

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

MICHAEL L. SHAKMAN, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Case No. 69 C 2145
v.	)	
	)	Magistrate Judge Sidney I. Schenkier
COOK COUNTY ASSESSOR’S	)	
OFFICE, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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

Susan G. Feibus, Assessor Compliance Administrator for the Cook County Assessor (“ACA”), by her attorney, Matthew D. Pryor, pursuant to Section III(C) of the September 19, 2012 Agreed Order for the Cook County Assessor’s Office (“AO”), Doc. No. 3007, submits the ACA’s Twelfth Report to the Court:

**I. INTRODUCTION**

On June 14, 2018, the ACA filed the Eleventh Report to the Court (the “Eleventh Report”). Doc. No. 5894. This was her sixth report since her January 26, 2016 appointment (effective February 1, 2016). *See* Doc. Nos. 4751, 4856, 5059, 5204, 5725 (ACA’s Sixth – Tenth Reports). This Twelfth Report is to update the Court as to the Assessor’s progress towards Substantial Compliance with the September 19, 2012 Agreed Order (“Agreed Order”) since the Tenth Report.

As this will be the ACA’s final report during the Berrios Administration, a brief summing up seems in order. When the ACA was appointed in February 2016, little had been done by the AO to achieve Substantial Compliance, which under the Agreed Order requires:

1. a New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance;
2. the Assessor to act in good faith to remedy instances of non-compliance that have been identified and prevent a recurrence;
3. the Assessor 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 Assessor's Consent Decrees<sup>1</sup> and this Agreed Order's essential purpose; and
5. the Assessor to implement procedures that will affect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor.

Doc. No. 3007 at 18.

As of February 2016, an Employment Plan had not been approved by the Court, the process of revising (let alone implementing) *Shakman*-related policies barely had begun, there was no organized plan to update Position Descriptions<sup>2</sup> and the Human Resources function was ineffective. The Assessor immediately began to hire for many Non-Exempt<sup>3</sup> positions, with most ultimately filled internally, claiming that the tax bills would not get out if this was not done. Most of the ACA's recommendations regarding this hiring were rejected or ignored and it was replete with violations of the draft Employment Plan by which the parties had agreed to abide. Shortly thereafter, the Assessor moved his daughter, Vanessa Berrios, into the Exempt Position of Director of Industrial/Commercial Valuations in violation of the draft Employment Plan's

---

<sup>1</sup> The "Assessor's Consent Decrees" refer to the combination of (a) a 1972 Consent Decree which, *inter alia*, prohibited the Assessor from taking any action regarding governmental employment against any governmental employee based on political reasons or factors; and (b) a 1995 Consent Decree which incorporated the 1972 Consent Decree's prohibitions and extended those prohibitions to the Assessor's hiring practices, with certain exclusions. *See* Doc. No. 3007 at 5.

<sup>2</sup> Capitalized terms in this Report are given the meaning assigned them in the Employment Plan.

<sup>3</sup> Throughout this Report, the terms "Exempt" and "Non-Exempt" have the meaning ascribed by the Employment Plan. These terms do not relate to the applicability of any collective bargaining agreement.

rules for Exempt Hiring. A few months later, the Assessor hired a new Deputy of Human Resources, also disregarding the draft Employment Plan's rules for Exempt Hiring. The Assessor continued to refuse to use an Electronic Application System ("EAS") for hiring, continuing to claim that he was developing one internally. Non-Exempt hiring continued to violate the Employment Plan, which the Court-approved on August 10, 2016, thereby satisfying the first element of Substantial Compliance.

Slowly but surely, things started to improve. Non-Exempt hiring got better, even if not wholly Employment Plan-compliant. *Shakman*-related policy revisions and Position Description updates started, *albeit* slowly.

In the Summer of 2017, genuine progress began largely as a result of three things. First, in May 2017, the Assessor hired Thomas Nowinski, a former Assistant State's Attorney with years of experience in *Shakman* litigation, as his Legal Counsel. It appears that the Assessor empowered Mr. Nowinski to make a real effort at *Shakman* compliance – and he did. Second, the Assessor retained Joseph M. Gagliardo and the Laner Muchin firm as his outside counsel. Mr. Gagliardo's input always is useful and his firm's help was critical to the progress made on updating the Position Descriptions. Third, the Court exercised increased supervision over *Shakman*-related policy revisions, Position Description updates and the AO's implementation of an EAS through the use of deadlines. This was very effective. It also must be said that despite the outcome of the March 2018 primary, the AO's efforts to achieve Substantial Compliance did not abate.

While much remains to be done for the AO to achieve Substantial Compliance, as described below, much has been achieved. The ACA would be remiss if she did not acknowledge Assessor Berrios, Mr. Nowinski and the many others at the AO who have assisted

the effort, as well as Mr. Gagliardo and his team. She also acknowledges the fine work done by Sharon Goss, the former DOC, and Mark Grba, the current DOC. Of course, Plaintiffs and their counsel, Brian Hays, are instrumental to the process.

The ACA looks forward to working with the new Assessor and his team to bring the AO to Substantial Compliance.

## **II. OVERVIEW OF THE ACA'S ACTIONS SINCE THE JUNE 14, 2018 ELEVENTH REPORT**

The ACA and her staff remain actively engaged with the AO and its efforts to achieve Substantial Compliance. The ACA's activities since the Eleventh Report included:

- served as the Interim Director of Compliance ("DOC") following the DOC's May 4, 2018 resignation until the hiring of a new DOC as of August 6, 2018, including set office hours to meet with AO employees, as requested;
- issued a July 16, 2018 Report and Recommendation as the Interim DOC, finding that an employee in a Support Staff position in the Financial Operations Department was not performing the duties of his position. While the AO claimed its conduct did not violate the Employment Plan, which, as Interim DOC, the ACA disputed, the AO has undertaken a reorganization to address the problem;
- provided significant input into and monitoring of the hiring of the new DOC;
- provided significant input into and monitoring of the hiring process for a Human Resources Generalist following the July 20, 2018 resignation of the employee in that position;
- met and conferred with counsel for Plaintiffs on a regular basis, including regarding issues related to AFSCME's refusal to allow the ACA to monitor grievances<sup>4</sup>;
- met and conferred with AO personnel responsible for implementing the Agreed Order and counsel on a regular basis;

---

<sup>4</sup> AFSCME, the union to which the AO's bargaining unit belong, has refused to allow the ACA to monitor Step I and Step 2 grievances. This is contrary to the ACA's authority under the Agreed Order. The AO does not challenge the ACA's ability to monitor grievances. Plaintiffs have informed AFSCME, orally and in writing, that the ACA is authorized to monitor grievances. AFSCME did not respond and renewed its objections at recent grievance hearings, which did not proceed because AFSCME refused ACA monitors to be present. The ACA understands that Plaintiffs intend to seek redress from the Court.

- provided significant input into revisions to the AO's *Shakman*-related employment policies;
- provided significant input into the AO's efforts at implementing *Shakman*-related employment policies, including regular feedback to the AO;
- provided significant input into updating and finalizing Position Descriptions for the Communications, Legal, Financial Operations and Exemption Investigations Departments following numerous desk audits that occurred prior to the Twelfth Report;
- monitored and participated in the numerous desk audits required to accurately update the Position Descriptions for the Human Resources, Front Office, Information Technology, Valuations, Taxpayer Services and Operations Departments;
- provided significant input into updating and finalizing Position Descriptions for the Human Resources, Front Office, Information Technology, Valuations and Taxpayer Services following the desk audits;
- interviewed and conducted desk audits of AO employees, as needed; and
- monitored many non-hiring employment actions (*e.g.*, overtime, temporary assignment, discipline and points discipline) and provided feedback regarding same.

### **III. THE ASSESSOR'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE**

#### **A. The Assessor Finally Is Using Taleo – The Hiring Process is Much Improved**

Beginning with her initial (the sixth) report through the Tenth Report, the ACA criticized the Assessor for his refusal to use an EAS for hiring. Rather than using Taleo, a well-established talent management software that is used by other elected officials in Cook County in compliance with the *Shakman* decrees, the Assessor insisted on creating his own EAS in-house. That never happened.

In October 2017, after the Court ordered the parties to “meet and confer” about the use of Taleo for hiring and report back, the Assessor finally agreed to use Taleo. Given the represented budget constraints, however, the AO did no Exempt or Non-Exempt hiring until the Summer of 2018.

1. Director of Compliance – August 6, 2018 Date of Hire

The initial use of Taleo was for the hiring of a new DOC.<sup>5</sup> Although the DOC technically is a Non-Exempt position, hiring is pursuant to a special process proscribed by the Employment Plan. Nonetheless, this hiring provided a good opportunity to assess the AO's ability to hire in accordance with proscribed procedures.

The ACA is pleased to report that the hiring of the DOC went smoothly, and no Employment Plan violations were observed. The parties and the ACA collaborated on updating the DOC Position Description, validating the submitted applications (which was considerably easier with Taleo than the paper process used previously) and crafting the interview questions. The interview process was Employment Plan-compliant.

In response to a request by the ACA, the Assessor agreed to increase the DOC salary range towards the goal of raising the quality of the applicant pool. It worked. Mark Grba was selected; his date of hire was August 6, 2018. Since that time, Mr. Grba has familiarized himself with the AO's operations, become aware of the AO's efforts towards Substantial Compliance and assisted in those efforts. In his "watchdog" role, he recently issued a Report and Recommendations that will be discussed below. *See pp. 13-14, infra.* The ACA believes that Mr. Grba will be an asset to the AO in its efforts to achieve Substantial Compliance. In the shorter term, he should be useful to the new Assessor in his transition.

2. Human Resources Generalist – Date of Hire to be determined

The Assessor is in the process of hiring a Human Resources Generalist following the July 20, 2018 resignation of the AO employee in that position. The Human Resources Generalist is a

---

<sup>5</sup> Sharon Goss, the prior DOC resigned, effective May 4, 2018.

Non-Exempt position.<sup>6</sup> While overall the process went reasonably well, the ACA observed the following violations of the Employment Plan:

- Violation of Sections VI.F.3 (“Creation of Applicant List”)<sup>7</sup> and Section VI.F.4 (“Application Screening”)<sup>8</sup> – On the initial Applicant List, the Deputy of HR included names of Applicants who (1) did not submit completed applications; and/or (2) answered “No” to a Disqualifying Question in violation of these sections which does not allow such Applicants to be included on the initial Applicant List.
- Violation of Section VI.F.8 (“Randomization”)<sup>9</sup> – While for the sake of expediency the ACA agreed that the AO could proceed with the improper initial Applicant List, when randomized the list contained Applicants who did not submit completed submissions and/or answered “no” to a Disqualifying Question.
- Violation of Section VI.O (“Documentation Review”)<sup>10</sup> – The Deputy of HR attempted to reach the first-ranked Candidate to offer her the position before providing the DOC and ACA with the Posting File.

Unfortunately, the AO was not transparent about the salary range for the position. The job posting listed the salary range at \$60,470 - \$97,606. The ACA relied on the AO’s job posting and believed that the salary offered would be commensurate with the selected candidate’s background and experience (as had been the case with the hiring of the DOC). Presumably, the applicants relied on the salary range in the job posting, as well.

---

<sup>6</sup> The AO reasonably proceeded to fill the Human Resources Generalist position, despite the upcoming change in Administration. The Human Resources staff consists of the Deputy and two Human Resources Generalists. With the expected departure of the Deputy (whose last day was October 26, 2018), failure to fill the position would have been untenable to the AO’s operations, even without regard for its *Shakman* compliance obligations.

<sup>7</sup> Section VI.F.3 provides: “Applicants who fail to submit completed applications pursuant to Section IV.E.1 will have their ineligibility documented on the Applicant List and will not be further screened pursuant to Section IV.E.4.”

<sup>8</sup> Section VI.F.4 provides: “Applicants who answer “No” to a Disqualifying Question will have their ineligibility documented on the Applicant List and will not be further validated pursuant to Section VI.E.5 below.”

<sup>9</sup> Section VI.F.8 provides: “After sorting the Validated Eligibility List into the groups as described in Section VI.F.6.c, and if there are more Candidates than needed to fill the Final Interview List as discussed below, HR will randomize each group as necessary to fill the Final Interview List, using a computerized system.”

<sup>10</sup> Section VI.O, in relevant part, provides: “[N]o offer will be extended prior to the Deputy of HR, DOC, and ACA, while acting, receiving all required documents and supporting materials from the Hiring Department, Interview Panel, Assessor or Chief Deputy Assessor.”

Only after the interview process had ended and the candidates were ranked did the AO disclose that external candidates would be offered the \$60,470 starting salary only. This made the posted \$60,470 - \$97,606 disingenuous as it was known from the start that all candidates would be external.

The negative effects from the posted \$60,470 - \$97,606 salary range, with a nearly \$40,000 differential that would not be realized, were manifold: (1) applicants earning significantly more than \$60,470 applied in reliance on the stated \$60,470 - \$97,606 range; (2) applicants earning at or near \$60,470 may not have applied, thinking they were not qualified; (3) time was spent reviewing applications of those applicants who were earning significantly more than \$60,470; and (4) interviews were granted to applicants earning significantly more than \$60,470; this deprived candidates who were earning less and actually would have interest in the position from being interviewed.

These harms are not theoretical or imagined. The first, second and third ranked candidates, all of whom earned more than the \$60,470 salary offered, refused the position. The ACA understands the AO has extended an offer to the fourth-ranked candidate.

Hiring under the Employment Plan is a highly regulated process and Substantial Compliance requires the ability to hire compliance with that process. Presumably, the incoming Administration will engage in Non-Exempt Hiring.<sup>11</sup> This will give the ACA the opportunity to assess its ability to comply with the Employment Plan.

---

<sup>11</sup> The ACA expects that upon taking office the new Assessor will wish to do Exempt hiring. This is a less regulated process although there are rules under the Employment Plan for this, too. The ACA is prepared to work with the incoming Administration to facilitate Exempt hiring in accordance with the Employment Plan.

**B. The Assessor Remains Compliant with Provisions of the Employment Plan Unrelated to Hiring**

As of the Eleventh Report, the Assessor finally became compliant with Non-Hiring provisions of the Employment Plan that required the posting of specified information on his website to ensure its Employment Actions and hiring lists were available to the public. This included Quarterly Reports, which include the total number of New Hires, Promotions, Demotions, Transfers, Terminations, Reclassifications, Layoffs and Resignations by Department for each three-month period (Section IV.C); the Executive Assistant List, with active links to the Position Description (Section X.A); and the Exempt List, with active links to the Position Descriptions (Section XI.A.1). The AO has continued to post the required information on his website and remains compliant with the Employment Plan.

**C. The Assessor Appropriately Has Revised *Shakman*-Related Policies Based on Attempted Implementation: An Employee Handbook is in the Offing**

Substantial Compliance under the Agreed Order requires the Assessor, *inter alia*, to “implement procedures that will affect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor.” *See* Doc. No. 3007 at 14, PageID No. 138914. A foundational piece of these procedures is an Employee Handbook, which collects the AO’s “employment policies and procedures regarding the Employees’ relationship with the Assessor’s Office.” *See* Employment Plan at 8 and 17; Doc. No. 4651 at PageID Nos. 29673, 29682. The Employee Handbook includes policies required by the Employment Plan (“*Shakman*-related policies”) and other personnel policies that are not required by the Employment Plan.

At the time of the January 18, 2018 Tenth Report, the parties, the ACA and the DOC had collaborated on revising the AO’s *Shakman*-related policies, which are Reclassification;

Performance Evaluation; Overtime; Layoff and Recall; Interim Assignment; Temporary Assignment; Training; Performance Improvement Plan; Time and Attendance; and Discipline.

The AO's initial efforts toward policy implementation – a critical piece of *Shakman* compliance – revealed that certain policy provisions needed clarification, did not provide the transparency desired and/or were unnecessarily cumbersome. The parties, the ACA and the DOC undertook to further review and revise these policies to make them more workable. The process was extensive and painstaking, but it appears to be completed.

The ACA understands that AFSCME, the union to which the AO's bargaining unit employees belong, has 30 days to review the revised policies. The ACA further understands that the AO has submitted the revised policies to AFSCME with the goal of distributing a new Employee Handbook before the change in Administration.<sup>12</sup> This will be the first substantive revision to the AO's Employee Handbook since 2012 and a significant step towards achieving Substantial Compliance.

**D. Much Work, Including Supervisory Training, Remains to Implement the *Shakman*-related Policies**

As the ACA has noted in prior reports, finalizing the *Shakman*-related policies is necessary but insufficient to achieve Substantial Compliance. Proper implementation is required to assure that the policies are being applied even-handedly, without regard for political influence or factors.

Prior reports have described in considerable detail the AO's deficiencies in implementing *Shakman*-related policies, particularly the Overtime, "Attendance Points" (part of the Time and

---

<sup>12</sup> Certain of the *Shakman*-related policies require implementing forms. The ACA is in the process of reviewing the current version of the forms to determine what revisions are required or recommended to achieve or ease policy implementation. Following review, the ACA will collaborate with the AO and DOC with the goal of completing revisions before the change in Administration.

Attendance Policy), Discipline and Temporary Assignment policies. For the past two months, the ACA largely has focused her resources on finalizing the *Shakman*-related policies, as described above, and updating the AO's Position Descriptions, as described below, as opposed to giving detailed feedback on policy implementation deficiencies. The AO's resources have been similarly focused. Nonetheless, the following policy implementation violations/issues identified by the ACA have not been rectified or have gone unaddressed by the AO since the Eleventh Report:

### **1. Overtime Policy**

The vast majority of the AO's Employment Actions relate to overtime. In the Eleventh Report, the ACA identified a number of Overtime Policy violations that had occurred on a regular basis. Doc. No. 5894 at 8-9; PageID Nos. 551993 – 51994. These violations continue and indicate a lack of understanding and/or oversight by Human Resources and the need for additional supervisor training. These include:

- Failure to provide advance notice of overtime. Section 3.1(A) requires a Deputy to provide at least 48 hours advance notice when overtime is required. This requirement is violated regularly and an adequate explanation for the deficiency is not given.
- Failure to abide by overtime limitations on notice of overtime opportunity. Section 3.1(B) requires the email notice of overtime to identify when the overtime may be, or is required to be, performed and the daily or weekly limits on that overtime. Employees regularly violate the limits and restrictions on overtime assignments exceed the stated time constraints on a regular basis. There have been no apparent repercussions for supervisors failing to properly monitor the overtime performed or the employees who exceed the restrictions.
- Failure to demonstrate that email notice of overtime sent to all eligible employees. Section 3.1(B) requires that the email notice of overtime be sent to all employees who hold the job classification(s) that generally perform the type of work required. The AO regularly sends email notices of overtime that omit seemingly eligible employees.
- Failure to provide adequate details of selection criteria. Section 3.1(C) requires overtime without advance notice to be offered to all employees who perform the type of work

required and that it be offered on a rotating basis. Human Resources' overtime forms often fail to provide the requisite information.

- Failure to create and maintain spreadsheets demonstrating overtime is assigned on a rotating basis. Section 3.1(E) requires the Deputy of Human Resources to create and maintain a spreadsheet that shows the rotating list of employees assigned overtime and an explanation for the assignment. The AO has promised to provide these since February 2018. It never has happened.
- Failure to adequately explain the business reason for overtime without advance notice. Section 3.1(F) requires the Deputy of the department where the overtime was worked to send to Human Resources a Notice of Overtime Performed form that explains the operational need for the overtime and why the employee was selected. These forms regularly have been deficient.
- Failure to properly document exceptions to seniority/rotation-based overtime without advance notice – Section 3.2(C) requires overtime without advance notice to be offered on a seniority basis rotated through all employees who generally perform the work required unless the overtime is assigned to enable an employee to complete a specific project to meet a deadline or there is an operational need or efficiency in assigning a particular employee. Deputies regularly fail to provide adequate explanations for why employees received overtime without advance notice.

## **2. “Points” Discipline Policy (“Attendance Points” Section of Time and Attendance Policy)**

The ACA has spent much time monitoring and giving feedback to the AO regarding the “points” discipline aspect of the Time and Attendance Policy, which has been in effect for many years including before the current Assessor’s election. Through the course of these discussions, Human Resources’ administration of the points discipline policy and the documentation provided to the ACA has improved. Issues, however, remain:

- Calculation of employees’ attendance points – Employees’ attendance points are documented, *inter alia*, by “Points Reports” which track the level of all AO employees’ points. From the outset of monitoring this policy, the ACA has seen Points Reports that do not accurately reflect an employee’s points history. These errors appear to arise primarily from improper or no documentation when points are removed or due to human error in calculations. Sometimes Human Resources can explain the discrepancy and sometimes it cannot. Since erroneous points calculations can subject employees to unwarranted discipline, Human Resources must exercise extreme rigor to make sure that does not happen.

- Memorandum describing basis for discipline - As part of the points discipline meetings, employees are given a memorandum with a narrative description of their point histories that provide the factual basis for the discipline. Since attendance points accrue for 365 days and then “fall off,” an employee’s points history can be complicated. While the narrative descriptions of employee point histories have improved considerably, issues remain particularly where the points history is complicated.

### **3. Time and Attendance Policy – Misuse of Interactive Voice Recognition System**

In May 2018, the AO began using an Interactive Voice Recognition system (“IVR”) as part of its use of Cook County’s new time and attendance tracking system (“CCT”). The IVR system allows employees to swipe in and out remotely via phone. Based on information obtained from the desk audits of Operations Department employees, the ACA and DOC identified potential misuse of the IVR system. The DOC conducted an investigation which he provided to the Assessor, Plaintiffs and the ACA on October 16, 2018.

The DOC found the following problems related to the IVR system:

- Deducting full days of sick leave from field inspectors who forgot to swipe in or out via the required phone call. The decision to dock field inspectors a full day of sick leave if they forgot to call in or out on the IVR system was made by Mike Sobczak, the Deputy of Operations, and Vickie LaCalamita, the Deputy of Financial Operations, without informing Human Resources or others at the AO. The ACA and DOC also had no idea this docking was going on. The decision was particularly egregious since the field inspectors apparently were not trained on the IVR system when it went into use.

- Improper use of the IVR system by the Deputy of Financial Operations and the Manager of Payroll. Vickie LaCalamita, the Deputy of Financial Operations, the Manager of Payroll and the Purchasing Manager have been using the IVR system – instead of being physically present in the AO - even though the AO has no policy that allows telecommuting. Deputy LaCalamita did not inform Human Resources of this use of the IVR system.

- Improper use of the IVR system by Information Technology employees. Haleema Brady, the Deputy of IT, allowed her direct report to use the IVR system - instead of being physically present in the AO - even though the AO has no policy that allows telecommuting. Deputy Brady did not inform Human Resources of this use of the IVR system.

- No set work schedules for field inspectors. It turns out that field inspectors have no set work schedules in violation of the AO’s Time and Attendance Policy that requires scheduled start and end times.

- Deputy of Financial Operation's requests for overtime when using IVR. Deputy LaCalamita requested overtime on seven days for which she used the IVR system to call in from home and did not physically swipe in at the AO, in violation of Section 4 of the Overtime Policy that requires *Shakman*-Exempt employees to physically swipe in and out on days for which they request overtime.

The DOC made various recommendations, including amending the Time and Attendance policy, which the AO verbally has agreed to do. The AO also has indicated a willingness to set schedules for field inspectors and restore sick time improperly docked. The DOC recommended that Deputy LaCalamita's requests for overtime when she used IVR be denied; the AO has not indicated how it intends to address this.

The Employment Plan gives the Assessor 30 days to respond in writing to a DOC report, with one allowable 30-day extension. Section V.F(7)(c). If the current Assessor does not file a response, it will be up to the new Assessor to address any unresolved issues raised by the DOC.

#### **4. Discipline Policy**

The ACA previously reported problems with the AO's imposition of discipline and the need for a transparent policy and policy implementation to ensure that discipline is imposed free of political influences or factors. The revised Discipline Policy is the first step in achieving that aim. Implementation remains an issue. The ACA reports the following discipline-related issues since the Eleventh Report:

Counseling – The ACA's Tenth Report challenged Human Resources' use of mandatory counseling where a supervisor submits a written Request for Discipline form to Human Resources. Doc. No. 5894 at 10 – 11; PageID Nos. 551995 – 51996. The AO's Disciplinary Policy has been revised to allow this action, which must be memorialized by both the Deputy of Human Resources and the counseling supervisor. Counseling was issued four times in August 2018. In each instance, the Discipline policy was violated based on inadequate and/or

insufficient documentation by the supervisor who did the counseling. Presumably, supervisor training and subsequent oversight by Human Resources will address these deficiencies.

Monitoring of AO's Deliberative Process – As part of her authority under the Agreed Order and Employment Plan to monitor all employment actions, which includes discipline, the ACA sought to monitor the AO's decision-making about disciplinary actions. The AO refused. The parties brought the issue to the Court which directed the AO to allow the ACA's requested monitoring. The Discipline policy was amended to permit this monitoring.

Timeliness of Disciplinary Decisions – The Discipline Policy requires the AO to discipline employees “as soon as practical” after having the opportunity to conduct a thorough investigation of the conduct or event that prompted the discipline. The timeliness of Human Resources' issuance of discipline, which has been an ongoing issue, continues. In two disciplinary actions since the Eleventh Report, the Deputy of Human Resources issued discipline six weeks and over two months after the incidents giving rise to the discipline. Neither instance required extensive investigations. While the AO refused to codify in the policy when disciplinary decisions must be rendered, the decisions in these matters cannot reasonably be viewed “as soon as practical.”

#### **5. Temporary Assignment Policy**

The temporary assignment policy is designed to ensure that temporary assignments are made fairly with the opportunity available to all who qualify and to provide adequate notice to employees and the ACA and DOC. The AO's failure to properly handle temporary assignments has been reported to the Court.

In February 2018, the AO agreed to take certain actions to achieve better policy implementation. This included (1) meeting with the Deputies to expand the universe of positions

subject to temporary assignments to rectify instances where qualified employees were denied the opportunity to be considered for a temporary assignment and to ensure that employees who should be subject to temporary assignments are were not excluded; and (2) complying with the Temporary Assignment Policy by requiring Deputies to create and maintain (and provide to the ACA and DOC) an up-to-date record of temporary assignments to ensure that they are rotated equally among all eligible employees. This has not happened.

#### **6. Performance Evaluation Policy**

That the AO has not conducted performance reviews in the nearly eight years since the Assessor took office has been a subject of consternation to the Court, Plaintiffs and the ACA. How and when the AO would begin conducting performance evaluations has been a subject of discussion with the Court for about the last year. When the process of updating the Position Descriptions proceeded in earnest (about six months ago), the collective thinking was that these should be completed before a plan to begin performance evaluations could be put into place.

As described below, the AO's Position Descriptions largely have been updated. On October 29, 2018, the updated Position Descriptions were given to the Deputies of the Communications, Exemption Investigations, Information Technology, Legal, Human Resources, Financial Operations and the Front Office Departments to distribute to their employees. The employees were to return their signed paperwork by October 31, 2018. Updated Position Descriptions will be distributed to employees in the remaining departments (Valuations, Taxpayer Services and Operations) as soon as possible.<sup>13</sup>

---

<sup>13</sup> The ACA understands that AFSCME's sign off is required when Position Descriptions are updated for bargaining unit positions and that has been accomplished for those positions in the departments where the Position Descriptions have been distributed. The Position Descriptions for the Valuations, Taxpayer Services and Operation Departments were addressed later in the process and, as described below, the revisions are in the process of being finalized. *See* pp. 18 – 19, *infra*.

Now that the Position Descriptions are completed or nearing so, the time is right for the AO to devise a plan for supervisor training and implementation of the Performance Evaluation Policy. As Substantial Compliance cannot be achieved without the AO's demonstrated ability to conduct performance evaluations in accordance with the policy, addressing this issue presumably will be a priority to the incoming Assessor. Implementing this policy also will give the new Assessor the opportunity to assess his workforce.

**E. The AO's Exempt and Non-Exempt Position Descriptions Have, For the Most Part, Been Updated**

Section IV.J of the Employment Plan requires the AO to review Position Descriptions to make sure they are current and accurate. *See* Employment Plan at 19 - 20; Doc. No. 4651 at PageID Nos. 29684 - 85. This is a critical step towards achieving Substantial Compliance. Updated and accurate Position Descriptions are the foundation not only for appropriate hiring but for many other employment actions including performance evaluations and discipline.

Since the Eleventh Report, the parties, ACA and DOC have spent considerable time in updating the AO's Exempt and Non-Exempt Position Descriptions. This is a formidable task. In the first instance, it requires desk audits of AO employees in each position (often multiple employees) to determine the job duties being performed, whether they are appropriate to the position and whether the position has an appropriate job Grade. These factors must be considered for the positions in each department and for similar positions across departments. Based on the information gathered, each Position Description must be revised and updated. As part of this process, positions have been added, eliminated or reclassified and job Grades have been adjusted to fit the level of work being performed.

The agreed-upon process was to update the Position Descriptions by AO department. As of the June 14, 2018 Eleventh Report, modest progress had been made. That situation has much improved.

In April 2018, the Court had ordered the parties to submit a schedule for the completion of Position Descriptions. The parties did so, along with an accompanying plan (including the desk audits) that would drive the review.

In accordance with the parties' schedule, Exempt and Non-Exempt Position Descriptions have been updated, finalized and agreed for the Communications, Legal, Human Resources, Front Office, Exemption Investigations, Financial Operations, Information Technology and Valuations Departments. Also in accordance with the parties' schedule, the desk audits have been completed and Position Descriptions are in progress for Taxpayer Services and Operations Departments and for office-wide Support Staff positions, which the parties and the ACA had agreed to do at the end.

These outstanding issues are:

- Taxpayer Services Department – This is the largest AO department and includes the important customer service function. The desk audits, Position Description revisions and discussion were completed on schedule by October 26, 2018. The review however showed historic, systemic issues in three positions that are customer focused: Taxpayer Information Senior Specialist, Taxpayer Information Specialist and Taxpayer Information Junior Specialist. The ACA is informed that altering these positions implicates the AO's Collective Bargaining Agreement and the surrounding negotiations likely would extend beyond the Assessor's term. Also, the ACA believes that it would be inappropriate to attempt to resolve these longstanding issues without the next Assessor's input. The ACA understands that the AO and DOC agree.

- Operations Department – This is another large AO department. The desk audits are completed and revisions to the Position Descriptions are underway. The parties and the ACA agreed to abbreviate the schedule to achieve completion by November 28, 2018, prior to the change in Administration. While the process is on schedule, there may be historic, systemic issues in certain positions in this department, as well, that either cannot be resolved in the next few weeks or it would be inappropriate to do so without the next Assessor’s input. The ACA will keep the Court advised.

- Support Staff – The AO has generic Support Staff and Senior Support Staff Position Descriptions that apply office-wide. The desk audits of various employees in these positions, which have been completed, showed a range of duties, some more complicated than others, in large part determined by the department to which the employee is assigned. Certain employees in these positions are performing the job duties of a different position; this presumably can be rectified by reclassifying the employees pursuant to the AO’s Reclassification Policy. Ultimately, there are a variety of ways in which the support staff function potentially could be addressed and this appears better left to the new Assessor.

- Legal Department: Division Analysts and Division Junior Analysts – The desk audits of the Division Analysts (Grades 14 and 16) and Division Junior Analysts (Grade 13), positions in the Legal Department, were completed in May 2018. The theory for two levels of analysts is that the Division Analysts, with a higher salary Grade, do more complicated work. The desk audits however showed that the Division Analysts and Division Junior Analysts do the same work. In some instances the Division Junior Analysts do more complicated work. The ACA’s suggested solution was to eliminate the Division Junior Analyst position. The AO took the position that the problem could be solved by the supervisor who would make sure that work was

assigned and performed commensurate with the level of the employee's position. In July 2018, the ACA indicated her willingness to allow the AO to demonstrate that the work could be assigned appropriately but made it clear she would not sign off on these Position Descriptions in the absence of such a demonstration. While the ACA understood that the AO would institute its plan in July 2018, it did nothing until October 2018. The ACA intends to desk audit the affected employees in approximately two weeks. If the work is being appropriately assigned, the issue is resolved. If not, she will not sign off on the Position Descriptions and the issue will be further addressed.

In sum, all Exempt and Non-Exempt Position Descriptions office-wide should be completed prior to the change in Administration, subject to the outstanding issues described above. The ACA expects to address the outstanding issues, and any others that arise, with the new Assessor.

**F. The Human Resources Function, Which Must be Fully Functioning to Achieve Substantial Compliance, Would Benefit from Reassessment**

Substantial Compliance cannot be achieved without a professional, effective Human Resources function. *See* Section III.I of the Employment Plan at 16 (requires maintaining a Human Resources staff of "experienced and knowledgeable professionals"); Doc. No. 4651 at PageID No. 2968.

Each of the ACA's prior reports has expressed concern that the AO's Human Resources staff (currently budgeted at a Deputy and two Human Resources Generalists) is inadequate to manage the day-to-day operations of an approximately 300-person workforce and perform *Shakman*-related activities. Support from the Assessor's Legal Counsel, however valuable, does not obviate the Employment Plan's requirement of a professional, effective Human Resources function.

The ACA is aware of the budgetary constraints to which all elected officials in Cook County apparently are subject. Given the importance of the Human Resources function to achieving Substantial Compliance, she encourages the incoming Administration to examine the function and take whatever steps are available for upgrade and improvement.

**IV. RECOMMENDATIONS**

It has been the ACA's practice to make substantive recommendations to the Court at the end of each report. This is difficult given the upcoming change. Once that transition is made, the ACA expects to continue her practice of making substantive recommendations in future reports.

Procedurally, the ACA makes the following recommendations:

A. The Court should consider holding a status hearing before the December 3, 2018, change in Administration at which time the parties and the ACA can apprise the Court of the status of the major projects (policies, Position Descriptions) and what remains to complete them.

B. The Court should consider scheduling a status hearing prior to the end of the 2018 and require the incoming Assessor to appear (as has been required of the current Assessor) at which time, among other things, an initial discussion of the Court's expectations going forward can take place.

C. The Court should consider scheduling status hearings every four to six weeks for the first quarter of 2019 to help insure a smooth and effective transition in the Assessor's *Shakman* compliance efforts.

Respectfully submitted,

Susan G. Feibus  
Assessor Compliance Administrator  
69 West Washington St., Suite 830  
Chicago, IL 60602  
and  
105 West Adams St., 35<sup>th</sup> Floor  
Chicago, IL 60603  
(312) 637-9637  
susan@feibuslaw.com

By her attorney:

/s/ Matthew D. Pryor

Matthew D. Pryor  
(mpryor@shakmancompliance.com)  
Counsel to the ACA  
69 West Washington St., Suite 830  
Chicago, IL 60602  
Telephone: (312) 603-8911  
Fax: (312) 603-9505

**CERTIFICATE OF ELECTRONIC FILING**

I, Matthew D. Pryor, the undersigned, do hereby certify that on October 31, 2018, I electronically filed a true and correct copy of the foregoing **Twelfth Report of the Assessor Compliance Administrator for the Cook County Assessor** using the CM/ECF system, which sends notification of such filing to all registered users.

/s/ Matthew D. Pryor  
Counsel to the ACA