

The Agreed Order for the Cook County Assessor's Office, entered by agreement between the parties in 2012 (the "2012 Agreed Order"), sets out the following requirements for Substantial Compliance:

- The Assessor must adopt and implement a new Employment Plan as well as procedures that will ensure compliance with the Employment Plan and that will aid in identifying instances of noncompliance.
 - The Assessor must demonstrate that he has acted in good faith to remedy any noncompliance with the Employment Plan or the rules prohibiting political discrimination.
 - The Assessor must demonstrate that he does not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt positions.
 - The Assessor must demonstrate an absence of material noncompliance which would frustrate the essential purpose of the Assessor's Consent Decree and the Agreed Order.
 - The Assessor must implement procedures that will effect the long term prevention of the use of political factors or reasons when making decisions regarding employment.
- [2012 Agreed Order, sec III (F)(8), p.13]

It has been approximately two and one half years since the ACA was appointed and five months since the ACA's Third Report. While there have been personnel changes, those changes have yet to produce measurable progress. A brief look backward is appropriate.

The ACA's Third Report contained the following recommendations:

No. 1: A qualified professional must be selected for the position of Deputy of Human Resources;

No. 2: It is necessary to post for, hire and support a Director of Compliance;

No. 3: A fair and efficient system...begins with an Employment Plan, a set of policies and procedures to implement the Plan and ongoing support [for] the Plan;

No. 4: A designated employee at the Deputy level, responsible for insuring progress, must be identified...; and

No. 5: The elected official should be required to appear in open Court on a regular basis to publicly report on the progress this office is making toward achieving Substantial Compliance.

These recommendations were the outgrowth of the ACA's experience in this assignment and reflected frustration with both the delays and the apparent lack of commitment by the Assessor's Office towards making this significant public office *Shakman* compliant. The ACA now reports his observations on the Assessor's Office's efforts to implement the recommendations of the Third Report.

B. Status of Progress on Third Report Recommendation

I. RECOMMENDATION #1: A qualified professional must be selected for the position of Deputy of Human Resources

a. Deputy of Human Resources Vacancy

The 2012 Agreed Order requires a new Employment Plan be adopted and implemented, along with the adoption and implementation of procedures that ensure a fair and transparent

system for taking employment actions. [2012 Agreed Order, sec II(D), p. 7] This undertaking requires a professional Human Resources Department.

For more than two years, the Human Resources Department of the Assessor's Office was without a qualified professional with the requisite experience to appreciate the challenges inherent in the position. The Department was administered on an interim basis by individuals assigned to a different department. The only other position in the Human Resources Department assigned to personnel issues (other positions are assigned payroll responsibilities) is the position of Human Resources Generalist. The non-Exempt Human Resources Generalist position has remained vacant for more than four years. It remains vacant.

In the Third Report, the ACA identified many shortcomings in the Department. Employment Actions were the product of an opaque process. With the exception of a Collective Bargaining Agreement and an inconsistently used Employee Handbook, there were no written policies and procedures for the employees to reference or for the Assessor's Office to follow. Contents of the personnel files were not standardized. No consistent disciplinary policy, promotion policy, discharge policy or hiring protocol was utilized. There were no performance evaluations. Position descriptions and organization charts were incomplete and inaccurate. The general impression of the employees was that Employment Actions were based on nepotism, favoritism or politics. To many employees, decisions appeared to be arbitrary or worse. Assessor personnel conceded the existence of multiple Human Resources issues.

The ACA advised the Assessor that the Human Resources Department needed to be professionalized and that achieving Substantial Compliance would not be possible absent a change in the Human Resources Department. The essential role of the Deputy of Human Resources was reflected as *Recommendation Number One* in the ACA's Third Report. While the

Assessor initially rejected the opinion of the ACA, a change has been made and a new Deputy is in place.

b. Deputy of Human Resources: Performance

In February of 2015, the Assessor hired a Deputy of Human Resources (the “HR Deputy”). The Assessor’s Office informed the ACA that this HR Deputy had a professional background, expertise in human resources, was well-versed in *Shakman* issues and possessed the substantive depth of knowledge needed to bring the employment practices of the Assessor’s Office into *Shakman* compliance.

Immediately upon the hiring and introduction of the HR Deputy, the ACA initiated both large scale and one-on-one individual meetings. The ACA has attempted to share insights and provide guidance in the day to day operations of the Human Resources Department, including *Shakman* training, formulation of questions for hiring interviews, the candidate interview process, employment form review and other personnel issues. Generally, the HR Deputy has been receptive to the ACA’s assistance and has attempted to follow the ACA’s advice. The Human Resources Department is now in transition under the HR Deputy who is attempting to deal with human resources issues. Certain actions, however, give the ACA pause.

1. Exempt Positions

The HR Deputy’s first act upon assuming his duties was a request for the creation of a new Exempt position in the Human Resources Department. Specifically, the HR Deputy requested a new Exempt Executive Assistant position to assist in his duties. This request has taken precedence over hiring an individual into the long-vacant, non-Exempt position of Human Resources Generalist. Given the numerous substantive challenges in bringing a professional climate to the Assessor’s Office, the need for a professional approach to human resources issues

and the human resources history in the Assessor's Office, the HR Deputy's request for the immediate addition of an Exempt Executive Assistant was met with surprise and concern by the ACA.

First, the proposed Executive Assistant Position Description is not that of an Exempt employee. Exempt Positions are defined in the draft Employment Plan.

***Exempt Position:** A Position that is included on the Exempt List because it is a job that involves policy making to an extent or is confidential in such a way that political party affiliation is an appropriate requirement for the effective performance of the job. [Assessor Plan, prior draft and March 2015 draft, sec II, p.5]*

The February 6, 2015 Position Description drafted by the Assessor's Office for the position of Executive Assistant – Human Resources contains basic secretarial job duties. It requires no policy making, personnel experience or knowledge of human resources in general.

The Position Description states in pertinent part as follows:

***Job Summary:** The Executive Assistant is responsible for providing administrative aid and support to the Deputy of Human Resources within the Assessor's Office.*

***Typical Duties:** The Executive Assistant assists the Deputy of Human Resources in the administration of the various HR functions. The Executive Assistant answers telephones and records messages as required and plans conferences and meetings as directed. He/she compiles, stores and retrieves HR data using the Office's automated systems and types and maintains correspondence. He/she assists with research projects and the resolution of inquiries. The Executive Assistant operates office machines such as the computers, priorities, scanners and copiers in support of providing assistance to the Deputy. He/she assists other Assessor's Office departments and divisions as assigned. The Executive Assistant greets and receives visitors, and assists with scheduling matters for the Deputy. He/she may work extended hours and weekends as assigned.*

***Minimum Qualifications:** Possession of high school diploma or GED certificate PLUS a minimum of one (1) year experience in an administrative support capacity OR graduation from an accredited*

college or university with a Bachelor's Degree. [Assessor's Office job descrptn, Exec Asst - HR, Feb 2015]

Second, proposed Exempt positions are properly the subject of a negotiation between the Assessor's Office and the Plaintiffs in the first instance. It is not the role of the ACA to "approve" any new Exempt position.

Third, the Human Resources Generalist position, long vacant, appears to meet the needs articulated by the HR Deputy. The Position Description states as follows:

Basis Purpose: *Provide superior HR solutions and support to all CCAO departments and management. Support Director of Human Resources in employee relation issues and office wide training.*

Job Summary: *Duties and tasks are frequently non-routine. Collects and analyzes HR data and makes recommendations to director and/or management. Works under minimal supervision. Anticipates employee and management needs related to Human Resources. Prepares internal employee communications regarding performance management, training programs, compensation, benefits and office policies/guidelines. Provides counseling and assistance on HR matters. Interfaces with manager and office leaders on a frequent basis to identify solutions and support. Proactively works with department managers on disciplinary action items. Assists managers by providing alternative dispute resolutions. Minimizes legal exposure with items related to employee relations. Assists numerous office initiatives such as diversity awareness, affirmative action plans, recruiting office personnel etc. Processes paperwork according to established procedures. May work extended hours and weekends as assigned. Performs other assignment and duties as required.*

Essential Duties, Responsibilities and Primary Activities:

- 1. Encourage[s] staff productivity and development(,) promotes morale and assists management in establishing performance goals and measures for reporting staff members.*
- 2. Provides technical support, counseling, assistance, advice and training to managers and employees on other Human Resources areas procedures. May participate in employee/manager discussions.*

3. *Conducts orientation sessions for new/current employees to explain personnel policies, compensation and benefit programs, Recruits, interviews and recommends qualified candidates for selection. Recommends, coordinates and initiates office activities to promote good morale.*
4. *Collects and analyzes HR data and makes recommendations to management.*
5. *Implements planning, delivery and administration of management and staff training programs.*
6. *Attends scheduled meetings to update management of any and all ongoing HR issues*

Required Education, Knowledge, Skills and Experience:

1. *Bachelor's degree in Human Resources, Labor Relations or related discipline.*
2. *3-5 years of related experience required.*
3. *Knowledge of HR related Federal/State regulations and employment laws.*
4. *Must have ability to analyze information effectively and consistently.*
5. *A wide degree of creativity and latitude.*
6. *Ability to work in a diverse, complex fast paced environment.*
7. *Ability to lead and direct the work of others.*
8. *Ability to solve practical problems.*
9. *Ability to deal tactfully and courteously with employees at all levels.*
10. *Knowledge of PC operation and software (Microsoft [W]ord, Excel. Power point) required.*
11. *Ability to anticipate and identify office needs and create, implement and execute a plan to meet these needs for a successful and timely completion. [Assessor's Office job descrptn, HR Generalist, June 2006]*

Based upon the serious, long pending human resources issues at the Assessor's Office identified in the ACA's Third Report, the ACA suggested that the Assessor's Office consider filling the vacant, non-Exempt Human Resources Generalist position. It was made clear to the ACA that the Deputy of Human Resources preferred to pursue the addition of an Exempt Executive Assistant position.

The ACA suggested to the HR Deputy and, in a separate conversation, to the Assessor's Chief Deputy, that the ACA's prior Reports to the Court and the 2012 Agreed Order be reviewed for guidance on the issue of Executive Assistants and Exempt positions.

Executive Assistant Hiring Process The New Employment Plan shall provide for an Executive Assistant Hiring Process for **non-Exempt** private secretary positions. The Assessor shall present a list of Executive Assistant Positions to Plaintiffs' Class Counsel for comment and discussion in a good faith effort to reach agreement on the list. Any disagreements shall be presented to the Court for resolution. A final Executive Assistant List shall be approved by the Court and incorporated in this Agreed Order. The New Employment Plan shall include a procedure for amending the list of Executive Assistant positions agreed to by the parties. {emphasis added} [2012 Agreed Order, sec II(F), p. 8]

The ACA also suggested that the HR Deputy review the *Initial Report of the Special Master*, issued March 4th, 2015 by attorney Noelle C. Brennan, the court-appointed Special Master for the Illinois Department of Transportation in an ongoing, related case on this Court's docket³. The ACA had already sent the *Initial Report of the Special Master* ("Special Master's Report") to Assessor's Counsel and, in a telephone conference with Assessor's Counsel, had recommended review of the document. Reference was made to the Special Master's Report's instructive discussion of Exempt positions for Executive Assistants as such positions relate to *Rutan/Shakman* concerns. The ACA referenced the 2012 Agreed Order, noting any request for the creation of an Exempt Executive Assistant position in the Human Resources Department would need to be raised with Plaintiff's counsel and, if no agreement was reached, the ACA and ultimately, the Court.

A further concern of the ACA involves the Assessor's proposed changes contained in

³ Michael Shakman and Paul M. Lurie, et al., v Democratic Organization of Cook County, et al., Case No. 69 C 2145

the draft Employment Plan. The Assessor's prior draft Employment Plan had defined an Executive Assistant as:

*an employee ... whose primary duties include the performance of executive-level administrative services to the Executive Assistant Supervisor. Executive Assistants are (1) not covered by any collective bargaining agreement, (2) at-will, and (3) **not in Exempt Positions.** {emphasis added} [Assessor Plan, prior draft, sec II, p. 5]*

The Assessor's latest draft of the proposed Employment Plan (circulated in March, 2015) changes the Assessor's Exempt categorization of all Executive Assistants and now defines an Executive Assistant as:

*an employee ... whose primary duties include the performance of executive-level administrative services for the Deputy. Executive Assistants are (1) not covered by any CBA, (2) at-will, and (3) **in Exempt Positions.** {emphasis added}[Assessor Plan, March 2015 draft, sec II, p.5]*

This proposed change, if approved, has the potential to create several new Exempt positions. The proposed new Exempt position in the Human Resources Department and the changes in the new draft Employment Plan raise serious concerns. The focus on creating new Exempt positions suggests the Assessor's Office continues to misapprehend the goal of *Shakman* litigation. What is worse, is that time spent on these issues comes at the expense of progress in areas necessitating change.

2. Policies and Procedures

Pursuant to the Sept. 26, 2014 Position Description for the position of Deputy Assessor of Human Resources, the HR Deputy;

...consults with and advises the Assessor relative to the development, promulgation and implementation of the personnel

policies and practices affecting all Assessor's Office employees. The Deputy provides direction and leadership to the office in creating and promulgating policies that affect long range personnel planning in order to meet the strategic goals of the Office. The Deputy assures that activities and results are consistent with the Assessor's Office mission, goals, and objectives, as well as employment law, rules, regulations and policies. The Deputy advises the Assessor on human resources policies and personnel issues which require the Assessor's deliberation and approval. He/she advises on labor relations matter and issues raised by the union. The Deputy of Human Resources reviews employment actions to confirm the fair and effective implementation of personnel rules and policies and compliance with the Office's employment plan and other court directives regarding the Shakman case. [Assessor's Office job decrptn, Dep Assr HR, Sept 2014.]

In his Third Report to the Court, the ACA observed the existence of many unwritten practices impacting Assessor's Office employees. The absence of clear and transparent written policies and procedures at the Assessor's Office continues. For example, as noted in earlier Reports to the Court, the Assessor's Office did not engage in hiring for over a year. With vacancies throughout the Assessor's Office, the Assessor is now engaged in hiring individuals into open positions. Three vacant non-Exempt positions have been filled since December, 2014. All three vacancies were filled by internal employee candidates; none by external candidates. The question arises as to whether these Employment Actions should be considered hires or promotions. Notably, no written promotion policy or performance evaluation policy exists that is actually being utilized in the Assessor's Office. The ACA has continuously expressed concern at the absence of these (and other) basic employment procedures.

The competent implementation of fair and transparent written policies governing all aspects of the employment relationship, including but not limited to hiring, promotion, performance evaluation, reclassification, temporary assignments, transfer, training,

compensatory time, overtime, cross-training, layoffs, recalls and a disciplinary process, is long overdue for a governmental office seeking a finding of *Shakman* Compliance. Advance notice to employees of policies in effect, documentation requirements for management action and limitations on management discretion are prerequisites to a finding of Substantial Compliance. The Assessor's Office is aware that it is required to develop employment policies, including a discipline policy and procedures, for inclusion in a Policy Manual that effectuates all provisions of the Employment Plan.⁴ These goals continue to be aspirational in the Assessor's Office. They are unmet.

3. *Hearing Issues*

The 2012 Agreed Order sets out the ACA's duty to observe the employment practices of the Assessor's Office:

Review Employment Practices and Recommend Changes. The ACA shall review the Assessor's employment practices including observing actual hiring and promotion sequences to determine whether the Assessor is complying with the Assessor's Consent Decrees and hiring procedures. The ACA shall make recommendations for changes, to achieve better compliance from the Assessor's employment procedures. The ACA shall work with the Assessor's employees to observe current employment practices and answer questions and provide guidance as deemed necessary. [2012 Agreed Order, sec I(G), p.5]

As part of the appointed duties, the ACA has monitored and reviewed the Assessor's Office's hiring process from the posting of a position and development of interview questions

⁴ The Agreed Order requires "...[T]he ACA and the Parties [to] negotiate, in good faith, a new employment plan [] that will govern the Assessor's employment practices, policies, and procedures, including, but not limited to, nonpolitical hiring, promotion, transfer, assignment of overtime, discipline and discharge." [2012 Agreed Order, sec II(D), p.7] Additionally, the Assessor's March, 2015 draft of the Employment Plan defines "Policy Manual" as the "Manual of employment policies and procedures pertinent to Section XIII of this Employment Plan and developed and maintained by HR." Section IV.A. of the draft Plan requires HR to "revise and maintain a Policy Manual that is consistent and in compliance with and effectuates all provisions of [the] Employment Plan." However, the Assessor's March, 2015 draft of the Employment Plan no longer contains a Section XIII and the ACA considers this draft of the Employment Plan incomplete until it fulfills the requirements of the Agreed Order.

through candidate interviews, scoring and evaluations to the offer of employment. The HR Deputy is a vital part of this process from its early stages. He has consulted with the ACA on aspects of the hiring process and has generally advised the ACA of the status of the process. He attends the candidate interview sessions and, although not usually a member of the interview panel, supervises and guides the interview and selection process, including the questioning, scoring and discussion of candidates. The ACA and the HR Deputy continue to work together to improve this process.

Recently, the Assessor has made the decision to fill many positions which have been vacant for some time. The need for an adequately staffed and fully functioning Assessor's Office is appreciated by the ACA. Filling a single position, however, is not more important than implementing a *Shakman* compliant hiring process. The Assessor's Office has a history of hiring on a "crisis" basis and the sudden impetus to fill long vacant positions continues. As in the past, the Assessor's Office continues to be reactive rather than proactive. A discussion of the most recent hiring process at the Assessor's Office, for the position of Division Analyst, reveals weakness in the Assessor's Office's commitment to *Shakman* compliance. Until a consistent process is implemented, the Assessor's Office will continue to be reactive and operate from crisis to crisis.

The hiring practice at the Assessor's Office requires a multi-step process starting with the completion of a Request to Hire form, posting of the position, application screening, creation of an interview list, interview preparation including drafting of questions, interview of candidates, candidate scoring and evaluation, selection meeting, review of final selection and offer of employment.

At the interview stage of the hiring process, each interview panel member is required to

complete an interviewer evaluation form for every candidate. The form requires the panel members to rate each interview question and panel members have been trained that the ratings are to be based exclusively on the candidates' answers to the questions. The HR Deputy reinforces this fact at the beginning of each interview, emphasizing to the candidates that they will be scored based upon their answers and not what is in their application materials and/or any direct observation of their work performance. Candidates are instructed to assume the panel members know nothing about them and to repeat information from one question to the next if it is relevant to more than one answer. The HR Deputy explains that panel members are not able to attribute information provided by a candidate to a scored question unless it is addressed by the candidate in response to that question.

After the interview process concludes, the HR Deputy first calculates all of the interviewer evaluation forms and then each candidate's average interview score. The average interview score is significant because candidates who fail to score 3.00 or higher are ineligible for further consideration in hiring process. This means that the panel members are prohibited from considering their candidacy at the selection meeting which follows the interviews.

Three candidates were interviewed for this Division Analyst position on Tuesday, March 31st, 2015. The interview panel was comprised of three Assessor's Office employees and the HR Deputy monitored the process. After the interviews concluded, the HR Deputy calculated the average interview scores and identified those eligible for consideration at the selection meeting. Two of the three candidates who interviewed received qualifying scores.

During the selection meeting, the panel members discussed that the candidates under consideration had given somewhat inarticulate and/or incomplete answers to some of the interview questions designed to test their relevant technical knowledge. One panel member

admitted in the course of the discussion that he had factored his knowledge of their education and experience into his scoring of their responses to the technical questions rather than relying exclusively upon their responses to the questions. He attributed any deficiencies in their individual responses to nerves.

The HR Deputy made a comment that signified to the ACA that he recognized that the panel member's admission was problematic, but the HR Deputy did not take any further action. The integrity of the hiring process could have been quickly and easily redeemed through correction of the panel member's apparent mistake. Under the circumstances, the HR Deputy should have called an immediate halt to the process in order to fully address the propriety of the interview scores. The HR Deputy should have directed the panel to go back and rate the candidates based exclusively upon their answers to the interview questions and then to recalculate the scores to ensure that the panel members considered only those candidates who rightly received average interview scores of 3.00 or higher. This could have been done within minutes of the noted conversation and little time would have been lost. Unfortunately, that did not occur.

The process moved forward despite uncertainty as to the validity of the interview scores that "qualified" the candidates for consideration at the selection meeting and an internal candidate was recommended for hire. Whether the end result would have been the selection of the same candidate is unknown because no corrective action was taken.

On Thursday, April 2, 2015, two days after this flawed process, the HR Deputy sent to the ACA a 13-page packet of documentation regarding the hiring process for this position. The packet included a copy of the Assessor's Office letter offering the position to the candidate. The letter was dated the following Monday (April 16, 2015). The ACA was advised the letter

would be sent on that date.

Upon receipt of the Human Resources packet, the ACA immediately reviewed the packet documentation along with the ACA's internal observation report drafted by the ACA employee who had monitored the interview and scoring process. Concerned with the rush to hire and with the scoring errors used to evaluate and score the candidates, the ACA asked the HR Deputy to hold off on the employment offer. The ACA also requested an immediate meeting with the HR Deputy the following Monday to discuss the faulty hiring process for this position and to recommend corrective measures. At the meeting, in response to the ACA's inquiry about the hiring process, the HR Deputy indicated that it was too late for the ACA to provide comment, suggestions or recommendations on the matter as it was the HR Deputy's position that the time period for the ACA's input had lapsed. The HR Deputy's position was unexpected by the ACA given that the HR Deputy had invited and/or accepted guidance in past instances.

The HR Deputy's action in this most recent hiring action is important for two reasons: (1) It reflects a missed opportunity to correct a faulty hiring process which the HR Deputy should have recognized, as it was happening, as improper. The integrity of the Assessor's Office hiring process was unnecessarily compromised. Even days later at the ACA meeting, quick corrective action could have been planned if the HR Deputy had demonstrated a willingness to accept input and guidance; and (2) more importantly, the HR Deputy's refusal to consider the ACA's observations or hear the ACA's suggestions and recommendations at the requested follow-up meeting violates the letter and spirit of the 2012 Agreed Order. The Consent Decree, the 2012 Agreed Order and the ACA monitoring process represent a joint commitment to continually improve the process of the Assessor's Office, to be open to

guidance, suggestions and recommendations and to commit to a cooperative attitude in a working relationship with the ACA. The ACA strongly disagrees with the use of a flawed protocol.

The HR Deputy's comments and refusal to discuss the issue suggests that adherence to uniform, specific hiring procedures is not important even in the face of acknowledged improper hiring practices, and that ACA guidance or recommendations are not needed, valued or wanted. Not only does this attitude allow and encourage improper hiring actions, it reflects a failure to learn from past mistakes in order to improve the future operations of the Human Resources Department. An HR Deputy or Assessor who is unwilling to engage with the ACA, who does not care about the ACA's opinion on a monitored event and who is not interested in hearing the ACA's recommendations for corrective action is not taking *Shakman* compliance seriously.

Mistakes can be made in the normal course of business. Errors in the hiring process may sometimes occur, especially as the Assessor's Office management struggles to become more familiar with *Shakman* compliance. The challenges and judgment calls faced by a newly hired HR Deputy are important factors to be considered. Whether these factors will become less problematic is a function of experience in process, practice, HR training, ACA training and ACA review. The Assessor's Office needs to appreciate the ACA will not accept this type of conduct and cannot begin to consider Substantial Compliance as long as it continues.

II. RECOMMENDATION #2: It is necessary to post for, hire and support a Director of Compliance

There is no Director of Compliance currently in place in the Assessor's Office. The former Director of Compliance, hired in 2013 through a detailed hiring sequence agreed upon by the parties, was terminated by the Assessor in 2014, before the issuance of the ACA's Third

Report. The Director of Compliance hiring was, with the agreement of the Assessor's Office, Plaintiffs and ACA, deferred until the HR Deputy was in place. Now that the Assessor's Office has the HR Deputy, a Director of Compliance must be engaged. Once more, a look backward is instructive.

a. Purpose of Director of Compliance

The 2012 Agreed Order requires the Assessor to establish that the Assessor's Office no longer has a policy, custom or practice of making employment decisions based on political factors. The Assessor must also prove an absence of material noncompliance with the Consent Decrees and the Agreed Order and must implement those procedures that will effect the long-term prevention of Unlawful Political Discrimination. [2012 Agreed Order, sec III(F)(8), p.13] In order to meet these requirements the Assessor must commit to a strong compliance regime for this Office and again establish the position of Director of Compliance. As outlined in the 2012 Agreed Order, the Director of Compliance is responsible for, among other responsibilities, overseeing continued compliance with the 2012 Agreed Order and the Employment Plan, maintaining and reviewing the Exempt List to ensure continued compliance, observing all employment practices and providing guidance as necessary, accepting complaints related to Employment Actions and the Plan, evaluating, eliminating, remedying and reporting instances of Unlawful Political Discrimination, and training Assessor employees on the Plan and supplemental policies. [2012 Agreed Order, sec III(B) p. 6-7]

Effective performance by the Director of Compliance is a prerequisite for Substantial Compliance. Effective oversight must include authority to require adherence to rules, policies and procedures. Effective oversight would also include the authority to review and audit key processes and hiring sequences. The Director of Compliance must have the authority to

investigate hiring sequences, review qualifications and ensure that the procedures set forth in the Employment Plan are implemented fairly and with transparency and accountability. If there is a determination that there have been deviations from the adopted processes, the Director of Compliance must have the authority to halt any Employment Action, make a report and take remedial action. A condition precedent is the unqualified and active support of the elected official. The Officeholder must take appropriate action after due consideration of the Director of Compliance's report.

As a condition for dissolving the Consent Decree, the Agreed Order requires that the Director of Compliance be in place and certify that the Assessor's Office is in Substantial Compliance with the Consent Decree and the Agreed Order. The value and weight placed on the certification by the Director of Compliance is based, in large part, on the independence of the Director of Compliance. "The DOC must have a degree of independence from the elected official if his/her certification is to be given any credence". [ACA Third Report, sec. III, p.8] For this reason, the selection and hiring of an independent compliance professional is of utmost importance to the fair and open operation of the Assessor's Office, the principles of law surrounding this case and the integrity of this Court monitored process.

b. Director of Compliance Hiring Process: Past and Projected

In 2013, "(i)n an attempt to secure an independent person for the position of Director of Compliance an elaborate hiring sequence was devised." [ACA Third Report, sec. III, p.8] On March 26, 2013, the parties and the ACA agreed to both the Director of Compliance Position Description and to a Candidate Evaluation Process which outlined the necessary steps in filling the position. The Evaluation Process called for first round interviews with a Review Panel which consisted of The Honorable Wayne Andersen, Ret., former Forest Preserve *Shakman*

Compliance Administrator Jan Carlson, and 2013 Chicago Bar Association President Aurora Abella-Austriaco (the “DOC Review Panel”).

The process and sequence was followed and resulted in the hiring of a well-qualified individual with strong investigative skills, law enforcement experience, experience in government and a firm commitment to serve. The Employment Plan draft of June, 2014 reflected this clear, detailed evaluation, selection and hiring process for the Director of Compliance position, including the appointment of and evaluation by the independent DOC Review Panel. [Plan, June 2014 draft, sec XII, p.37-40] (The Assessor, it should be remembered, terminated this prior Director of Compliance.) The current “draft” Employment Plan is a far different animal.

In his 2015 draft, the Assessor proposes changes to the hiring process for the Director of Compliance position. Section XI. of the Assessor’s March, 2015 draft of the Employment Plan is entitled *Director of Compliance Hiring Process*. In this Section, the Assessor deletes 2 ½ pages from the prior draft, language which had set out the previously agreed upon hiring process for the Director of Compliance. This most recent draft replaces the prior hiring sequence with language referencing the general hiring process used for all non-Exempt positions throughout the Assessor’s Office.

The Assessor will follow the General Hiring Process in accordance with Section VI for hiring the DOC. [Assessor Plan, March 2015 draft, sec. XI (B), p.33]

HR will recruit and the Assessor’s Office will hire a Director of Compliance pursuant to the process set forth in sec. XII. [Assessor Plan, March, 2015 draft, sec.V, p.16]

As noted above, the Assessor's Office is currently without a Director of Compliance. Although the 2012 Agreed Order requires the Assessor's Office to create and staff such a position, whether the proposed changes in the hiring protocol will be accepted by the Plaintiffs, or the ACA, should not be assumed, particularly in light of past experience with the Director of Compliance position. If there has been any effort to publish for the position, the ACA is unaware of it.

III. RECOMMENDATION #3: A fair and efficient system ... begins with an Employment Plan, a set of policies and procedures to implement the Plan and ongoing support [for] the Plan.

a. Purpose of Employment Plan

The Employment Plan is more than an agreement among the parties. It is the ultimate expression of the Assessor's commitment to Substantial Compliance. The 2012 Agreed Order requires a new Employment Plan be adopted and implemented by the Assessor's Office, along with policies and procedures that ensure a fair and transparent system for Employment Actions. [2012 Agreed Order, sec II(D), p.7] Although it is reasonable for the parties to require time to negotiate disputes, the Employment Plan is far from finished and has not received the priority attention mandated by the spirit of the 2012 Agreed Order.

b. Drafting of Employment Plan

Since 2012, the parties have proposed, reviewed and discussed many drafts of the Assessor's Employment Plan but have made only limited progress. In June, 2014, another draft in the series of proposed Employment Plans was circulated. After detailed discussion and comment and ACA recommendations to move forward, the ACA awaited the Assessor's next revised draft and movement towards compliance. Five months later, in November,

2014, no revised draft from the Assessor had yet been received. Thus, in the Third Report filed in November, the ACA stated, “The negotiations have languished. The ACA strongly encourages both parties to complete negotiations over the language of the Plan promptly, and is available to assist upon request.” [ACA 3rd Rpt, p. 14] The ACA also observed, “The delay in Plan negotiations has necessarily resulted in delay in implementation and monitoring.” [ACA 3rd Rpt, p. 14]

Concerned with the consequences of lack of progress and lack of negotiations, the ACA repeatedly requested movement on the Employment Plan, specifically requesting the Assessor’s production of the next draft. The ACA’s numerous requests to Assessor’s Counsel were reiterated over a period of months in group meetings, telephone conferences and emails. Production of the Employment Plan was promised by Assessor’s Counsel but not delivered. Finally, in March of 2015 and nine months after the prior draft, the Assessor’s Counsel produced and circulated the Assessor’s latest proposal for an Employment Plan.

A preliminary review of the Assessor’s March, 2015 draft Employment Plan is not promising. As noted elsewhere in this Fourth Report, the proposed language in the Assessor’s Office draft Employment Plan suggests a retreat from previous positions. The Assessor’s March, 2015 draft of the Employment Plan is now under review by Plaintiffs’ counsel and the ACA. It is anticipated that the parties will soon meet to begin active negotiation of the Employment Plan. The ACA will attend and participate in negotiations.

The Assessor’s Office and the ACA had previously agreed to follow the language of the then pending draft Employment Plan as it pertained to the hiring process until the parties reach an agreement on the Employment Plan. Due to the nature of the Assessor’s changes in his most recent proposal, the ACA no longer agrees to the use of the Assessor’s latest draft of

the Employment Plan (now the March, 2015 draft) as the proper procedure for the hiring process and recommends that the parties negotiate an agreement as to the hiring process. The June, 2014 Employment Plan draft should guide the operations of the Assessor's Office until the parties come to agreement on an Employment Plan to be filed with the Court.

IV. RECOMMENDATION #4: A designated employee at the Deputy level, responsible for insuring progress, must be identified...

In January of 2015, the Assessor complied with the ACA's *Recommendation Number Four* by hiring a new Chief Deputy Assessor. The Chief Deputy Assessor has encouraged and participated in regular meetings, both large and small, between the Assessor's Office, Assessor's counsel and the ACA and has made himself available to the ACA at all times. The Chief Deputy has also voiced a strong desire and intent to bring about Substantial Compliance in the Assessor's Office. The ACA is hopeful that the Chief Deputy's active leadership will move the Assessor's Office towards Substantial Compliance.

V. RECOMMENDATION #5: The elected official should be required to appear in open Court on a regular basis to publicly report on the progress this office is making toward achieving Substantial Compliance.

Assessor's Counsel have indicated privately and in open Court that the Assessor agrees with ACA's *Recommendation Number Five*. While there was reticence in producing the Officeholder, the ACA believes that the Assessor must attend scheduled sessions. It is anticipated, therefore, that the Assessor's attendance in open Court will take place in the near future by agreement of the parties. The ACA views consistent Court participation by the Assessor as essential.

C. Conclusion of the ACA's Fourth Report

Shakman compliance begins with a demonstrated commitment by the Chief Executive to the principles of fairness, transparency and accountability in the Employment Actions within the elected office. This commitment must be demonstrated through actions that signal the intention to enforce a fair and efficient system with rules applicable to all employees. Ongoing delays in negotiation and implementation of an Employment Plan, questionable changes in the draft Employment Plan, continuing issues with Employment Actions, the lack of written policies, changes in the Employment Plan draft hiring sequence for a Director of Compliance and resistance to concerns expressed by the ACA all suggest that *Shakman* is not a priority in the Assessor's Office. As always, actions are telling, while words are not. It is noteworthy that the Assessor demonstrates a sense of urgency when seeking approval of Exempt positions. The contrast between the level of activity demonstrated by the Assessor's Office negotiating Exempt positions stands in stark contrast to the efforts to make the Assessor's Office *Shakman* compliant.

The ACA, therefore, recommends to the Court the following:

1. The priority of the HR Deputy must be the implementation of a functioning professional office demonstrating *Shakman* compliance in all aspects of human resources.
2. The parties must negotiate a process for identifying and hiring an independent Director of Compliance. Hiring must take place and the Assessor must provide ongoing support once the Director of Compliance is hired.
3. An Employment Plan, policies and procedures to implement the Employment Plan and ongoing support for the Employment Plan must become a priority.
4. The elected official should be required to appear in open Court on a regular basis to publicly report on progress toward achieving Substantial Compliance in all respects.

5. Given the history of this case, the Court should consider entering a series of orders requiring the elected official to complete the following tasks by the dates recommended:

- a. Complete organizational charts, listing both occupied and vacant positions, should be filed with the Court on or before June 1, 2015;
- b. An accurate listing of Exempt positions, the current occupants of those positions, the qualifications of each occupant and accurate position descriptions for each Exempt position should be completed and filed with the Court on or before June 1, 2015;
- c. A disciplinary policy and procedures should be completed and filed with the Court on or before June 1, 2015;
- d. A performance evaluation policy and procedure, including criteria and forms, should be completed and filed with the Court on or before August 1, 2015;
- e. Promotion, reclassification, transfer, temporary assignment, compensation time, overtime and layoff/recall policies and necessary procedures should be completed and filed with the Court on or before August 1, 2015;
- f. A negotiated procedure and process to hire a Director of Compliance should be filed with the Court on or before August 1, 2015. The Assessor's Office must use best efforts to designate a Director of Compliance on or before September 1, 2015;
- g. Complete and accurate position descriptions for all positions in the Assessor's Office should be completed and filed with the Court on or before August 15, 2015; and
- h. A negotiated Employment Plan that incorporates items a-g above should be filed with the Court on or before December 31, 2015. In the event the Employment Plan is not approved by Plaintiffs and the ACA, the Assessor is not relieved of the obligation to

file his proposed Employment Plan. The Assessor's Office should be ordered to institute negotiations at once, and to schedule meetings on a bi-weekly basis with Plaintiff's counsel.

It is unfortunate that the Court is being asked to consider ordering action, but the ACA sees no reasonable alternative to ensuring progress. As noted in the ACA's Third Report, absent these steps, the ACA has concerns that the lack of meaningful progress that has characterized this endeavor will continue to the detriment of those employed by the Assessor, those who seek to be employed by the Assessor and, most significantly, the taxpayers of Cook County.

Respectfully submitted,

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