

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

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

**EIGHTH 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 Eighth Report to the Court:

I. INTRODUCTION

On June 21, 2021, the CCCA filed the Seventh Report to the Court (“Seventh Report”). Doc. No. 7483. This Eighth Report is to update the Court as to the Clerk’s progress towards Substantial Compliance¹ with the SRO since the Seventh 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. 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

Clerk Martinez has been in office for approximately nine months (since December 1, 2020). In that time, her Chief of Staff (COS) and Chief Human Resources Officer (CHRO) have demonstrated their understanding of what Substantial Compliance entails and a willingness to do what is required to achieve it.

The first element of Substantial Compliance, a full Employment Plan, was in place when Clerk Martinez took office. The Court approved an amended Employment Plan in March 2021; the CCCA expects a request to approve further amendments will be presented to the Court soon, primarily related to “tweaking” the bargaining unit hiring, transfer and promotion processes.

As suggested by the anticipated Employment Plan amendments, the majority of the CCCO’s efforts towards Substantial Compliance have been related to bargaining unit position hiring and transfers, to be followed by bargaining unit promotions, which, under the CCCO’s Collective Bargaining Agreement (CBA), first must be offered internally. The CCCO’s stated reason for this focus is great operational need.

The CCCA accepts the CCCO’s operational need to augment its workforce (both bargaining unit and non-bargaining unit). This need however should not supplant moving forward with foundational Shakman requirements such as Employment Plan training for employees and supervisors. The CCCA is not suggesting that the CCCO/HR does not recognize these foundational requirements or is seeking to avoid them. But nine months into Clerk Martinez’s term, the CCCA would be remiss not to note the need to focus on foundational matters.

The CCCA recognizes that the CCCO’s progress would be enhanced with a more robust HR team. The Exempt Director of Personnel Services position is vacant and presumably will be

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.

filled soon. The CCCA understands that the CCCO intends to expand the number of non-Exempt HR positions. Besides important for the CCCO to, *inter alia*, implement the Employment Plan, a staff of “experienced and knowledgeable” HR professionals, *see* Employment Plan at Section III(I), is necessary to show that the CCCO has a durable remedy, which is a fundamental Substantial Compliance finding.

All that being said, the COS and the CHRO (and her team) continue to work collaboratively and cooperatively with the CCCA and Plaintiffs towards the Substantial Compliance goal. The CCCA appreciates the effort and looks forward to further progress.

II. OVERVIEW OF THE CCCA’S ACTIONS SINCE THE JUNE 21, 2021 SEVENTH 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 Seventh Report included:

- serving as Interim Director of Compliance (“DOC”);
- provided significant input into additional amendments to the Employment Plan, which are nearly finalized;
- provided significant input into reviewing and approving Exempt Candidates proposed by Clerk Martinez;
- provided significant input into the CCCO’s training for HR on proper validation and review protocols;
- provided significant input into the CCCO’s abbreviated Interviewer training;
- provided significant input into the CCCO’s training on the Transfer and Temporary Assignment policies;
- provided the CCCO/HR with regular feedback regarding compliance with Shakman-related Employment Actions, policies and procedures;
- worked closely with the CCCO/HR regarding the CCCO’s first use of the Lateral Transfer process for bargaining unit positions under the Employment Plan;

- worked closely with the CCCO/HR regarding the CCCO's first use of the Entry-Level Bargaining Unit Hiring process under the Employment Plan;
- provided significant input into the Employment Plan's DOC Hiring, including serving as a member of the Vetting Panel;
- conducted exit interviews of departing CCCO employees;
- monitored bi-monthly CCCO grievance hearings;
- conferred with the COS on a regular basis;
- conferred with the CHRO/Shakman Liaison and other legal and HR personnel 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 Since the June 21, 2021 Seventh Report

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.

The CCCO's Exempt List last was amended on July 16, 2021, adding the positions of (1) Chief Deputy Clerk – Accounting and Auditing; and (2) Manager Information Systems Project Manager, bringing the number of CCCO Exempt positions to 89.

The CCCO requested and Plaintiffs and the ACA/Interim DOC agreed to an additional Exempt position of Labor Counsel. The ACA expects Plaintiffs shortly will file a motion to amend the Exempt List to include the Labor Counsel position.

2. Exempt Hiring

Article XII of the Employment Plan governs the Exempt Hiring process. Since the Seventh Report, the CCCO has filled four Exempt positions: (1) Chief Deputy Clerk (“CDC”) Budget; (2) CDC Accounting and Auditing; (3) Investigator/Security Detail Officer; and (4) Information Technology Project Manager. All positions were filled in accordance with Section XII of the Employment Plan.

Two Exempt positions currently are vacant: (1) Labor Liaison Officer; and (2) Director of Personnel Services.

B. Non-Exempt, Bargaining Unit Hiring, Promotion and Transfer Processes Under the Employment Plan Since the June 21, 2021 Seventh Report

1. Bargaining Unit Position Lateral Transfer Process

Under the Collective Bargaining Agreement (“CBA”), the CCCO must offer certain Grade 10 entry-level bargaining unit vacancies to current Grade 10 employees in those positions at another location. This is reflected in Section VIII(B) of the Employment Plan, which sets forth the bidding and selection processes that the CCCO must use for those transfers (“Lateral Transfers”).

In March 2021, the CCCO initiated the first Lateral Transfer process under Section VIII(B) of the Employment Plan, which was completed since the Seventh Report. The following vacancies were filled via lateral transfers:

- Clerk IV, Sr - 9 (of 69) vacancies
- Clerk Court I - 10 (of 57) vacancies
- Financial Room Clerk II - 1 (of 1) vacancy
- Cashier II - 2 (of 10) vacancies

As indicated in the Seventh Report, while there were bumps in the road, it was a learning process for all involved. The CCCA expects that the CCCO's next use of the Lateral Transfer process will be smoother and more efficient.

2. Bargaining Unit Position Entry-Level Hiring Process

Under the CBA, after the Lateral Transfer process is completed, the CCCO may offer the remaining entry-level bargaining unit vacancies to external applicants. This is reflected in Section VII of the Employment Plan, which sets forth the Entry-Level Bargaining Unit Position Hiring Process. Because the positions are entry-level, the process is abbreviated and does not require interviews.

As indicated in the Seventh Report, the CCCO posted 100 entry-level bargaining unit positions on June 11, 2021. The status of these positions as of September 2, 2021 is:

- *Financial Room Clerk* (10 vacancies; 486 applicants; 486 applicants validated) – 6 vacancies filled; 4 conditional offers² made.
- *Cashier II* (10 vacancies; 801 applicants; 409 applicants validated) – 4 vacancies filled; 5 conditional offers made.
- *Warehouse I Records Clerk Senior* (10 vacancies; 530 applicants; 464 applicants validated) – 10 conditional offers made.
- *Expungement Clerk* (10 vacancies; 639 applicants; 265 applicants validated) – 1 vacancy filled; 6 conditional offers made.
- *Appeals Clerk I* (10 vacancies; 893 applicants; 302 applicants validated) – 9 conditional offers made.

For these 50 positions, 11 have been filled and the offer process is ongoing. The CCCO has indicated that it hopes to have the remaining 39 positions filled by or about the end of September 2021.

² Under Section VII(B) of the Employment Plan, offers are made conditionally as they are subject to employment verification, a background check and, for the Warehouse I Senior, a drug screen.

- Clerk IV Senior (50 vacancies; 737 applicants; 737 applicants to be validated) – validation process ongoing.

For these 50 positions, the CCCO/HR and the CCCO are planning to complete half of the validation process during the week of September 7, 2021, which should allow the CCCO/HR to begin making offers, and finish the validation process during the week of September 14, 2021.

Filling 100 positions, even with an expedited process, is no small task. Filling these positions was an even larger task because this was the first time the CCCO's HR team was required to validate applicants, as required by Section VII(A) of the Employment Plan. This was trial by fire because, as indicated above, the five entry-level positions (excluding Clerk IV Senior) required 1926 applicants to be validated. And since there are 50 Clerk IV Senior vacancies, all 737 applicants must be validated. *See* Employment Plan at Section VI(M)(1) incorporated into Section VII(A) (HR shall validate applicants who indicated they meet the Minimum Qualifications for the position until there are at least 15 applicants per vacancy for multiple vacancies). Also, much time and effort was devoted to determining whether applicants provided the documentation required to be eligible for the various positions.

The CCCO/HR and the CCCA worked cooperatively throughout the process and continue to do so. As would be expected with a first/trial run, much was learned that should make the next outing more efficient.

3. Primary Postings (Promotions)

Under the CBA, promotions for certain bargaining unit positions must be offered to CCCO employees in bargaining unit positions before they can be filled externally. The Employment Plan's General Hiring process (Section VI) is only used where the bargaining unit promotions cannot be filled internally. This is reflected in Section VIII(C) of the Employment Plan, which sets forth the Primary Postings process.

The CCCO has indicated that there are approximately 80 bargaining unit positions that must be in the process of being filled by the November 30, 2021 end of the County's fiscal year or they will be lost. Of these 80 positions, approximately 60 are for Court Clerk I; approximately 15 are Warrant Clerks; and approximately five are Court Clerk Trainers.³ The CCCO/HR and the CCCA have begun discussions about initiating this process, including the position descriptions and position-specific written interview questionnaires required by the Employment Plan. The CCCA will report on the CCCO's use of the Primary Posting process in future reports.

C. Non-Exempt, Non-Bargaining Unit Hiring Processes Under the Employment Plan Since the June 21, 2021 Seventh Report

1. DOC Hiring

As indicated in the Seventh Report, the DOC passed away on May 22, 2021. At the June 21, 2021 court status, as memorialized in the June 28, 2021 order, the CCCA was appointed Interim DOC until a new DOC is hired.

The CCCO proceeded to fill the DOC position pursuant to Section X of the Employment Plan. The position was posted from July 1, 2021 through July 15, 2021. The Vetting Panel met on July 28, 2021 and recommended three candidates to be interviewed. One candidate declined the interview.

As the DOC hiring process requires interviews, Interviewer Training, per Section IV(I) of the Employment Plan, was required for the four DOC interview panelists (COS, CHRO, Inspector General and Executive Clerk of Court Operations) before the DOC interviews could proceed. On August 9, 2021, the Director of Training, in conjunction with the CCCA/Interim DOC, presented abbreviated Interviewer Training to the four DOC interview panelists sufficient to comply with

³ The CCCA understands that the CCCO is in discussions with the Union as to whether the CBA requires the Court Clerk Trainer positions to be filled through the Primary Posting process.

Section IV(I) given the need to fill the DOC position expeditiously. The two candidates were interviewed on August 12, 2021 and August 16, 2021.

Clerk Martinez selected the highest-ranked candidate on August 25, 2021. The CCCO/HR has indicated that a conditional offer was made, which the selected candidate accepted on August 27, 2021, and she has passed the requisite background check and employment verification. According to the CCCO/HR, the selected candidate will begin at the end of September or mid-October 2021.

The selected candidate was the DOC for the Cook County Forest Preserve from 2011 to 2014 and HR Division Manager for the City of Evanston from 2015 to the present. This experience suggests that she should be a good fit for the DOC position.

The DOC hiring process was Employment Plan compliant. The CCCO/HR and the CCCA worked cooperatively to bring the process to closure in a timely fashion.

2. The General /Actively Recruited Hiring Processes

The CCCO has indicated that it is in the process of requesting County approval to hire approximately 30 non-union, non-Exempt positions that are in its 2021 budget or else the positions will be lost. The CCCO has indicated that these are “back office” jobs related to Human Resources, finance and information technology. The CCCA is unaware if any of these positions will be eligible for the Actively Recruited Hiring process set forth in Section IX of the Employment Plan (versus the General Hiring process set forth in Section VI of the Employment Plan).

Based on conversations with the CCCO, the CCCA understands that the Human Resources positions will be the first priority, with a current goal of posting in or about November 2021. The CCCA will report on the CCCO’s hiring under the General Hiring process and the Actively Recruited Hiring Process, as applicable, in future reports.

D. Employment Plan Revisions Since the June 21, 2021 Seventh Report

A prerequisite to Substantial Compliance under Section II(C) of the SRO is the creation of a full Employment Plan. As indicated in the Seventh Report, the Court approved the Clerk's original full Employment Plan on November 24, 2020, and amendments to the Employment Plan on March 19, 2021.

The parties and the CCCA/Interim DOC have been working on additional Employment Plan amendments. These amendments primarily are directed toward the Lateral Transfer Hiring Process and Entry Level Hiring Process based on the experience gained through the first use of these processes. The parties and the CCCA also are considering whether any amendment to the Primary Posting (Promotion) Process may be advisable, based on what has been learned through the hiring to date. To the extent the amendments will require changes to the Employment Plan exhibits, the implementing forms, those revisions also will be addressed.

The parties and the CCCA are working cooperatively to bring this round of Employment Plan amendments to closure expeditiously.

E. Employment Plan Mandated Training Since the June 21, 2021 Seventh Report

1. 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.

Employment Plan training is a foundational and fundamental piece of Substantial Compliance. While the COS and CHRO recognize the need to provide this training, it has not occurred nor been scheduled.

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”).

As indicated in the Seventh Report, the CCCA’s counsel presented abbreviated HR Employment Plan training to the CCCO’s HR staff on June 16, 2021 to apprise them of the processes and procedures attendant to the Entry-Level Bargaining Unit Position Hiring process on which the CCCO was about to embark.

The June 16, 2021 abbreviated HR Training was born of the CCCO’s represented operational need to fill entry-level bargaining unit positions. As a stopgap only, the fulsome HR Training required by Section IV(E)(1) of the Employment Plan must be completed. The CCCO cannot proceed, for example, with the Primary Posting (Promotion) process for bargaining unit positions or the General Hiring Process for non-Exempt, non-bargaining unit positions until the HR staff is fully trained.

On June 25, 2021, the CCCO’s Director of Training, in conjunction with the CCCA/Interim DOC’s counsel, presented Validation Training to the CCCO’s HR staff to prepare them to validate application materials for the entry-level bargaining unit positions.

3. Interviewer Training

The only Interviewer Training to date was the abbreviated Interviewer Training for the four DOC interviewer panelists noted above. As the General Hiring and Actively Recruited Hiring processes require interviews, the CCCO cannot undertake those processes until all supervisors who

will be involved in the interview process receive fulsome Interviewer Training, as required by Section IV(I) of the Employment Plan.

F. Employee Handbook/Shakman-Related Policies Since the June 21, 2021 Seventh Report

1. Policy Drafting

Section IV(B) of the Employment Plan requires the 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.

The COS provided a draft Employee Handbook to Plaintiffs and the CCCA for their review and comment on August 10, 2021.

2. Policy Implementation

As indicated in the Sixth and Seventh Reports, there have been issues regarding the CCCO/HR’s providing timely and sufficient notice of Employment Actions⁴ to the CCCA in accordance with Section I(G) of the SRO and Section I of the Employment Plan. Overall, the CCCO/HR has improved.

In most instances, the CCCO/HR is providing notice on a timely basis. Also, the substance of the CCCO/HR’s notices generally has improved such that the basis of the employment decisions

⁴ 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.

are more transparent. To the extent the CCCA has observed deficiencies, she is providing regular feedback to the CCCO/HR. The CCCA's most recent September 1, 2021 feedback (for June 21, 2021 through July 18, 2021) identified: (1) six Temporary Assignments where the process used did not comply with the Temporary Assignment policy in a variety of ways; (2) one Expedited Temporary Assignment that did not comply with the Temporary Assignment policy; and (3) one disciplinary action that lacked supporting documentation.

The CCCA understands that the CCCO/HR ability to provide transparent notice – and the CCCA's ability to assess it - will be enhanced greatly once the Shakman-related policies in the Employee Handbook are completed.

IV. CCCA's ACTIVITIES AS INTERIM DOC

The CCCA has been fulfilling the DOC's duties under the Employment Plan since being appointed Interim DOC at the June 21, 2021 court status. The CCCA, of course, was performing the duties jointly assigned to the DOC and CCCA in the CCCA role (*e.g.*, reviewing Exempt candidates, providing input into Employment Plan amendments). Also, while the CCCA/Interim DOC was deeply involved in the CCCO/HR's training efforts before her appointment as Interim DOC, that involvement continued since all training under the Employment Plan is to be done by "the CHRO or Designee, in conjunction with the DOC." *See* Employment Plan at Sections IV(E) – (J).

The CCCA/Interim DOC has assumed one Employment Plan duty specifically assigned to the DOC - conducting the hearing of a former CCCO employee's appeal of her inclusion on the Ineligible for Rehire List under Section IV(U) of the Employment Plan. The CCCO is in the process of scheduling the hearing for September 15, 2021.

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.
- B. **Recommendation No. 2** – The CCCO, in conjunction with the DOC, should be directed to present Employment Plan training to CCCO Exempt and Non-Exempt staff and supervisors as soon as practicable.
- C. **Recommendation No. 3** – The parties and the CCCA should be directed to use their best efforts to finalize an Employee Handbook as soon as practicable.

Dated: September 3, 2021

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I, Sue Gombis, the undersigned, do hereby certify that on September 3, 2021, I electronically filed a true and correct copy of the foregoing **Eighth 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