge and experience throughout the job analysis project. Finally, many of the Recruiters and Analysts (most of who were hired after the Monitor's appointment) are showing an increased willingness to work collaboratively with the Monitor's Office.

## **D. Ongoing Concerns with DHR Culture**

### **1. Characterization of Violations as “Errors” and/or “Mistakes”**

Over the past year, and most recently in the DHR Report, DHR management has repeatedly characterized situations in which DHR deviated from the hiring processes required by the Hiring Plan as “errors” or “mistakes.” This characterization has been used to minimize intentional or negligent failures to follow the hiring plan. To deem such instances “mistakes,” is not only inaccurate; it trivializes instances where DHR deviated from the standard hiring process in a manner that undermined the Hiring Plan’s basic principles.

One of the “mistakes” recently referenced in the DHR Report involved its own internal student hiring processes. In February 2009 DHR posted an opening for a student intern in the Commissioner’s Office. Thereafter, a Managing Deputy Commissioner and Deputy Commissioner in DHR screened, interviewed and selected a candidate. It was later discovered that the candidate did not meet the qualifications stated on the posting and the Deputy Commissioner improperly moved the candidate into “eligible” status.

The changing of a candidate’s status by the Deputy Commissioner was highly unusual as usually only the Recruiter and her supervisor can change a candidate’s selection status. Some of the candidates who were marked eligible by the Deputy Commissioner, including the selected candidate, had not yet attached all required documentation to their application. When the paperwork was eventually provided by the selected candidate, it showed that he did not meet the qualifications as stated on the posting. The Monitor’s Office became aware of the issue when the candidate’s hire packet was submitted to the Monitor’s Office for final approval. Although many DHR employees were aware of the situation, no one reported it to the HPCM or the Monitor’s Office. One individual reported the incident to his supervisor (a Deputy Commissioner), but the Deputy failed to escalate the issue.

The Deputy Commissioner’s actions were not a “mistake.” Her actions represented an intentional violation of the hiring plan and resulted in discipline. Similarly, the failure of numerous DHR employees to report the Deputy Commissioner’s actions was not a mistake. It was, at best, the result of poor training.

### **2. Under-reporting and/or Minimizing Violations of the Hiring Plan**

As previously reported, there have been a number of occasions wherein DHR has sought to minimize Hiring Plan violations and state, without appropriate support, that the violations were “non-political” in nature.

For example, the June 2009 DHR Report includes the statement that “[f]rom January through April 2009, DHR processed 918 hire packets; 42 hire packets contained errors.” The Report goes on to state that of those errors, only 1.5% were related to Hiring Plan requirements.<sup>2</sup>

DHR’s error rate does not take into account *numerous* problems identified by the Monitor and Office of Compliance, many of which are directly related to Hiring Plan requirements. For instance, while reviewing the hire packets for the Department of Water, Foreman of Sewer Bricklayers hire sequence in April, the Monitor’s staff discovered that some candidates' seniority dates (which are used to make selections) did not match the seniority dates on the referral list. As a result, one candidate, who would not have otherwise been selected, was offered one of the positions.<sup>3</sup> This is but one example of a number of problems identified, but not accounted for, in the DHR Report error rate.

A related concern is DHR management’s tendency to overstate the City’s compliance with the Hiring Plan. For example, on July 11, 2008, within days of joining the City as Commissioner of the Department of Human Resources, the then-DHR Commissioner sent the Monitor a letter containing a series of misstatements about DHR’s compliance with the Hiring Plan. For example, the letter included the following representation:

- All hiring sequences commenced as of July 1<sup>st</sup> [2008] will be compliant with the entire general hiring process, student hiring, senior manager hiring process, private secretary process and volunteer worker processes as outlined in the accord. *See* 7/11/08 DHR Commissioner Letter at 7, attached as Ex. B.

As evidenced by the Monitor’s August 7, 2008 Report, this statement was inaccurate. Rather, the report detailed numerous instances in which DHR was not following fundamental requirements under the Hiring Plan (e.g., failure to verify minimum qualifications for the senior manager process; failure to conduct an independent job analysis; failure to post existing job titles, qualifications and descriptions; failure to independently review changes to job descriptions; failure to adhere to uniform testing practices; and failure to provide notice to the Monitor of interviews and tests).

Similarly, the June 1, 2009 DHR Report asserts that “[w]hile certain issues with hiring have been raised in the past, notably, none have been sustained to hold that political influence occurred.” Although this statement may be technically accurate in the most narrowly read sense

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<sup>2</sup> Even assuming the Report intended to state that 1.5% of overall errors in processing hire packets related to Hiring Plan violations, such a statement is similarly inaccurate.

<sup>3</sup> Although the Monitor’s Office would not characterize this issue as an “error,” the DHR Report characterizes a wide spectrum of hiring problems as “errors” and assumingly this situation would qualify under that umbrella.

(applying only to findings by the IG and excluding findings of pre-selection that do not specifically determine the intent behind the pre-selection) it is nonetheless misleading in light of the numerous violations that have occurred over the past year; the ongoing investigations by the Monitor's and Inspector General's offices; and problems identified with the City's layoffs.

### **3. Potential Problems with 2008 Layoffs**

In March of 2009, the Monitor discovered that, at various times during the 2008 layoffs, DHR ran reports that identified individuals to be laid off that included the **ward** in which each individual lived. These reports differed from the "official" City reports provided to the Monitor's Office, which did not contain the ward information. The Monitor questioned the former Commissioner of DHR about the inclusion of the information. He initially explained that the ward information was included in preparation for DHR's budget meeting in October of 2008 in anticipation of questions from Aldermen. When asked to explain why the reports were still being run in March of 2009, he stated that a DHR Deputy made that decision. According to the Commissioner, that Deputy was operating under the misunderstanding that DHR had to publicly post layoff information, including the ward of each laid-off employee. Notably, at that time this information was not posted and no one at DHR had ever expressed any intent to post the information.

At the Monitor's request, DHR agreed to post the information about laid-off employees that includes department, position, and ward. That information was posted on the City's website on July 15, 2009. Although there has been no finding that the ward information influenced any lay off decision, the fact that it was included in these reports remains a concern and the Monitor's Office is continuing to investigate this matter.

The problems described above are largely the result of actions by limited members of DHR's leadership. They are not meant to be a reflection upon the majority of Human Resources employees who diligently perform their duties. In fact, the problems described above are tempered by the actions of numerous DHR employees who have demonstrated an increased commitment to comply with the requirements in the Hiring Plan. The Monitor hopes that incoming members of DHR's leadership will work to repair the relationship between the Monitor's Office and DHR and will work on changing the internal culture of DHR to one that encourages transparency, accuracy and collaboration.

### III. SIGNIFICANT VIOLATIONS REQUIRING IMMEDIATE INVESTIGATION AND REMEDIATION

#### A. Continued Use of Contractors and 501(c)(3) Entities to Bypass *Shakman* Provisions

In the Office of Compliance's June 20, 2009 Report, OCX identified that there are currently 290 contractors or 501(c)(3) employees who were hired in violation of the *Shakman* rules. Specifically, OCX found that 290 employees were working as City employees (as "common law" employees), but had been hired outside the *Shakman* provisions. These current violations exist despite the fact that the same *types* of violations had been the subject of active litigation between the City and Plaintiffs beginning in 1994 and ending with an explicit Court injunction barring these types of hires in 2005. In addition, the Monitor has reported on this same *type* of violation to the City (on at least three occasions) and in two separate Court filed Reports.

By way of background, in 1992, the City was alleged to have circumvented the *Shakman* Decree provisions by hiring individuals through a variety of hiring devices, such as personal service contracts, employment agencies and independent contractor agreements. *Shakman v. Dem. Org. of Cook County, et al.*, 2001 U.S. Dist. LEXIS 15459 (N.D. Ill. September 27, 2001) (the "Pennick" matter). In 2001, this Court granted summary judgment to the Plaintiffs with regard to the status of many City workers, finding that 2000-plus workers hired through alternative devices were City employees and that the City violated the *Shakman* Decree by hiring these individuals without regard for *Shakman* rules. In 2005, the Court entered a permanent injunction barring the City from employing common law employees pursuant to personal service contracts, personnel agencies, or similar mechanisms or organizations if those individuals were hired outside of the *Shakman* Decree. May 13, 2005 Order, attached as Ex. C. After this Order and the Monitor's appointment, the Monitor's Office reported to the City on at least three separate occasions that contractors/501(c)(3) entities were used to circumvent the Hiring Plan.

Despite the years' long litigation, several Court filings by the Monitor, and memos from both the Mayor's Office and the Corporation Counsel to individual departments, the City continues to violate this Court's May 2005 Order. Not until after the Monitor's March 5, 2009 Report was filed, did the City (through OCX) conduct an audit of individual departments to determine compliance with this Order. As noted above, OCX identified **290** who that were hired in violation of the *Shakman* hiring rules. We have no way of knowing the motivation of the people involved in these hiring sequences and we do not currently know the identities of the individuals hired. We do know, however, that violations of the Hiring Plan, especially wide-spread violations, are the conduit through which political motivations are inserted into the hiring process.

## **B. City Clerk Student Interns**

In the last month the Monitor's Office conducted an audit of packets for 27 Student Interns recalled to the City Clerk's office in May and June of 2009. The audit revealed a number of problems with these packets. First, a number of the recalled student interns are not students. Four of the interns listed May 2009 graduation dates on their resumes, and another five interns likely graduated in May 2009 based on transcript information. None of the packets contained proof of continued study. Second, *Shakman* certifications, attesting that no political considerations impacted these hires, were not signed by the head of the department, as required. Finally, several of the recalled interns were relatives of City Clerk employees or other current or former City employees. Specifically, the audit revealed that at least three recalled interns are children of current City Clerk employees (one of whom is involved with hiring for the department), and six others are relatives of current or former employees from other City departments. Two of the connected interns are no longer students; three others also appear to have graduated.

Finally, one of the connected interns had actually been the subject of a 2006 hiring violation in the Fire Department previously reported by the Monitor's Office to the City. After the report, an investigation by the City's outside counsel confirmed that the Fire Department had improperly placed the intern's name on a referral list and sought to hire her despite her failure to meet the minimum qualifications, in violation of the City's then-hiring plan and the Court's orders. Moreover, email communications produced during the investigation revealed that a number of senior level Fire Department officials were involved in the selection and in attempts to hire the intern (who was the daughter of an Administrative Assistant II in the Fire Department). As a result of the City's investigation, the hire was stopped. The next summer, however, the same intern was hired by the City Clerk's Office and she was recalled this summer.

## **C. Disproportionate Overtime Distribution**

Another example of recent potential violations involves allegations of political discrimination in the distribution of overtime in the Department of Streets and Sanitation. In February 2009, the City was informed that the Monitor's Office had received allegations of politically based distribution of overtime for Motor Truck Drivers in Streets and Sanitation, and that an initial review had revealed that three allegedly connected individuals consistently received disproportionate amounts of overtime. Two of these individuals are purportedly connected to the 11<sup>th</sup> Ward Organization and one is purportedly connected to the 5<sup>th</sup> Ward Organization. In 2008, these three individuals received approximately \$27,500, \$22,500 and \$24,400 respectively. These amounts were significantly higher than amounts received (if any)

by the vast majority of Motor Truck Drivers.<sup>4</sup> To date, no one at the City has provided an explanation for these disparities.

All of these issues should be further investigated. The Office of Compliance is working on recommendations to eliminate the current contractor and 501(c)(3) violations, however, further review of the individuals involved in these hires and the individuals hired is needed. Likewise, the circumstances surrounding the Clerk's Office recalls and the distribution of overtime in Streets & Sanitation also require further review.

#### **D. CITY'S AGREEMENT TO DISCIPLINE FOR PRIOR VIOLATIONS**

For several years, the Monitor has been asking the City to take action with regard to disciplining past violators of the *Shakman* Decree. There was extensive testimony at the *Sorich* and *Sanchez* trials detailing past violations of the *Shakman* Decree and naming the involved parties. In addition, the Monitor's office has submitted information to the City gleaned from complaints, *Shakman* Claim Forms, and the Monitor's own investigations. To date, the City has failed to take any global (and in most cases any individual) action against violators. As noted in previous reports, discipline for past violations of the *Shakman* Decree is necessary if the City wants to send the message that patronage practices will no longer be tolerated.

Recently, the Monitor recommended that representatives from the Monitor's Office, the Office of Compliance, and the Inspector General's office work together to review information gathered by all three offices regarding *Shakman* Decree violations (including the trial transcripts) and make recommendations for disciplinary action. Although these offices are still working on the details for putting a process in place, including the level of involvement each office will have and the universe of information/documents to be reviewed, the City's agreement to create a "discipline panel" is a positive development. The crucial test on this front, however, will be the City's response to the disciplinary recommendations that come out of this proposal. The Monitor will report on the City's response to those recommendations in the future.<sup>5</sup>

The City's recent response to a discipline recommendation from the Inspector General, however, raises concerns about future responses to any discipline recommendations made as a

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<sup>4</sup> In fact, the Motor Truck Drivers in Streets and Sanitation who received any overtime earned, on average, approximately \$4,200 for the year.

<sup>5</sup> On July 15, 2009, it was reported by the Chicago Sun-Times that the City and members of Local 1001 have agreed to "amnesty" for all prior violations for employees in Streets and Sanitation. After inquiring with the Executive Director of the Office of Compliance, the Monitor's Office has been assured that any so-called "amnesty," if it were to happen, will not bar discipline for Hiring Plan or *Shakman* violations in the past. In addition, the City has agreed to allow the Monitor's Office to review the specific language on this matter before it is formally agreed to, if any agreement is indeed reached.

result of this panel. On June 26, 2009, the Office of the Inspector General issued a Report sustaining violations previously raised by the Monitor. The Report further found that the DHR Commissioner supplied false information to the Inspector General's Office during the course of its investigation and recommended his removal. The Inspector General's Report also included recommendations for discipline for two senior DHR officials and one Law Department official.

In response to the Inspector General's Report, on June 29, 2009, the DHR Commissioner sent a letter to the Inspector General's Office and filed that letter with the Court. June 2009 Letter, attached as Ex. D. The letter was also distributed to the press. In that letter, the DHR Commissioner made a number of statements, including that the Inspector General's "conclusions are reckless" and that portions of the Report were "absurd on [their] face." *Id.* at 2. The letter concludes with the following:

I find it unfortunate that you have allowed your zeal to cloud your judgment and ignore the facts. Your assertion that I was not truthful is patently false. The conclusions contained in your Report are in error and violate the basic notions of logic and common sense. *Id.*

The DHR Commissioner's letter was on the City's Department of Human Resources letterhead and was formally filed with the Court.

The Mayor's Chief of Staff received a draft of the June 29<sup>th</sup> letter prior to its distribution and its filing with the Court. In addition, the Mayor's Chief of Staff and Press Secretary were present for at least one press interview given by the DHR Commissioner in response to the Report. Although the Mayor's Chief of Staff has told the Monitor that the views contained in the DHR Commissioner's letter do not reflect the Mayor's position, this series of events raises a concern about the way in which the City will respond to future recommendations for discipline.

## **E. ADDITIONAL RECOMMENDATIONS**

### **A. Office of Compliance Reports Made Public**

Public reporting for the reviews and audits of hiring data that the Office of Compliance is required to conduct pursuant to the *Accord* would be a key component of creating a system that ensures continued compliance with the *Accord*, and would increase transparency and public confidence in the City's hiring practices.

### **B. Department of Human Resources Senior Management *Shakman*-covered**

Department of Human Resources' management positions should be *Shakman*-covered to ensure DHR's independence from political pressures. Allowing political appointments in DHR negatively impacts the public's confidence in the City's commitment to patronage-free hiring

and jeopardizes the independence of DHR employees who may hesitate to report violations committed by elected officials affiliated with members of DHR leadership.

## F. CONCLUSION

Despite the fact that much progress has been made by the City in complying with this Court's Orders, obstacles to Substantial Compliance still exist. These obstacles result in both increased costs to the City's taxpayers and in the increased potential for hiring manipulations.

When the Monitor's Office is given inaccurate or misleading information, the time spent having to verify, disprove and/or scrutinize information provided by certain City officials necessarily creates more work and thus, higher costs. Moreover, when the City fails to correct repeated and wide-spread violations (*see* the contractor issue discussed above), a significant amount of time is spent investigating, reporting on and seeking solutions to individual violations, rather than addressing the issue globally.<sup>6</sup> Finally, when certain City departments continue to hire individuals in violation of the City's rules (*see* discussion of City Clerk Student Interns above), the need to continue active monitoring of City hires increases, as does the cost.

The practical effect of these continuing violations is also significant. Although the City often describes violations reported by the Monitor's Office as "errors" or "mistakes" for which there is "no evidence of political influence," that refrain misses the bigger picture. Absent a full-scale federal investigation, admissions that hiring actions were motivated by political factors have rarely occurred outside criminal trials. Strict adherence to the Hiring Plan rules is the means by which the City can *limit and prevent*, not detect, political influence.

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<sup>6</sup> The contractor/501(c)(3) entity issue is just one example of the City's failure to correct past violations resulting in additional work by the Monitor and additional costs to the City and taxpayers. For example, see "Terminated for Cause" discussion, *infra*; March 23, 2006 Status Report (City's failure to require Court ordered Shakman certifications requires Monitor audit); Monitor's Motion for Expedited Hearing, May 4, 2006 (City's failure to purge laborer list pursuant to Court's order requires motion); December 18, 2007 Report of the Monitor at 19 (discussing City's failure to remedy reported violations); at 20 (failure to implement and enforce acting-up policy); at 21-23 (failure to accurately report violations).

Respectfully submitted this 16<sup>th</sup> day of July, 2009.

\_\_\_\_/s/ Noelle C. Brennan\_\_\_\_\_  
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