

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

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

I. INTRODUCTION

On January 21, 2021, the CCCA filed the Sixth Report to the Court (“Sixth Report”). Doc. No. 7143. This Seventh Report is to update the Court as to the Clerk’s progress towards Substantial Compliance¹ with the SRO since the Sixth Report.

¹ All capitalized terms have the same meaning as in the SRO or Employment Plan, unless otherwise indicated. 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” and the SRO’s essential purpose; and 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. (Footnote continued on next page)

It has been nearly seven months since Clerk Martinez assumed office on December 1, 2020. From a Shakman perspective, she and her team, notably the Chief of Staff (“COS”) and Executive Clerk - Chief Human Resources Officer (“CHRO”), have accomplished a great deal in that time. The accomplishments, discussed below, include revised/updated Exempt position descriptions; reexamined Exempt positions which resulted in a revised Exempt List; filling virtually all Exempt positions; initiating hiring under the Employment Plan (Executive Assistants, Entry-Level Bargaining Unit Positions); initiated Bargaining Unit Lateral Transfers under the Employment Plan; and initial work regarding the policies and procedures required to effectuate the Employment Plan (“Shakman-related policies”).

Of note is that the progress made by the CCCO since the Sixth Report has been in cooperation and collaboration with the CCCA and Plaintiffs. Communication between the COS and the CCCA and the CHRO/Shakman Liaison (and her team) and the CCCA has been regular, cordial and productive. As the Court well knows, this is the most efficient and effective way for an elected official under a Shakman supplemental relief order to achieve Substantial Compliance.

An unfortunate development since the Sixth Report, as the Court is aware, was the Director of Compliance’s passing away on May 22, 2021. The CCCA formally extends her condolences to his family and co-workers.

II. OVERVIEW OF THE CCCA’S ACTIONS SINCE THE JANUARY 21, 2021 SIXTH 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 Sixth Report included:

No. 6382 at 13 – 14. The “Clerk of Court’s Decrees” refer to: (1) 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 (2) 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.

- provided significant input into amending the Employment Plan, including adding an Executive Assistant hiring process, which the Court entered on March 19, 2021;
- provided significant input into the CCCO's request to amend the Exempt List, which the Court entered on April 19, 2021;
- provided significant input into revising and finalizing the Exempt position descriptions to make them current and accurate;
- provided significant input into reviewing and approving many Exempt Candidates proposed by Clerk Martinez;
- provided significant input into reviewing and approving many Executive Assistant Candidates proposed by Clerk Martinez;
- provided Shakman Training to the CCCO's Exempt staff on February 24, 2021, which was recorded and used to train the Non-Exempt staff;
- provided significant input into creating Telework, Transfer and Temporary Assignment policies and implementing forms;
- provided significant input into the CCCO's continuing efforts to revise and improve its time and attendance enforcement mechanisms;
- provided significant input into how the CCCO/HR should provide the CCCA and DOC with the requisite notice of Employment Actions and regular feedback as to the efficacy of the notice;
- provided significant input into the CCCO's first use of the Lateral Transfer process for bargaining unit positions under the Employment Plan;
- provided significant input into revising and finalizing position descriptions for positions covered by the Employment Plan's Entry-Level Bargaining Unit Hiring process to make them current and accurate;
- provided Human Resources Training, as required by the Employment Plan, to allow the CCCO/HR to hire under the Entry-Level Bargaining Unit Hiring process;
- provided significant input into revising the Director of Compliance ("DOC") position description and anticipated DOC Hiring process;
- conducted exit interviews of departing CCCO employees;
- monitored bi-monthly CCCO grievance hearings;

- conferred with the COS and CHRO/Shakman Liaison on a regular basis;
- conferred with counsel for Plaintiffs 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. Matters Relating to Exempt Positions

1. Exempt List

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.

When Clerk Martinez took office, the Exempt List, effective November 16, 2020, had 80 positions. The current version of the Exempt List, entered by the Court on April 19, 2021, has 87 positions. The new Exempt positions are: Senior Policy Advisor; Executive Clerk of External Affairs; Deputy Director of Personnel Services; Director of Training and Development; Deputy Director of Training and Development; Chief Deputy Clerk-Special Projects; and Assistant Chief Deputy Clerk – Domestic Violence.

The parties and the CCCA have agreed to two additional Exempt positions: (1) Chief Deputy Clerk – Accounting and Auditing; and (2) Manager Information Systems Project Manager. The CCCA expects Plaintiffs shortly will file a motion to amend the Exempt List.

2. Exempt Position Descriptions

Sections XII(C)(1) and (2) of the Employment Plan requires Exempt position descriptions, which are subject to review and comment by Plaintiffs, the CCCA and the DOC, to be “current and accurate” and include the position's Minimum Qualifications. Clerk Martinez's Exempt hiring

gave rise to the need to review the Exempt position descriptions to ensure that the essential job duties were accurate and the Minimum Qualifications were appropriate.

As described in the Sixth Report, the parties and the CCCA agreed to a transparent and comprehensive plan governing Exempt Minimum Qualifications, which has been applied to the Exempt positions in Court Operations and Administration and either applied to or informed CCCO “back-office job” Exempt positions (*e.g.*, public policy, Human Resources, finance, information technology). The parties and the CCCA agreed that supervisory experience may be waived by agreement on a case-by-case basis for Exempt positions that do not include supervisory duties. The agreed Minimum Qualifications for the four security and investigative positions were based on the job level.

Since the Sixth Report, all Exempt position descriptions have been revised and finalized.

3. Exempt Hiring

Article XII of the Employment Plan governs the Exempt Hiring process. Clerk Martinez began proposing Candidates for Exempt positions even before assuming office and that process has continued to the present. The parties and the CCCA have developed an efficient process to review, request additional information, as required, and approve Exempt Candidates in a timely manner. The CCCA understands that of the 87 positions on the current Exempt List, four are vacant.

B. Employment Plan Revisions

A prerequisite to Substantial Compliance under Section II(C) of the SRO is the creation of a full Employment Plan. The Court entered the Clerk’s original full Employment Plan on November 24, 2020.

On March 19, 2021, the Court approved an agreed motion to amend the Employment Plan. The changes requested by the Clerk were modest and, for the most part, technical. The most significant substantive change was adding an Executive Assistant Hiring Process, which allows Executive Clerks, Associate Clerks and Chief Deputy Clerks to hire direct-report, executive-level administrative assistants of their choosing, so long as they possess the Minimum Qualifications of the position. This process is contained in the Employment Plans of other elected officials subject to Shakman supplemental relief orders.

Based on using the Employment Plan, particularly in beginning to hire, the CCCO has identified the need for additional Employment Plan revisions. The parties and the CCCA are in the process of finalizing those revisions. The CCCA expects Plaintiffs shortly will file a motion to amend the Employment Plan with those revisions.

C. Non-Exempt Hiring Under the Employment Plan

The Non-Exempt hiring processes in the Employment Plan are the: General Hiring process (Section VI); Entry-Level Bargaining Position Unit Hiring process (Section VII); Bargaining Unit Position Promotion and Transfer processes (Section VIII); Actively Recruited Hiring process (Section IX); Director of Compliance Hiring process (Section X); Intern/Extern Hiring process (Section XI); and Executive Assistant Hiring process (Section XIII). This report addresses only those processes that the CCCO has initiated or is expected to initiate shortly.

1. Executive Assistant Hiring Process

In connection with adding Executive Assistant Hiring Process to the Employment Plan, the parties and CCCA agreed to an Executive Assistant position description on March 18, 2021.

The CCCO proffered eight Executive Assistant Candidates for: (1) Executive Clerk – Chief Financial Officer; (2) Executive Clerk – Management Information Systems; (3) Executive Clerk

– Chief Human Resources Officer; (4) Executive Clerk – General Counsel; (5) Executive Clerk – External Affairs; (6) Executive Clerk – Inspector General; (7) Chief Deputy Clerk – Archives/Micrographics; and (8) Chief Deputy Clerk – Special Projects, Court Operations. The process went smoothly and all proffered Candidates were approved.

2. Bargaining Unit Position Lateral Transfer Process

Under the Collective Bargaining Agreement (“CBA”), the CCCO first must try to fill certain Grade 10 bargaining unit vacancies by transferring willing current Grade 10 employees in those positions at another location. Section VIII(B) of the Employment Plan sets forth the process that the CCCO must use to make those transfers (“Lateral Transfers”). The Lateral Transfer Process, which includes bidding and selection processes, is consistent with the CBA and brings a level of transparency to bargaining unit lateral transfers that was absent prior to the Employment Plan.

In March 2021, the CCCO initiated the first Lateral Transfer process under the Employment Plan. In May 2021, the CCCO effectuated lateral transfers for Clerk IV, Sr (offers to 14 employees), Cashier II (offers to two employees), and Financial Room Clerk II (offer to one employee). In June 2021, the CCCO expects to make lateral transfer offers to 30 Clerk Court I employees.

The CCCA and the CCCO/HR collaborated and cooperated to effectuate this first Lateral Transfer process, which ultimately worked well. While there were a few bumps in the road, it was a learning process for all involved.

3. Bargaining Unit Position Entry-Level Hiring Process

The CBA does not address the hiring of entry-level bargaining unit employees. The Entry-Level Bargaining Unit Position Hiring Process is similar to the General Hiring process. The most

significant difference is g that the Entry-Level Bargaining Unit Position Hiring process does not require interviews prior to offers of employment. The Entry-Level Bargaining Unit Position Hiring process brings a level of transparency to entry-level bargaining position hiring that was absent prior to the Employment Plan.

On June 11, 2021, the CCCO commenced the Entry-Level Bargaining Unit Position Hiring process by posting six positions on Taleo: (1) Clerk IV, Senior (50 vacancies); (2) Cashier II (10 vacancies); (3) Appeals Clerk I (10 vacancies); (4) Financial Room Clerk II (10 vacancies); (5) Expungement Clerk I (10 vacancies); and (6) Warehouse Records Clerk I, Sr. (10 vacancies). As a precondition to posting, the parties and CCCA agreed to revised, current and accurate positions descriptions.

The posting period ends on June 25, 2021, at which time the validation and other processes described in the Employment Plan will commence. The CCCA will report further on this hiring process in her next report.

4. Director of Compliance Hiring

As indicated above, the CCCO finds itself in need of hiring a DOC based on the DOC's unfortunate passing. The parties and the CCCA are in the process of revising the position description. The CCCO is identifying the websites where the DOC position will be posted; the COS and CHRO have indicated that the position will be posted widely for a three-week period in an effort to achieve a robust applicant pool. The parties and the CCCA are in the process of identifying who will participate in the various aspects of the DOC Hiring Process.

Subject to the CCCO completing its posting plan, the CCCA expects the DOC position to be posted by the time of the June 28, 2021 court status. The parties and the CCCA have agreed to

work expeditiously to fill the DOC position. Based on discussions with the COS and CHRO, the CCCA understands that the CCCO hopes to be able to make an offer by mid-August 2021.

Based on discussions with the parties, the CCCA understands that they would like the Court to appoint the CCCA as Interim DOC until the position is filled, as has been customary when the DOC position is vacant. The CCCA is amenable to this appointment.

D. Training

1. Shakman Training

The parties and the CCCA agreed that training the CCCO Exempt and Non-Exempt workforce on Shakman precepts was imperative. The CCCO asked the CCCA to present this training, which she did to the Exempt staff via a live video stream (Zoom) on February 24, 2021. The training was recorded and presented to the Non-Exempt staff by the end of March 2021. The training included detailed materials designed to be a reference guide for CCCO employees.

The CCCO provided an evaluation form along with the training, which employees were expected to fill out. The response was favorable.

2. Human Resources Training

- Section IV(E)(1) of the Employment Plan requires, *inter alia*, comprehensive annual Employment Plan training for HR employees “to ensure that they are aware of, knowledgeable about, able to administer and able to answer questions they receive” about the Employment Plan.
- Section IV(E)(3) of the Employment Plan requires comprehensive training of all HR employees regarding proper validation and review protocols before they conduct such review and validation (“Validation Training”).

These provisions became of paramount importance when the CCCO embarked on the Entry-Level Bargaining Unit Position Hiring process described above. On June 16, 2021, the CCCA’s counsel presented HR Employment Plan training sufficient to educate the HR staff on the

processes and procedures required for that training. The training included detailed materials designed to be a reference guide for CCCO employees. The response from HR was favorable.

The CCCO's Director of Training is working on the training materials and presentation for the requisite Validation Training, which must be delivered before HR employees can validate application materials for the entry-level bargaining unit positions.

3. Employment Plan Training

- Section IV(G) of the Employment Plan requires, *inter alia*, comprehensive annual Employment Plan training for all employees.
- Section IV(F) of the Employment Plan requires, *inter alia*, comprehensive annual Employment Plan training for Supervisors.

The COS and CHRO recognize the necessity of providing this training. With the addition of the Director of Training and Development and Deputy Director of Training and Development on May 5, 2021, the CCCO should be in a position to assume primary responsibility. The CCCA understands that the CCCO aims to accomplish Employment Plan training by the end of July 2021.

4. Interviewer Training

Section IV(I) of the Employment Plan requires that all employees who are eligible to interview Candidates for any position receive comprehensive training on proper interviewing conduct, techniques, requirements and the prohibition of Unlawful Political Contacts and Unlawful Political Discrimination before the employee may participate on an Interview Panel.

Interviewer Training is not relevant to the Entry-Level Bargaining Unit Hiring process since those positions do not require interviews. Interviewer training is relevant to the Director of Compliance Hiring process as interviews are required. The CCCO is aware of this requirement and has indicated that it will be satisfied prior the interviews for the DOC position, which, under the hiring scenario discussed above, should commence by the end of July or early August 2021.

E. Employee Handbook: Shakman-Related Policies

Section IV(B) of the Employment Plan requires CCCO “to maintain an up-to-date Employee Handbook” that “shall be consistent, in compliance with, and effectuate” the Employment Plan. The Shakman-related policies required to effectuate the Employment Plan include: training; layoffs/recall; reclassifications; temporary assignments; interim assignments; transfers; overtime/compensatory time; time and attendance; discipline; performance evaluations; and telework.

As indicated in the Sixth Report, the parties and the CCCA have focused on creating and implementing those Shakman-related policies that the CCCO’s operational needs require on a regular basis in the effort to ensure the transparency that Shakman requires. Also, the parties and the CCCO agree that creating Shakman-related policies is not enough; effective implementation also requires supervisory training.

Regarding Shakman-related policies to date:

- Telework - a revised Telework policy and implementing forms were finalized and supervisory training occurred.
- Temporary Assignment and Transfer - Temporary Assignment and Transfer policies and implementing forms were finalized; supervisory training is anticipated by or about the end of June 2021.
- Time and Attendance – the CCCO recognizes the need to create and implement a transparent Time and Attendance policy by which the CCCO will administer its attendance “points”-based discipline. The CHRO has named a team to engage with the Cook County Bureau of Technology (“BOT”) to enhance the CCCO’s Cook County Time (“CCT”) system and eliminate the CCCO’s legacy timekeeping system. These efforts are ongoing. The CCCA has been a part of and/or been apprised of the discussions with BOT. The CCCA will apprise the Court further in future reports.

The parties and the CCCA have discussed the need for a full-fledged Employee Handbook, both to satisfy the Employment Plan and based on the CCCO’s operational need. The COS has

indicated that he will provide a first draft of an Employee Handbook (covering Shakman-related policies and those not required by Shakman) as soon as practicable.

F. CCCO/HR Notices of Employment Actions

Section I(G) of the SRO authorizes that CCCA to, *inter alia*, “review the Clerk of the Court’s employment practices.” Section I of the Employment Plan authorizes the CCCA to, *inter alia*, “monitor any and all Employment Actions² involving both union and non-union Employees whether in Exempt or Non-Exempt Positions.” Without notice of an Employment Action, the CCCA’s authority to monitor is illusory. The agreed notice period is at least two business days.

As indicated in the Sixth Report, there have been issues regarding the CCCO/HR’s requisite notice of Employment Actions to the CCCA. Since the Sixth Report, the CCCO/HR began using an agreed “Notice of Employment Action” form (“NEA”), which facilitates CCCA monitoring. An accurate and transparent description of the Employment Action, including supporting documentation, from the CCCO/HR also is required. The CCCO/HR has improved in conveying that information, although deficiencies remain. The CCCA has begun to give the CCCO/HR regular feedback on NEAs and supporting documentation deficiencies, which presumably will assist the CCCO/HR is the quality of the NEAs it provides. The notice process also should be clearer to all involved once the CCCO has Shakman-related policies in place.

² The Employment Plan’s definition of “Employment Action” is broad: “Any action (positive or negative) related to any aspect of employment, including, but not limited to, hiring, Promotion, Training, Interim Assignment, Temporary Assignment, Transfer, Reclassification, Compassionate Transfer, Layoff, assignment of Overtime (and other benefits of employment), Discipline and Termination.” (Emphasis supplied.) The CCCA’s monitoring authority goes beyond Employment Actions as, per the SRO and Employment Plan, it extends to all aspects of the CCCO’s hiring.

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:

- A. Recommendation No. 1** - The parties and the CCCA should be directed to finalize amendments to the Employment Plan as soon as practicable, following which Plaintiffs promptly should file a motion to amend the Employment Plan and Exempt List (to which the addition of two Exempt positions have been agreed).
- B. Recommendation No. 2** – The CCCO, in conjunction with the CCCA (and also in the role of Interim DOC, should the Court make that appointment) should be directed to present Employment Plan training to CCCO Exempt and Non-Exempt staff as soon as practicable.
- C. Recommendation No. 3** – The parties and the CCCA should be directed to use their best efforts to create an Employee Handbook as soon as practicable.
- D. Recommendation No. 4** – The CCCO, in conjunction with Plaintiffs and the CCCA, should be directed to use its best efforts hire a Director of Compliance as soon as possible.

Dated: June 21, 2021

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I, Sue Gombis, the undersigned, do hereby certify that on June 21, 2021, I electronically filed a true and correct copy of the foregoing **Seventh 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/ Sue Gombis
Counsel to the CCCA