

**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.)	

**September 18, 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 a series of Progress Reports regarding the City of Chicago's status with respect to its goal of reaching Substantial Compliance. Thirty days after each Progress Report, the Monitor is 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.

A. Discipline Against Past Violators of the *Shakman* Decree, the *Shakman* Accord and the Hiring Plan

As previously reported, the City has agreed to a process designed to globally address past violations of the *Shakman* Decree, the *Shakman* Accord and the City's Hiring Plan. The Monitor's office submitted a proposal that outlines a plan to review existing information regarding alleged violators (including court transcripts, Claim Forms and complaint files), to conduct investigative interviews when necessary, and to group violators into categories based on factors such as level of involvement, intent, benefits received from wrongdoing, cooperation, and exculpatory/mitigating evidence. On September 17, 2009, the Monitor's office, the Office of Compliance, and the Office of the Inspector General met in an effort to fine-tune and modify the process to account for concerns raised by Office of Compliance and the Office of the Inspector General.

Some of the items that require further consideration include: 1) setting a time frame for completion of these investigations; 2) providing an opportunity for alleged violators to respond to allegations; and 3) forms of discipline that will be considered. The Monitor's office is encouraged by the City's commitment to moving forward on this issue, and looks forward to working with the Office of Compliance and the Office of the Inspector General to effectuate the recommendations.

Independently, the Corporation Counsel's office has already made recommendations for discipline for certain individuals as a result of its review of the *Sanchez* trial transcripts. We are further encouraged by this progress and cooperation by the Law Department.

B. Improvements in the Department of Human Resources

The City has made significant strides in reestablishing cooperation between the Department of Human Resources and the Monitor's office. The Department of Human Resources' Acting Commissioner has engaged the Monitor through in-person meetings and the facilitation of meetings between the Monitor's office and the Department of Human Resources' staff. She has encouraged employees in her department to escalate matters quickly and to work with the Monitor's office in improving systems to facilitate the Hiring Plan. For example, the Department of Human Resources is instituting an enhancement to its online application system that will track changes to job requisitions across years. The Department of Human Resources will also re-train its staff on receiving approval for changes to posted requisitions. In addition, the Department of Human Resources has created a process in its online application system that requires the recruiting staff to verify whether a candidate has been terminated for cause previously by the City, and provided training for staff on this issue. The Monitor's office welcomes these changes and the increased cooperation from the Department of Human Resources.

C. Status of Revisions and Drafting of Hiring Plans

The Monitor's office, the City and the Plaintiffs have made significant progress towards finalizing the City's General Hire Plan ("the revised plan"), including the Fire Department, Police Department and senior manager hire plans. While revising these plans, a primary goal has been to create a simplified, user-friendly guide to the City's hiring rules and procedures that increases objectivity in the hiring process and encourages transparency. To that end, the Monitor's office is encouraged by the City's willingness to implement the Monitor's recommendations and its effort to include provisions aimed at preventing past hiring problems. For instance, in previous reports, the Monitor expressed serious concerns about the processes (or lack thereof) used to hire student workers, which resulted in the appearance of impropriety. On its own initiative, the City decided that the revised plan will now apply to student workers, which should open these opportunities to more individuals and increase the transparency associated with student hires. The revised plan also contains a section pertaining to job assignments and

transfers, which requires DHR to maintain a record of the current assignment of all positions in the City service and requires departments to report material changes to an employee's assignment to DHR and the HPCM. This will help the City ensure that supervisors do not use assignments to punish or reward employees for supporting or not supporting a political party or candidate. These improvements are examples of numerous protocols that have been added to the revised plan. Although there is still work and negotiation to be done, particularly with regard to the fire department's testing protocols and the plan's mandatory reporting requirements, the Monitor is confident that the revised draft will be finalized in the near future.

D. City's Proposed Executive Order Encompassing Anti-Patronage Policy

Over the past several months, the City and the Monitor's office have been working on a formal anti-patronage policy. More recently, the City proposed to encompass the policy into an Executive Order. The Law Department recently proposed language for the Executive Order and, after agreeing to a minor change, the parties have reached agreement on the language.

The Executive Order includes a formal anti-patronage policy; a policy prohibiting certain activities relating to employment by City contractors; a duty to cooperate with the Executive Director of the Office of Compliance; a duty to report all contacts by elected or appointed officials or members of the Mayor's Office attempting to influence employment decisions of non-exempt employees; and a non-retaliation provision. The proposed Executive Order is another indication of the City's increasing willingness to work with the Monitor's office in a collaborative manner.

E. Public Reporting Requirements

As previously discussed and reported, the City may move to sunset the *Accord* once it believes that it has reached Substantial Compliance with the *Accord's* provisions. Two components of the definition of Substantial Compliance include demonstrating that:

“the City has implemented the New Plan, including procedures to ensure compliance with the New Plan and identify instances of non-compliance; [and]

the City has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment.” *See Accord*, Section I.G. (8).

One way in which the City can demonstrate that it has implemented procedures to ensure compliance with the New Plan and procedures that will effect long-term prevention of the use of political factors in employment is to increase transparency. Thus, a significant consideration that will impact the Monitor's assessment of the City's compliance with the *Accord* is whether the City will be required to publically report information pertaining to *Shakman* complaints and violations after the Monitor's appointment is over. Such reporting is critical to the goal of

increasing public confidence in the City's hiring and employment practices. To that end, the Monitor recommends that the Hiring Plan include provisions requiring the Office of Compliance and the Inspector General's Office to report certain information pertaining to *Shakman* complaints and violations in a publically available forum.

With regard to the Office of Compliance, the Monitor recommends that the Hiring Plan include a provision that requires the HPCM to post quarterly reports on the Office of Compliance's publically available website that include the number of escalations and complaints received that quarter, the nature of each escalation or complaint, the number of escalations or complaints sustained, the Departments involved in the sustained escalations or complaints and whether the City followed the HPCM and Office of Compliance's recommendation(s). The Monitor looks forward to the Office of Compliance's response to this proposal.

With regard to the Inspector General, the Monitor had previously proposed that the Inspector General also be required to provide quarterly reports to the public that include the number of *Shakman* complaints received, the number of sustained complaints, a summary of the nature of any sustained complaint and whether the City followed the Inspector General's recommendations. In response, the City indicated that it was already working on its own proposal to create more transparency in the Inspector General's investigations through public posting of certain information. Currently, the Inspector General's and Corporation Counsel's offices are in the process of formulating such a process.

F. Department of Human Resources Senior Management *Shakman*-covered

In the Monitor's July 16, 2009 Report to the Court, the Monitor recommended that the Commissioner of the Department of Human Resources be a *Shakman*-covered position. The basis for this recommendation is simple; the City's central hiring department should not be run by a political appointee. This is not to say that the City would be required to hire the Commissioner through the procedures outlined in the Senior Manager Hiring Plan. Rather, the Monitor proposes that the City develop a mutually acceptable (and minimally invasive) safeguard to prevent the Commissioner from being appointed on the basis of political considerations. The Monitor and the City continue to discuss this proposal and the Monitor will report on the result of these negotiations.

In sum, the City has made significant progress over the past two months towards Substantial Compliance with the *Accord*. We are encouraged and hopeful that such progress can continue.

Respectfully submitted this 18th day of September, 2009.

_____/s/ Noelle C. Brennan_____
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