

**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, <i>et al.</i>,)	Magistrate Judge
)	
Defendants.)	

**FIFTH 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 Fifth Report to the Court:

I. INTRODUCTION

On July 21, 2020, the CCCA filed the Fourth Report to the Court (“Fourth Report”). Doc. No. 6967. This Fifth Report is to update the Court as to the Clerk’s progress towards Substantial Compliance with the SRO since the Fourth Report.

This is the CCCA’s final report of Clerk Brown’s tenure. So it seems appropriate to summarize the CCCO’s progress toward Substantial Compliance in the nineteen months since the CCCA was appointed.

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

The CCCO's progress towards Substantial Compliance includes:

- Revising and amending the Exempt List;
- Shakman training of all CCCO employees (conducted by the CCCA in her role of Interim DOC in June 2019);
- Creating and implementing an Interim Employment Plan;
- Supervisor training under the Interim Employment Plan (conducted by the CCCA in her role of Interim DOC in September 2019 (senior staff) and December 2019 (senior staff and managers));
- Hiring a Director of Compliance;
- Exempt hiring under the Interim Employment Plan;
- Entry-level union hiring under the Interim Employment Plan;
- General (non-union) hiring under the Interim Employment Plan; and
- Revising various Exempt, Non-Exempt and entry-level position descriptions.

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. 6382 at 1.

Also, as described below, the parties and the CCCA are in the process of creating a full Employment Plan with a court-ordered completion goal of November 30, 2020. While the Clerk has taken the position that she is at impasse regarding the bargaining unit promotion and transfer processes, the CCCA hopes that resolution can be reached so that resort to the SRO's impasse resolution provision will not be required.

The CCCA would be remiss not to note the significance of the CCCO's accomplishments - and all the more so given the disruption to the CCCO's operations for the last seven months, since March 2020, because of the pandemic. This progress could not have been made without Clerk Brown's commitment to the process; the hard work of the Shakman Liaison and Human Resources and other staff; the guidance of outside counsel; and input from Plaintiffs' counsel. After some initial bumps in the road, the CCCO has been communicative, cooperative and a good partner in this venture.

II. OVERVIEW OF THE CCCA'S ACTIONS SINCE THE JULY 21, 2020 FOURTH 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 Fourth Report include:

- drafted a full Employment Plan, which is under negotiation with the CCCO;
- provided significant input into the CCCO's request to amend the Exempt List, including desk audits;
- provided significant input into a telework policy and implementing forms;
- reviewed the CCCO's employee selection process during the COVID-related shutdown from March through June 2020;
- provided continued input into the CCCO's first hiring sequence (entry-level union position) using Taleo, which essentially has been completed;

- provided significant input into two hiring sequences for non-Exempt positions using Taleo, which did not result in hiring, and in the reposting of the positions and hiring processes which are ongoing;
- consulted with the DOC on an ongoing basis since his June 15, 2020 arrival;
- examined past and current CCCO hiring practices;
- 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 Human Resources personnel 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 Amended Exempt List was Approved by the Court on August 18, 2020; an Amended Exempt List with Position Identification Numbers 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.

The parties and the CCCA have addressed the Exempt List since shortly after the CCCA's appointment, resulting in various amendments. On August 18, 2020, the Court last approved an Amended Exempt List, Doc. No. 7037, which was appended to the SRO.² This version did not

² There was discussion at the September 16, 2020 court status, as indicated in the September 18, 2020 order, of the need to desk audit two positions on the Exempt List to make sure they satisfied the *Branti* standard. It turned out that one of the positions was vacant and the holder of the other position had been desk audited. It was agreed that the positions would remain on the Exempt List subject to future desk auditing.

include the Cook County Position Identification Description (“PID”) numbers, which the Court’s September 16, 2020 order, Doc. No. 7091, directed the CCCO to provide, and which the CCCO did provide, by October 16, 2020. The CCCA expects Plaintiffs to present a motion to amend the Exempt List to include the PID numbers in the near term.

B. A Full Employment Plan is in Process with a November 30, 2020 completion goal

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.

Per the Court’s September 18, 2020 order: “[T]he Full New Employment Plan...is the highest priority step to accomplish by 11/30/20.” To that end, by the September 16, 2020 status hearing, the Plaintiffs/CCCA and the CCCO had exchanged drafts and, as required by the September 18, 2020 order, Plaintiffs/ACA provided a revised draft on October 2, 2020. The September 18, 2020 order required the CCCO to respond with comments or revisions by October 16, 2020. The CCCO did so – but not in red-lined form – which made review difficult, if not impossible. Upon request, the CCCO provided red-lined versions on October 20, 2020. The parties and the CCCA are working to comply with the 10/23/20 meet and conferral requirement.

While good progress on the Full Employment Plan has been made, the sticking point is the promotion and transfer processes for bargaining unit positions. Unlike other elected officials subject to Shakman decrees who fill bargaining unit positions through a General Hiring Process, the Clerk’s Collective Bargaining Agreement (“CBA”) prescribes the framework for bargaining

unit employee promotions and transfers. While the CCCO has developed procedures for effectuating these promotions and transfers, these processes do not provide the procedural transparency that Shakman requires.

Plaintiffs and the CCCA proposed processes - within the CBA's framework - to address bargaining unit promotions and transfers, which they subsequently revised based on the CCCO's comments. As of October 16, 2020, the Clerk has taken the position that she and Plaintiffs/CCCA are at impasse. If this cannot be resolved via the court-ordered "meet and confer," the parties and the CCCA will follow the SRO's Impasse Resolution provision, Section II(F), whereby, per the Court's September 18, 2020 order: the CCCA shall present any impasse by November 6, 2020; Plaintiffs and the CCCO shall respond by November 13, 2020; the CCCA shall reply by November 20, 2020; and the Court will rule by November 30, 2020.

C. CCCO Exempt Hiring Since the Fourth Report

The CCCO has made one Exempt hire – a Deputy General Counsel - since the Fourth Report. The CCCO followed the Interim Employment Plan's Exempt Hiring Process.

D. CCCO Non-Exempt Hiring Since the Third Report

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

The CCCO has been in the process of filling 21 entry-level Clerk IV, Sr. bargaining unit positions using Taleo for over a year (since August 2019). The CCCA understands that 20 positions have been filled and one conditional offer (dependent on passing background checks) has been made. The extended duration of this hiring process was caused, in part, by the CCCO's COVID-related shutdown from March 2020 through June 2020, as the CCCO was not in a position to onboard new court clerks. Also, given the hiring process' duration, the CCCA understands positions initially accepted subsequently were rejected.

2. 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 extended that Candidate an offer, which was declined.

The position was reposted and the CCCA is waiting for the CCCO to schedule the validation meeting. The CCCA understands that the CCCO hopes to complete the hiring process before the change of administration.

3. Windows Server Administrator (General Hiring Process)

This technical information technology job was posted on Taleo on April 15, 2020. The May 13, 2020 validation meeting did not result in any minimally qualified Candidates.

The position was reposted and the CCCA is waiting for the CCCO to schedule the validation meeting. The CCCA understands that the CCCO hopes to complete the hiring process before the change of administrations.

E. Shakman-Related Policies

1. Telework Policy

The Employment Plan, required under Section II(C) of the SRO, governs CCCO employment practices, policies and procedures (including, but not limited to, hiring, promotion, transfer, assignment of overtime, discipline and discharge).

In this pandemic era, teleworking has taken on heightened importance, including at the CCCO. Teleworking implicates Shakman as transparent procedures are required 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.

As discussed in the Fourth Report, issues arose regarding the CCCO's drafting and issuance of a telework policy without obtaining input from Plaintiffs and the CCCA. Fourth Report at pp. 11-13. Since the Fourth Report, in accordance with the Court's September 18, 2020 order, the parties and the CCCA have negotiated an agreed telework policy and implementing forms.

The Court's September 18, 2020 order directs the CCCO to complete training on the telework policy by mid-November 2020, with full implementation by November 30, 2020. The CCCO has indicated that it is working on a written (PowerPoint) training presentation for the CCCA's review. The CCCA expects that the CCCO will implement the telework policy in accordance with the Court's September 18, 2020 order.

2. Time and Attendance Policy

While the creation of Shakman-related policies typically occurs after the completion of a full Employment Plan, the parties and the CCCA have addressed the CCCO's Time and Attendance policy, which the CCCO administers attendance through employee accrual of "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, as well as a legacy time and attendance system. Certain enhancements of CCT – and the elimination of the legacy system - are required before the CCCA will be able to effectively monitor CCCO time and attendance policy enforcement.

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 July 24, 2020. The CCCA understands that BOT has not completed the enhancements. The project was made more difficult after the Chief Human Resources Officer's resignation as she was managing the process.

The CCCA understands that there has been additional communication between the CCCO and BOT that has not included the CCCA. The CCCA has made repeated requests for some time to the CCCO to schedule a meeting with BOT and include the CCCA. That has not yet happened. Only after enhancements are made to CCT and the legacy time and attendance system is retired will the parties and the CCCA be in a position to craft a Time and Attendance policy and will the CCCA reasonably be able to monitor it.

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. As this report is due and is being filed in advance of the November 19, 2020 court status, the CCCA's recommendations echo the directives contained in the Court's September 18, 2020 order:

- A. Recommendation No. 1 - The parties and the CCCA should complete the Full Employment Plan by November 30, 2020.**
- B. Recommendation No. 2 – Plaintiffs should file a motion to amend the Exempt List to include the PID numbers.**
- C. Recommendation No. 3 – The CCCO should fully implement its Telework Policy by November 30, 2020.**
- D. Recommendation No. 4 – The CCCO should arrange a meeting with Cook County BOT as soon as possible, including the CCCA, to address the status of enhancements to the CCCO's CCT system needed to effectively track the CCCO's "points" discipline policy.**

Dated: October 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., 35th 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 October 21, 2020, I electronically filed a true and correct copy of the foregoing **Fifth 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