

**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.)	

**THIRD 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”),¹ pursuant to Sections I(B) and III(C) of the August 10, 2018 Supplemental Relief Order as amended June 19, 2019 (“SRO”) for Defendant Dorothy Brown (“Clerk”), Clerk of the Circuit Court of Cook County (“CCCO”), Doc. No. 6382, submits her Third Report to the Court:

I. INTRODUCTION

On August 22, 2019, the CCCA filed the Second Report to the Court (“Second Report”). Doc. No. 6464. This Third Report is to update the Court as to the Clerk’s progress towards Substantial Compliance with the SRO since the Second Report.

The CCCA has been on the job for ten months. In that time, some good progress towards Substantial Compliance has been made. Under the SRO, Substantial Compliance requires:

¹ Margarita Kulys Hoffman, the CCCA’s prior counsel, is no longer involved in the case. As the CCCA is in the process of identifying new counsel, she is filing the report on her own behalf. For ease of reading, she will refer to herself in the third person.

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 Decrees² 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. 6382 at 13 – 14. *See also* Exhibit III.F(2) (Certification of Substantial Compliance).

In the first instance, the CCCO's communication and cooperation with the CCCA has improved. Documents are being produced timely. Notices of Employment Actions³ are being provided timely. Both facilitate movement towards Substantial Compliance. Credit for these improvements must be given to the CCCO's Shakman liaison.

Also, Clerk Brown has been actively engaged with Shakman compliance, including regular meetings with Plaintiffs and the CCCA; attendance at trainings; attention to potential amendments to the Interim Employment Plan and Exempt List; attention to the Director of Compliance hiring; and new policy implementation. As the Court frequently advises: Shakman compliance comes from the top. Clerk Brown's attention only can promote the process.

² 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. 6382 at 1.

³ The Interim Employment Plan defines an "Employment Action" as: "Any action (positive or negative) related to any aspect of employment, including, but not limited to, hiring, training, change in job assignment, Temporary Assignment, Promotion, Demotion, transfer, Reclassification, Layoff, assignment of overtime (and other benefits of employment), discipline and Termination." Unless otherwise indicated, capitalized terms have the meaning ascribed to them in the Interim Employment Plan.

In terms of progress specifics since the Second Report: the CCCA trained the CCCO non-bargaining unit workforce on the Interim Employment Plan and how to interview consistent with the plan; the Exempt List was finalized; the CCCO adopted Taleo, an electronic application system for hiring; the Director of Compliance position will soon be posted; the CCCO's Exempt and non-Exempt hiring processes have improved; the parties and the CCCA are beginning to address Shakman-related employment policies; and Shakman-related information is much more conspicuous on the CCCO website. These are all positive steps towards Substantial Compliance.

II. OVERVIEW OF THE CCCA'S ACTIONS SINCE THE AUGUST 22, 2019 SECOND REPORT

The CCCA and her staff are actively engaged with the CCCO and its efforts to achieve Substantial Compliance. The CCCA's activities since the Second Report include:

- provided live Interim Employment Plan and Interviewer training to all CCCO non-bargaining unit employees, which was videotaped and will be used for new hires and promotions in non-bargaining unit positions;
- worked with the CCCO and Plaintiffs regarding amendments to the Interim Employment Plan, including the addition of an Exempt Hiring Process, which is expected to be presented to the Court soon;
- assisted the CCCO in obtaining the use of Taleo, Cook County's electronic application system, for future hiring under the Interim Employment Plan;
- provided significant input into the CCCO's first hiring sequence (entry-level union position) prior to the implementation of Taleo, which has been completed;
- provided significant input into the CCCO's first hiring sequence (entry-level union position) using Taleo, which is nearly complete;
- provided significant input into an ongoing hiring sequence for an information technology position;
- functioned as Interim DOC, per Court order, in addition to the role as CCCA, pending the hiring of a DOC;
- provided significant input into revising the Director of Compliance position description and hiring process; the position is expected to be posted shortly;

- provided significant input into the CCCO's request to amend the Exempt List, which is under discussion between the parties and the CCCA;
- provided significant input into creating an orderly Exempt hiring process, including revising many Exempt position descriptions and reviewing the qualifications of the Clerk's candidates for those positions;
- examined past and current CCCO hiring practices, including interviews of CCCO employees;
- conducted exit interviews of many departing CCCO employees;
- monitored a variety of CCCO employment actions including grievances, discipline, and time and attendance-related matters;
- met and conferred with counsel for Plaintiffs on a regular basis;
- met and conferred with Clerk Brown, the CCCO *Shakman* liaison and the CCCO Chief Human Resources Officer, on a regular basis; and
- met and conferred with the CCCO's outside counsel on a regular basis.

III. THE CLERK'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE

A. The CCCO is Operating Under the Interim Employment Plan entered in July 2019, and Training Under the Plan Has Been Completed

A prerequisite to Substantial Compliance under Section II(C) of the SRO is the creation of a final Employment Plan. As a first step, as has been the case with other Elected Officials subject to the Shakman decrees, the parties and the CCCA agreed to and presented to the Court an Interim Employment Plan, which was entered on July 17, 2019. Doc. No. 6413. The Interim Employment Plan applies to: (1) non-Exempt new hires (union and non-union); and (2) transfers, promotions and demotions of non-bargaining unit, non-Exempt employees. Hiring under the Interim Employment Plan is a sea change as the hiring process is structured to achieve transparency in ways that were not formerly present and guard against Unlawful Political Discrimination.

To promote its effectiveness, the Interim Employment Plan requires training. This has been accomplished since the Second Report. On September 26, 2019, the CCCA trained CCCO Senior Staff and Human Resources Personnel on the hiring processes under the Interim Employment Plan and the prohibition of consideration of Political Reasons or Factors. On December 4 and 5, 2019, the CCCA presented this training to all CCCO non-bargaining unit/supervisory employees. Also included was Interviewer training, which described proper interviewing conduct, interview techniques and requirements, as well as the prohibition of Unlawful Political Contacts and Unlawful Political Discrimination. The December 2019 sessions were videotaped and will be part of employee orientation for new non-bargaining unit hires and when bargaining unit employees are promoted to non-bargaining unit/supervisory positions.

B. An Exempt List was Approved by the Court on August 28, 2019; Discussions About Amendments are Ongoing

A prerequisite to Substantial Compliance under Section II(E) of the SRO is the creation of an agreed upon Exempt List, which identifies positions that involve policymaking to an extent or are confidential in such a way that political party affiliation is an appropriate requirement for the effective performance of the job. On August 28, 2019, shortly after the Second Report, the Court approved an Exempt List, Doc. No. 6478, which updated the Exempt List that was appended to the SRO.

The parties and the CCCA are discussing further amendments to the Exempt List, which are expected to be presented to the Court for approval in the near term.

C. The CCCO Has Implemented an Electronic Application Tracking System

A prerequisite for Substantial Compliance under Section II(D) of the SRO is a web-based Application Tracking System, which must be used for hiring all non-Exempt positions. This has been accomplished since the Second Report. As recommended in the Second Report, the Clerk has

adopted Taleo, a well-established talent management software that, in large part, automates the hiring process.⁴ This was accomplished with the help of the County's Bureau of Technology, which, like other Cook County Elected Officials under the Shakman decrees, uses Taleo for hiring. As described below, the CCCO is close to completing its first hiring sequence using Taleo.

D. The Director of Compliance Position is on the Verge of Being Posted

A prerequisite to Substantial Compliance under *e.g.*, Section I(B) of the SRO, is the hiring of a non-Exempt Director of Compliance who functions as the CCCO's Employment Plan compliance officer by assuming responsibilities related to monitoring, investigating and auditing Employment Actions and Shakman-related employment policies to ensure plan compliance.

As described in the Second Report, posting this important position was delayed pending the CCCO's adoption of Taleo and the completion of one hiring sequence to allow the Human Resources team to become familiar with the contours of Taleo hiring. The parties and the CCCA have agreed to the position description, hiring process, and websites where the job will be posted (which will direct the applicants to Taleo). The CCCA understands and expects that the position will be posted before the January 31, 2019 Court status.

E. The CCCO's Hiring Efforts Have Improved

1. Post-SRO Undisclosed Hiring, Promotions and Salary Adjustments

The Second Report indicated that on the eve of its filing, the CCCA happened upon what appeared to be an Exempt hire of which the CCCA and Plaintiffs had not been given notice. When the CCCO finally produced documents that long had been requested, it turned out the Clerk had

⁴ Taleo's capabilities include tracking job openings, an on-line job application system, tracking job applicants, applicant screening and assessment tools, applicant communication functions, interview management, and interviewee assessment.

engaged in considerable Exempt and Non-Exempt hiring undisclosed to Plaintiffs or the CCCA since the August 10, 2018 entry of the SRO.

Besides the Exempt hire noted in the Second Report, CCCO documents showed two additional undisclosed Exempt hires since the entry of the SRO – for a total of three undisclosed Exempt hires. CCCO documents also showed 15 undisclosed non-Exempt hires since the entry of the SRO. Eight of these were made on or about June 24, 2019, as the Interim Employment Plan was being finalized, which allowed the Clerk to avoid the structure and resulting transparency of hiring under the Interim Employment Plan.

Also, CCCO documents showed numerous promotions and salary increases since the entry of the SRO that had not been disclosed to Plaintiffs or the CCCA. Approximately 25 were done before the current CCCA was appointed. Another 29 or thereabouts, most of which were for non-Exempt employees, were effectuated via memos dated July 1, 2019 (purportedly effective June 6, 2019). These, too, were right before the Interim Employment Plan was finalized and avoided its requirements.

As the Court indicated at the August 26, 2019 status, these non-disclosed hires, promotions and salary increases were troubling and, as to those on the eve of the entry of the Interim Employment Plan, seemingly not in good faith. The Court cautioned that similar conduct could subject the Clerk to Court oversight of all CCCO hiring. The Clerk appears to have taken the Court's admonitions to heart as Exempt and non-Exempt hiring has improved since the Second Report.

2. Exempt Hiring Since the Second Report

The Clerk has filled 19 Exempt positions since the Second Report. They break down as follows: one Executive Clerk; one First Deputy Counsel; one Deputy General Counsel; two Associate Clerks; eight Chief Deputy Clerks; six Assistant Chief Deputy Clerks.

Exempt hiring, which the CCCA monitors in conjunction with Plaintiffs, has been a work in progress. As an initial matter, the Clerk seemingly understands and accepts the parameters of Exempt hiring oversight. The parties and the CCCA have discussed amending the Interim Employment Plan to include an Exempt Hiring Process, which would memorialize the procedures used by Plaintiffs and the CCCA to avoid Unlawful Political Discrimination in Exempt Hiring. The CCCA expects Plaintiffs will submit a proposed amended Interim Employment Plan to the Court in the near term.

Plaintiffs and the CCCA's oversight of Exempt hiring boils down to ensuring: (a) an accurate, up-to-date position description; and (2) a Candidate who meets the job's Minimum Qualifications. Since the Second Report, progress has occurred on two fronts: (a) template position descriptions for a number of Exempt jobs have been created; and (b) the Chief Human Resources Officer has begun to give appropriate analyses of why a proposed Candidate is minimally qualified for the position.

One issue regarding Exempt hiring recently has come to light. It appears that when a CCCO employee in an Exempt position has been "reassigned" to another Exempt position of the same level in another division (*e.g.*, Associate Clerk in Traffic to Associate Clerk in Chancery), the CCCO did not view that "reassignment" as subject to Plaintiffs/CCCA review. Plaintiffs and the CCCA have disabused the CCCO of that interpretation since whenever a person is to be placed into an Exempt position (even if he/she already is in an Exempt position), that is an Exempt hire subject to Plaintiffs/CCCA Shakman review.

The CCCA is aware of at least one instance of an Exempt "reassignment" that the CCCO did not submit to Plaintiffs/CCCA for Shakman review; there may be others. It does not appear however that this failure was to avoid Shakman review; it seems to have been a misunderstanding

of the parameters of Exempt hiring. The CCCA expects the CCCO will submit the appropriate documentation and analysis for any “reassigned” Exempt employees that were not subject to Shakman review in short order; they presumably will be found minimally qualified by Plaintiffs/CCCA; and the error will not be repeated going forward.

3. Non-Exempt Hiring Under the Interim Employment Plan Since the Second Report

Since the Second Report, the CCCO has filled 18 entry-level Clerk IV, Sr. bargaining unit jobs. As discussed in the Second Report, these hires were initiated using indeed.com (as opposed to Taleo). The CCCA agreed to complete the process with indeed.com, incorporating as many elements of the Interim Employment Plan as possible, because of the represented great operational need. As indicated in the Second Report, this experience had the salutary effect of leading the CCCO to Taleo.

The Clerk IV, Sr. hiring sequence was bumpy, both because of indeed.com’s limitations and it was the Human Resources team’s first brush with the rigors of hiring under the Interim Employment Plan. Issues included the Human Resources team’s lack of understanding of the Applicant validation process; offers of employment were not extended in compliance with the Interim Employment Plan; and the required Contact Log, which memorializes all contacts with Applicants, was confusing and incomplete. Nonetheless, the hiring sequence appears to have been a useful learning experience for the Human Resources team.

The CCCO is in the process of filling an additional 18 entry-level Clerk IV, Sr. bargaining unit jobs – this time using Taleo. While a learning curve remains, this process has gone considerably smoother than the first outing. The Human Resources team appears to better understand the Applicant validation process. Also, offers of employment are in the process of

being made and appear to be Interim Employment Plan compliant. The CCCA expects the Contact Log will be improved.

The CCCO also is in the process of hiring for a specialized information technology job. This process was initiated with indeed.com. The CCCA agreed to complete the process without Taleo because of the stated great operational need. As this is not an entry level job, interviews are required. This will be the Human Resources team's first opportunity to manage the interview process, including picking an interview panel; creating interview questions; ranking the Candidates; and Candidate selection. The CCCA has been working with Human Resources with the goal of an interview process that is Interim Employment Plan compliant.

The CCCA would be remiss not to commend the Chief Human Resources Officer and her team for their diligence and commitment to understand and effectuate what is required to hire in compliance with the Interim Employment Plan.

F. Initial Foray into Creation of Shakman-Related Policies

The Employment Plan required under Section II(C) of the SRO governs the CCCO employment practices, policies and procedures including, but not limited to, hiring, promotion, transfer, assignment of overtime, discipline and discharge. Rather than tackle a full-blown Employee Handbook at this juncture, Plaintiffs and the CCCA have begun working with the CCCO on discrete policies, the need for which have become evident. On the table now are the "points" discipline aspect of a Time and Attendance policy, an Interim Assignment policy, and a Temporary Assignment policy. The CCCA is hopeful that these policies can be finalized by the next Court status.

G. Production of Documents and Notice of Employment Actions in a Timely Manner by the CCCO Has Improved

The SRO requires the CCCO to cooperate with the CCCA by, among other things, “providing reasonable access to all relevant non-privileged documents.” SRO at I(E). The CCCA’s access to documents is not at the CCCO’s discretion. The SRO imposes a mandatory timeframe: “Within two weeks of receiving a request from the [CCCA], the [CCCO] *shall* either produce all requested documents or provide a time frame for when documents will be produced.” SRO at I(F) (emphasis supplied). The CCCO’s pattern of failing to produce documents requested by the CCCA within two weeks or providing a timeframe for production, as reported in the Second Report, has abated.

Also, the CCCO’s repeated failure to provide the CCCA with timely notice of Employment Actions, which extend far beyond hiring, has improved.

H. CCCO Information About Compliance with the SRO is Considerably More Conspicuous

The Employment Plans of other elected officials formerly or presently under supplemental Shakman orders require(d) their websites to include information about compliance with the supplemental order. The Employment Plans further required this information on their websites to be conspicuous. The Second Report complained that the CCCO’s website said nothing about Shakman compliance and its two references to Shakman were difficult to find. The CCCO has addressed these complaints. Shakman-related information can be found with one “click” under the “Employment” banner and there are links to important pleadings and documents (SRO; Amended SRO; Executive Order; Interim Employment Plan; and Exempt List) and the CCCA’s website.

V. **RECOMMENDATIONS**

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

- A. Recommendation No. 1 – The Court should encourage the Clerk to provide whatever resources are required to imitate and bring the Director of Compliance hiring process to closure.**
- B. Recommendation No. 2 - The Court should encourage the parties and the CCCA to finalize the “points” discipline part of the Time and Attendance policy and the Interim Assignment and Temporary Assignment policies by the next Court status.**
- C. Recommendation No. 3 – The Court should encourage the parties and the CCCA to work towards a Final Employment Plan as soon as practicable.**

Dated: January 28, 2020

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I, Susan G. Feibus, the undersigned, do hereby certify that on January 28, 2020, I electronically filed a true and correct copy of the foregoing **Third 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/ Susan G. Feibus
CCCA