

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MICHAEL L. SHAKMAN, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case Number: 69 C 2145
v.	)	Magistrate Judge Schenkier
	)	
COOK COUNTY ASSESSOR’S OFFICE et al.,	)	
	)	
Defendants.	)	

**SECOND REPORT OF THE ASSESSOR COMPLIANCE ADMINISTRATOR  
FOR THE COOK COUNTY ASSESSOR**

The Honorable Clifford L. Meacham (ret.), Assessor Compliance Administrator for the Cook County Assessor (the “ACA”), by and through his attorney, Peter A. Monahan, pursuant to Section I.B. of the Agreed Order for the Cook County Assessor (the “Agreed Order”) submits this Second Report as follows:

**I. Introduction**

On September 19, 2012, with the agreement of the Plaintiffs and the Cook County Assessor (“Assessor”), this Court entered an order entitled “Agreed Order for the Cook County Assessor’s Office.” In order to ensure the Assessor’s future compliance with the 1995 Consent Decree and the Agreed Order, the Court appointed the Honorable Clifford L. Meacham (ret.) as

Assessor Compliance Administrator (“ACA”)<sup>1</sup> effective September 19, 2012. Pursuant to Art. I.B. of the Agreed Order, the ACA filed his Initial Report to the Court on October 17, 2012 (hereinafter “Initial Report”). The Agreed Order also requires the ACA to provide quarterly reports updating the Court regarding the Assessor’s compliance with the Agreed Order and progress made toward Substantial Compliance. Agreed Order Art. III.C. The ACA submits this report to provide the Court with such an update detailing activities since his Initial Report.

In order for the ACA to recommend to the Court that the Assessor is in Substantial Compliance with the terms of the Agreed Order, he must find:

- 1) the Assessor has implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance;
- 2) the Assessor has acted in good faith to remedy instances of noncompliance that have been identified, and prevent a recurrence;
- 3) the Assessor does not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions;
- 4) the absence of material noncompliance which frustrates the Assessor’s Consent Decrees and this Agreed Order’s essential purpose. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the Assessor is not in substantial compliance; and
- 5) the Assessor has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor.

Agreed Order Art. III.F.8. The ACA will present this report and future reports to this Court in a manner that provides updates on all sections contained in the definition of Substantial Compliance. The ACA hopes that structuring his reports in this manner will lead to a shared understanding and clear expectations as to what is required to achieve Substantial Compliance. As such, the ACA’s reports are intended to provide all parties, the Court and taxpayers a greater degree of clarity regarding the Assessor’s progress toward Substantial Compliance.

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<sup>1</sup> “ACA” hereinafter shall refer to the Assessor Compliance Administrator and/or his staff.

## **II. Activities to Date**

Since the Initial Report, the ACA has accepted 14 Pre-Agreed Order claims, created a Pre-Agreed Order claims protocol, began claims investigations, met with the Assessor's Office and the States Attorney's Office (hereinafter the "Assessor's Counsel") regarding processes for notification of employment actions, approved the Director of Compliance job description, conducted the ACA's *Shakman* introduction training and started the desk auditing process. The Assessor's Office has provided the ACA with some initial information and documents relating to its operations, personnel and employment procedures. The Assessor has designated the Deputy of Human Resources to serve as the Assessor's Liaison. See Agreed Order at Art. I.E. In addition, the Director of Legal and other members of the Assessor's senior management staff took the ACA and Plaintiff's Counsel on a tour of the Assessor's main office in downtown Chicago so the parties may better understand the Assessor's Office operations.

While the Assessor's Office has met with the ACA regularly and provided certain requested documentation to the ACA, there has been little movement on a number of items including notification and monitoring of employment actions, providing a revised Exempt List, accurate job descriptions for all union positions and posting for a Director of Compliance. The lack of progress on these items has and will continue to delay the development of a transparent employment plan and consequently achieving Substantial Compliance. The ACA appreciates the cooperation the Assessor's Office has given to date and expects the Assessor's Office will prioritize hiring a Director of Compliance and notifying the ACA of all employment actions so that the ACA can begin to monitor. These issues and the impact they have on Substantial Compliance are discussed more fully below.

## **III. New Employment Plan and Employment Procedures**

*A. Issues Regarding Notice of Employment Actions*

The Agreed Order provides that “the ACA and the parties” may begin to negotiate a New Employment Plan after the ACA has “actively monitored” the Assessor’s employment practices including, but not limited to, nonpolitical hiring, promotion, transfer, assignment of overtime, discipline and discharge for sixty days. Agreed Order Art.II.D. Such monitoring is critical for the ACA to “define appropriate and inappropriate employment practices, consistent with law, the Assessor’s Consent Decrees and this Agreed Order.” Agreed Order Art.II.A.2. Active monitoring will also assist the ACA to identify the points at which the Assessor’s decision making processes are vulnerable to unlawful political discrimination and to help the Office create transparent employment procedures to eliminate those vulnerabilities.

The ACA has requested that the Assessor’s Office provide 48 hour written notice of any employment action. Initial Report at 6. In order to facilitate this process, the ACA also created and distributed Employment Action Notice Templates (the “Notice Templates”) to the Assessor’s Counsel, and the Deputy of Human Resources. The ACA provided one Notice Template requesting notification of any employment action including new hires, promotions, reclassifications or upgrades, assignments of duties, assignments of overtime, transfers, discipline, performance evaluations, demotions, grievances, separations or recalls. In addition, specifically for hiring, the ACA provided a Notice Template requesting notification of any recruitment, change in job description, job posting, application screening, interviews or candidate selection. Since the Initial Report, the ACA has made numerous inquiries as to the status of employment actions, including but not limited to hiring, promotion, transfer, assignment of overtime, discipline and separations from the Assessor’s Office. The Assessor’s Deputy of Human Resources’ response was that no employment actions have taken place since the ACA’s

formal appointment on September 19, 2012 and therefore there have been no employment actions for the ACA to monitor in the Assessor's Office.

More recently, however, on November 30, 2012 the ACA met with the Deputy of Human Resources and members of the Assessor's Legal Counsel who informed the ACA that until that day they thought "Employment action" meant only hiring and terminations from the Assessor's Office. This came as quite a surprise given the ACA has been clear with the Assessor since the date of his appointment, verbally, through the Notice Template and the Initial Report (*see* Initial Report at 6-7), that in the Agreed Order the term "Employment Action" goes far beyond hiring and terminations. Despite this, the ACA did not receive notice of three retirements, four resignations, and at least one department transfer. The Assessor's failure to comply with certain terms of the Agreed Order and notify the ACA is unacceptable. Moreover, until the ACA is able to actively monitor employment actions, negotiations on the New Employment Plan will continue to be delayed.

On a more positive note, recent events suggest a greater level of cooperation from the Assessor. The Deputy of Human Resources provided the ACA with a listing of all new hires, recalls, terminations, retirements, and resignations that have occurred between September 19, 2012 and December 6, 2012. She and a member of the Assessor's Legal Counsel also met with ACA staff on December 6, 2012 and discussed the Notice Template to ensure the Assessor understands the definition of employment action and his obligation to provide timely notice to the ACA.<sup>2</sup> The ACA is prepared to begin active monitoring immediately. Once the ACA has

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<sup>2</sup> While reviewing the Notice Template during the December 6, 2012 meeting the Deputy of Human Resources informed the ACA that a "department transfer" has also taken place since the ACA's inception and the ACA once again had to reiterate that the definition of Employment Actions includes transfers.

monitored the Assessor's employment actions for at least sixty (60) days, negotiations on the Employment Plan will begin.

***B. Employment Procedures Review***

On August 17, 2012 the ACA requested "the Assessor's current written procedure for all employment actions including, but not limited to, hiring (probationary, temporary, part-time and permanent), promotions, transfers, assignments, demotions, discipline, discharge, grievance, layoffs, overtime, and performance evaluations." On October 25, 2012 the Assessor provided a copy of the Collective Bargaining Agreement between Council #31 - AFSCME and the Cook County Assessor's Office (the "CBA") and the Assessor's Employee Handbook with no further explanation. In an effort to better understand the Assessor's employment procedures followed by the Assessor's Office, the ACA began meeting with the Assessor's Office. To date, the ACA and Assessor have discussed the performance evaluation, swiping and hiring policies at length. As set forth below, the ACA's auditing to date reveals widespread disregard for written policies and procedures which will need to change if the Assessor is to achieve Substantial Compliance.

1. Performance Evaluations

According to the Assessor's Legal Counsel "the Assessor does not have performance evaluations under the CBA." However, Section 3.D. of the Employee Handbook states "[i]t is the goal of the Assessor's Office to provide a performance evaluation on or near your sixth month of employment. Additionally, it is the goal of supervisors to evaluate the job performance of all employees under their direction on an ongoing basis." Employee Handbook at 31. Forty five new employees have joined the Assessor's Office since December 6, 2010 but none have received a six month evaluation. A review of employee personnel files reveals that yearly performance evaluations were common under the former administration but according to the

Assessor's Deputy of Human Resources the current administration has not and does not conduct performance evaluations of its employees. Systematic and logical performance evaluations are important to increasing objectivity and transparency within the office. The ACA intends to work with the Assessor's Office to ensure that an objective and meaningful performance evaluation system is implemented and that the policies relating to the system are followed.

## 2. Swiping and Vacation Time

Section 2.A.1 of the Employee Handbook requires "all employees permanently assigned to a location with a swipe machine will utilize the electronic attendance system. [] Employees shall swipe in when they arrive for work each day and swipe out when they leave for the day." Employee Handbook at 10-11. The ACA determined that the Assessor's Office was not complying with this policy in that it exempted certain employees from this policy. The Deputy of Human Resources identified 19 employees who were not required to follow the Assessor's swiping policy as outlined in the Employee Handbook. The ACA inquired as to what factors exempted these 19 employees from the swiping policy. The Deputy of Human Resources referred to them as "Berrios' people" and explained that they were not required to swipe because after Mr. Berrios' took office, they transferred to the Assessor's Office from the Cook County Board of Review where they were not required to swipe.

Similarly, the ACA learned that although the Employee Handbook provides that all employees must seek prior approval for vacation time and vacation time must be approved at least one day prior to the planned absence from work, these same 19 employees are exempted from this policy. See Employee Handbook at 19. The Assessor's Office gave the same explanation as provided regarding swiping. Specifically "Berrios people" do not need prior approval to take vacation time. The ACA is concerned with the disparate treatment afforded

these employees and has impressed upon the Assessor's Office that policies must be followed. Permitting politically connected employees to unfairly receive favorable treatment over non-politically connected employees is material noncompliance which frustrates the Assessor's Consent Decrees and the Agreed Order's essential purpose.

In an effort to address the ACA's concerns, on December 7, 2012, the Assessor's Office issued an Executive Order titled "Clarification of Electronic Attendance Policy" which became effective that same day. The new policy states:

"For daily timekeeping purposes all employees who may accrue Time Due and are permanently assigned to a location with a swipe machine must utilize the electronic attendance system. [] Employees who cannot accrue time due, such as deputies, director, attorneys and the Special Assistant to the Assessor, are not required to utilize the electronic attendance system."

The Assessor's current CBA states that a union employee shall be paid overtime compensation "for any approved hours actually worked over forty in a work week, unless such employee is not eligible for overtime compensation under federal or state law." Since union employees can accrue time due they are required, as they always were, under the new Executive Order to swipe. The Assessor's Office, however, has approximately 68 non-union employees who are governed by the Employee Handbook which does not identify which titles or employees may or cannot accrue time due. Section 2.F. of the Employee Handbook which addresses Time Due and is applicable to all employees merely explains the process by which time due may be accrued. Employee Handbook at 21.

The Executive Order specifically states that "deputies, directors, attorneys and the Special Assistant to the Assessor" cannot accrue Time Due and are therefore exempt from swiping. The Executive Order though is unclear as to whether other titles such as Managers, Assistant Managers, or Executive Assistants, to name a few, may or cannot accrue time due and



whether they are required to swipe. This is especially important given that of the 19 employees who were originally identified as “Berrios people” there were at least three Managers and the new policy is unclear as to whether they are now required to swipe.

The ACA appreciates the Assessor’s efforts to correct these violations through development of and adherence to written policies. The ACA notes, however, that this policy was drafted and promulgated unilaterally by the Assessor’ Office. The ACA’s expectation is that drafting policies that govern employment actions will be a collaborative effort and should include the ACA and plaintiff’s counsel. Reducing a practice to a written policy may only serve to institutionalize an unlawful practice which the ACA cannot support as it is a clear violation of the law prohibiting political discrimination. The ACA will continue to monitor the Assessor’s Office’s Electronic Attendance Policy to ensure that the policy itself is not based on political factors and reasons and that its implementation complies with the law.

### 3. Hiring

On November 7, 2012 the ACA requested “[a] roster of employees that joined the Assessor’s payroll on or after December 6, 2010. This includes those hired, appointed, transferred into the office, returning from leave, exercised recall rights, or who may have joined the office in some other manner.” The Assessor’s Deputy of Human Resources provided the ACA with a list of 45 employees who have joined the Assessor’s payroll since December 6, 2010. These 45 employees are denoted as either “full-time employees transferred” or “full-time employees hired.” The Assessor’s Office has defined “transfer” as the reassignment of a County employee from one County agency, without a break in service, to a vacant position in another County agency. For example, the “transfer” of 22 Cook County Board of Review employees to the Cook County Assessor’s Office that took place on December 6, 2010; the day Assessor

Berrios took office. The ACA would like to make clear to the Assessor that the filling of any vacancy within the Assessor's Office, whether by a current County employee or external non-County candidate, is considered a new hire and that all hiring must comply with the law prohibiting political discrimination.

The Assessor's Office also provided the ACA with a list of 21 "hired" employees who have joined the ACA since December 6, 2010, however, only 14, were purportedly hired through a competitive hiring process. The ACA reviewed 12 posting files for 14 full time positions that have been filled since December 6, 2010. What the ACA found is numerous deviations from the Assessor's obligations under the 1995 Consent Decree and the 1995 Plan of Compliance as well as its own stated policies and procedures.

The Assessor's Consent Decrees, which include the 1995 Consent Decree and Plan of Compliance, remain in full force and effect after the Court's approval of the Agreed Order. Agreed Order at 3. The 1995 Consent Decree and Plan of Compliance, along with the Employee Handbook and current CBA outline the Assessor's written policies on hiring which involves the identification of vacancies, posting, submission of applications, pre-screening, interview and candidate selection. However, the Assessor's Office's actual hiring practices are not documented and so the ACA met with the Deputy of Human Resources to discuss the hiring process at length. Subsequently, on December 17, 2012, the ACA provided the Assessor's Office with his understanding of the hiring procedures followed in the office based on the ACA's review of the relevant documentation and numerous meetings with the Deputy of Human Resources.

In practice, as far as identifying vacancies and determining which vacancies to fill, the decision is ultimately the Cook County Assessor's. Once the determination to hire is made, the

department hiring works with the Deputy of Human Resources to post the position. The position is posted for ten business days and then the Deputy of Human Resources, with the assistance of the department hiring, reviews the applications, completes the pre-screening process and determines which applicants to interview. However, the Deputy of Human Resources was unable to explain the methodology for which minimum qualifications and preferred qualifications are considered in the pre-screening process or why one candidate is selected for interview over another same scoring candidate.

The ACA's review demonstrated that the Assessor's Office, at least on two occasions failed to follow their stated procedures. Specifically, for the Liaison to Religious Institutions, the Assessor's Office hired an applicant who applied four days after the close of the posting despite the ACA being told that any applications received after the posting period are discarded and not eligible for consideration. Although the applicant and subsequent hire met the minimum qualifications, he did not apply in the prescribed period and should have been disqualified. Accordingly, this hire violated the Assessor's own policies. The ACA was also told that the Assessor's office follows the CBA's posting procedures for all non *Shakman* exempt positions however, with respect to four non *Shakman* exempt Executive Assistants, the Assessor's Office hired four employees outside of a posting and without a competitive process as required by both the CBA and the Plan of Compliance. The ACA was provided with all four of the Executive Assistant's applications and resumes but no further explanation was provided as to why they were hired outside a competitive process. These are only a few examples that the ACA has observed of the Assessor's widespread failure to follow existing procedures.

The previous examples were based on the ACA's review of employment actions that occurred prior to his appointment. There have been no new hires in the Assessor's Office since

his appointment, but the ACA is aware of 34 vacancies currently in the Assessor's Office. The ACA's opportunity to monitor the filling of these vacancies will help the ACA in making recommendations for the development of clear, transparent, written policies in the new Employment Plan. Even more important is implementing these procedures. The ACA will continue to review the Assessor's policies and procedures, work with the Assessor's Office to develop more transparent procedures and monitor the existing and new procedures to ensure compliance.

### *C. Director of Compliance*

For the Assessor to achieve Substantial Compliance pursuant to the Agreed Order, the Assessor's Office must, inter alia, "implement procedures to ensure compliance with the [Employment] Plan . . . [and] implement procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor." Agreed Order Art. III.F.8. The Agreed Order requires the Assessor to recruit and hire a Director of Compliance who will ensure compliance with the Agreed Order, monitor the Assessor's long-term implementation of the Employment Plan and investigate claims of unlawful political discrimination to help achieve the above requirements under the Agreed Order. Agreed Order at Art.II.B. Given the duties of the Director of Compliance, filling this position is essential to achieving Substantial Compliance and the ACA has repeatedly and early on impressed on the Assessor's Office and Counsel how important this position is. In an effort to expedite the process, the ACA provided the Assessor with sample job descriptions, however, the ACA only recently received the Assessor's Director of Compliance job description for comment. The ACA approved the job description on December 6, 2012 and looks forward to providing additional

details to the Court in his next report regarding the Director of Compliance and his/her progress in moving the Assessor's Office towards substantial compliance.

As discussed on numerous occasions with the Assessor's Office as well as in the ACA's Initial Report, the Director of Compliance is integral to ensuring compliance with the Court Orders and essential for the Assessor's Office to achieve Substantial Compliance. Not only is the Director of Compliance tasked with investigating and adjudicating Post-Agreed Order Complaints but he/she is also responsible for training the Assessor's staff on employment procedures and unlawful political discrimination. The delay in hiring the Director of Compliance has and will continue to impact the Assessor's Office's progress toward achieving Substantial Compliance.

#### **D. *Training***

As stated in the ACA's Initial Report, the ACA had hoped that the Director of Compliance would be involved in the presentation of the Introduction of the ACA and the *Shakman* decrees to all Assessor employees which in turn would assist in developing a culture free from political discrimination. Initial Report at 7. Given the substantial delay in the hiring of the Director of Compliance moving forward with the Introduction to *Shakman* training was necessary. On December, 13, 2012, the ACA conducted training on *Shakman* principles for all Assessor employees. The training materials, which were approved by the Assessor's Counsel, will be posted on the ACA's website in the coming weeks.

#### **E. *Exempt, Senior Manager and Executive Assistant Lists***

The Agreed Order requires that the parties negotiate a new list of Exempt positions and file the same with the Court for approval. Agreed Order at Art.II.G. To the extent that the parties cannot reach an agreement on the lists they are to bring the matter to the Court for

resolution. *Id.* The ACA will weigh in an advisory capacity to both parties should any questions arise. The ACA strongly encourages Assessor's Counsel to work with the Assessor's Office to create a new proposed Exempt List so that Plaintiff's Counsel may review the list in a timely manner and agree upon an Exempt List. After the parties agree on a new Exempt List, the ACA expects them to timely negotiate Senior Manager and Executive Assistant Lists as also required by the Agreed Order. See Agreed Order Art. II.E. and II.F.

**F. *Political Contact Log and No Political Consideration Certification***

The 1995 Consent Decree requires the Assessor's Office to track patronage (political) contacts. 1995 Consent Decree at 5. Despite this requirement, the Assessor does not maintain a Political Contact Log or employ any other tracking mechanism at this time. The ACA will require the Assessor's Office to develop and maintain a Political Contact Log and will work with the Assessor's Office to implement. Similarly, the ACA will work with the Assessor's Office to ensure that the Office begin to document and certify that political reasons and factors are not considered in any employment actions for non *Shakman* exempt employees.

**IV. Pre-Agreed Order Claims**

The Agreed Order outlines two classes of potential claimants: (1) those claiming the Assessor discriminated against them on the basis of political reasons or factors by terminating them between December 6, 2010 to September 18, 2012 (the "Pre-Agreed Order claimants") and (2) those claiming the Assessor discriminated against them on the basis of political reasons or factors on or after September 18, 2012 (the "Post-Agreed Order claimants"). The Post-Agreed Order claimants include any individual who claims the Assessor has retaliated against him or her for either filing a claim or reporting unlawful political discrimination.

**A. *Issue Concerning Proper Notification of Pre-Agreed Order Claims Process***

As noted in his Initial Report, the ACA conducted research to ensure that all potential Pre-Agreed Order claimants received notice of the Pre-Agreed Order Claims process in a timely manner. As a result of the ACA's research, the ACA identified an additional 72 former Assessor employees who separated from the Assessor's Office between December 6, 2010 and September 18, 2012. At the status conference held on October 23, 2012, Plaintiff's Counsel and the Assessor agreed with approval of the Court that the additional separated employees be sent the Amended Claims notice. The Agreed Order Requiring Notice to Additional Separated Employees and Extending Time for Them to Respond was entered on October 23, 2012 and it permitted the listed individuals to submit a claim pursuant to the Agreed Order or give notice of her or his intent to opt out of the claims process no later than December 7, 2012. As a result of this extension, the ACA received three (3) additional timely filed claims.

***B. Pre-Agreed Order Claim Investigation Progress***

As of the amended Pre-Agreed Order Claims Deadline of December 7, 2012, the ACA received 14 timely filed Pre-Agreed Order Claim forms. The ACA provided the Assessor's Counsel with a copy of all Pre-Agreed Order claims and supporting documents as required by Art. IV.D.5 of the Agreed Order. Given the issues concerning proper notification of the Pre-Agreed Order Claims Process, the ACA and the Assessor's Counsel have agreed to an extension of the Pre-Agreed Order Claims Adjudication deadline to 120 days from the amended Pre-Agreed Order Claims Deadline. In order to meet the amended Claims Adjudication Deadline, the ACA intends to start conducting interviews for the Pre-Agreed Order claimants in the coming weeks. The ACA will continue to move forward with investigating the filed claims and intends to have all claims adjudicated by the April 7, 2013 Amended Claims Adjudication Deadline.

**V. Post-Agreed Order Claims**

Pursuant to the Agreed Order the Director of Compliance is responsible for conducting the investigations of any complaints of unlawful political discrimination in connection with any aspect of government employment, including seeking employment with the Assessor, alleged to have occurred on or after September 19, 2012. Agreed Order at Art.II.B.4 and V.D. Until the Director of Compliance is hired, the ACA and Assessor's Counsel have agreed that individuals may submit their Post-Agreed Order Claim forms to the ACA who will hold the forms until a Director of Compliance is in place. The limitations period for filing a lawsuit based on a claim of unlawful political discrimination will be tolled until the Complaint Form is actually submitted to the Director of Compliance. As mentioned above, the Assessor's Office's continued delay in filling this position continues to delay the Assessor's Office ability to reach substantial compliance.

## **VI. Conclusion**

Since filing the Initial Report, the ACA has worked closely with the Assessor's Office to evaluate existing employment procedures and to agree upon any revisions to the claims process. The ACA has learned a significant amount by meeting with the Deputy of Human Resources, meeting with the Assessor's Counsel, touring the office and reviewing documentation provided by the Assessor's Office and others. In addition, the ACA presented the Introduction to *Shakman* training for all Assessor employees. The ACA had hoped that more progress would have been made with respect to the Employment Plan and the Director of Compliance. To date, however, the ACA has not monitored any employment actions and the Director of Compliance position has not been posted. In addition, where the Assessor's Office has written policies, it is clear that they are not always followed. It is the ACA's expectation that this will be rectified prior to filing his next report.



Respectfully submitted,

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