

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

MICHAEL L. SHAKMAN, <i>et al.</i>,)	
)	Case No. 69 C 2145
Plaintiffs,)	
)	Hon. Edmond E. Chang
v.)	District Judge
)	
COOK COUNTY ASSESSOR, <i>et al.</i>)	Hon. Gabriel A. Fuentes
)	Magistrate Judge
)	
Defendants.)	

**EIGHTEENTH 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 Eighteenth Report to the Court:

I. INTRODUCTION

On December 15, 2020, the ACA filed the Seventeenth Report to the Court (“Seventeenth Report”). This was her eleventh report since her January 26, 2016 appointment (effective February 1, 2016). This Eighteenth 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 Seventeenth Report.

The Assessor is getting closer to achieving Substantial Compliance. At the December 17, 2020 status hearing, as reflected in the December 29, 2020 order, the Court directed the parties and the ACA to confer on a potential timeline to initiate the Sunset Procedures and to submit a report by March 12, 2021. Based on that report, the Court set July 30, 2021 for the filing of a

“hoped-for” joint motion for Substantial Compliance. The ACA will support a joint motion if, in her view, the Assessor has satisfied the “five prongs” of Substantial Compliance by that time.

Under Section III(F)(8) of the Agreed Order, Substantial Compliance requires:

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 non-compliance 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.

This report will assess the Assessor’s progress towards Substantial Compliance in terms of these five prongs.

II. OVERVIEW OF THE ACA’S ACTIONS SINCE THE DECEMBER 15, 2020 SEVENTEENTH REPORT

The ACA and her staff remain actively engaged with the AO, Plaintiffs and the DOC in the AO’s efforts to achieve Substantial Compliance. In summary, the ACA’s activities since the Seventeenth Report included:

- reviewed, monitored and provided regular feedback regarding many Employment Actions;¹

¹ Unless otherwise indicated, capitalized terms used in this report have the same meanings ascribed to them in the Agreed Order or Employment Plan.

- reviewed, monitored and provided feedback regarding annual Performance Evaluations;
- provided feedback regarding AO training materials and monitored many training sessions;
- reviewed and monitored the Assessor's hiring under the Exempt hiring process;
- provided significant input into and monitoring of the Assessor's hiring under the Actively-Recruited hiring process;
- provided significant input into and monitoring of the Assessor's hiring under the General Hiring process;
- provided significant input and comments regarding the AO's proposed revisions to various Exempt and non-Exempt Position Descriptions;
- conferred and corresponded with the AO on a regular basis;
- conferred and corresponded with counsel for Plaintiffs on a regular basis;
- conferred and corresponded with the Director of Compliance ("DOC") on a regular basis;
- conferred with the AO's outside counsel on a regular basis;
- provided significant revisions to the Temporary Assignment and Performance Improvement Plan ("PIP") policies;
- provided detailed feedback to the AO regarding issues attendant to its efforts to implement Shakman-related policies, including the Time and Attendance, Discipline, PIP, Performance Evaluation, Overtime, Training, Temporary Assignment policies;
- conducted exit interviews of various AO employees.

III. THE ASSESSOR'S PROGRESS TOWARDS SUBSTANTIAL COMPLIANCE

A. Has the Assessor implemented the New Employment Plan, including procedures to ensure compliance with the New Employment Plan and identify instances of non-compliance?

1. Employment Plan Implementation: Hiring Since the Seventeenth Report

A significant component of the Employment Plan relates to its five separate hiring processes: (1) Exempt; (2) Actively Recruited; (3) General Hiring; (4) DOC; and (5) Executive

Assistant. Substantial Compliance requires a demonstrated ability by the AO to hire in compliance with these schemes. Since the Seventeenth Report, the AO has hired employees under the Exempt, Actively Recruited and General Hiring processes:

a. Exempt Hiring

Per the amended Exempt List entered by the Court on October 28, 2020, the AO has 31 Exempt positions. Five of those positions have been vacated since the Seventeenth Report.

The AO filled four positions through the Exempt hiring process since the Seventeenth Report:

- Special Assistant (reporting to Deputy Assessor): March 1, 2021 date of hire
- Legislative Coordinator: March 2, 2021 date of hire
- Deputy Assessor – Chief Data Officer: April 5, 2021 date of hire
- Director of Data Analytics: April 5, 2021 date of hire

These Exempt Positions were filled in accordance with the Employment Plan.

Five Exempt positions currently are vacant:

- Director of Policy: vacant since August 17, 2020
- Legal Counsel: vacant since December 1, 2020
- Executive Assistant – Assessor: vacant since March 1, 2021
- Director of Legal: vacant since March 26, 2021
- Director of Communications: vacant since April 5, 2021

b. Non-Exempt Hiring: Actively Recruited Hiring

The AO filled four positions through the Actively Recruited hiring process since the

Seventeenth Report:

- Manager of Commercial Valuations: December 21, 2020 date of hire
- Manager of Divisions: January 19, 2021 date of hire
- Manager of Special Properties: January 19, 2021 date of hire
- Compliance Analyst: April 11, 2021 date offer accepted; expected start date April 26, 2021

While the hiring for these Actively Recruited positions generally was Employment Plan compliant, the deficiencies identified by the ACA (and conveyed to the AO) include:

- Human Resources failed to provide the Posting File to the DOC and ACA within two days of the final Candidate selection and put all required documentation into the Posting File. (*Manager of Commercial Valuations; Manager of Divisions; Manager of Special Properties*). As of the date of this report, the Posting Files for these three hiring sequences remain incomplete.
- Human Resources failed to include information required by the Employment Plan on the Request to Hire and/or Notice of Job Opportunity. (*Manager of Divisions; Manager of Special Properties*)
- Human Resources improperly directed the Interview Panel to exclude one Candidate from consideration at the Ranking Meeting because Human Resources used the minimum interview scoring threshold that was removed from the Employment Plan in September 2020. (*Manager of Divisions*)
- Human Resources failed to “promptly notify” the ACA (or DOC) of a Conflict-of-Interest determination until nine days after the determination was made – which was after interviews had been completed. (*Manager of Special Properties*)

No hiring under the Actively Recruited Hiring Process currently is in progress.

c. Non-Exempt Hiring: General Hiring Process

The AO filled six positions through the General hiring process since the Seventeenth Report:

- Industrial Commercial (“IC”) Junior Analyst (three of four vacancies): March 15, 2021 and March 29, 2021 dates of hire
- Residential Junior Analyst (two of three vacancies filled): March 15, 2021 and April 12, 2021 dates of hire

- Manager of Records Management: March 29, 2021 date of hire
- IC Group Leader: April 12, 2021 date of hire
- Assistant Manager of Taxpayer Information: April 12, 2021 date of hire
- Residential Group Leader: April 26, 2021 expected date of hire

While the hiring for these positions generally was Employment Plan compliant, the deficiencies identified by the ACA (and conveyed to the AO) include:

- Human Resources failed to provide the Posting File to the DOC and ACA within two days of the final selection of a Candidate and put all required documentation into the Posting File. (*IC Junior Analyst, Residential Junior Analyst; Manager of Records Management; Assistant Manager of TPI; IC Group Leader; Residential Group Leader*) As of the date of this report, the Posting Files for all six recently completed hiring sequences remain incomplete.
- Director of Human Resources extended an offer to selected Candidates before putting the pre-interview proof of education and list of references for three Candidates and proof that HR had verified the employment of two External Candidate in the Posting File. (*IC Junior Analyst; IC Group Leader; Residential Group Leader*)
- Human Resources' initial tabulation of interview scores and draft of Scored Interview List contained significant errors; correction by DOC and ACA was required. (*IC Junior Analyst*)
- Hiring Deputy's Justification to Hire improperly failed to explain why he did not select the highest-ranked Candidate selected. (*Residential Group Leader*)
- Human Resources failed to provide proof that Candidates submitted required documentation (*i.e.*, proof of education, list of professional references, copy of ID) by the deadline included on the Posting File, which apparently allowed ineligible Candidates to be ranked at Ranking Meeting. (*IC Junior Analyst; Manager of Records Management; Assistant Manager of TPI; Residential Group Leader*)
- Human Resources improperly directed the Interview Panel to exclude two Candidates from consideration at the Ranking Meeting because Human Resources used the minimum interview scoring threshold that was removed from the Employment Plan in September 2020. (*Residential Junior Analyst*)
- Human Resources' Ranking Meeting notes failed to reflect the panel's discussion for six of the 10 Candidates at the Ranking Meeting, as is required. (*Residential Junior Analyst*)

- Human Resources failed to conduct a Conflict-of-Interest investigation when an Interview Panelist disclosed a prior professional relationship with one Candidate. (*Assistant Manager of TPI*)
- Human Resources failed to create the required Sorted Preliminary Eligibility List. (*IC Junior Analyst; Residential Junior Analyst; Assistant Manager of TPI; IC Group Leader*)
- Human Resources failed to provide the DOC and ACA with an accurate Scored Interview List in a timely fashion before the Ranking Meeting eliminating their opportunity to correct errors before the Ranking Meeting. (*IC Junior Analyst; Assistant Manager of TPI*)
- Human Resources failed to notify the ACA (and presumably DOC) when an offer of hire was accepted by a Candidate. (*Assistant Manager of TPI*)

Hiring is underway for six positions under the General Hiring Process: (1) Manager of Data Collection; (2) Manager of Computer Assisted Mass Appraisal; (3) Incentive Senior Analyst; (4) Residential Senior Field Inspector; (5) TPI Specialist; and (6) Division Analyst. The ACA will report on any progress or deficiencies with these hiring sequences in her next report.

2. Employment Plan Implementation: Shakman-Related Policies

To implement and ensure compliance with the Employment Plan, Substantial Compliance requires employment policies and procedures (“Shakman-related policies”) and the ability to identify instances of non-compliance with these policies. Agreed Order at II(D), III(F)(8)(1). The Employment Plan requires the Shakman-related policies to be included in the AO’s Employee Handbook, which is to be revised and maintained by HR and distributed to all employees. *See* Section IV.B. The AO’s Employee Handbook includes the Shakman-related policies and other personnel policies that are not required by the Employment Plan.

The Shakman-related policies in AO’s Employee Handbook, issued on November 16, 2020, are: Reclassification; Performance Evaluation; Overtime; Layoff and Recall; Interim

Assignment; Temporary Assignment; Training; Performance Improvement Plan (“PIP”); Time and Attendance; and Discipline.

Currently, two Shakman-related policies are under revision: (1) Time and Attendance; and (2) PIPs.

a. Time and Attendance

The AO’s Time and Attendance policy has been a subject of every ACA report to the Court since Assessor Kaegi assumed office in December 2018. While policy implementation will be discussed below, on April 19, 2021, the parties and the ACA discussed additional policy revisions to address certain policy implementation issues. The discussion was productive and the ACA expects final agreement on a revised policy in short order.

b. PIP

While PIP policy implementation will be discussed below, the AO’s attempts to implement the PIP policy, which is new to the AO, has revealed issues regarding the policy’s substance and procedure. Drafts have been exchanged; the issues appear to be narrowed, particularly as to procedure. The parties and the ACA are scheduled to meet to discuss revisions prior to the April 22, 2021 court status. The ACA expects the Court will be updated at the status.

3. Employment Plan Implementation: Training

a. Mandatory Annual Supervisory Employee Handbook Training (December 11 and 14, 2020)

Section IV(E) of the Employment Plan requires the Director of Human Resources or Designee, in conjunction with the CAO, Director of Training and the DOC, to conduct annual “comprehensive, mandatory training for all Supervisors to ensure that they are aware of and knowledgeable about...the Employee Handbook.” This training, conducted on December 11 and 14, 2020, met the Employment Plan’s requirements.

b. Other Employment Plan Mandated Training

Since the Seventeenth Report, the AO conducted mandatory Human Resources annual Taleo and Validation Training pursuant to Section IV(D) of the Employment Plan; Interviewer Training (required for employees to participate in interviews for any hiring process) pursuant to Section IV(H) of the Employment Plan; Investigation Training (required for employees to investigate allegations of misconduct) pursuant to Section IV(I) of the Employment Plan; and new-hire Employment Plan Training, Employment Plan Supervisory Training and Employee Handbook Training pursuant to Sections IV(E) and (F) of the Employment Plan. While the quality of the presentations varied based on quality of the training deck and the presenter, the Employment Plan requirements were satisfied.

4. Employment Plan Implementation: Position Description Revisions

Section IV(K)(1) of the Employment Plan requires that position descriptions be “accurate and reflect[] the actual duties and Minimum Qualifications and Preferred Qualifications, if any, for the job.” If the AO wishes to revise a position description, it must provide the proposed revisions to the DOC and ACA and, in the case of Exempt positions to Plaintiffs, for review and comment. *Id.*

Since the Seventeenth Report, the AO has advised the DOC, ACA and Plaintiffs of a desire to revise several Exempt and non-Exempt position descriptions, typically to change Minimum Qualifications and/or Preferred Qualifications. Following the DOC, ACA and Plaintiffs’ review, the AO’s proposed revisions have been negotiated and agreed.

B. Has the Assessor has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence?

This section will address the current state of the AO’s compliance with Shakman-related policies since Substantial Compliance requires consistent and effective policy implementation.

Agreed Order at III(F)(8)(1). In the ACA's current view, this second prong should be considered in connection with the fourth prong, which speaks in terms of the "absence of material noncompliance which frustrates the Agreed Order's essential purpose" and her discussion of the fourth prong will endeavor to do that.

The ACA's assessment of the current state of AO Shakman-related policy implementation is based on the monitoring of many Employment Actions and the standards imposed by the November 2020 Employee Handbook. In large measure, the ACA's assessment has been conveyed to the AO through regular written feedback on policy implementation issues.

1. Layoff/Recall

On April 5, 2021, the Shakman Liaison/Deputy Assessor advised the DOC, ACA and union that the AO had decided to layoff a position occupied by a single employee. On April 6, 2021, Human Resources sent a notice of Layoff. The ACA advised the AO that the notice was incomplete and therefore not policy compliant. On April 7, 2021, Human Resources sent a revised, policy-compliant notice. The DOC was not copied.

On April 8, 2021, the ACA was copied on correspondence from a union staff representative to the Director of Human Resources memorializing the union's agreement with the AO/HR to recall the laid off employee into a vacant position. The agreement was based on the employee purportedly holding that vacant position before Assessor Kaegi took office - even though the employee was not Minimally Qualified since the current position requires a Bachelor's Degree, which the employee does not have. The DOC was not copied on this correspondence; when contacted by ACA, the DOC indicated this was the first he had heard of the AO's apparent agreement with the union to recall the employee.

On April 8, 2021, the ACA called the Shakman Liaison/Deputy Assessor to find out why the AO/HR had entered into an agreement with the union relating to an employee recall that would violate the Employment Plan without advising the ACA or DOC. While the Shakman Liaison/Deputy Assessor claimed that she had alerted the ACA's counsel of the matter, that was inaccurate as the only thing she mentioned to him was the existence of a vacant position for which the laid off employee might qualify for recall; the Shakman Liaison/Deputy Assessor did not mention what the position was or that the employee did not meet its Minimum Qualifications.

Whether or not the employee is qualified for the vacant position under the Collective Bargaining Agreement may be subject to debate. The AO/HR's failure to give the DOC and ACA notice of the potential recall, with clear Employment Plan implications, is not.

2. PIPs

The AO has engaged in 12 PIPs since the Seventeenth Report that were based on substandard Performance Evaluations. To date, four PIPs have been completed - two successfully and one unsuccessfully; one PIP was terminated because the employee resigned. The remainder are in process.

The ACA has monitored each of these PIPs, including the adequacy of the Performance Improvement Form, PIP Progress Forms for each PIP Progress meeting, the Final PIP Form and the clarity of the communication between the Supervisor and employee at the various PIP meetings. As most of the PIPs are ongoing, the ACA has not yet provided formal feedback to the AO but has advised the AO of certain deficiencies as they arose.

Based on the ACA's observations to date, the recurrent issues with the PIP forms and PIP process include:

- The PIP Form does not provide employees with a clear roadmap on how to correct performance issues.

- Requisite “Performance Expectations” are not clearly defined (*e.g.*, “exhibit incompetence or inefficiency in the performance of the duties of the Employee’s Position;” performance metric “subject to change”).
 - Requisite “Performance Expectations” do not attach requisite applicable standards.
 - Requisite “Agreed Action Steps” are not clearly defined, measurable and/or objective (*e.g.*, “use good judgment” and “comply with policies and procedures”); employees told they will have to complete exercises “to gauge [their] proficiency” when exercises had not been created and employees given no objective measure as what constitutes “proficiency.”
 - Requisite “Agreed Action Steps” are not well thought out and may result in a successful PIP even though employee shows no improvement (*e.g.*, “report daily on the specific task you are working;” “outline the processes that [Employee] takes to create an ABL from start to finish to ensure that the right steps are being followed”).
 - “Agreed Action Steps” lack completion dates.
 - Whether an “Agreed Action Step” has been completed are not addressed during Progress Meetings
- Undue delay between the Performance Evaluations underlying the PIP and the initial PIP meeting.
 - PIPs focus on performance issues raised in the Performance Evaluation months before (*e.g.*, initial PIP meeting in April 2021 based on performance issues that occurred in August 2020 and October 2020) and no longer are relevant (*e.g.*, performance metric was from 2020 and employee no longer performs that job duty) or have been corrected.
 - Little or no discussion regarding current performance issues. When Supervisor raises a current performance issue, Director of Human Resources directs discussion to be limited to performance issues raised in Performance Evaluation that led to the PIP.
 - PIP Requirements are not uniformly enforced (*e.g.*, dates for completion of Agreed Action Steps extended for some employees but not others); without modification, employee would have failed PIP.
 - PIPs are being created by the wrong person. Although the employee’s Supervisor is required to create the PIP, the AO/HR is bypassing that requirement such that the employee’s Immediate Supervisors (to whom Supervisor reports) is creating the PIP –

sometimes without the Supervisor's participation. This is a particular problem in Valuations, where six of the employees currently on PIPs are assigned.

- Employee was found not to have successfully completed a PIP without supervisory documentation/explanation of deficiencies in job performance or specific examples of same.

3. Performance Evaluations

The AO completed the second tranche of annual performance evaluations on January 31, 2021. The ACA monitored 51 of the 102 (50%) of the annual Performance Evaluations conducted in that second tranche (between November 16, 2020 and January 31, 2021). The Performance Evaluations were selected based on the Supervisor who was responsible for conducting the evaluation. The ACA's goal (which was achieved) was to monitor all Supervisors at least once (but typically more than once) to assess their policy compliance.

These annual performance evaluations improved from the first tranche that the ACA monitored in September and October 2020, which were discussed in the Seventeenth Report. The ACA continued to see compliance issues:

- *Section 3.1 (Performance Evaluation Form)* - 37 compliant; 14 non-compliant. Supervisory deficiencies included: failure to provide reasonably meaningful written explanation of numerical scores; failure to include specific examples of unsatisfactory or exceptional performance required for scores of (1) or (5); failure to include recommendations for improved performance for scores of (1) or (2); employee's final scores not calculated correctly.
- *Section 3.5 (Supervisory Review)* - 9 compliant; 42 non-compliant. Supervisory deficiencies included: failure to have Immediate Supervisor-Supervisor conferral where Immediate Supervisor (higher level than Supervisor) offered feedback on the Supervisor's Performance Evaluation Form; failure to copy DOC and ACA on all emails between Supervisor, Immediate Supervisor and Deputy, which is required to allow DOC and ACA to monitor the process; failure of Deputy to review the Performance Evaluation Form; failure to approve Performance Evaluation Form by signing.
- *Sections 3.3 and 3.4 (Timing)* – all compliant.

- *Section 3.6 (More than One Supervisor for Entirety of Evaluation Period)* – 43 compliant; 7 non-compliant. Supervisory deficiency was failure to complete a Performance Evaluation Form for employees who were assigned to them for at least 90 days before being reassigned.
- *Section 4 (Performance Evaluation Meeting)* – 25 compliant; 25 non-compliant. Supervisory deficiencies included: failure to provide DOC and ACA with written notice of the meeting, including completed Performance Evaluation Form and related documentation, at least two business days before the meeting; failure to provide a thorough explanation of scores; failure to discuss employee’s performance expectations for the coming year; and improper meeting attendees.
- *Section 5 (Employee Review)* – 4 compliant; 47 non-compliant. Deficiencies included: supervisor failure to give employee an opportunity to review form and ask questions during the meeting; employee failure to timely sign form and provide feedback; failure to timely provide employee-signed form to, *inter alia*, DOC and ACA and check boxes on Performance Evaluation Form indicating same.

4. Time and Attendance

Since the Seventeenth Report, the ACA provided feedback regarding the AO’s Time and Attendance policy compliance in December 2020, January 2021 and February 2021. For each month, the ACA found AO noncompliance with the following policy sections:

- *Section 2.5 - Employees Departing Early Resulting in an Unexcused Absence*
- *Section 2.6(B) – Insufficient Supervisor Notations for Excusal of Early Departures*
- *Section 3.2 – Improper Use of Vacation Leave (employees allowed to use vacation time on same day requested)*
- *Section 3.2 - Improper Use of Vacation Leave (employee improper use of vacation time instead of compensatory time based on amount of compensatory time banked)*
- *Section 3.2 (employee failure to document basis for use of vacation time as opposed to compensatory time)²*

² The “late arrival”/tardiness addressed in earlier reports has not been an issue – presumably because the bulk of the AO’s workforce is working remotely. This issue will have to be closely monitored when employees return on site.

These were not one-off deficiencies as there were multiple occurrences. To the extent the ACA requested documentation, either at her initiative or in response to a purported explanation, it was not provided.

While the Time and Attendance policy allows the AO to address supervisory non-compliance with, *inter alia*, informal counseling, the limited instances of this to date (*e.g.*, three emails for multiple violations of Section 3.2) have consisted of an email from the Payroll Manager to the Supervisor asking that he/she be “mindful of the Policy going forward.” In the ACA’s view, this email communication is inadequate as it does not include consequences for noncompliance. The AO has indicated that future informal counselings will be more directive. Whether or not this occurs will be addressed in the ACA’s next report.

5. Overtime

The AO has utilized overtime significantly less since its workforce began working remotely. Since the Seventeenth Report, the ACA assessed the AO’s compliance with the AO’s Overtime policy regarding overtime in the Data Integrity Unit, IC Valuations, Incentives and Special Properties. The repeated substantive and procedural deficiencies identified included:

- Unclear documentation regarding the work expected to be accomplished via overtime
- Unclear documentation regarding the dates of overtime to be worked
- Failure to properly document basis for employee selection for overtime
- Employees working beyond allowable limits of overtime offered
- Improper approval of overtime that exceeded allowed limits
- Overtime offered to employees who did not have the job titles to which the overtime offers applied
- Failure by Human Resources to timely provide accurate and/or timely Notices of Employment Actions related to overtime

6. Temporary Assignment

The ACA monitored several temporary assignments before the November 2020 Employee Handbook was issued and found compliance deficiencies. The AO instituted one Temporary Assignment, which included an extension, since the November 2020 Employee Handbook was issued – three permit specialists temporarily were assigned to the Incentives group. The AO did not discuss the process with the ACA (and to her knowledge the DOC) prior to implementation. Upon receipt of the NEA, the ACA questioned how and by whom the employees were selected; the notice to the employees; and the adequacy of the documentation. It took over one month for errors, which the AO acknowledged, to be resolved. The time and effort expended by the AO, ACA and DOC to reach resolution could have been avoided if the AO had discussed the Temporary Assignment with the ACA and DOC before undertaking it.

7. Interim Assignment

The AO instituted one Interim Assignment since the November 2020 Employee Handbook was issued. The AO did not discuss the process with the ACA (and to her knowledge the DOC) prior to implementation. Upon receipt of the NEA, the ACA questioned the employee selection, which the documentation did not make clear. The time and effort expended by the AO, ACA and DOC to reach resolution could have been avoided if the AO had discussed the Interim Assignment with the ACA and DOC before undertaking it. Prior to implementation, the AO raised additional questions that were resolved based on an agreement to amend the Interim Assignment policy.

8. Training

In December 2020 and January 2021 and February 2021, the AO engaged in employee training both Employment Plan-mandated and not. The AO/Director of Training persistently provided Notices of Employment Actions that were incomplete and/or inaccurate: December 2020

(5 improper notices total; 3 for Shakman trainings); January 2021 (8 improper notices total; 3 for Shakman trainings); February 2021 (7 improper notices total; 4 for Shakman trainings). The AO also persistently failed to provide the Notices of Employment Action on a timely basis: December 2020 (1 late notice); January 2021 (5 late notices); February 2021 (5 late notices).

9. Discipline

The AO instituted four disciplinary actions since the Seventeenth Report. These were the first disciplinary actions since October 2020. Of the four, two have been completed. Two have not been completed and, assuming they are, they will be addressed in the next ACA report.

Of the two disciplinary actions that have been completed, one was based on an employee's unexcused absence for failing to report to work, claiming that he thought it was a holiday. This was fairly straightforward; no investigation was commenced and the employee was issued a verbal reprimand.

The second disciplinary action was based on conduct that occurred in July 2020 and August 2020 – although discipline (in the form of a verbal reprimand) was not issued until April 6, 2021.

The deficiencies in this process included:

- There was no Request for Disciplinary Action Form.
- Human Resources failed to give the ACA notice of the investigatory interviews of the employees.
- The Disciplinary Action Form did not identify which alleged instance(s) of misconduct was sustained; the form initially provided to the ACA did not attach the supporting documentation attached.
- The initial investigatory report was substandard; coaching by the DOC resulted in an improved report.
- HR, not the Supervisor, conducted the disciplinary issuance meeting.

- Discipline was not issued “as soon as practical after learning of the conduct” as it occurred approximately eight months after Human Resources learned of the conduct and at least three months after Human Resources concluded its investigation.

10. Reclassification

The AO has not reclassified or attempted to reclassify any positions since the November 2020 Employee Handbook was issued. On April 16, 2021, the Shakman Liaison/Deputy Assessor indicated that the AO expected to reclassify certain union positions; no additional information has been provided. Prior actions under the Reclassification policy have included:

- In December 2019, the AO reclassified eight union positions and did not timely provide the ACA with an NEA; the NEA initially provided required supplementation.
- February 2020, the AO reclassified approximately 33 union positions in compliance with the policy.
- In March 2021, the AO indicated a request to reclassify the Exempt Analyst position. That has not been effectuated as a desk audit by the AO is a precondition to the reclassification.

C. Does the Assessor not have a policy, custom or practice of making employment decisions based on political reasons or factors except for Exempt Positions?

The AO has not been found to have engaged in Unlawful Political Discrimination (“UPD”). While that, alone, is insufficient for the AO to achieve Substantial Compliance, it is, in the ACA’s view, sufficient to meet this third prong.

D. Has the Assessor demonstrated 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 finding that the Assessor is not in substantial compliance.)

This fourth prong, in the ACA’s view as noted above, should be read in conjunction with the second prong as their requirements appear to overlap. The discussion of the second prong identified current instances of AO noncompliance. The ACA expects such instances will continue.

That, in and of itself, is not a bar to Substantial Compliance as the Agreed Order's compliance standard is not perfection.

The question under the fourth prong is whether the AO's unremedied noncompliance is "material." The fourth prong offers the guidance that technical violations or isolated incidents of noncompliance will not preclude a finding of Substantial Compliance. But that guidance goes only so far. Because at a certain point, the number, kind or duration of arguably "technical" violations indicates a systemic problem: either the Assessor does not understand the policy or is choosing not to enforce it. Reading prongs two and four in tandem, the failure to remedy longstanding, repeated policy violations, even if arguably "technical," indicates the absence of the second prong's requisite "good faith," which only can be judged by the AO's conduct.

The ACA views the AO's compliance with prongs two and four in three categories: (1) Shakman-related policies with which the AO has not achieved material compliance; (2) Shakman-related policies with compliance deficiencies which, even if arguably "technical," are sufficient in number, kind or duration to amount to material noncompliance; and (3) Shakman-related policies where AO usage has been too limited for the ACA to determine whether prongs two and four are satisfied.

1. Category 1: Shakman-related policies – Material Noncompliance

a. PIP

The ACA's discussion of PIPs under the second prong shows that the AO's implementation of this relatively new policy is not materially compliant. The comments of the DOC at the March 19, 2021 court status and in his reports are consistent with the ACA's view. At the March 19, 2021 court status, the DOC indicated that the major implementation issue was the PIPs' lack of specificity. 3/19/21 Tr. at 43. This was similar to the DOC's discussion in his March 15, 2021

semi-annual report where he described PIP documentation so deficient that he recommended the responsible supervisors receive Counseling on PIPs, a recommendation previously made in the DOC's January 25, 2021 report to the Assessor. (The Assessor did not accept the DOC's recommendation as no Counselings have been issued.) The DOC also identified PIP implementation issues in his April 26, 2021 and April 6, 2021 reports to the Assessor.

Further, as indicated above, the PIP policy is in the process of revision and the substantive and procedural issues require resolution and effective implementation of numerous PIPs need be demonstrated for the ACA to view the AO as materially compliant with the PIP policy.

b. Layoff/Recall

The AO/HR's recent failure to advise the ACA and DOC that the AO was considering recalling a laid off employee until after an agreement had been reached with the union was material noncompliance with the Layoff/Recall policy. While the Shakman Liaison claims that fronting the issue with the ACA and DOC fell through the cracks, this indicates a systemic problem regarding how Shakman is being administered and/or a lack of acceptance or understanding of the transparency that Shakman requires. The ACA views AO consultation with the DOC and ACA before entering into agreements that implicate the Employment Plan is necessary for the AO to materially comply with the Layoff/Recall policy.

c. Temporary Assignment/Interim Assignment

As indicated above, the AO has instituted few temporary or interim assignments since the November 2020 Employee Handbook was issued. Based on the compliance deficiencies in those processes, as well as in those under prior versions of the Employee Handbook – as well as the AO's lack of transparency described above - the ACA does not view the AO materially compliant with these policies. With better AO communication with the DOC and ACA when temporary or

interim assignments are contemplated, the AO should be able to materially comply with these policies.

2. Category 3: Shakman-related policies – Material noncompliance based on number, kind or duration of violations, even if arguably “technical”

- a. *Performance Evaluation*

In his semi-annual report, the DOC noted that while the more recent performance evaluations had improved, they “were not without their issues,” particularly the lack of understanding, effort and/or buy-in by some front-line supervisors, as well as the “technical” issues noted above. DOC Semi-Annual Report at 4-5. The ACA concurs with the DOC’s comments and further notes the many compliance deficiencies discussed above.

While the AO’s completion of the first annual performance evaluations for over ten years was a major accomplishment, addressing the substantive and procedural policy deficiencies identified by the DOC and ACA is necessary, in the ACA’s view, for the AO to materially comply with the Performance Evaluation policy.

The AO has the opportunity to demonstrate policy compliance because, based on recent and anticipated hiring, the AO will be required to conduct many 90 and 180-day performance evaluations over the coming two months. These upcoming performance evaluations will provide a basis for the DOC and ACA to continue to assess the AO’s Performance Evaluation policy compliance.

- b. *Time and Attendance*

The AO’s reluctance to enforce its time and attendance policy, beginning in February 2019 when it unilaterally decided not to enforce the time and attendance “points” policy, has been the subject of prior ACA reports. While compliance deficiencies have lessened, they exist in large number. Further reduction may result from the policy revisions nearing completion.

While the time and attendance compliance deficiencies may be seen as “technical,” the DOC’s semi-annual report recognizes that the extent of these deficiencies “may be seen as systemic.” DOC Semi-Annual Report at 6. Against the backdrop of longstanding AO time and attendance enforcement issues and the current policy revisions, the ACA views material compliance as requiring a reduced the number of compliance deficiencies and the AO holding supervisors and employees accountable if they do not comply with their policy obligations.

c. Training

The DOC’s March 18, 2021 report to the Assessor described procedural compliance deficiencies regarding the Training policy, including the AO/Director of Training’s failure to provide timely and/or accurate Notices of Employment Actions regarding training, consistent with those discussed above. The DOC also described substantive compliance deficiencies regarding employees’ failure to attend mandatory training. The AO’s March 26, 2021 response to the DOC’s report acknowledged that “the AO’s training needs to be improved” and indicated steps planned to accomplish that. While the AO has satisfied the Employment Plan’s training requirements, the AO must address the extensive procedural deficiencies, even if arguably “technical,” to be materially compliant with the Training policy.

d. Overtime

The DOC’s April 6, 2021 and April 13, 2021 reports to the Assessor described AO compliance deficiencies with the Overtime policy similar to those described above. In the ACA’s view, even if arguably “technical,” the extent of the AO’s Overtime policy noncompliance precludes a conclusion of material compliance.

The DOC indicated in his April 6, 2021 report that he met with the Human Resources Generalist and Director of Payroll on March 31, 2021 to facilitate Overtime policy compliance.

The DOC recommended that the AO (1) develop a spreadsheet to track overtime; and (2) create a reference guide for supervisors. These should be useful tools to assist the AO, which hopefully can sufficiently address the deficiencies to materially comply with the Overtime policy.

3. Category 4 : Shakman-related policies – Insufficient data to determine material compliance (or not)

a. *Discipline*

The November 2020 Employee Handbook included a significantly revised Discipline policy, including allowing (trained) supervisors to conduct investigations. The AO, as indicated above, has used the revised policy little and the one completed investigation had numerous compliance deficiencies. The ACA is not in a position to opine on the quality of the AO's Discipline policy compliance until she has had the opportunity to monitor additional discipline sequences. She will address this further in future reports.

b. *Reclassification*

The AO, as indicated above, has not implemented employee reclassifications under the November 2020 Employee Handbook. Based on anticipated reclassifications, the ACA expects to have the opportunity to monitor AO Reclassification policy compliance and will address this in future reports.

E. Has the Assessor implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the Assessor?

At the December 17, 2020 and March 19, 2021 status hearings, the Court referenced the fifth prong, quoted above, 12/17/20 Tr. at 9; 3/19/21 Tr. at 39, and advised the Assessor: “[I]f you want a focus, it is...implementing these procedures so they have long term prevention.” *Id.*

The requisite procedures cannot be implemented without: (1) a “HR staff of experienced and knowledgeable professionals” who are “responsible for fulfilling the Assessor’s Office

obligations under [the] Employment Plan and Employee Handbook,” Employment Plan at Section III(I); and (2) an effective DOC who “functions as the Employment Plan compliance officer for the Assessor’s Office by assuming responsibilities relating to monitoring, investigating, and auditing Employment Actions to ensure compliance with the Employment Plan and [Shakman-related] policies in the Employee Handbook.” *Id.* at Section V(A).

1. Assessment of the Human Resources Function

Under the AO’s current organizational structure, the Chief Administrative Officer (“CAO”) is responsible for the Human Resources function. The Human Resources staff is comprised of: (1) the Director of Human Resources, who reports to the CAO; (2) two Senior Human Resources Generalists and one Human Resources Generalist, who report to the Director of Human Resources; (3) the Director of Training, who, along with others, is responsible for Employment Plan-mandated training, and reports to the CAO; and (4) the Director of Payroll who, *inter alia*, administers the Overtime and Time and Attendance policies.

a. *CAO*

The CAO, an experienced, high-level Human Resources professional, has not been engaged in Shakman compliance since she was hired in February 2020. While initially designated as the Shakman Liaison, she never functioned in that capacity. She was replaced as Shakman Liaison by the Chief Deputy Assessor in or about December 2020.

On March 30, 2021, the AO provided the DOC, ACA and Plaintiffs with a proposed revised organizational chart which creates a new Deputy of Human Resources position, reporting directly to the Chief Deputy Assessor. Under this scheme, Human Resources no longer is under the CAO’s aegis. According to the proposed organizational chart, the CAO will continue in the CAO role. Neither Plaintiffs nor the ACA have objected to the AO’s proposed organizational changes.

b. Director of Human Resources/Putative Deputy of Human Resources

The ACA has raised concerns about the Director of Human Resources' understanding and/or willingness to embrace the AO's obligations under the Employment Plan and the Shakman-Employee Handbook, beginning with the October 2019 Fourteenth Report, which was two months after he was hired. Based on the Director of Human Resources conduct since the Seventeenth Report, the ACA's concerns continue and, in fact, are heightened because, under the AO's revised organizational structure, the Director of Human Resources will be elevated to the Deputy of Human Resources and responsible for the Human Resources function.

First, the Director of Human Resources' inability to accept feedback in a manner that is not defensive or combative is a longstanding problem. An example of this was at the December 17, 2020 status where the Director of Human Resources spoke of "defending ourselves when I got the [DOC and ACA] feedback." 12/17/21 Tr. at 30. The DOC rightly commented that we would be in better position if Director of Human Resources could "shift from that mindset...that feedback...equates to attacking [as] it's really not. It's trying to improve." *Id.* at 43 – 44. The DOC also correctly noted that if the Director of Human Resources had "adopted a mea culpa approach" and said "we'll do better the next time," the issue would not have been the subject of the ACA's report or discussed at the status. *Id.* at 44.

Unfortunately, the Director of Human Resources cannot seem to accept a "mea culpa" approach. A recent example involves the IC Junior Analyst hiring process, where the Director of Human Resources improperly extended an offer before the Posting File was complete. While he admitted the premature offer was an "oversite," he could not accept responsibility and move on. Rather, the Director of Human Resources claimed there was no Employment Plan violation because Human Resources had been providing the DOC and ACA with the documents that are to

be included in the Posting File for months and only a few documents were being provided for the first time. This is the same argument that the Director of Human Resources made, and the Court rejected, at the March 19, 2021 status: “I think when a sentence says that no offer shall be extended before HR provides all documents contained in the posting file to the DOC and ACA that one would not expect it piecemeal over several months, for example, to constitute the provision of all documents contained in the posting file because that just puts more burden on the DOC and ACA.” 3/19/21 Tr. at 16 -17.³

Second, and of greater importance, is the Director of Human Resources’ continuing unwillingness to accept his obligation to enforce Shakman-related policies:

i. Time and Attendance – In response to the ACA’s feedback regarding the AO’s December 2020 Time and Attendance policy compliance, the Director of Human Resources attempted to excuse certain violations as “*di minimus*” even though there is no Time and Attendance policy exception for “*di minimus*” violations and the AO can consider the degree of the violation in the disciplinary process. The Director of Human Resources attempted to excuse other violations as not “worthy of discipline” or “unreasonable” and “unwise” to enforce – decisions that undermine the policy and not for the Director of Human Resources to make. The Director of Human Resources attempted to excuse other violations by unilaterally (and unreasonably) interpreting policy provisions – which has been a recurring problem.

³ The ability to accept a “*mea culpa*” approach and move on is not limited to the Director of Human Resources and has extended to the Chief Deputy Assessor/Shakman Liaison, as demonstrated in connection with the recent Residential Group Leader hiring. Rather than accept the ACA/DOC’s 3/31/21 comments that the Department Deputy’s required Justification to Hire (“JTH”) was inadequate and fix it by adding a paragraph, which would not have taken more than ten minutes, the Chief Deputy Assessor/Shakman Liaison claimed the JTH was fine and would “vouch” that everything had been done correctly; such “vouching” of course, would not satisfy the Employment Plan’s requirement for written documentation. Human Resources provided a proper JTH the next day (4/1/21) but only after extensive email exchanges, which unnecessary occupied the DOC, ACA and Plaintiffs for much of an entire day (3/31/21).

ii. Interim Assignment - The DOC's April 13, 2021 report to the Assessor related an April 8, 2021 discussion between the DOC, Shakman Liaison/Chief Deputy Assessor, Senior Legal Counsel and the Director of Human Resources about Shakman-related policy revisions. According to the DOC, the Director of Human Resources wanted the Interim Assignment policy to be revised to allow consideration of experience gained through an Interim Assignment if the employee applies for another position. The DOC reported that the Director of Human Resources' stated solution to allow Interim Assignment experience to be considered in the absence of a policy revision, was: "if an employee were to file a grievance because of this provision he (Director of Human Resources) would simply grant the grievance at step 2."

The DOC's April 13, 2021 report stated: "I voiced my concern then, and reiterate now, that the Director of HR should not and cannot abuse his authority at a step 2 grievance simply because he does not like the policy at issue." The DOC's report indicates that the Shakman Liaison/Chief Deputy Assessor, Senior Legal Counsel also expressed their objections to the Director of Human Resources position.

On April 14, 2021, Plaintiffs, in response to the DOC's April 13, 2021 report, informed the AO, *inter alia*:

The Director of HR's expressed intent of ignoring unambiguous policy language is unacceptable...The abuse of Temporary Assignments to give politically connected candidates an unfair advantage when the position is posted had a long history in this case. The policy was drafted to address that history and to ensure that politics do not slip back into employment actions.

The Director of Human Resources apologized and the Shakman Liaison/Chief Deputy Assessor and Chief Legal Officer reported that they explained to the Director of Human Resources the seriousness of his statement and that they would not tolerate such statements in the future. But as the DOC appropriately noted on April 14, 2021, neither he, the Shakman Liaison/Chief Deputy

Assessor or Legal always will be there when the Director of Human Resources is making employment/policy decisions.

The Director of Human Resources' stated willingness to make an end run around the Interim Assignment policy, apology and reprimand aside, is exacerbated because it is not an aberration. His longstanding efforts to avoid Shakman-related policy enforcement or unilaterally interpret a policy as he sees fit has been reported in prior ACA reports and is not new behavior. And this seriousness of his behavior cannot be overstated as it strikes at the heart of Shakman. As the Court said at the March 19, 2021 status: "[T]here does have to be consistent enforcement because that eliminates an opportunity for partisan decision making." 3/19/21 Tr. at 39.

Full "buy in" to Shakman compliance by the person responsible for the Human Resources function is essential to the durable remedy the fifth prong requires. Based on the Director of Human Resources' conduct throughout his tenure – coupled with his apparent promotion to Deputy of Human Resources – whether the AO can achieve Substantial Compliance with the Director of Human Resources responsible for the AO's Human Resources function is, in the ACA's view, an open question. One aspect of this question is the precondition to Substantial Compliance of a prescribed "Certification of Substantial Compliance" attesting that the Assessor satisfied the five prongs by the Assessor, the Director of Human Resources and the Director of Compliance. Without confidence in the Director of Human Resources, there can be no confidence in his certification.

c. Director of Training

The Director of Training was placed on a PIP following her 180-day evaluation in December 2019; the CAO (to whom the Director of Training reports) concluded that the PIP was completed successfully.

The Director of Training was placed on a second PIP on January 13, 2021, following her annual performance evaluation. This second PIP is a textbook example of poor PIP policy implementation, which included unclear initial goals, which the CAO repeatedly amended, and multiple extensions of the PIP completion date. Three months after the PIP was initiated, it still is not completed.

An underperforming Director of Training is not helpful to the AO's ability to demonstrate a durable remedy. As the Court said at the December 17, 2020 status: "[T]raining is important to implementing the procedures that have been adopted to try to eliminate partisan decision making. And the adoption of those policies don't mean much if they're not implemented. And training is crucial to proper implementation." 12/17/20 Tr. at 18 -19. The AO presumably has the high-level Director of Training position to assist it in these efforts. While the ACA does to take the position that a competent Director of Training is necessary for the AO to satisfy the fifth prong and achieve Substantial Compliance, it would bolster the AO if it did.

2. Assessment of the Director of Compliance/Monitoring Transition Plan

As the Assessor attempts to achieve Substantial Compliance, as the Court said at the March 19, 2021 status: "[T]here is an extraordinary burden on the DOC, and it's extraordinary because it is a correspondingly important duty that he has." 3/19/21 Tr. at 58.

The ACA is confident that the DOC understands the responsibilities of his position as described in Section V of the Employment Plan and is capable of fulfilling them so long as he is

provided adequate resources to do so and the AO seeks and accepts the DOC's counsel. The DOC has made it clear that adequate resources include a Compliance Analyst. To its credit, the AO agreed to create and hire for the position. The hiring process is complete and the ACA understands that Compliance Analyst's start date is April 26, 2021.

In connection with transitioning primary monitoring responsibility to the DOC, he is providing more reports to the Assessor describing his monitoring activity and making recommendations, with the last three reports/recommendations (3/26/21; 4/6/21; 4/13/21) made weekly. In the ACA's view (communicated to the DOC), his reports would benefit from recommendations more clearly tied to his observations and timeframes for the AO's responses. The DOC indicated he was amenable to this.

Although the AO agreed to provide timely responses to DOC recommendations, of the ten recommendations in the DOC's March 15, 2021 Semi-Annual report, to the ACA's knowledge, the AO has implemented none. Nor is the ACA aware that the AO has implemented the DOC's 3/15/21 recommendations regarding training (although the AO indicated it would do so). The ACA has not seen any AO response to the DOC's three most recent reports. Providing timely responses is an important piece of a durable remedy since, without AO accountability to the DOC, his recommendations become illusory.

Regarding the schedule by which the DOC would assume primary monitoring activity, set out in the March 17, 2021 Joint Status Report, this was predicated on the hiring of a Compliance Analyst by mid-March 2021, such that the selected candidate would be engaged in active monitoring by April 2021. That has not occurred as the Compliance Analyst will not begin until April 26, 2021. Also, there will be a learning curve, particularly regarding the various highly-

structured hiring processes.

The DOC transition schedule is heavily reliant on assistance from Human Resources. The ACA questions the realism of relying on Human Resources. The DOC's "strategic plan" recognized the limitations of his ability to rely on Human Resources and the ACA is unaware of assistance provided by the Senior Human Resources Generalists to date, despite the March 12, 2021 Joint Status Report indicating that was to begin in March 2021. The DOC's "strategic plan" relies on the Director of Payroll to assist in monitoring Time and Attendance policy compliance and the Human Resources Generalist to assist in monitoring Overtime policy compliance – both of which remain to be seen. The ACA will provide the Court with updates as to how the transition is proceeding in future reports.

CONCLUSION

This admittedly lengthy report is designed to make it clear to the Court and the parties where the ACA stands on the AO's compliance with the five prongs of the Agreed Order's Substantial Compliance standard, particularly the "durable remedy" fifth prong, as it was the Court's suggested focus at the March 19, 2021 status. While considerable work remains to be done, the ACA has indicated what that work entails and is hopeful that it can be accomplished within the timeframe described in the March 12, 2021 Joint Status Report.

Dated: April 19, 2021

Respectfully submitted,

Susan G. Feibus
Assessor Compliance Administrator
105 West Adams St., 35th floor
Chicago, IL 60603
(312) 637-9637 (o)
(312) 343-0221 (c)
susan@feibuslaw.com

By her attorney:

/s/ Matthew D. Pryor

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

CERTIFICATE OF ELECTRONIC FILING

I, Matthew D. Pryor, the undersigned, do hereby certify that on April 19, 2021, I electronically filed a true and correct copy of the foregoing **Eighteenth 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