

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>MICHAEL L. SHAKMAN, <i>et al.</i>,</b>	)	
	)	<b>Case No. 69 C 2145</b>
<b>Plaintiffs,</b>	)	
	)	<b>Hon. Edmond E. Chang</b>
<b>v.</b>	)	<b>District Judge</b>
	)	
<b>CLERK OF THE CIRCUIT COURT</b>	)	<b>Hon. Gabriel A. Fuentes</b>
<b>OF COOK COUNTY, <i>et al.</i>,</b>	)	<b>Magistrate Judge</b>
	)	
<b>Defendants.</b>	)	

**FOURTH 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, Dina Masiello, 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 Fourth Report to the Court:

**I. INTRODUCTION**

On January 28, 2020, the CCCA filed the Third Report to the Court (“Third Report”). Doc. No. 6464. This Fourth Report is to update the Court as to the Clerk’s progress towards Substantial Compliance with the SRO since the Third Report.

This report begins by stating the obvious - CCCO operations have been significantly impacted by COVID. The CCCO was shut down from March 23, 2020 to July 6, 2020, during which time the CCCO was closed to the public and operated on site with a skeleton crew. CCCO employees (who are not telecommuting) returned to work on July 6, 2020, although the CCCA

understands that CCCO operations continue to be impacted. While the COVID-related shutdown has given rise to Shakman issues, progress towards Substantial Compliance has continued. The CCCA acknowledges the continued effort of the Clerk and her team during these challenging times.

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 Decrees<sup>1</sup> 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).

First, the bulk of the progress towards Substantial Compliance has been in the hiring arena. The CCCO essentially has completed the entry-level hiring process under the Interim Employment Plan that was referenced in the Third Report (at pp. 9-10). The CCCO also has completed one non-Exempt hiring process and virtually completed two additional non-Exempt hiring processes under the Interim Employment Plan. The CHRO, the Director of Human Resources and their team have made considerable progress in learning the Interim Employment Plan's hiring processes and should be commended.

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<sup>1</sup> 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.

Second, a Director of Compliance (“DOC”), integral under the SRO, is on board as of June 15, 2020.

Third, there has been good cooperation and communication between the CCCO and the CCCA. Documents generally have been produced in a reasonable timeframe, given the difficulties caused by the COVID-related shutdown. Notices of Employment Actions<sup>2</sup> for the most part have been timely provided. Credit for this must be given to the CCCO’s Shakman liaison.

The CCCA’s report is not entirely positive. The Clerk’s activities related to the COVID-related shutdown gave rise to two Shakman issues: (1) employee selection for onsite work during the March 23, 2020 to July 6, 2020 shutdown lacked the transparency Shakman requires; and (2) the Clerk promulgated a “telework” policy on July 2, 2020, effective July 6, 2020, without Plaintiffs or CCCA’s review or comment – despite her awareness that to do so was not Shakman compliant.

## **II. OVERVIEW OF THE CCCA’S ACTIONS SINCE THE JANUARY 28, 2020 THIRD 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 Third Report include:

- worked with the CCCO and Plaintiffs to amend the Interim Employment Plan to include an Exempt Hiring Process, which was entered by the Court on April 1, 2020;
- assisted the CCCO in understanding how to use Taleo,<sup>3</sup> Cook County’s electronic application system, for hiring under the Interim Employment Plan;

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<sup>2</sup> 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.

<sup>3</sup> Taleo is a well-established talent management software that, in large part, automates the hiring process. Its 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. As indicated in the Third Report (at pp. 5-6), other Cook County Elected Officials under Shakman decrees use Taleo for hiring.

- provided significant input into the CCCO's first hiring sequence (entry-level union position) using Taleo, which essentially has been completed;
- provided significant input into three hiring sequences for non-Exempt positions, one of which is complete and two of which are nearly complete, using Taleo;
- functioned as Interim DOC in addition to CCCA, pending the hiring of a DOC, per Court order until June 29, 2020;
- was a member of the DOC Vetting Panel, which screened applications and recommended the Candidates to be interviewed for the DOC position, and oversaw the interview, ranking and selection processes leading to an offer, and the post-offer verification processes;
- consulted with the DOC on an ongoing basis since his June 15, 2020 arrival;
- provided significant input into the CCCO's request to amend the Exempt List, including desk audits, which is near completion;
- drafted a full Employment Plan, which is under review by Plaintiffs;
- examined past and current CCCO hiring practices, including interviews of CCCO employees;
- conducted exit interviews of departing CCCO employees;
- monitored a variety of CCCO employment actions including grievances, discipline and time and attendance-related matters;
- conferred with counsel for Plaintiffs on a regular basis;
- conferred with the CCCO *Shakman* liaison and Chief Human Resources Officer on a regular basis; and
- conferred with the CCCO's outside counsel on a regular basis.

### **III. THE CLERK'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE**

#### **A. An Exempt List was Approved by the Court on August 28, 2019; an Amended Exempt List is Expected Shortly**

A prerequisite to Substantial Compliance under Section II(E) of the SRO is the creation of an agreed 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, the Court approved an Exempt List, Doc. No. 6478, which was appended to the SRO.

The parties and the CCCA have discussed further amendments to the Exempt List, most of which have been agreed. To the extent there were disagreements, the CCCA conducted desk audits of the positions and apprised Plaintiffs of her findings. The CCCA expects Plaintiffs to bring this to closure and present a motion to approve an amended Exempt List in the near term.

**B. A Full Employment Plan is in Process**

A prerequisite to Substantial Compliance under Section II(C) of the SRO is the creation of a full Employment Plan. As a first step, on July 17, 2019, the Court entered an order approving an Interim Employment Plan, which applied to: (1) non-Exempt new hires (union and non-union); and (2) transfers, promotions and demotions of non-bargaining unit, non-Exempt employees. Doc. No. 6413. On April 1, 2020, the Court entered an order approving an Amended Interim Employment Plan, which added an Exempt Hiring Process. Doc. No. 6811.

The CCCA has drafted a full Employment Plan, which is under review by Plaintiffs. Once complete, the draft will be transmitted to the CCCO for review and comment. Unlike other Elected Officials who have agreed to supplemental relief orders, the Clerk's Collective Bargaining Agreement ("CBA") prescribes the framework for bargaining unit employee promotions and transfers; the other "Electeds" fill bargaining unit positions through a general hiring process. As the CCCO's promotion and transfer processes under the CBA framework do not provide the procedural transparency that Shakman requires, achieving that transparency is expected to be the subject of considerable discussion with the CCCO.

**C. A Director of Compliance Has Been Hired**

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.

On January 29, 2020, the DOC position was posted on Taleo. The proscribed DOC hiring process is more complicated than hiring under the Interim Employment Plan. Besides validating Applicants to include only those who are minimally qualified, it requires a Vetting Panel<sup>4</sup> to screen applications and recommend Candidates for interviews; interviews, selection and ranking by an Interview Panel;<sup>5</sup> final selection by the Clerk; and post-employment reference and background checks by CCCO Human Resources.

Prior to the DOC position, the CCCO's sole hiring under the Interim Employment Plan using Taleo was for the entry-level bargaining unit Clerk IV, Sr. positions.<sup>6</sup> The CCCA shepherded every aspect of the DOC hiring process, including creating detailed checklists. The collaboration between the CCCO's Director of Human Resources and the CCCA's experienced monitor was extensive and, the CCCA understands, welcomed and resulted in a substantially compliant DOC hiring process.

The DOC, Byron Wardlaw, began his CCCO employment on June 15, 2020, and officially assumed the role on June 29, 2020, when the Court entered an order relieving the CCCA of her previously court-appointed Interim DOC duties. The CCCA understands that the DOC has

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<sup>4</sup> The Vetting Panel members were the CCCA, the Clerk's outside counsel and the CCCO Shakman Liaison.

<sup>5</sup> The Interview Panel members were the CCCO's Chief of Staff, Chief Human Resources Officer, Inspector General and Head of Labor.

<sup>6</sup> The parties and the CCCA agreed that the DOC hiring should wait until the CCCO had one hiring sequence using Taleo under its belt before embarking on the DOC hiring process. The Court concurred.

familiarized himself with the various court orders and the Interim Employment Plan and is working to understand the CCCO operations. He has monitored the portions of the hiring sequences that have occurred since his arrival.

Of utmost importance, of course, is the DOC's integration into the CCCO as its internal Shakman counselor. This requires the development of a culture where the DOC is the CCCO's first-line resource who is regularly consulted to ensure that its actions are Shakman compliant. It also requires the DOC to provide the independent advice and counsel that the position was designed to deliver.

The CCCA welcomes the DOC's arrival and anticipates a fruitful collaboration, as appropriate. They already have spent considerable time conferring and she will do whatever she can to assist him. As part of the CCCA's duties is to monitor the DOC, she will do that, as well.

**D. CCCO Exempt Hiring Since the Third Report**

CCCO Exempt hiring since the Third Report was limited to reassignments and temporary assignments of employees already holding Exempt positions. An Associate Clerk was transferred from one Bureau to another; three Chief Deputy Clerks ("CDC") were laterally transferred from one Division to another; the temporary assignment of one Assistant Chief Deputy Clerk ("ACDC") was extended; the temporary assignment of the Community Outreach Specialist was extended; and the Deputy Chief Information Officer was reassigned to the Assistant Comptroller position.

Unlike prior instances where Exempt employees were moved to other Exempt positions without notice to Plaintiffs and the CCCA, *see* Third Report at pp. 8-9, the CCCO gave Plaintiffs and the CCCA notice of these Exempt employee moves, along with the current position description and the CCCO's explanation of why the Exempt employee was minimally qualified for the new position. In each instance, Plaintiffs and the CCCA agreed.

A number of Exempt employees have resigned since the Third Report including, most recently, the Chief Human Resources Officer. Fortunately, based on the CCCA's experience to date, the Director of Personnel Services should be able to well manage Human Resources' Shakman compliance activities.

Other departing Exempt employees were the Chief Deputy Clerk ("CDC") of the Records Center; Assistant Chief Deputy Clerk ("ACDC") of Public Information; ACDC of District 5 (Bridgeview); ACDC of the Civil Division; and a Deputy General Counsel. Additional Exempt employee resignations may be forthcoming before December 1, 2020, when the newly-elected Clerk takes office.

**E. CCCO Non-Exempt Hiring Since the Third Report**

1. Clerk IV, Sr. (Entry-Level Bargaining Unit Hiring Process)

The Second Report (at p. 9) reported that the CCCO had filled 18 entry-level Clerk IV, Sr. bargaining unit jobs via indeed.com. Since then, the CCCO has been in the process of filling an additional 21 entry-level Clerk IV, Sr. bargaining unit jobs using Taleo. The CCCA understands that 19 positions have been filled and two conditional offers (dependent on passing background checks) have been made. The extended duration of this hiring process was caused by the COVID-related shutdown as the CCCA understands that the CCCO was not – and apparently still is not – in a position to onboard new court clerks. Also, given the hiring process' duration, the CCCA understands positions initially accepted subsequently were rejected.

The second Clerk IV, Sr. hiring process was the CCCO's first use of Taleo. The CCCO Human Resources team worked closely with the CCCA monitors and demonstrated a better understanding of process components, particularly the Applicant validation process. While the



CCCA identified a few technical deviations from the Interim Employment Plan, it was a credible Taleo first effort.

2. Senior Accountant (General Hiring Process)

The Senior Accountant position was the first hiring sequence under the Interim Employment Plan's General Hiring Process. This required the CCCO/Human Resources to manage the interview process, including picking an Interview Panel; creating interview questions; ranking the Candidates; and Candidate selection. The process has been completed and the selected Candidate is expected to begin employment in early August 2020.

While the CCCA identified a variety of technical deviations from the Interim Employment Plan, the overall effort, overseen by CCCA monitors, was a credible first effort under the General Hiring Process.

3. SQL Server DBA (General Hiring Process)

When the Third Report was submitted, the CCCO was in the midst of trying to fill this specialized information technology job. The hiring process had been started via indeed.com.; the CCCA agreed the CCCO could complete the process without Taleo because of the stated great operational need. As the Interim Employment Plan does not require interviews for entry-level bargaining unit positions, the SQL Server DBA hiring process was the CCCO/Human Resources' first opportunity to manage the interview process. Unfortunately, the process failed to provide a viable Candidate.

On April 15, 2020, CCCO posted the SQL Server position on Taleo. The second attempt was successful. The CCCO made the selected Candidate a conditional offer on July 6, 2020, subject to background and reference checks. Those checks have been completed and the CCCO is expected to make a formal offer on July 22, 2020.

Once again, while the CCCA identified a variety of technical deviations from the Interim Employment Plan, the Human Resources team, overseen by CCCA monitors, performed well.

4. Web Application Developer (General Hiring Process)

This technical information technology job was posted on Taleo on April 15, 2020. Three Candidates were validated and accepted interviews. Following the interviews, the Interview Panel ranked one Candidate. The CCCO expects to make the selected Candidate a condition offer, subject to background and reference checks, on July 22, 2020.

Here, too, while the CCCA identified a variety of technical deviations from the Interim Employment Plan, the Human Resources team, overseen by CCCA monitors, performed well. Also, while the hiring process began before the DOC's arrival, he monitored the interview, ranking and selection processes, per the Interim Employment Plan.

5. Windows Server Administrator (General Hiring Process)

This technical information technology job was posted on Taleo on April 15, 2020. Unfortunately, the May 13, 2020 validation meeting did not result in any minimally qualified Candidates. The CCCA understands that the CCCO is reconsidering the position description and job grade.

**F. Shakman-Related Policies**

1. COVID-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). Further, the CCCO must give the CCCA and DOC notice of all Employment Actions (which cover any and all aspects of employment), *see* fn. 3, *supra*, since there cannot be effective monitoring without notice. While a

work in progress, the CCCO's notice of Employment Actions to the CCCA has improved considerably.

This progress broke down in connection with the CCCO's COVID-related shutdown. The CCCA recognizes the unprecedented times that we face. She does not minimize the Clerk's challenges in dealing with her workforce and her need to comply with the orders of the Chief Judge of the Circuit Court of Cook County. But those challenges, however great, should not excuse the Clerk from her obligations under the SRO.

From mid-March 2020 to July 6, 2020, when only a skeleton crew of CCCO employees were working on site and others were working remotely, the Clerk made decisions about her workforce, including how many union and union employees would work on-site and how they would be selected, and increased their rate of pay. Although these were Employment Actions under the SRO, the Clerk made these decisions without prior notice to Plaintiffs or the CCCA. These decisions raise concerns about potential Unlawful Political Discrimination as, for example, employees could be allowed to work remotely as a reward for their political affiliations or forced to work on site as punishment for their political affiliations (or lack thereof). Plaintiffs and the CCCA have asked for information on the Clerk's selection process and the CCCO is in the process of providing it. But this is after the fact and in contravention of the SRO.

How the Clerk is dealing with telecommuting is another Shakman problem. It was no mystery to the CCCA or Plaintiffs that the CCCO would need a telecommuting policy. Cook County issued one on March 16, 2020. It is imperative that a telecommuting policy have transparent procedures and requirements to guard against potential Unlawful Political Discrimination such as employees who are allowed to work remotely without being required to actually work as a reward for their political affiliations.

Starting on May 29, 2020, the CCCA repeatedly asked about the status of the CCCO's telecommuting policy – with no response. On June 25, 2020, the CCCA sent the CCCO a copy of the County's telecommuting policy, suggesting it would be a useful model. The CCCO maintained its silence.

On June 30, 2020 at 9:48 p.m., the CCCO sent Plaintiffs and the CCCA its "telework" policy "for review and comment." The transmittal email said that the CCCO "intends to issue the attached policy by the morning of July 2, 2020." Giving Plaintiffs and the CCCA one day to review and comment on the policy with no time for subsequent discussion shows the Clerk's knowing avoidance of Plaintiffs/CCCA's engagement on the telecommuting policy.

Plaintiffs and the CCCA's immediate objections to the telecommuting policy's issuance without their input were unheeded as the Clerk proceeded to issue the policy on July 2, 2020. While the Clerk's purported justification for July 2, 2020 issuance was that July 3, 2020 was a holiday and the workforce was returning on July 6, 2020, her urgency appears makeshift: the CCCO telework policy did not affect employees who were returning on site and CCCO employees had been working remotely since the end of March 2020, with no telecommuting policy in place.

Faced with Plaintiffs and the CCCA's opposition, on July 1, 2020, the Clerk claimed she was "amenable to reviewing [Plaintiffs and the CCCA's] recommendations and considering a revision to the policy after you submit your feedback." That the Clerk will "consider" Plaintiffs and the CCCA's revisions is inadequate as Shakman-related policies are not to be issued without Plaintiff/CCCA involvement and, if agreement cannot be reached, the Court's.

As they said they would, Plaintiffs and the CCCA sent their revised telecommuting policy on July 7, 2020, and asked for the CCCO's comments. To date, none have been forthcoming.

Also, how the CCCO is administering its telecommuting policy raises concerns about potential Unlawful Political Discrimination as employees could be allowed to work remotely as a reward for their political affiliations or forced to work on site as punishment for their political affiliations (or lack thereof). The CCCA has requested information regarding how the CCCO is administering its current telework policy including, but not limited to, which employees are being allowed to work remotely and why. No documents have yet been provided.

## 2. Other Policies

While the creation of Shakman-related policies typically occurs after the completion of a full Employment Plan, the parties and the CCCA had begun initial efforts to address discrete policies prior to the COVID-related shutdown. The most significant effort was directed towards time and attendance. The CCCO administers attendance through a policy under which employees accrue “points” for infractions (*e.g.*, late arrivals, unexcused absences) and certain levels of “points” give rise to disciplinary action.

Currently, the CCCO tracks time and attendance with Cook County Time (“CCT”), which is used by the offices of all Cook County Elected Officials. The CCCO also uses a legacy time and attendance tracking system. As would be expected, using two different systems gives rise to accuracy and transparency issues, which made CCCA monitoring of time and attendance virtually impossible.

At the CCCA’s urging, the CCCO engaged the Cook County Bureau of Technology (“BOT”) to enhance the CCCO’s CCT system to allow the retirement of the legacy system. BOT began the process and was expected to be done by mid-June 2020. Unfortunately, BOT has indicated that it needs more time and hopes to complete the requested enhancements by July 24, 2020. Since these enhancements will change how the CCCO administers time and attendance,

once they are completed and their functionality understood, the parties and the CCCA should be in a position to revisit the Time and Attendance policy.

The parties and the CCCA also began discussing an Interim Assignment policy and a Temporary Assignment policy, which was initiated by the CCCO's lack of notice to the CCCA about these Employment Actions. The CCCA is informed that she is receiving notice of all interim and temporary assignments, which alleviated the immediate need for these policies.

**IV. 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 parties to finalize an Amended Exempt List, including imposing a deadline for doing so, if appropriate.**
- B. Recommendation No. 2 - The Court should encourage the parties and the CCCA to work towards a Final Employment Plan as soon as practicable, including imposing deadlines for the exchanges of drafts, if appropriate.**
- C. Recommendation No. 3 – The Court should require the Clerk to provide comments on Plaintiffs/CCCA's revisions to the CCCO's telecommuting policy by an immediate date certain, along with documents sufficient to explain how the CCCO is administering this policy.**

Dated: July 21, 2020

Respectfully submitted,

Susan G. Feibus  
Compliance Administrator for the Clerk of the  
Circuit Court of Cook County  
69 West Washington St., Suite 1422  
Chicago, IL 60602

and

105 West Adams St., 35<sup>th</sup> floor

Chicago, IL 60603  
(312) 637-9637  
susan@feibuslaw.com

By her attorney:

Dina Masiello  
69 West Washington St., Suite 1422  
Chicago, IL 60602

**CERTIFICATE OF ELECTRONIC FILING**

I, Dina Masiello, the undersigned, do hereby certify that on July 21, 2020, I electronically filed a true and correct copy of the foregoing **Fourth 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/ Dina Masiello  
Counsel to the CCCA