UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

SECOND INTERIM 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 Second Interim Report:

I. INTRODUCTION

The Court's June 17, 2021 order set out a revised potential timeline/target date for the filing of a Motion to Dissolve the Assessor's Consent Decrees[1] and the September 19, 2012 Agreed Order ("Agreed Order"), either jointly (AO, Plaintiffs and the ACA) or by the AO, alone, in accordance with Section III(F) of the Agreed Order, by October 29, 2021. In connection with that target date, the Court ordered the ACA to provide a Second Interim Report (in lieu of any other periodic report) by August 16, 2021. This Second Interim Report follows the ACA's First Interim Report ("First Interim Report"), which was filed on June 6, 2021.

[1] The "Assessor's Consent Decrees" refer to the Consent Decrees to which the Assessor entered: (1) in 1972, which, *inter alia*, prohibited the Assessor from taking any employment action against a current employee based on political reasons or factors; and (2) in 1995, which extended the prohibitions of the 1972 Consent Decree to include the Assessor's hiring practices, certain exclusions.

At the June 9, 2021 court status, as reflected in the June 17, 2021 order, the Court "highlighted the specific areas of focus [in the First Interim Report], with the overarching goal of improving enforcement of those aspects of the Employment Plan that require transparency and (as much as practicable) objectivity in employment decision-making so that there is a durable remedy against political discrimination." Doc. No. 7480. The areas of focus identified by the Court included: (1) deficiencies in the non-Exempt hiring process that lacked objectivity and transparency; (2) the AO's failure to provide the HR Employment Plan and Employee Handbook Training and Supervisor Employment Plan training required by the Employment Plan; (3) Performance Improvement Plans ("PIPs") that lacked objective standards and transparency; (4) performance evaluations that lacked transparency; and (5) time and attendance enforcement that lacked transparency.

Based on the Court's direction, the Second Interim Report will focus on issues that pose a threat to the Assessor's implementation of a durable remedy because they pose a substantial risk of political decision-making (as opposed to best human resources practices). *See Shakman v. Office of the Governor of Ill.*, No. 1:69-CV-02145 (N.D. Ill. Mar. 31, 2021) at 29. All of this, of course, is in the context of the Agreed Order's conditions for sunset set forth in Section III(F), which include achieving Substantial Compliance,[2] as defined therein,[3] and Certifications of Substantial Compliance by the Assessor, the Deputy of Human Resources and the Director of

[2] All capitalized terms have the meaning ascribed to them in the Agreed Order, Employment Plan or Employee Handbook, unless otherwise indicated.

[3] Substantial Compliance under Section III(F)(8) of the Agreed Order 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.

Compliance. As the Court said at the June 9, 2021 court status: "[D]uty number one in terms of the agreed order and in terms of the substantial compliance definition is, that the employment plan is being implemented and any problems then being remedied to try to prevent recurrence." 6/9/21 Tr. at 25.

Following this analysis, the Second Interim Report will address reasonableness of the current October 29, 2021 target date for a potential Motion to Dissolve.

II. ISSUES THAT POSE A THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: NON-EXEMPT GENERAL HIRING PROCESS

The AO completed two hiring processes under the General Hiring process since the First Interim Report: Manager of Data Collection and Industrial Commercial Junior Analyst. In each hiring process, there was "a lack of the objective requirements and the documentation of objective requirements of hiring." *See* 6/9/21 Tr. at 25.

A. Manager of Data Collection

1. Unremedied/unjustified Employment Plan violations

In the First Interim Report (at 4), the ACA identified deficiencies in the Manager of Data Collection hiring process: (1) HR's failure to create the required Sorted Preliminary Eligibility List; and (2) HR allowing a Candidate who had not provided the required educational documentation to be considered at the Ranking Meeting. As the Court recognized at the 6/9/21 court status, errors like these pose a threat to the Assessor's implementation of a durable remedy. *See* 6/9/21 Tr. at 25.

The Assessor's 7/30/21 response to the First Interim Report (Doc. No. 7525) provided no justification for HR allowing the ineligible Candidate to be considered at the Ranking Meeting. As to HR's failure to create the Sorted Eligibility List, the Assessor claims that the ACA and DOC waived their ability to raise this Employment Plan violation. The Employment Plan, of course,

has no waiver clause and the AO provided no substantive explanation for HR's failure to create the Sorted Eligibility List, as the Employment Plan requires.

2. Deputy's improper decision to reject all ranked Candidates

On July 23, 2021, HR notified the ACA that the Deputy Assessor of Valuations decided not to offer the Manager of Data Collections job to the Candidate ranked by the Interview Panel. On July 25, 2021, the ACA informed the AO/HR that the Deputy's decision was not Employment Plan compliant.

a. *Ranking Meeting*

Section VII(R) of the Employment Plan, governing the Candidate Ranking Procedure, affords the Interview Panelists a fulsome opportunity to discuss eligible Candidates and determine which, if any, should be ranked. HR is required to document the process, including "the objective basis or bases on which any Candidate was ranked by the panel." At the April 16, 2021 Ranking Meeting, the then-Director of Human Resources appropriately instructed the Interview Panel that it was not required to rank any of the eligible Candidates, in which case the position would be reposted. The Interview Panel decided to rank one Candidate. The Interview Panel's positive assessment of the ranked Candidate included the Candidate's solid assessment background; understanding of the AO and the assessment cycle; and that the Candidate seemed very smart, educated, a fast learner and easy to work with.

b. *Justification (not) to Hire – Employment Plan provisions*

The Employment Plan, in relevant part, defines "Justification to Hire" as: "The form, attached as Exhibit G…completed by the Deputy of the Hiring Department upon completion of the Candidate selection process and setting forth the objective basis or bases for hiring the selected Candidate."

Section VII(S) of the Employment Plan, governing the "Justification to Hire," requires the Deputy of the Hiring Department to review the Interview File, including the Interview Panel Ranking List and Ranking Meeting notes, and select a final Candidate by submitting a "Justification to Hire" form to HR "setting forth the objective basis or bases for the hiring with an explanation of the justification for the selection." The Deputy of the Hiring Department need not select the first-ranked Candidate but the "Justification to Hire" must include the basis or bases on which the Deputy's decision was based.

There is no provision in Section VII(S) or elsewhere in the Employment Plan that permits the Deputy of the Hiring Department to reject all Candidate(s) ranked by the Interview Panel. Nonetheless, the Deputy rejected the ranked Candidate because, as stated in the July 23, 2021 "Justification to Hire" form, the Deputy did "not believe that candidate is the right fit for this position based upon the individual's background and what this position will entail."

The AO/HR tried to justify the Deputy's improper rejection of the ranked Candidate claiming that the Employment Plan is "silent" on whether Deputies can reject all ranked Candidates. This is an untenable reading given the General Hiring Process's structure, which allows the Interview Panel, which interviewed the Candidates, to decide if any are worthy of being ranked. If the Interview Panel ranks more than one Candidate, the Deputy need not select the Interview Panel's first-ranked Candidate, but the Employment Plan does not include the option that the Deputy refuse to hire at all.

Consistent with the Employment Plan's provisions, Plaintiffs informed the AO/HR and the ACA that no Shakman-generated General Hiring Process allows a Deputy to reject all ranked Candidates. Plaintiffs reported that Employment Plan amendments have been approved to allow

Deputies to override the Interview Panel in the Actively Recruited Hiring Process, which Plaintiffs and the ACA indicated they are willing to consider.

c. *Justification (not) to Hire – Lack of objective bases*

Assuming, *arguendo*, that the Deputy could reject all ranked Candidates (which he cannot), the Deputy's "belief" that the ranked Candidate is not "the right fit" based on her "background and what this position will entail" is hardly the required "objective basis or bases" for the non-selection.

The AO/HR conceded as much and provided a revised Justification for Hire form on August 10, 2021, which said:

> Director of [ ] …was the most knowledgeable interview panel member and also the individual panel member who would be working with the new hire. [Director] was underwhelmed with [the ranked Candidate] due to a lack of data collection experience. Data collection experience can come from being a licensed appraiser or having experience in an assessor office field inspector type role.

The Deputy's revised Justification to Hire form did not contain the requisite objective bases for his decision for reasons that include:

- If the Director, the admitted "most knowledgeable interview panel member" had the recited concerns, he could have and presumably would have voted not to rank the Candidate; the Ranking Meeting notes show that the Director agreed that the Candidate should be ranked.

- The Deputy's purported reason for rejecting the Candidate – lack of data collection experience – is not part of the "experience" Minimum Qualification, which requires "experience as a field inspector of industrial and commercial properties or in managing a similar property tax related operation." If data collection experience is as important as the Deputy now claims, he presumably would have made sure it was in the position description as Section IV(K)(1) of the Employment Plan requires HR to review position descriptions with the Deputy of the Hiring Department.

B. Industrial Commercial ("IC") Junior Analyst

The IC Junior Analyst position was posted in November 2020. There were four vacancies. On February 10, 2021, following 17 interviews in February 2021, the Interview Panel ranked seven

Candidates. Offers were made to the four highest-ranked Candidates. Three accepted; the fourth did not. As there was one more vacancy and three additional ranked Candidates on the Scored Interview List, the ACA reasonably assumed that the AO would use that list to fill the remaining slot.

On March 10, 2021, unbeknown to the ACA,[4] the Deputy decided not to offer the remaining vacancy to any of the three remaining ranked Candidates. The Deputy's March 10, 2021 decision not to hire was memorialized in an email to the then-Director of HR and a Senior HR Generalist. HR did not notify the ACA of the Deputy's decision until July 28, 2021 – over four months later. When the ACA (and Plaintiffs) questioned the propriety of the Deputy's decision not to hire, the AO/HR provided the Deputy's Justification to Hire form dated August 9, 2021.

Based on the August 9, 2021 Justification to Hire form, the Deputy rejected the fifth-ranked Candidate because that Candidate had accepted another AO position. The Deputy's rejected the sixth and seventh-ranked Candidates because: "[P]er the validated eligibility list I was provided, neither [Candidate] had any income approach to valuation or property valuation experiences, which is a very necessary component for this position."

The Deputy's revised Justification to Hire did not include the requisite objective bases for his decision for reasons that include:

- That a ranked Candidate accepted a position at the Assessor's Office is not a basis for refusing to offer the Candidate another AO position.

- The Deputy had no basis to review the Validated Eligibility List (which is created early in the process and includes the Applicants whom HR, ACA and DOC agree are minimally qualified) in deciding whether to extend additional offers. Section VII(S) of the Employment Plan, governing final selection and Justification to Hire, limits the

[4] To the ACA's knowledge, the former DOC was not informed of the Deputy's decision prior to the DOC's June 2021 departure.

materials that the Deputy may review to the Interview File, which does not include the Validated Eligibility List.

- The purported reasons for rejecting the Candidates – lack of experience in the income approach to valuation or property valuation – are not part of the "experience" Minimum Qualification, which requires "experience in finance, property taxation, assessments, real estate valuation, or a related field." If experience in the income approach to valuation or property valuation is as important as the Deputy now claims, he presumably would have made sure that it was in the position description as Section IV(K)(1) of the Employment Plan requires HR to review position descriptions with the Deputy of the Hiring Department.

- Based on the ACA's monitoring of the interviews, the first-ranked Candidate who was offered a position did not have experience in the income approach to valuation or property valuation.

- The AO renegotiated the IC Jr. Analyst position description with Plaintiffs and the ACA in the Fall of 2020 to reduce the Minimum Qualifications because, according to the Chief Deputy Assessor's 10/21/21 email: "This is an entry level position. The most important questions is: does… someone have the mental acuity to be an analyst? Since this is an entry level position we are going to have to train employees on how to do their job once they start. If we limit applicants to those with experience in very narrow fields of property assessments we will may [sic] not attract candidates who would be well suited to analyst work." That the AO/Deputy decided to reduce the Minimum Qualifications makes the Deputy's refusal to hire minimally qualified Candidates all the more suspect.

The Deputy's decision to reject all ranked Candidates suffers from the same infirmities as those discussed above regarding the Manager of Data Collections, including the Deputy's failure to provide an objective basis for his decision. In addition, the Deputy of HR claimed that the AO/HR was not obliged to tell the DOC and ACA of the Deputy's decision not to hire, further increasing the opportunity for subjective decision making and political discrimination.

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The AO/HR improperly allowed the Deputy of Valuations to upend two General Hiring Processes in contravention of the Employment Plan. In both instances, the AO/HR also countenanced documentation submitted by the Deputy that was nothing more than (unsuccessful) attempts to gin up objective bases post-hoc – also in violation of the Employment Plan. The

AO/HR's conduct does not demonstrate the transparency and objectivity in employment decision-making indicative of a durable remedy against political discrimination.

At a minimum, the AO/HR should remedy the Deputy's misconduct by: (1) offering the Manager of Data Collection position to the ranked Candidate; and (2) offering the vacant IC Junior Analyst positions (which currently are three) to the three remaining ranked Candidates on the Scored Interview List.

III. ISSUES THAT POSE A DURABLE THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: TRAINING

A. Employment Plan Mandated Annual HR Personnel Training

Section IV(D) of the Employment Plan requires annual comprehensive mandatory Employment Plan and Employee Handbook training programs for all HR personnel to ensure that they are able to "administer relevant portions of [the] Employment Plan and the Employee Handbook, and are able to answer questions they may receive." The purpose of this training is to go beyond the Employment Plan and Employee Handbook training which employees and Supervisors must receive under Sections IV(E) and (F) and focus on what is required for HR to administer the Employment Plan and the Employee Handbook competently. Section IV(D) also requires validation training for HR employees before they review and validate employment applications.

The AO has provided validation training on an annual basis. The ACA – in the role of Interim DOC – provided HR Employment Plan training on January 24, 2019. There has been no HR Employment Plan or Employee Handbook training since.

On July 27, 2021, HR sent the ACA a training deck entitled "HR Role in Hiring," which addressed portions of the Employment Plan. On August 11, 2021, the ACA provided extensive comments, including that the training should focus more on the specific requirements of Section

IV(D) and HR Employment Plan administration. An August 18, 2021 meeting is scheduled to discuss this Employment Plan-related deck further. The ACA has not received any training materials related HR Employee Handbook training.

B. Employment Plan Mandated Annual Supervisor Employment Plan Training

Section IV(E) of the Employment Plan requires annual comprehensive Employment Plan and Employee Handbook training for Supervisors. The AO's 7/30/21 response to the First Interim Report correctly indicates that Employee Handbook training for Supervisors has been presented on an annual basis. Employment Plan training for Supervisors never has been presented. To the extent the AO's 7/30/21 response to the First Interim Report suggests that it has, it is in error.

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At the June 9, 2021 status, the Court noted that HR personnel training was "crucial because HR personnel are…the front line in enforcing all these other objective requirements." 6/9/21 Tr. at 27. The Court also noted the importance of Employment Plan Supervisor training "because the supervisors play such an important role under the employment plan…they're the decision makers." *Id.* *See also* 7/19/21 Order at Section 3(C). The continued absence of this HR and Supervisor training is a threat to the Assessor's implementation of a durable remedy.

IV. ISSUES THAT POSE A THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: SHAKMAN-RELATED POLICIES

Revisions to three Shakman-related policies deserve note:

A. PIPs

The parties and the ACA agreed to a revised PIP policy on May 13, 2021, although the AO has not implemented it. On August 10, 2021, the AO indicated that additional revisions would be proposed. The AO/HR sent Plaintiffs and the ACA a proposed revised PIP policy after the close of business on Friday, August 9, 2021; the ACA will advise the Court further in the next report.

B. Time and Attendance

On August 9, 2021, the AO sent a revised Time and Attendance policy. On August 11, 2021, the ACA provided modest comments. The ACA expects that this policy, which has been under discussion for some time, will be finalized shortly.

C. Telecommuting

On August 31, 2020, the AO issued a supplement to the Employee Handbook in the form of a Telecommuting policy. As this policy has Shakman implications (*e.g.*, allowing telecommuting for favored employees, not allowing telecommuting for disfavored employees), the AO, Plaintiffs and the ACA negotiated the policy.

The policy was negotiated and issued in the midst of the pandemic when telecommuting suddenly became necessary for most AO employees. The AO understandably wanted to get a policy in place on an emergency basis. In finalizing the current version of policy, the parties and the AO agreed that a more fulsome policy (presumably more akin to the County's policy) would be issued when the emergency situation abated.

As much of the AO's workforce returned on site (full-time or part-time) in early June 2021, the ACA has reminded the AO of the agreement regarding the Telecommuting policy. The ACA (and presumably Plaintiffs) expect the AO's draft revised Employee Handbook to include a revised Telecommuting policy.

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Plaintiffs long have indicated that a Motion to Dissolve (joint or by the AO only) must include a revised Employee Handbook (and a revised Employment Plan), along with implementing forms. The AO/HR has indicated that it expects to provide a draft revised Employee Handbook, on which Plaintiff and the ACA will comment, by August 30, 2021. Based on past experience,

coming to agreement on Shakman-related policy revisions will not be speedy. But agreement to a revised Employee Handbook is required to effectuate the Employment Plan and is a precondition to a durable remedy.

V. ISSUES THAT POSE A THREAT TO THE ASSESSOR'S IMPLEMENATION OF A DURABLE REMEDY: SHAKMAN-RELATED POLICY IMPLEMENATION

A. Performance Evaluations

Between May 1, 2021 and June 30, 2021, the ACA monitored four 90-day and two 180-day Performance Evaluations of new hires or current employees in new positions to assess the AO's compliance with the Performance Evaluation Policy. Based on this monitoring, the ACA provided the AO with detailed feedback on its compliance with its Performance Evaluation policy on July 28, 2021.

While the ACA's July 28, 2021 feedback was more extensive, this report focuses on supervisory deficiencies "in which the subjectivity of decision making would allow for political discrimination." *See* 6/9/21 Tr. at 24, 28; 6/19/21 Order at Section 3(E).

1. Deficiencies in Valuations Employee's 90-day Performance Evaluation

The most significant performance evaluation deficiency since the First Interim Report involved the 90-day performance evaluation of an AO employee who was hired into a position in the Valuations Department. The employee's overall performance evaluation score (which is the average of the scores for the seven performance areas) went through four iterations with the score increasingly reduced from 3.7 ("Good") to 2.4 ("Needs Improvement"):[5]

- **Version #1 (5/24/21)** - signed by Deputy, Supervisor and Immediate Supervisor;[6] Overall Score 3.7

[5] The category designations per the Performance Evaluation Form are: Exceptional (4.6 – 5.0); Good (3.6 – 4.5); Satisfactory (2.6 – 3.5); Needs Improvement (1.6 – 2.5); Unsatisfactory (1.5 – 1).

[6] The Employee Handbook defines "Supervisor" as "the individual to whom the employee reports." The Employee Handbook defines "Immediate Supervisor" as "the Deputy Assessor, Director or Manager to whom a supervisory-level employee directly reports." While perhaps counterintuitive, an employee directly reports to a "Supervisor" and

- **Version #2 (5/28/21)** - signed by Supervisor and Immediate Supervisor; Overall Score 3.5

- **Version #3 (6/2/21)** - signed by Deputy, Supervisor and Immediate Supervisor; Overall Score 3.0

- **Version #4 (6/8/21)** - signed by Supervisor and Immediate Supervisor; Overall Score 2.4

Based on the final overall score, the employee (per the Collective Bargaining Agreement) was returned to her former position in another AO Department.

a. *Lack of objective documentation (Section 3.1 violations)*

Section 3.1 of the Performance Evaluation policy requires a written explanation for all scores in the box for each category on the Performance Evaluation Form. In contravention of Section 3.1, scores for performance areas were reduced with no corresponding change in the written explanations:

- **Performance Area 1 (Effectiveness)** – reduced from score of "3" in Version #2 to score of "2" in Version #3; no change in written explanation

- **Performance Area 2 (Prompt Completeness of Work)** – reduced from score of "4" in Version #1 to score of "3" in Version #2; no change in written explanation

- **Performance Area 3 (Judgment)** - reduced from score of "3" in Version #2 to score of "2" in Version #3; no change in written explanation

- **Performance Area 7 (Accountability)** - reduced from score of "3" in Version #2 to score of "2" in Version #3; no change in written explanation

In another instance, the employee's score was changed with an unreasonable explanation:

- **Performance Area 6 (Ability to Work with Others)** – reduced from score of "4" in Version #3 to score of "2" in Version #4 with an additional comment about the employee's purported analytical experience, which is unrelated to the "Ability to Work with Others"

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a Supervisor directly reports to an "Immediate Supervisor." In practice, employees typically report to managers (Supervisors) who report to Directors (Immediate Supervisors) who report to Deputies.

The four versions of the Performance Evaluation Form were created over the course of ten days. That the employee's performance could have deteriorated from a 3.7 overall score to a 2.4 overall score in that short period of time appears unreasonable, particularly since the Deputy signed off on the first version where the employee received a final overall score of 3.7, as well as the third version where the employee received a final overall score of 3.0.

b. *Failure to allow ACA/DOC to monitor supervisory deliberative process (Section 3.5 violations)*

Section 3.5 of the Performance Evaluation policy authorizes the ACA and DOC to monitor the supervisory deliberative process, including feedback and changes made on the Performance Evaluation Form. In another era, supervisors would deliberate at meetings, of which the ACA and DOC were required to receive notice and could attend. In this era, as Section 3.5 provides, supervisory deliberation "may occur via an exchange of emails." If email is used, Section 3.5 further provides: "[T]he DOC and ACA shall be copied on all email(s)."

In contravention of Section 3.5, the ACA and DOC were excluded from the supervisory deliberative process:

- **Version #1 (5/24/21)** - DOC and ACA not copied on supervisory emails as they received the Performance Evaluation Form already signed by Supervisor, Immediate Supervisor and Deputy. (*Overall score 3.7.)*

- **Version #2 (5/28/21)** – DOC and ACA not copied on supervisory emails as they received the revised Performance Evaluation Form already signed by Supervisor and Immediate Supervisor; revisions purportedly based on Supervisor's receipt of "new information," although specifics or source of information were not disclosed. (*Overall score 3.5.*)

- **Version #3 (6/2/21)** – DOC and ACA not copied on supervisory emails as they received the revised Performance Evaluation Form already signed by Supervisor, Immediate Supervisor and Deputy. Only supervisory email sent to DOC/ACA was from Deputy indicating that employee "lacks the skills required for the role," it will be a "true 'project' to get [employee] where we need [the employee] to be," and it is "hard for me to think that [employee] is anything above a 3.0 at this point;" Deputy did not

provide specifics examples of employee's purported deficient performance. (*Overall score 3.0.*)

- **Version #4 (6/8/21)** – DOC and ACA not copied on supervisory emails as they received the revised Performance Evaluation Form already signed by Supervisor and Immediate Supervisor and with comments by Deputy; revisions purportedly based on Supervisor's receipt of "new information," although specifics or source of information were not disclosed. This was the first Performance Evaluation Form with a sufficiently low score to permit employee (per the CBA) to be returned to her former AO position. *(Overall score 2.4.*)

2. Other Supervisory Deficiencies that would allow political discrimination

- ACA/Interim DOC not allowed to monitor supervisory deliberative process for another Valuations employee as ACA/Interim DOC received Performance Evaluation Form already signed by Supervisor and Immediate Supervisor/Deputy. (§3.5)[7]

- Deputy or Immediate Supervisor did not sign the Performance Evaluation Form (§3.5) (four performance evaluations)

3. Failure to Conduct Performance Evaluations

The AO/HR failed to conduct 90-day Performance Evaluations, as required by Sections 3.3 and 3.4 of the Performance Evaluation policy, for two employees: one was due on or about July 13, 2021 and the other was due on or about July 26, 2021. This raises issues regarding the AO/HR's competence in implementing Performance Evaluations, without which there is room for subjective decision making (*e.g.*, not evaluating favored employees who are not doing their job) that would allow for political discrimination. *See* 6/9/21 Tr. at 24.

B. PIPs

The ACA has monitored six PIPs in the Valuations Department since the First Interim Report. Four of these PIPs were completed (three successfully and one unsuccessfully) and two remain pending. All of these PIPs were based on deficient performance evaluations during the annual performance evaluation cycle.

[7] The section in the parentheticals refers to the relevant policy provision.

The ACA gave the AO/HR detailed feedback on its compliance with the PIP policy[8] on August 5, 2021. While the ACA's August 5, 2021 feedback was more extensive, this report focuses on deficiencies that "lead[] to subjective enforcement and represent a lack of transparency." *See* 7/19/21 Order at Section 3(D).

1. PIP was not created by the employee's supervisor. (§3.2) (6 PIPs)

While the AO's July 30, 2021 response to the First Interim Report acknowledges that none of the performance evaluations for Valuations employees were created by the employee's supervisor, as Section 3.2 requires, the AO's conclusory response, without supporting facts, does not obviate that the AO's conduct violated the PIP policy and allows for subjectivity in the PIP process.

2. PIP did not identify the rule, standards or policies that the employee is required to follow or meet. (§3.2) (6 PIPs)

The PIPs for all six Valuations employees failed to identify the rule, standard or policy that the employee was required to follow because: (a) the standard identified was not a standard (*e.g.*, "exhibit incompetence or inefficiency in performance of the duties in Employee's Position;" "willful refusal or failure to follow the lawful instructions of the person designated to supervise); or (b) the PIPs lacked clarity regarding the standard to be followed (*e.g.,* although 2020 metrics for First Pass and Appeals identified as the standard, Supervisors indicated that metrics were subject to change and employee performance was not judged based on those standards). Reflecting the lack of clarity, the applicable rules, standard or policies were not attached to five of the six PIPs, which Section 3.2 also requires.

[8] As the revised PIP policy has not been implemented, the ACA's comments are based on the PIP policy currently in effect.

3. Supervisor failed to submit PIP to the Immediate Supervisor and/or Deputy for review prior to the initial PIP meeting, as evidenced by the absence of signatures on the PIP. (§3.2) (1 PIP)

4. PIP Progress Form did not document employee's progress or lack of progress (§3.3) (5 PIPs)

5. Supervisors involved in decision making did not sign a NPCC (§3.4) (3 PIPs)

6. Apparent disparate treatment of Valuations employees subject to PIPs

On June 25, 2021, the ACA asked the AO to explain what appears to be disparate treatment of four of the Valuations employees subject to PIPs. Specifically, all four Valuations employees were put on PIPs because they failed to complete 20 appeals per day or 100 appeals in a five-day work week during the 2020 appeals cycle. The 2021 appeals have not yet been assigned. Nonetheless, the PIPs of two of the Valuations employees proceeded (and they were deemed successful) based on their performance of non-appeals work. The PIPs of the other two Valuations employees were put on hold until 2021 appeals are assigned.

The AO/HR sent the ACA a report on PIPs after the close of business on Friday, August 9, 2021; the ACA will advise the Court further in the next report.

C. Discipline

The ACA monitored six disciplinary actions since the First Interim Report. On August 6, 2021, the ACA provided the AO with detailed feedback on its compliance with the Discipline policy from May 26, 2021 through July 31, 2021.

While the ACA's August 6, 2021 feedback was more extensive, this report focuses on the AO/HR's competence in implementing the Discipline policy in a timely fashion since, without it, there is room for subjective decision making (*e.g.*, not disciplining favored employees; disciplining non-favored employees) that would allow for political discrimination. *See* 6/9/21 Tr. at 24.

Section 1 of the Discipline policy requires the AO to discipline employees "as soon as practical" after learning of the conduct or event giving rise to the request for discipline, after having the opportunity to conduct a thorough investigation. As also reported in the First Interim Report, the AO/HR is not meeting the "as soon as practical" standard.

Of the six disciplinary actions reviewed, five have unreasonably lingered:

- Discipline pending since 1/28/21 (over six months) with no disciplinary report issued; mooted by employee's 8/12/21 resignation.
- Discipline was pending from 2/2/21 through 6/11/21 (over four months)
- Discipline pending since 4/13/21 (over four months)
- Discipline pending since 4/14/21 (over four months)
- Discipline pending since 5/11/21 (over three months)

The AO/HR's failure to timely administer the Discipline policy is not a "mundane procedural issue," as the AO's July 30, 2021 response to the First Interim Report suggests. Rather, it is a bulwark against a First Amendment violation.

D. Training

Training is a Shakman concern because of the potential that it could be offered to favored AO employees as a means of their obtaining skills and experience that would advantage them for a higher AO position. To guard against such subjective decision making and assure transparency:

- Section 1 of the Training policy requires training opportunities to be offered equally to all employees in the same position;
- Section 2 of the Training policy describes the detailed procedures that Deputies and HR must take to ensure that employees are offered training opportunities fairly; and
- Section 2 of the Training policy requires the DOC and ACA to receive notice of the training/Training Request form within two business days after it is sent and documentation of the employees who attended the training within two days after the training occurred.

In the First Interim Report and reports prior, the ACA described many training opportunities where the documentation was incomplete and/or inaccurate and notice to the DOC and ACA was untimely or nonexistent. The ACA has advised the AO of these Training policy violations (in greater detail than reported to the Court) on a monthly basis. The AO has not responded to the AO's feedback or corrected the problems, which are not mentioned in the Assessor's July 30, 2021 response to the First Interim Report.

Since the First Interim Report, the ACA provided feedback to the AO/HR regarding compliance with the Training policy for May 2021 (provided on July 1, 2021) and June 2021 (provided on July 30, 2021). While the ACA's July 1, 2021 and July 30, 2021 feedback was more extensive, this report focuses on the AO/HR's documentation and notice problems that attended many training sessions that provide room for subjective decision making about training opportunities and allow political discrimination:

- Training opportunities were extended to employees who do not hold titles listed in mandatory Training Requests
- Optional training opportunities were extended to employees who hold titles listed in mandatory Training Requests
- Failure to extend mandatory training opportunities to all employees in a position title
- Failure to document employees who attended training sessions
- Failure to provide DOC and ACA with notice of training sessions and notice/documentation of who attended

E. Other Shakman-related Policies

The ACA has no basis to comment on the Overtime, Temporary Assignment, Interim Assignment, Reclassification or Layoff/Recall policies as the AO/HR did not engage in these Employment Actions since the First Interim Report. The ACA provided feedback to the AO/HR

on its compliance with the Time and Attendance, Telecommuting policies since the First Interim Report but the deficiencies identified are not of sufficient concern to bring to the Court's attention.

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Based on the Shakman-related policy deficiencies/violations identified above, there are areas of ongoing concern that the AO/HR must address to demonstrate that "objective firewalls" are in place. *See* 6/9/21. Tr. at 30.

V. ISSUES THAT POSE A THREAT TO THE ASSESSOR'S IMPLEMENTATION OF A DURABLE REMEDY: HUMAN RESOURCES FUNCTION AND DOC

A. Assessment of the Human Resources Function

The requisite procedures required to achieve Substantial Compliance cannot be implemented without 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).

1. Human Resources Reorganization – Status

The status of the HR reorganization is:

- June 1, 2021 - Senior Human Resources Generalist became Director of Human Resources
- July 6, 2021 - Deputy of Human Resources began employment
- TBD – Senior Human Resources position was posted; interviews scheduled for 8/23/21 – 8/25/21

Also, while not in HR but the Legal Department, the Director of Labor and Employment, began employment on June 7, 2021.

The AO has designated the Deputy of Human Resources as the Shakman Liaison, per Section I(E) of the Agreed Order, in lieu of the Deputy Assessor.

2. Human Resources – Assessment

The Deputy of HR/Shakman Liaison began her employment less than six weeks ago. This is an insufficient period of time for the ACA (or Plaintiffs) to assess her ability to do the job and her approach to Shakman compliance. As to the former, the ACA's interactions with the Deputy of HR suggest that she understands the duties of the position and should be able to carry them out.

As to the Deputy of Human Resources' approach to Shakman compliance, she has joined an organization that has been reluctant or unwilling to acknowledge compliance deficiencies, the most recent evidence of which is the Assessor's July 30, 2021 response to the First Interim Report. That July 30, 2021 response continues the AO's trope that identified compliance deficiencies did not occur, are a "difference of opinion" with the ACA, mere "procedural lapses," non-substantive or immaterial. The ACA hopes the Deputy of HR will take the more constructive approach of acknowledging Employment Plan and Shakman-related policy violations when they occur and take the steps required to remedy them and avoid recurrence.

The Director of Human Resources has been in her new role for ten weeks and appears to be learning and trying to effectuate her new job duties. The HR function is one person short as the Senior HR Generalist position (formerly held by the Director of HR) is vacant. Based on the AO's indicated interview schedule, that position presumably will be filled by the latter half of September 2021.

B. Status of the Director of Compliance Position

Substantial Compliance cannot be implemented without 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." Employment Plan at Section V(A).

The AO undertook the DOC Hiring process in accordance with Section IX of the Employment Plan. An offer was extended and the selected Candidate is to begin employment on August 23, 2021.

The ACA has functioned as the Interim DOC, per the June 19, 2021 Order, following the prior DOC's June 4, 2021.

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The AO cannot demonstrate a "durable remedy" until (1) the new HR team demonstrates that it is capable of fulfilling the AO's obligations under the Employment Plan and Employee Handbook; and (2) the new DOC demonstrates that she effectively can fulfill the DOC's duties and responsibilities under the Employment Plan.

VI. MOTION TO DISSOLVE: REASONABLENESS OF 10/29/21 TARGET DATE

The current October 29, 2021 target date for a (joint or AO-only) Motion to Dissolve was set at the June 9, 2021 status. This October 29, 2021 target date extended the prior July 30, 2021 target date based on the DOC's June 4, 2021 resignation and conferral between the parties and the ACA. *See* 7/19/21 Order at 5. Based on the October 29, 2021 target date, the AO's "preview date" to share the motion with Plaintiffs and the ACA is September 29, 2021. *Id.* at 6.

The new DOC is not scheduled to begin employment until August 23, 2021. This means there will be approximately five weeks between the start of the DOC's employment and the AO's September 29, 2021 "preview date" for a motion.

Objectively analyzed, five weeks is not enough time for Plaintiffs and the ACA to assess the DOC's competence or for her to credibly certify that the Assessor is in Substantial Compliance

with the Assessor's Consent Decrees and the Agreed Order. As the Court said about the DOC in extending the target date at the June 9, 2021 status: "[T]his is a crucial position under the agreed order, and the least of which is the formal requirement of a certification before the motion to terminate can be filed. And then, of course, more important really is making sure the employment plan has been implemented and followed and the kind of ongoing duties that a DOC has." 6/9/21 Tr. at 7. And the reasoning of Plaintiffs' counsel for extending the target date at the June 9, 2021 status applies with equal force: "[I]t does make sense for us to push that date back so that we will be in a position…with a new DOC [to] see who that person is, see how he or she is doing." *Id.* at 12.

There is another reason for extending the target date – the AO's continued compliance issues. As Plaintiffs' counsel said at the June 9, 2021 status, extending the target date will "give the [Assessor's] Office an opportunity to continue to implement the policies and procedures so that we're in a position to get more positive reports from the ACA so that we can file an agreed joint motion for a finding of substantial compliance." *Id.*

The September 29, 2021 "preview date" seems unrealistic given that the AO's motion must attach revised versions of the Employment Plan and the Employee Handbook. The AO has indicated that it will provide its draft revisions to the Employment Plan on August 23, 2021 and its draft revisions to the Employee Handbook on August 30, 2021. Based on how long Employment Plan and Shakman-related policy revisions have taken (as described in prior reports to the Court), the ACA views it as unlikely that the parties and the ACA will have agreed drafts by the September 29, 2021 preview date.

The ACA expects that the Court would prefer to extend the target date for a Motion to Dissolve, no matter how speculative, rather than abandon a timeline altogether. With that in mind,

and based on consultation with Plaintiffs, the ACA suggests that the target date for a Motion to Dissolve be extended until December 29, 2021, with the AO's "share date" extended until November 29, 2021 (or possibly a bit later). The ACA also suggests that the dates for Interim Status Reports and a Final Report be adjusted in accordance with the revised schedule.

Dated: August 16, 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 August 16, 2021, I electronically filed a true and correct copy of the foregoing **Second Interim Status 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