

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL L. SHAKMAN, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 69 C 2145
v.)	
)	Magistrate Judge Sidney I. Schenkier
CLERK OF THE CIRCUIT COURT)	
OF COOK COUNTY, <i>et al.</i> ,)	
)	
Defendants.)	

FIRST REPORT OF SUSAN G. FEIBUS
AS COMPLIANCE ADMINISTRATOR FOR
THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Susan G. Feibus, Compliance Administrator for the Clerk of the Circuit Court of Cook County (“CCCA”), by her attorney, Margarita Kulys Hoffman, pursuant to Sections I(B) and III(C) of the August 10, 2018 Supplemental Relief Order (“SRO”) for Defendant Clerk of the Circuit Court of Cook County (“CCCO”), Doc. No. 5945, submits her First Report to the Court:

I. INTRODUCTION

On March 11, 2019, the Court appointed Susan G. Feibus as the CCCA to replace the prior Compliance Administrator, Clifford L. Meacham (“Prior CCCA”), who resigned. Doc. No. 6256. The CCCA has been on the job for approximately eight weeks. In that time, she has focused her efforts and those of her team on work that is necessary for the CCCO to achieve Substantial Compliance with the SRO.

Under the SRO, Substantial Compliance requires:

1. the CCCO to implement a New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance;

2. the CCCO to act in good faith to remedy instances of non-compliance that have been identified and prevent a recurrence;
3. the CCCO to not have a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions;
4. the absence of material noncompliance which frustrates the Clerk of Court's Decrees¹ and the SRO's essential purpose; and
5. the CCCO to implement procedures that will affect long-term prevention of the use of impermissible political considerations in connection with employment with the CCCO.

Doc. No. 5945 at 13 – 14. *See also* Exhibit III.F(2) (Certification of Substantial Compliance).

For the CCCO to achieve Substantial Compliance with the SRO is a long-term goal. The history of what was required for the City of Chicago and other elected officials in Cook County to achieve Substantial Compliance – and the years that it took to do it - teaches that the road is not short nor is it easy. The CCCA and her team will use their best efforts to facilitate this result. She is hopeful that the Clerk and her team will be willing partners in the effort. To date, there is no indication that is not the case. The CCCA and her counsel have met regularly with Lauren Raymond, the Clerk's *Shakman* liaison. These sessions have been productive as we seek pragmatic solutions to the many issues presented as the Clerk goes down the road of *Shakman* compliance.

II. OVERVIEW OF THE CCCA'S ACTIONS SINCE HER MARCH 11, 2019 APPOINTMENT

Since her March 11, 2019 appointment, the CCCA has familiarized herself with the SRO and the activities of the Prior CCCA, as reflected in his two reports to Court, Doc. Nos. 6099, 6202, and through discussions with his lawyer, whom the CCCA has retained. Based on the Prior

¹ The "Clerk of Court's Decrees" refer to: (a) the 1972 Consent Decree which, *inter alia*, prohibited the CCCO from taking any action regarding governmental employment against any governmental employee based on political reasons or factors; and (b) the 1983 Judgment Order which prohibited the CCCO from, *inter alia*, conditioning hiring practices on political reasons or factors, except for specified positions that are "*Shakman* Exempt." *See* Doc. No. 5945 at 1.

CCCA's reports, it appears that besides trying to understand the workings of CCCO, which has been useful to the CCCA, most of his work was focused on auditing the CCCO's hires, promotions and transfers since 2014. The CCCA is more forward-looking. Her activities since her March 11, 2019 have included:

- appeared at a hearing of the Litigation Subcommittee of the Cook County Board to report on the CCCO's *Shakman* compliance;
- reconfigured the CCCA's staff, including a change of monitors, elimination of full-time administrative help and reduction of consultants;
- reviewed, revised and updated the CCCA website;
- met and conferred with counsel for Plaintiffs on a regular basis;
- met and conferred with the CCCO's *Shakman* liaison on a regular basis;
- met and conferred with the CCCO's outside counsel on a regular basis;
- reviewed CCCO hiring practices and provided feedback to the CCCO re: same;
- monitored various employment actions and provided feedback to the CCCO regarding same;
- significantly revised the Director of Compliance position description and hiring process;
- significantly revised the draft Interim Employment Plan;
- drafted a proposed Protective Order for review by Plaintiffs and the CCCO; and
- reviewed the CCCO's proposed Exempt List and Plaintiffs' counsel's comments regarding same.

III. MILESTONES TO BE COMPLETED IN THE NEAR TERM THAT ARE PREREQUISITES TO SUBSTANTIAL COMPLIANCE

At this initial stage, four elements must be put into place as part of the necessary foundation for Substantial Compliance. These are: (1) finalizing the *Shakman* Exempt List; (2) finalizing an Interim Employment Plan; (3) hiring an independent Director of Compliance; and (4) providing

Shakman training for the CCCO's workforce. As discussed below, progress has been made on each of these items since the CCCA's March 11, 2019, appointment.

A. Negotiation of the Shakman Exempt List is Proceeding

While the essence of *Shakman* compliance is hiring that is free from political reasons or factors, the SRO recognizes that political party affiliation is an appropriate requirement for the effective performance of jobs that involve policymaking or are confidential. SRO at II(E). Those policymaking or confidential jobs are memorialized in a Shakman Exempt List, which requires Court approval.

In accordance with Section II(E) of the SRO, the CCCA understands that, prior to her appointment, the CCCO and Plaintiffs were negotiating a Shakman Exempt List. These negotiations continue. The CCCA has reviewed the parties' proposals and has and will continue to use her best efforts to facilitate the finalizing of a Shakman Exempt List.

B. Negotiation of an Interim Employment Plan is Moving Forward

Substantial Compliance cannot be achieved without a court-approved Employment Plan that governs the CCCO's employment practices, policies and procedures. *See* SRO at II(A) and (C). As in prior *Shakman* cases, the parties and the CCCA are negotiating an Interim Employment Plan. This is an important step to bringing transparency to CCCO hiring practices.

The CCCO has approximately 1350 employees. Of these, approximately 300 are non-bargaining unit employees. The Interim Employment Plan is expected to cover: (1) entry level non-Exempt bargaining unit and non-bargaining unit positions; and (2) the promotions and demotions of all current CCCO employees to a non-bargaining unit position except, as described above, those on the Shakman Exempt List.

While the parties and the Prior CCCA had begun negotiating an Interim Employment Plan, the CCCA has provided substantial revisions which have been reviewed by Plaintiffs. The CCCA/Plaintiffs are in the process of consolidating their comments and expect to provide a revised draft Interim Employment Plan to the CCCO by May 17, 2019.

C. The Director of Compliance Position Description is Completed and Should be Posted Soon

An independent Director of Compliance (“DOC”) is a component critical to Substantial Compliance. The CCCO has agreed to the hiring of a DOC to filled by an external candidate pursuant to a job posting and an agreed-to position description and hiring process.

While the parties and the Prior CCCA had begun negotiating a DOC position description, the CCCA, in consultation with Plaintiffs, offered substantial revisions and added a proscribed hiring process similar to that used by other elected officials subject to *Shakman* decrees and supplemental relief orders. The CCCA understands that the Clerk has agreed to the revised DOC position description and hiring process. The CCCA also understands (and appreciates) that the Clerk has agreed to a DOC salary in a range that should attract qualified candidates. The position description is being finalized, as are the logistics of posting, including the identification of external posting sites. The CCCA expects the DOC position to be posted in May 2019.

D. Plans for Shakman Training for the CCCO’s Workforce Are Underway

The SRO requires the training of CCCO employees “to effectuate a culture free of political consideration in all aspects of governmental employment for non-Exempt Positions, including, but not limited to, hiring promotion, discharge, overtime and transfers” of CCCO employees. SRO at II(B). While the SRO speaks of training in the context of a new Employment Plan, the CCCO, with encouragement from the Court, has recognized an immediate need for Shakman training for its workforce.

To date, there has been no “Shakman training” of CCCO employees. To remedy this, the CCCO has agreed to a plan for the CCCA to provide Shakman training for its workforce by the end of June 2017. The plan has two components – one for training the CCCO’s approximately 300 non-bargaining unit employees and one for training the CCCO’s approximately 1050 bargaining unit employees:

- Training of non-bargaining unit workforce - The plan is for the CCCA to train the CCCO’s non-bargaining unit workforce in two live sessions which will occur after regular business hours. The CCCO has indicated that it will videotape these sessions, which will be used to train the bargaining unit workforce and as part of new employee onboarding. The CCCA welcomes the Clerk’s presence and input at the live presentations.

- Training of bargaining unit workforce - The CCCO bargaining unit workforce numbers approximately 1350 employees located at fifteen different locations. Training of this workforce must be done during working hours, in accordance with the CCCO’s collective bargaining agreement (“CBA”). The CCCA has agreed to use the videotape of the non-bargaining unit training as the basis for training the bargaining unit workforce as it appeared the most (and perhaps only) practical way to go. The training will be mandatory, done at the direction of division chiefs, with an anticipated deadline in mid-July 2019. Participation of all non-bargaining unit employees will be documented. The videotaped training will be augmented with an invitation to bargaining unit employees to follow up with the CCCA with any questions they may have.

IV. OTHER ISSUES ATTENDANT TO SUBSTANTIAL COMPLIANCE

A. Entry of a Protective Order Should be Forthcoming

The SRO references the potential entry of a Protective Order. SRO at I(F). The CCCA understands that other elected officials under the Shakman decree and supplemental relief orders

have agreed to such orders as issues sometimes arise where the existence of a Protective Order is useful.

To date, a Protective Order has not been entered in this case. In consultation with Plaintiffs, the CCCA prepared for the CCCO's review a draft Protective Order similar to those that the Court has entered in other Shakman cases. The CCCO has indicated a willingness to such an order. The CCCA expects a Protective Order to be presented to the Court for entry in May 2019.

B. The CCCA's monitoring of Employment Actions remains hampered by notice and document production issues

The SRO empowers the CCCA to monitor all CCCO employment actions which means any action (positive or negative) related to any aspect of employment including, but not limited to, hiring, training, change in job assignment, transfer, promotion, demotion, assignment of overtime (and other benefits of employment), discipline and discharge. *See* SRO at II(C). The SRO also requires the CCCO to provide the CCCA with, *inter alia*, "reasonable access to all relevant non-privileged documents." SRO at I(E).

For the CCCA's monitoring to be meaningful and effective, she must receive both clear notice of the employment action and the relevant documents sufficiently in advance to allow a monitor to be scheduled to attend and to be able to review the documents. The CCCO has agreed that reasonable notice to the CCCA means at least 48 hours.

Failure to receive clear and timely notice and the relevant documents have been issues since the CCCA's appointment; she understands that these were issues prior to her appointment. The CCCO has acknowledged the problems and progress has been made since the CCCA's appointment.

C. The CCCO's Union, Teamsters Local 700, has challenged the CCCA's ability to review CCCO documents and monitor employment actions including, but not limited to, grievance hearings

The CCCO's union is Teamsters Local 700. On May 1, 2019, the CCCO's Shakman liaison gave the CCCA an April 14, 2019 letter from the union's Business Agent to the CCCO's Chief Deputy Clerk & General Counsel for Labor Relations. In that April 14, 2019 letter, the union objected to the CCCO giving documents to the CCCA and her monitoring of employment actions, alleging that this impacted the union's duty to bargain collectively under the CBA.

The Clerk has been apprised of the CCCA's view that the union's position is baseless. The CCCA has suggested that the Clerk oppose any effort by the union to limit the CCCA's authority under the SRO. The Clerk has indicated that she wishes to respond in writing. The CCCA awaits the Clerk's response.

The CCCA has advised Plaintiffs of the union's April 14, 2019 letter. The CCCA understands that Plaintiff's counsel spoke to the union's business manager who authored the April 14, 2019 letter; he indicated no interest in discussing a resolution of the union's objections. Plaintiff's counsel has indicated that he will pursue the matter in this forum.

D. The CCCA continues to investigate and monitor the CCCO's hiring practices

The CCCA and her counsel have spent considerable time in what the CCCA expects to be a continuing effort to understand and bring transparency to the CCCO's hiring practices, particularly new hires and employment actions affecting non-bargaining unit employees. The entry of an Interim Employment Plan, as discussed above, undoubtedly will help. In the meantime, the CCCA's focus has included how the CCCO posts new jobs and scores applicants for those jobs. As mentioned in the Prior CCCA's reports, this has been rife with issues and potential for abuse. The CCCA understands that the Clerk is willing to modify her practices and hopes that is

true. This and other issues attendant to the Clerk's hiring practices are expected to be a continuing subject in the CCCA's future reports to the Court.V.

V. RECOMMENDATIONS

It has been the CCCA's experience that close oversight by the Court, including imposing deadlines, has been effective in creating movement towards Substantial Compliance. This informs the CCCA's recommendations below:

A. Recommendation No. 1 – The Court should consider imposing a deadline for finalizing the Exempt List

The Clerk agreed to the SRO seven months ago. While there presumably are many reasons why the Exempt List has not been finalized, this is a basic piece of the process that must be resolved. As such, the Court may wish to consider imposing a deadline for the parties for finalize the Exempt List.

B. Recommendation No. 2 – The Court should maintain close oversight of the Interim Employment Plan which should facilitate completion

Limited progress can be made regarding the CCCO's hiring practices without an Interim Employment Plan. The CCCA is committed (as are Plaintiffs) to bringing this to closure. Judicial supervision of how the process is proceeding should be helpful, with the Court's consideration of a deadline down the road, should that be required.

C. Recommendation No. 3 – The Court should maintain close supervision of the DOC hiring process

As indicated above, the CCCA expects the DOC position to be posted in May 2019. If this does not happen, the Court should consider imposing a deadline at our next status to ensure that it does. Since posting the job is only the first step the hiring process, the Court should maintain close supervision of the hiring process through its conclusion.

D. Recommendation No. 4 – The Court should maintain close supervision of Shakman training for the CCCO workforce

As indicated above, the CCCA expects to conduct Shakman training of the CCCO's non-bargaining unit and bargaining unit workforce in June and July 2019, with the CCCO's cooperation and logistical assistance. Given the importance of Shakman training, if this does not happen, the Court should consider imposing a deadline at our next status to ensure that it does.

Dated: May 9, 2019

Respectfully submitted,

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By her attorney:

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CERTIFICATE OF ELECTRONIC FILING

I, Margarita Kulys Hoffman, the undersigned, do hereby certify that on May 9, 2019, I electronically filed a true and correct copy of the foregoing **First Report of Susan G. Feibus as Compliance Administrator for the Clerk of the Circuit Court of Cook County** using the CM/ECF system, which sends notification of such filing to all registered users.

/s/ Margarita Kulys Hoffman
Counsel to the CCCA