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

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

MARCH 8, 2010 REPORT OF THE MONITOR

The Monitor, Noelle C. Brennan ("Monitor"), by and through her counsel, Beth A. Davis and Sarah M. Brown of the law firm Noelle Brennan & Associates, Ltd., submits this Report of the Monitor pursuant to the Order of the Court entered on August 2, 2005 and pursuant to the *Agreed Settlement Order and Accord* (the "*Accord*") entered on May 31, 2007. To date, the Monitor's Reports have largely concentrated on the status of *Shakman* reform efforts (and obstacles to those efforts) in the City's executive branch and the status of the City's goal of reaching substantial compliance with this Court's Orders. Although this Report briefly details some significant improvements in certain City departments, most notably the Department of Human Resources ("DHR") this Report primarily concentrates on the City's legislative branch and its relationship to the City's goal of reaching substantial compliance with the *Accord*. In particular, this Report details specific measures that the City Council can take to remove obstacles to substantial compliance and accelerate the City's pace towards ending Court oversight of City hiring.

I. City Council is Subject to *Shakman* Prohibitions and *Accord*

The Monitor's office has focused primarily on the City's executive branch employment actions and reforms. This focus was appropriate in light of the fact that the executive branch employs the vast majority of city employees. In addition, most City Council employees are deemed *Shakman*-exempt positions. Thus, in most instances, Aldermen are free to consider political factors when making these hires. The City Council, however, is nonetheless subject to the legal prohibitions which limit political influence in employment actions and is also subject to the *Agreed Settlement Order and Accord*. Indeed, the *Accord* was unanimously approved by City Council on April 11, 2007.

Under the Accord, the Aldermen are prohibited from *influencing or attempting to influence* employment actions in *Shakman*-covered positions for political reasons. For example, it is unlawful for an Alderman to instruct the Department of Water to hire a laborer because that laborer was part of the Alderman's campaign staff. Although recommendations from Aldermen based on personal knowledge of an individual's job-related skills, work experience, or other job-related qualifications are permissible, recommendations based on political activities, associations and/or views, are clearly prohibited from being considered for *Shakman* covered positions. As demonstrated by the "clout-list," made public during the *Sorich* trial, for years certain Aldermen (and other elected officials) attempted to influence hiring and promotions in *Shakman*-covered positions. Since most of the recommendations made by elected officials on the clout list were for positions such as laborer—a willing and able position—it can be fairly inferred that most of these were not based on personal knowledge of an individual's "job related skill."

As detailed in past Reports, certain Aldermen continue to make job recommendations that do not appear to be based on relevant job-related factors, in violation of the *Accord*. For example, in one case, an Alderman recommended an employee for transfer based on the employee's purported "excellent work record" even though that employee had just received a disciplinary suspension. In another case, an Alderman simply instructed the Department of Streets and Sanitation to promote a recently hired Motor Truck Driver from "seasonal" to "permanent" (a highly coveted promotion) without any justification at all. In another instance, an Alderman requested the rehire of a recently laid off employee based on the employee's status as a "good employee," despite the fact that the employee had received two separate disciplinary suspensions within the prior six months.

In addition to limiting Aldermanic influence on hiring for *Shakman*-covered titles, the Accord also limits the *number* of Aldermanic employees that are *Shakman*-exempt. The Accord specifically lists the titles in City Council that are *Shakman*-exempt and caps the number of individuals that can be hired to fill the titles. This limitation is necessary to prohibit the large-scale movement of positions to the City Council payroll, which would result in the conversion of *Shakman*-covered positions into *Shakman*-exempt positions. Again, the Aldermen approved the terms of the *Accord*, including the explicit numerical limits on the number of *Shakman*-exempt employees that the Aldermen were permitted to hire. Therefore, exceeding those limits is a violation of the *Accord*.

II. Current *Shakman* Violations in City Council

In November 2009, the Monitor's office learned of a long-standing budgeted fund used by Aldermen to employ individuals outside of their regular staff payrolls. The individuals paid through the 1012 Fund (referencing internal City budget coding), do not appear on the City payroll and were not reported to the Monitor by the City or City Council prior to the release of a press report about the 1012 Fund. Although some City officials have expressed the view that

individuals paid through the 1012 Fund are contractors and therefore not subject to the *Accord,* the issuance of W-2 tax forms to these individuals strongly indicates that they are employees, not contractors. The City or City Council's failure to disclose the existence of the 1012 Fund employees throughout the four years since the Monitor's appointment is concerning, especially because the positions under the 1012 Fund budget line are not included on the Court approved list of City Council positions and are outside the numerical limits of exempt Alderman employees. Data reviewed for the years 2005 through 2009 reflect that 556 individuals were hired through this fund. Although many of these individuals were hired for brief periods of time, ***all*** of these hires appear to be subject to the *Shakman* prohibitions, and thus, constitute *Shakman* violations. Use of the 1012 Fund has allowed Aldermen to employ individuals without going through any channels of City or Monitor oversight. In addition, there appears to be no accountability as to what *type* of work is being performed. Use of this Fund creates yet another opportunity for significant hiring abuses. Some of the potential abuses identified include:

- Individuals receiving pay from ***both*** the City payroll and 1012 Fund concurrently. A review of 1012 Fund records from 2005 to 2009 revealed several 1012 Fund payees who are also City or City Council employees on the regular payroll, with periods of overlapping employment lasting from one to four months of part-time hours.

- At least two employees have been paid for ***two full time*** positions, one for a period of ten months and the other for three months. Each of these employees was paid a full time salary from the City Council payroll and for full time hours from the 1012 Fund.

- Employment of individuals under the 1012 Fund who are ***barred*** from City employment. Because 1012 Fund employees do not go through the DHR review process before employment, nothing prevents individuals who have been terminated from the City for cause and barred from reemployment from being subsequently rehired by Aldermen through the 1012 Fund. One such employee, who resigned in lieu of discharge in 2005 as a result of a sexual harassment investigation, was hired through the 1012 Fund in 2006 and ***continues*** to work for an Alderman.[1]

[1] The Alderman at issue continues to employ this individual despite his having been notified by the former Commissioner of DHR that the employee was ineligible for rehire within the City. The DHR Commissioner recommended, on February 24, 2009, that the Alderman "terminate [the employee] effective immediately."

After a preliminary review of individuals who are employed by City Council through the 1012 Fund, the Monitor's office identified relatives and former employees of public officials who received significant wages from the fund. For instance, from 2005 thru 2009:

- An Alderman's father earned $94,683.00 in wages that were paid from the 1012 Fund.
- A couple collectively earned $280,197.50 in wages from the 1012 Fund. One of the individuals is a former Legislative Aide who retired in 2007 and was reemployed and paid through the 1012 fund the same year. The other individual appears to be a former employee of City Council's Committee on Finance and earned $190,187.50 in wages from the 1012 fund from 2005 thru 2009.
- An individual who is the brother of a former congressman and father of a former manager in the City's Department of Transportation (who was terminated for cause) earned $111,967 in wages from the 1012 Fund.
- A relative of the 11th Ward Precinct Captain, who was implicated during the Sorich trial, earned $80,940.00 in wages from the 1012 fund.
- An individual who is a political consultant described as a "major player" in the Democratic Party earned $73,780 in wages from the 1012 Fund.
- Four relatives of the Ward Superintendent in the 38th Ward collectively earned $75,852 in wages from the 1012 Fund.
- Former Streets & Sanitation Commissioner Al Sanchez' mother earned $41,775.60 in wages from the 1012 Fund.

As it stands, the above payments total $691,194 in wages paid by taxpayer dollars. Additionally, at least eight relatives of City Council members earned wages, albeit in lesser individual amounts, from the Fund during this time period. The Monitor's office also identified numerous other individuals who were paid by the 1012 Fund and share the last name of prominent public officials; however, the family relationships could not be confirmed prior to the filing of this report.

As described below, these actual or potential hiring abuses must be eliminated. The use of a 1012 Fund allows for politically based hiring; creates the possibility of "double dipping" without any oversight; and allows for the possibility that political work is being conducted on City time. As discussed below, one way that the City is seeking to deal with this loophole is to expand the Inspector General's jurisdiction to cover the City Council.

III. Proposed Ordinance Expanding the Inspector General's Authority

On February 10, 2010, Mayor Daley introduced an amendment to the Inspector General's enabling ordinance to the City Council that would expand the powers of the Inspector General in two significant ways: 1) to expand the Inspector General's jurisdiction to include the City Council; and 2) to transfer from the Office of Compliance to the Inspector General the authority to monitor and report on employment actions. In addition, the amendment allows the Inspector General to report publicly on a variety of hiring violations and other misconduct. If passed, the proposed ordinance would close a significant loop hole and consolidate hiring compliance and investigative functions. The City Council is scheduled to vote on the ordinance on March 10, 2010.

In April of 2009, the Monitor recommended to the Mayor's then Deputy Chief of Staff certain legislative changes that would significantly increase the likelihood that the City reach substantial compliance with the *Accord*. The recommendations were as follows: 1) expand the Inspector General's jurisdiction to cover Aldermen; 2) allow for public reporting (with certain limitations) by the Inspector General; and 3) require that the Aldermen adhere to the City's "Do Not Rehire" list. The first two recommendations are addressed in the recent amendment offered by Mayor Daley. The third recommendation is discussed further below.

A. IGO Authority over the City Council Will Allow the IGO to Fully Investigate All Hiring Violations

Currently, the Inspector General has "no power or authority over any member of the city council, any employee or staff person of any member of city council or any employee or staff person of any city council committee." Title II, Chapter 2-56, Sec. 2-56-050. Therefore, during the course of an investigation into a hiring violation, the IGO cannot question or request documents from an Alderman or his staff. In order for the City to establish the *most* effective system of compliance with the *Shakman* principles and avoid the recurrence of the well-documented past violations, the Inspector General must have the authority to include the City Council in his investigations. As explained above, the City Council is bound by the *Accord* and presumably has the same interest as the executive branch in eliminating Court oversight of employment practices.

Many of the illegal hiring sequences testified to in the *Sorich* and *Sanchez* trials involved employees who received job benefits in exchange for campaigning on behalf of candidates for aldermanic office. Thus, although much of the illegal hiring occurred in the executive branch, some of the beneficiaries of the scheme were in the legislative branch. Failure to address the entire scheme, including the beneficiaries, results in a loop hole in hiring compliance. If the City and the City Council are serious about meaningful reform, this gap cannot continue. Therefore,

in order to create a system that will effect long-term prevention of the influence of patronage on the City's employment practices, the IGO's jurisdiction should include the City Council.

The following example illustrates the existing gap. In March of 2009, the Monitor reported that an Alderman requested that an employee in the City's Department of Public Health be moved to a more favorable job assignment. The Court referred the matter to the Inspector General for further investigation, and ordered the Inspector General to report his findings to the Court. The Inspector General was not permitted to investigate one of the central issues – namely, the Alderman's motive for seeking a location change for the employee in the first instance. Despite the public reporting of the matter, this same Alderman was recently found to attempt to influence the employment of another *Shakman*-covered employee in Cook County. Notably, this employee had done campaign work for the Alderman for years and had recently made a financial contribution. Neither the Inspector General for Cook County nor the City Inspector General is allowed to investigate these potential violations, creating a significant gap in compliance with the *Shakman* principles. Thus, although the Monitor's office respects the fact that the majority of Aldermen are abiding by the *Shakman* prohibitions and *Accord*, there nonetheless has to be a process for detecting and remedying potential future violations.

B. Creating a Separate City Council Inspector General or Limiting the Jurisdiction to Employment Actions Will Reduce Effectiveness

Recently, there has been public discussion about alternatives to the amendment introduced by Mayor Daley. First, the prospect of creating a new Inspector General's office within the City Council has been discussed. Second, the possibility of limiting the current Inspector General's jurisdiction over City Council to employment actions only has been discussed. Although both of these actions would be an improvement over the current situation, wherein there is no oversight by any independent entity, these alternatives would dilute the effectiveness of any Inspector General's office and hamper the ability to eliminate and correct future misconduct.

Although we appreciate the City Council's concerns regarding this amendment as it currently reads, creating a separate Inspector General for the City Council will not adequately resolve the existing problem. First, this could lead to dual investigations into the same misconduct wherein the City Inspector General investigates the *award* of the employment benefit in the executive branch and the City Council Inspector General investigates the *request* for the benefit in City Council. Neither office will have the benefit of full information and could arrive at contrary conclusions. Problems of overlapping jurisdiction, similar to those existing between the Office of Compliance and Inspector General, would necessarily arise. Moreover, this suggestion assumes a clear delineation between actions within the executive branch and the City Council. It also ignores the sometimes complex interplay between executive branch employees

and City Council members or employees. In fact, allegations of misconduct involving the executive branch often overlap into matters within the City Council.

For example, in investigating claims of retaliation and *Shakman* violations allegedly committed by an Assistant Commissioner in the Department of Streets and Sanitation, we also received information suggesting that this employee was closely connected to and a beneficiary of particular Aldermen and/or political organizations. One benefit allegedly received by the Assistant Commissioner was the retention her husband's law firm by City Council. The Monitor's office was able to confirm that the employee's husband's firm received a substantial amount of business from the City Council. In fact, the law firm was paid $2,883,238.00 from the beginning of 2004 through 2008 by the City Council's Finance Committee. The investigation further confirmed that the Streets and Sanitation employee was a coordinator in a political organization which sought to get jobs for campaign workers and was accused of involvement in other *Shakman* violations during the *Sorich* trial. Because of this office's limited jurisdiction, however, we were prevented from exploring whether there was any connection between: the *Shakman* allegation; the Aldermen and/or political organization's relationship with the employee or her husband; and the City Council's retention of the law firm. If the City Council were to create its own Inspector General, full investigation of future matters will be similarly inhibited. Requiring that these types of allegations be artificially separated and investigated would diminish the effectiveness of both offices.

Similarly, limiting the IGO's jurisdiction over City Council to misconduct related to employment matters only will reduce the overall effectiveness of the IGO. Many investigations into potential *Shakman* violations result in the discovery of other forms of misconduct, and these issues are not easily separated out. For example, a recent Inspector General investigation into illegal hiring by a Deputy Commissioner in the Department of Water led to the discovery that this same individual was involved in providing free and unauthorized sewer work to businesses, a church, and residences in violation of City rules. Again, this non-employment related misconduct was discovered during the investigation of *Shakman* violations. If the IGO's jurisdiction is limited to employment actions, it will be unable to address other misconduct discovered during the course of its investigations.

In order to effectively investigate and eradicate political influence in all City employment, the Inspector General must have the authority to efficiently and effectively root out and prevent misconduct, including within the City Council. Absent such authority, the potential that the wide-spread violations of the past will eventually reoccur is increased.

C. Transferring the Hiring Compliance Function to IGO will Enhance Detection of Systemic Hiring Problems and Individual Hiring Violations

During the negotiation of the City's current Hiring Plan, the Monitor's office advocated for placing oversight of monitoring and reporting on employment actions within the office of the Inspector General in order to ensure a robust and comprehensive compliance program. The City, on the other hand, wanted to create a new Office of Compliance to handle the monitoring and auditing functions delineated in the *Shakman* Accord. The Monitor's office argued that the monitoring and auditing functions carved out under the Hiring Plan were best housed in the City's investigative branch (the office of the Inspector General), a department with an established history of independence and a track record of detecting nonconformity with City regulations. Further, the Monitor's office argued that separating the monitoring and auditing functions from the investigative function would diminish the City's ability to effectively identify *Shakman* violations and would create problems due to overlapping areas of authority.

Those concerns proved valid. For the past two years the responsibility for monitoring and auditing employment actions at the City has rested within the Office of Compliance. As reflected in recent filings by the Monitor and the Inspector General, that arrangement has created substantial lapses in the management of the monitoring function crucial to the City's reaching and sustaining substantial compliance. The separation of interrelated functions has made comprehensive reform challenging, as it has left both offices without the broad access to information necessary to examine, assess and redress problems in a thorough manner.

Combining the monitoring, auditing and investigative function for all employment matters in one office will significantly improve the City's ability to globally address improper hiring and employment actions in the future.

VI. The City Council Should Adopt the "Do Not Rehire" List and Not Hire Individuals who were Terminated for Cause from the City

City Council is not currently prohibited from hiring individuals who are banned from City employment. The City's Department of Human Resources currently maintains a "do not rehire" list of individuals who were terminated for infractions that render them ineligible for future City employment.[2] Prior to extending an employment offer to a candidate for a City position, DHR consults the "do not rehire" list and determines if the circumstances surrounding

[2] In 2006, the Monitor's Office learned that the Department of Aviation hired several pool Motor Truck Drivers who were previously terminated for cause from City employment. After the Monitor's Office alerted the City to the problem the City agreed to consult the list before hiring candidates in the future. In January 2009, the Monitor's Office learned that several Pool Motor Truck Drivers were rehired for the winter season, despite having been terminated for cause. Upon further review, the Monitor's Office learned that the City stopped consulting the "do not rehire" list in 2008. The Monitor alerted the City to the issue and the City agreed to resume using the list.

the individual's termination warrant permanent disqualification from future City employment. The City recently asked the Monitor to comment on a proposed policy that outlines when the City may rehire an individual who was previously terminated "for cause" from City employment. The City's willingness to institute a formal policy that will guide DHR in making these determinations is a positive step towards preventing individuals who are terminated for serious wrongdoing from future City employment. Thus far, the City has accepted the Monitor's recommendations regarding the universe of conduct that will result in an individual's permanent disqualification from City employment. That conduct includes violations of the Hiring Plan, violations of the City's EEO policies, fraud, bribery, etc. Although the City has incorporated a number of the Monitor's recommendations into the current draft of the policy, additional measures would increase the policy's effectiveness.

First, as currently written, City Council is not bound by the policy or even required to consult the City's "do not rehire" list prior to extending offers of employment. As a result, the policy does not prevent City Council from hiring individuals who are barred from City employment. Past instances when City Council hired individuals who were on the City's "do not rehire" list illustrate the need for the extension of the policy to City Council, for instance:

- A former Streets & Sanitation laborer ("Former Employee A") resigned in lieu of termination in 2005 and was designated ineligible for future City employment after the City's Sexual Harassment Office sustained a complaint that he sexually harassed a subordinate. The Sexual Harassment Office's findings indicate that Former Employee A made numerous sexually explicit comments, asked to touch the complainant's breasts and threatened to rape the complainant if she filed a sexual harassment complaint. The complainant eventually sued the City and the case settled after a federal court refused to dismiss the sexual harassment portion of her case. In 2006, Former Employee A began working for an Alderman and was paid through the Alderman's 1012 account. In 2008, the same Alderman hired Former Employee A in a salaried Legislative Aide position with a salary of $27,048 annually. In addition the Alderman continued to pay Former Employee A through the 1012 fund. In fact, in 2008 and most of 2009, Former Employee A was paid his salary plus an hourly rate through the 1012 fund for 120 hours per month.

- A former Assistant Division Superintendent in Streets & Sanitation ("Former Employee B") resigned in lieu of discharge on March 28, 2007, after he was investigated by the City's Sexual Harassment Office based on three complaints that he made sexually explicit comments and grabbed an employee's genitals. The City's Sexual Harassment Office eventually sustained the complaints and issued findings. The City designated Former Employee B ineligible for future City employment. Former Employee B was

hired by an Alderman for a Staff Assistant position on July 2, 2007, less than three months after he resigned. Former Employee B current earns a salary of $51,696.00 per year. Former Employee B's wife and daughter are also City employees.

A similar problem exists within the City's sister agencies. According to the Inspector General's Office, it is aware of five individuals who were either terminated or resigned under inquiry and transferred to CPS, CTA or the Park District after leaving City employment. Based on complaints received by the Monitor's office and newspaper articles, the Monitor's office suspects that more terminated individuals have transferred to sister agencies; however, the Monitor's office does not have access to the sister agencies' employment data to confirm these reports.

If an individual commits an act that is serious enough to warrant termination and permanent disqualification from future City employment, that disqualification should extend to all City entities. The Monitor recommends that the City, City Council and the City's Sister Agencies enter into a reciprocal agreement barring each entity from hiring individuals who were terminated and barred from employment at any of entities. The City's terminated for cause policy should reflect this agreement.

Second, under the current draft of the policy, if an individual *resigns* before or after the Inspector General's Office recommends his termination based upon conduct that warrants permanent disqualification from City employment, the individual will be permanently disqualified from future City employment. Nevertheless, if an individual resigns before the City learns that the individual was involved in serious wrongdoing during his employment or before the Inspector General initiates as investigation, the individual remains eligible for reemployment at the City. For example, federal witnesses and court records have implicated a significant number of high level individuals who voluntarily left City employment, who had extensive involvement in patronage hiring practices. These individuals are currently eligible for rehire.[3] This gap should be addressed by the City's policy.

V. Improvements in the City's Department of Human Resources

Although this report does not focus on the City's executive branch, it is worth noting that since the Monitor's March 5, 2009 Report, the Department of Human Resources has dramatically improved its function as the "gatekeeper" to City hiring. DHR's leadership, in particular the Commissioner and the Managing Deputy Commissioner have established and maintained open communication with the Monitor's office and demonstrated a commitment to

[3] Another individual, a former Deputy Commissioner in the City's General Services Department who was named during the Sorich trial as having made 175 requests for jobs for political workers, resigned with a severance package in 2008. Since the individual did not resign as a result of a sustained investigation by the Inspector General's Office and was never indicted, the individual is eligible for City employment. The individual was recently hired by the Cook County Sheriff's Department.

voicing opposition to potentially problematic hiring sequences. DHR's management would not be able to voice this opposition were it not for the increased proficiency of DHR's employees in recognizing and questioning irregularities during the hiring process.

In the past six months, DHR's management also proactively recommended solutions to long-standing hiring issues. For example, during the *Sorich* trial witnesses testified that certain City Personnel Liaisons (City employees who perform human resource functions on site at the departments), participated in the rigged hiring system. One of the reasons that the Personnel Liaisons were able to participate in the fraud was because they reported to their individual Departments. In January 2010, DHR's Commissioner recommended that the City's Personnel Liaisons should report to DHR rather than to management in the Department to which they are assigned. Centralizing the Personnel Liaison function would create a buffer between the departments and the personnel liaisons and diminish the risk of undue departmental influence on hiring. At the same meeting, the Commissioner and Managing Deputy Commissioner agreed to create job descriptions for all Senior Manager positions. In 2008 and 2009, the Monitor repeatedly requested that the City draft job descriptions for Senior Manager titles. Each time the Monitor was told that drafting the descriptions was too much work and that, at most, DHR would draft minimum qualifications for the positions and draft the descriptions when the positions were open and ready to be filled. This was troubling because it meant that a job description could be drafted to match the qualifications of an specific candidate. Not only did the Commissioner and Managing Deputy understand the necessity of establishing job descriptions prior to filling the titles, they also had a plan for how to proceed. This attitude, combined with DHR's demonstrated ability to detect and remedy potential violations, is a significant step in demonstrating the City is substantially compliant with the *Accord.*

VI. Other Indications of Increased Compliance with the *Accord*

Over the past several months, the level of cooperation between the Monitor's office and various City departments has shown a marked improvement. The City has demonstrated a concerted effort to move toward substantial compliance with the *Accord*. The City's most recent proposal to amend the Inspector General ordinance and its willingness to collaborate on the terminated for cause policy are just a couple of examples. We look forward to continuing this progress.

Respectfully submitted this 8th day of March, 2010.

___/s/ Noelle C. Brennan_______
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