

date, the Court ordered the ACA to provide a Third Interim Report by September 27, 2021 and a Fourth Interim Report by November 10, 2021. *Id.*, 8/18/21 Tr. at 40 - 41.

This is the Third Interim Report. It follows the ACA's June 6, 2021 First Interim Report ("First Interim Report") and August 16, 2021 Second Interim Report ("Second Interim Report").

The Agreed Order's conditions for sunset are in Section III(F) and 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 Compliance. As the Court indicated at the August 18, 2021 status, before termination, the Assessor "must ensure that there is a durable remedy so that there isn't any partisan employment decision-making where there ought not to be." 8/18 Tr. at 7-8.

The Second Interim Report focused on areas that are 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. Those included:

1. AO/HR failure to provide HR Employment Plan and Employee Handbook Training;
2. AO/HR failure to provide the Employment Plan Supervisor Training;
3. AO/HR General Hiring process Employment Plan violations;

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.

4. AO/HR deficiencies in Performance Evaluation policy implementation;
5. AO/HR deficiencies in Performance Improvement Plan (“PIP”) policy implementation;
6. AO/HR deficiencies in Operational Training policy implementation; and
7. AO/HR failure to timely administer Discipline.

The Third Interim Report will address: (1) the AO/HR’s progress regarding the areas identified in the Second Interim Report as well as additional areas of concern that pose a substantial risk of political/subjective decision; and (2) the reasonableness of the November 29, 2021 AO preview date for a potential Motion to dissolve and the December 29, 2021 potential target date for the motion to be filed.

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

A. Hiring Under the General Hiring Process Since the Second Interim Report

The AO completed (or has nearly completed) four hiring sequences under the General Hiring process (all for positions in the Valuations Department) since the Second Interim Report: (1) Division Analyst; (2) Residential Senior Field Inspector; (3) Residential Field Inspector; and (4) Senior Incentive Analyst.⁴ This report focuses on Employment Plan violations during those hiring sequences that open the door to subjectivity and partisan decision-making.

1. Division Analyst - HR nearly prevented an eligible candidate from being considered at the Ranking Meeting

On July 13, 2021, the HR Generalist provided the interview panelists and ACA/Interim DOC with the Scored Interview List and Interviewer Evaluation Forms in advance of the July 13,

⁴ The ACA gave detailed feedback on the Division Analyst hiring process on September 16, 2021 and on the Residential Senior Field Inspector on September 20, 2021. The ACA has not given formal feedback on the Residential Field Inspector hiring process because offers have not been made. The ACA has not given formal feedback on the Incentive Senior Analyst because it was not informed of an offer (which apparently was made on August 6, 2021) until September 21, 2021. The ACA’s feedback on the Division Analyst and Residential Field Inspector hiring processes were more extensive than the issues raised here.

2021 Ranking Meeting. HR indicated that “[a]nyone receiving a score of less than 2.5 will not be discussed during today’s meeting.” HR repeated this standard at the Ranking Meeting.

HR’s instruction that candidates who received a score of “less than 2.5” would not be considered violated Section VII.R.1 of the Employment Plan which requires consideration of candidates who received “a score of 2.5 or higher from at least one of the Interview Panelists.” HR’s Section VII.R.1 violation nearly precluded an eligible candidate (who received a score of 2.5 or higher from one interview panelist) from being included on the Scored Interview List and considered at the Ranking Meeting.

HR’s Section VII.R.1 violation was remediated because the ACA/Interim DOC’s monitor recognized and raised the issue with the HR Generalist, who agreed that the candidate should be added to the Scored Interview List and discussed at the Ranking Meeting.

HR is the front line against subjective and partisan decision-making. That duty cannot be fulfilled if HR does not understand and/or accurately convey the Employment Plan’s terms.

2. Residential Senior Field Inspector and Residential Field Inspector – Failure to Extend Offers Within a Reasonable Time

After the candidates are interviewed and ranked, the next steps are:

- The Deputy of the Hiring Department must review the Interview File and submit a Justification to Hire to HR identifying the selected candidate(s) to fill any vacancies;
- HR must prepare a Grant of Authority with the salary that will be offered the candidate(s) and provide the Grant of Authority to the Chief Deputy Assessor and Chief Administrative Officer (“CAO”) for review and signature; and
- The CAO or Designee must extend the offer to the selected candidate(s).

See Employment Plan at Sections VII.S-W.

While the Employment Plan does not prescribe a time limit for making offers, an inherent “reasonableness” standard must attach. Otherwise, offers can be delayed to a point that allows for partisan decision-making.

For two of the four hiring sequences, offers have not been made in the over three months (Residential Field Inspector) and four months (Senior Residential Field Inspector) since the candidates were ranked:

a. Residential Senior Field Inspector

- 5/26/21 - Interview Panel Ranking List finalized
- 6/3/21 – CAO submitted Justification to Hire to HR
- 6/8/21 – CAO and Chief Deputy Assessor signed Grants of Authority (two vacancies)

No offers have been made in the four months since the interview panel ranked the candidates.

b. Residential Field Inspector

- 6/21/21 - Interview Panel Ranking List finalized
- 9/9/21 – CAO submitted Justification to Hire to HR
- 9/22/21 - CAO and Chief Deputy Assessor signed Grants of Authority (two vacancies)

No offers have been made in the more than three months since the interview panel ranked the candidates.

Given the AO’s indications that it is understaffed, the failure to fill these four vacancies in the Valuations Department is inexplicable.

B. Update on Manager of Data Collections and IC Junior Analyst Hiring Processes

The Second Interim Report (at 4 - 8) described Employment Plan violations relating to the Manager of Data Collection and Industrial Commercial (“IC”) Junior Analyst hiring processes

based on the Deputy of Valuations' refusal to hire ranked candidates without proffering objective bases for doing so. The Second Interim Report (at 9) recommended how the Deputy's Employment Plan violations should be redressed. Based on the ACA's report and recommendations, the August 19, 2021 order directed the parties and the ACA to submit a Joint Status Report responding to the ACA's recommendations, *see* 8/18/21 Tr. at 12-13, which was filed on September 3, 2021.

The September 3, 2021 Joint Status Report described an agreement between the parties and the ACA to address the Employment Plan violations:

- The AO will amend the Employment Plan to include an optional intake meeting with the Deputy of HR, Deputy of the Hiring Department and interview panelists at the start of a hiring sequence to ensure clarity on the Position Description and interview questions designed to elicit whether Candidates will be able to perform the duties of the job;
- HR will provide Supervisor Employment Plan Training that will, *inter alia*, emphasize that interview panel members should not rank candidates who do not have the essential skills to perform the job, even if that results in the position being reposted and supervisor training will be revised to emphasize the implications of ranking candidates;
- Manager of Data Collection and IC Junior Analyst position descriptions will be revised to accurately reflect the Minimum Qualifications and essential skills needed to perform the job and interview questions will be revised before the positions will be reposted; and
- the candidate who was not offered the IC Junior Analyst position because he accepted a different AO position will be offered the position.

On September 6, 2021, the Court entered an order indicating that it "agrees with the proposed steps to address the concerns, both specific to the sequences and more generally in enhancing the opportunities to sync positions descriptions with interview-panel expectations, as well as additional supervisor training on ranked candidates."

Since the September 3, 2021 Joint Status Report, (1) the Manager of Data Collection and IC Junior Analyst position descriptions have been revised; and (2) the IC Junior Analyst position

was offered to the candidate who turned it down. The AO/HR has not provided revisions to the Employment Plan nor, as indicated below, undertaken Supervisor Employment Plan training.

While this report does not contain Employment Plan violations of the magnitude contained in the Second Interim Report, the violations described at this late date are sufficiently serious to raise concern whether the AO/HR's conduct demonstrates the transparency and objectivity in employment decision-making indicative of a durable remedy against political discrimination.

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

A. Annual HR Personnel Employment Plan and Employee Handbook Training Has Not Been Accomplished

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.

As of the Second Interim Report, neither HR Personnel Employment Plan nor Employee Handbook training had been conducted. That situation has not changed. The ACA has not received a revised HR Employment Plan training deck or any HR Employee Handbook training deck.

B. Employment Plan Mandated Annual Supervisor Employment Plan Training Has Not Been Accomplished

Section IV(E) of the Employment Plan requires annual comprehensive Employment Plan and Employee Handbook training for Supervisors. This training is in addition to the Interviewer Training required under IV(H) of the Employment Plan before a supervisor can participate in the interview portion of any hiring process. Unlike Supervisor Employment Plan training that is required annually, Interview Training need be taken only once.

The AO/HR has conducted Interviewer Training. As discussed at the August 18, 2021 status and in the Second Interim Report (at 10), the AO/HR never has conducted Supervisor Employment Plan training. Besides being required, the need for Supervisor Employment Plan should be apparent based, *inter alia*, on the many Employment Plan violations in the Manager of Data Collection and IC Junior Analyst hiring sequences discussed in the Second Interim Report (at 3 – 9).

The ACA/Interim DOC and HR discussed the contours of Supervisor Employment Plan on August 18, 2021. This training has not been conducted. The ACA has not received a draft training deck.

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 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: EMPLOYEE HANDBOOK/SHAKMAN-RELATED POLICY REVISIONS

Plaintiffs long have indicated that a Motion to Dissolve (joint or by the AO only) must include a revised Employee Handbook, along with implementing forms, as a revised Employee Handbook is required to effectuate the Employment Plan and is a precondition to a durable remedy.

The AO/HR had indicated that it expected to provide a draft revised Employee Handbook for Plaintiff and the ACA's review and comment by August 30, 2021. The draft has not been provided. As indicated in the Second Interim Report (at 11-12), based on past experience, the ACA expects that coming to agreement on Shakman-related policy revisions will not be speedy.

The parties and the ACA have agreed to a revised Performance Evaluation policy and implementing forms as the annual performance evaluation cycle is to begin on October 5, 2021. The AO apparently wishes to propose significant changes to the PIP policy (again). The ACA's review of the AO's time and attendance enforcement in June, July and August 2021, as described in her September 18, 2021 feedback, revealed that the Time and Attendance policy needs revision to avoid subjective decision-making yielding inconsistent results. The ACA expects the AO/HR will consider that September 18, 2021 feedback when revising the Time and Attendance policy.

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

A. Performance Evaluations

1. The AO/HR Has Not Explained Why a Valuations Employee's 90-Day Performance Evaluation Was Reduced Four Times Resulting in Return to her Former Position

The Second Interim Report described the 90-day performance evaluation of a Valuations employee where the Interim DOC/ACA was excluded from monitoring the supervisory

deliberative process (“Supervisor Meetings”⁵) in violation of Section 3.5 of the Performance Evaluation policy. This supervisory deliberative process resulted in four versions of the performance evaluation that reduced the employee’s overall score from 3.7 (“Good”) to 2.4 (“Needs Improvement”) over ten-days and resulted in the employee’s return to her former position under the Collective Bargaining Agreement.

At the August 18, 2021 status, the Court indicated that the lack of transparency to the ACA was “problematic” since “without the ACA being involved, then it starts to look odd.” 8/18/21 Tr. at 30. Plaintiffs noted that not only was the ACA not included but neither was the DOC (who happened to be the ACA acting in an interim capacity) even though the DOC is responsible for monitoring and overseeing enforcement and compliance after sunset. 8/18/21 Tr. at 30-31.

The Deputy of Human Resources told the Court at the August 18, 2021 status that she had begun an investigation and a “written follow-up report will be provided in the short term.” 8/18/21 Tr. at 26. No such report has been provided.

2. Policy Violations Since the Second Interim Report

The ACA/Interim DOC monitored the AO’s ten 90-day Performance Evaluations of new hires or current employees in new positions since the Second Interim Report (August 1, 2021 – September 8, 2021 review period). Based on this monitoring, the ACA provided the AO with detailed feedback on its compliance with its Performance Evaluation policy on September 17, 2021.

⁵ As indicated in the Second Interim Report (at 14), Section 3.5 of the Performance Evaluation policy authorizes the DOC and ACA to monitor the supervisory deliberative process, including feedback and changes made on the performance evaluation form. Section 3.5 allows supervisory deliberation to occur via email. If email is used, the DOC and ACA must be copied.

While the ACA's September 17, 2021 feedback was more extensive, this report focuses on policy violations involving subjective decision-making that would allow for political discrimination. These included:

- a. *ACA/Interim DOC excluded from Supervisor Meetings (§3.5)⁶ (five performance evaluations)*

The AO/HR continued to exclude the ACA/Interim DOC from the supervisory deliberative process in violation of Section 3.5. Of the five 90-performance evaluations for which this occurred, two were in the Valuations Department and three were in the Taxpayer Services Department.

- b. *HR failed to provide written notice and a copy of the completed Performance Evaluation Form to ACA/Interim DOC at least two days before Performance Evaluation Meeting. (§4) (three performance evaluations)*

At the August 18, 2021 status, the Court indicated that advising the DOC and ACA of the supervisory process should “enhance[] the efficiency and accuracy of the ultimate outcome,” 8/18/21 Tr. at 29 – 30, because they can identify and move to correct errors. The same is true of providing the DOC and ACA with completed performance evaluation forms before the performance evaluation, which is what Section 4 requires. In three of the 90-day performance evaluations, that did not occur.

- c. *Deputy or Immediate Supervisor failed to initial comments or sign the Performance Evaluation Form (§3.5) (four performance evaluations)*

At the June 9, 2021 status, the Court indicated concern where “a department deputy did not review or sign or initial the comment on the performance evaluation form” because “it’s harder to make political decisions where there are more individuals in the chain of command who are involved in these performance evaluations.” 6/9/21 Tr. at 28. This policy violation occurred with four of the performance evaluations reviewed.

⁶ The section in the parentheses refers to the relevant policy provision.

- d. HR failed to timely schedule performance evaluation. (§3.4) (two performance evaluations – one over three months late; one over two weeks late)*

B. PIPs

The AO/HR's PIP implementation deficiencies were addressed in the First Interim Report (at 9 – 11) and the Second Interim Report (at 15-17). Those deficiencies continued through August 2021, during which time the ACA monitored the PIPs of the two Valuations Department employees that remained pending since the Second Interim Report. Both PIPs were based on deficient performance evaluations during the annual performance evaluation cycle. Both PIPs were deemed successful on August 19, 2021.

On September 20, 2021, the ACA gave the AO/HR detailed feedback on its compliance with the PIP policy in August 2021. While the ACA's September 20, 2021 feedback was more extensive, this report focuses on policy violations that lead to subjective enforcement and represent a lack of transparency.

The two Valuation employees were placed on PIPs for failure to meet the same performance standard: compliance with the 2020 appeals metric that required completing at least 20 appeals per day or 100 per week. This performance issue could not be assessed during the pendency of their original PIP periods (4/26/21 to 6/25/21) because this was not in the appeals cycle.

The employees' PIP Progress Forms recognized the appeals timing issue. Each of their May and June 2021 Progress Forms (three for one employee and two for the other) stated: "Due to operational delays, no objective means for assessing the performance improvement plan progress has taken place at this point." The Director of Special Properties who oversaw both PIPs (although one of the employees was not, as indicated in prior reports, in his chain of command)

repeatedly extended the PIP period to allow appeals to be assigned and the employees to complete them.

On August 13, 2021, the Deputy of HR provided a document entitled “HR Investigation of Performance Improvement Plans” (“HR Report”). The HR Report indicated that the first set of 2021 appeals were assigned to Valuation employees on July 19, 2021. With appeals assigned on July 19, 2021, the employees presumably could be assessed on the timeliness of their appeals, as their PIPs required, by their September 28, 2021 PIP end dates.

But that is not what happened. On August 16, 2021, the Director of Special Properties - without explanation - shortened both employees’ PIP periods for from September 28, 2021 to August 6, 2021 and scheduled the final PIP Progress Meetings for August 19, 2021. By shortening the PIP periods by over five weeks, the Director of Special Properties eliminated his opportunity to assess the employees’ compliance with the performance issue that gave rise to their PIPs (completing appeals in a timely fashion) - as their PIPs required.

At the August 19, 2021 Progress Meetings, the Director deemed both PIPs “Successful.” While both August 19, 2021 Final Progress Forms claimed that: “Due to operational delays, no objective means for assessing the performance improvement plan progress has taken place at this point,” that was erroneous. With the appeals process started, the Director of Special Properties had an objective basis to assess the employees’ PIP progress - but he decided not to do it.

None of this, done after the Deputy of HR had investigated the Valuation Department’s PIPs, is consonant with the PIP policy.

These two employees were not the only Valuation employees whose PIPs were deemed “Successful” even though they were not assessed on the performance issues that gave rise to the

PIP. This was also the case for two other Valuations employees, as discussed in the Second Interim Report (at 15 – 17).

The HR Report effectively admits that the PIP policy was not followed for the four Valuations employees referenced above.⁷ To the extent the HR Report tries to excuse/justify the PIP policy violations, this does not abrogate them. The HR Report suggests that PIP violations can be addressed by: (1) PIP policy amendments; (2) training managers; and (3) more HR involvement. The ACA will report on the AO/HR's efforts in her next report.

C. Discipline

Since the Second Interim Report (August 1, 2021 – September 8, 2021 review period), one disciplinary action ended because the employee resigned and three disciplinary actions were initiated. In total, six disciplinary actions were pending. The ACA/Interim DOC monitored all activity related to these six disciplinary actions. On September 17, 2021, the ACA provided the AO with detailed feedback on its compliance with the Discipline policy during the August 1, 2021 – September 8, 2021 review period.

While the ACA's September 17, 2021 feedback was more extensive, this report focuses on subjective decision-making that would allow for political discrimination:

1. Failure to issue Discipline in a timely fashion. (§1) (three performance evaluations)

Of the three performance evaluations that were ongoing as of the August 16, 2021 Second Interim Report, none have been brought to closure:

- Discipline pending since 4/13/21 (over five months)
- Discipline pending since 4/16/21 (over five months)

⁷ The HR Report said it would provide an explanation for a fifth Valuations employee's PIP but that was not provided.

- Discipline pending since 5/11/21 (over four months)

At the August 16, 2021 status, the Deputy of Human Resources told the Court: “[W]e acknowledge that we do need to move things along, and that will be addressed.” 8/18/21 Tr. at 35 - 36. That has not occurred.

2. Request for Discipline Form failed to identify the rule or policy allegedly violated. (§ 4(A)) (one performance evaluation)

As the Court said at the August 18, 2021 status (in the context of PIPs, although applicable to discipline), when the rules or policies violated are not specified “that’s where subjectivity is injected into the process.” 8/18/21 Tr. at 34. One of the disciplinary actions initiated since the Second Interim Report failed to identify the rule or policy allegedly violated. While the request for discipline indicated that the employee failed to complete appeals, the policy or rule that conduct allegedly violated was not named.

D. Operational Training

At the August 18, 2021 status, the Court said that operational training obviously has Shakman implications, 8/18/21 Tr. at 37. The August 19, 2021 order (at §6) said that the AO “will be responding to the Compliance Administrator’s concerns on promoting compliance with even-handed notice of opportunities for operational training.” The AO/HR did not provide a response.

The ACA reviewed the AO/HR’s Notices of Employment Action for the AO’s 12 operational training opportunities in July 2021. The Training policy violations reported in the Second Interim Report continued. The ACA provided the AO with feedback on these violations on September 16, 2021. While the feedback was more extensive, it included:

- AO/HR failure to invite employees in the identified operational unit to attend mandatory training. (Section 2(B)) (one training)

- AO/HR failure to require makeup sessions for employees in the identified operational unit who failed to attend mandatory training. (Section 2(B)) (seven trainings)
- AO/HR failure to require makeup sessions for employees who did not complete or pass mandatory training. (Section 2(B)) (two trainings)
- AO/HR failure to document employee completion of mandatory training session. (Section 2(E)) (one training)
- AO/HR failure to document mandatory training session. (Section 2(E)) (one training)
- AO/HR failure to document optional training opportunity. (Section 2(E)) (one training)
- AO/HR untimely/no notice to ACA/Interim DOC. (Section 2(F); Article XII) (eleven trainings)

The AO/HR's failure to give timely notice to the ACA in her role of Interim DOC for 11 of the 12 trainings is of particular concern here (and with other employment actions). As Plaintiffs indicated at the August 18, 2021 status: "The Director of Compliance [is] the person that's going to be...responsible for monitoring and enforcement after sunset...[T]he office really needs to be focusing on giving the DOC an opportunity to monitor those activities." 8/18/21 Tr. at 30 - 31. Without notice, DOC monitoring and enforcement, of course, is impossible.

E. Time and Attendance

The AO/HR's interest in enforcing and/or its ability to enforce the Time and Attendance policy has been an issue since the Assessor took office. Policy revisions were made with the aim of making the policy clearer and enforcement easier. Those revisions have not obviated the problem and, as indicated above, additional revisions are required to guard against subjective decision-making yielding inconsistent results.

The ACA monitored the AO/HR's time and attendance policy enforcement for June, July and August 2021. On September 16 and 18, 2021, the ACA provided feedback on the AO/HR's policy compliance. While the feedback was more extensive, it included:

- Employees with Unexcused Absences (Departing Early) without supervisor approval not Disciplined. (§2.5) (three employees)
- Employee with 4 or 5 Unexcused Late Arrivals not Disciplined (§2.6) (one employee)
- Supervisor approved compensatory time to offset a Late Arrival for payroll purposes without Cook County Time notation and initials not Counseled or Disciplined (§2.6) (11 supervisors)
- Supervisor failed to note and initial Excused Late Arrivals and Early Departures not trained, Counseled or Disciplined (§2.6) (two supervisors)
- Supervisor allowed improper use of vacation leave not trained, Counseled or Disciplined (§3.2) (three supervisors)
- Supervisor allowed improper use of compensatory time not trained, Counseled or Disciplined (§3.2) (one supervisor)
- Supervisor improperly Counseled employee for Early Departure for swiping out one minute late where standard is leaving ten minutes late (§2.5) (one employee)
- Failure to consult with Department Deputy regarding employee temporary modified work schedule. (§2.4(b)(ii)) (two occurrences)
- Failure of Department Deputy to sign Notice of Employment Action for employee temporary modified work schedule. (§2.4(b)(ii)) (one occurrence)
- AO/HR failure to provide ACA/Interim DOC with requested documentation to support employee temporary modified work schedule (two occurrences; requests made on 6/29/21 and 7/2/21 with 8/27/21 follow up)

Employees showing up for work and being present for their scheduled work hours is at the heart of Shakman compliance. Any attempt to excuse or justify the AO's policy violations as "technical" and therefore immaterial should not hold weight since time and attendance enforcement, by its nature, is technical.

HR apparently has delegated the responsibility for time and attendance enforcement to the Manager of Payroll. While delegation, in and of itself, is not problematic, HR does not appear to be overseeing the Manager of Payroll to ensure that she is enforcing the policy correctly. While the prior DOC took it upon himself to assist the Manager of Payroll, and the new DOC appears to be doing the same, Time and Attendance policy compliance is HR's responsibility – not the Manager of Payroll's or the DOC's.

F. 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 Second Interim Report. The ACA/Interim DOC requested documentation to support approved Telecommuting for one employee on August 12, 2021, with a follow up request on August 27, 2021; the AO/HR did not respond.

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). As the Court said at the August 18,

2021 status: “[T]he HR function is key so that the...HR department is able on a long-term basis make sure that the [Employment] [P]lan is being complied with.” 8/18/21 Tr. at 19.

1. Human Resources Reorganization – Status

- On September 22, 2021, HR indicated that the candidate selected for the vacant Senior HR Generalist position accepted the job. Her start date has not been disclosed.
- The Director of Training position has been vacant since June 2021. The AO has not posted nor indicated whether it intends to fill the position.

2. Human Resources – Assessment

a. *Deputy of HR/Shakman Liaison*

The Deputy of HR, whose employment began on July 6, 2021, spent her entire career in the Shakman arena – as a monitor to the Compliance Administrators for the Cook County and the Forest Preserve and overseeing hiring for the City of Chicago’s Office of Inspector General. Based on that experience, she told the Court at the August 18, 2021 status that she completely understood the importance of compliance and “how to get there.” 8/18/21 Tr. at 7. Unfortunately, that does not seem to entirely be the case.

As has been discussed time and time again, the most effective and expeditious way for the AO to achieve Substantial Compliance is by the AO/HR cooperating, collaborating, acknowledging errors and taking steps to remediate and avoid their recurrence. The Deputy of HR in part has eschewed that constructive approach in favor of confrontation and opposition. She in large measure has adopted the AO’s reluctance or unwillingness to acknowledge Employment Plan and Shakman-related policy violations - by denying they occurred, trying to excuse them as non-substantive or immaterial, or trying to justify them (as with the “HR Report” regarding the PIPs) with analysis that is factually incorrect, legally erroneous or analytically weak. Should the Deputy of HR continue in this vein, it will prolong the time until Substantial Compliance.

b. Director of Human Resources

The Director of Human Resources assumed this role on June 1, 2021. Her prior role had been an AO Senior Human Resources Generalist since in or about July 2019. The ACA has no doubt that the Director of Human Resources is trying hard to execute her upgraded role. Her timeliness in completing tasks, that has been an issue, may improve with the addition of a Senior HR Generalist. Whether the Director of Human Resources will be able to perform the job efficiently and effectively and at the level required by the Employment Plan, in the ACA's view, is unclear.

B. Director of Compliance

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 DOC began on August 23, 2021. She was on vacation during the week of September 6, 2021. So she has been on the job for four weeks. This, of course, is not enough time for meaningful comment by the ACA regarding the DOC's ability to fulfill her duties and responsibilities under the Employment Plan.

To date, the ACA's observations include:

- The DOC is attempting to provide meaningful input on employment actions as she familiarizes herself with the Employment Plan and Employee Handbook and implementation issues relating to both.
- The DOC is considering the requisite Employment Plan and Employee Handbook revisions although, at this stage of the proceedings, as Plaintiffs recently indicated, this presumably is not the time to “reinvent the wheel.”

The ACA will comment further in her next report.

The AO cannot demonstrate a “durable remedy” until (1) the HR team demonstrates that it is capable of fulfilling the AO’s obligations under the Employment Plan and Employee Handbook; and (2) the 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 August 19, 2021 order (at 8) extended the Sunset and termination deadline to December 29, 2021, with a preview date of the AO’s motion to Plaintiffs’ and the ACA by November 29, 2021. Given:

- the outstanding items required for Substantial Compliance discussed above;
- the continuing Employment Plan and Shakman-related policy implementation issues discussed above;
- the new DOC, who must credibly certify that the AO has achieved Substantial Performance; and
- the Deputy of Human Resources, who must credibly certify that the AO has achieved Substantial Performance, apparently will be on leave from approximately mid-October to mid-November 2021,

it is unclear to the ACA that this timetable is achievable.

What the AO/HR can accomplish in the next six weeks is critical. The reasonableness of the current timeline should be much clearer by the time the ACA submits her Fourth Interim Report on November 10, 2021.

Dated: September 27, 2021

Respectfully submitted,

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By her attorney:

/s/ Matthew D. Pryor

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CERTIFICATE OF ELECTRONIC FILING

I, Matthew D. Pryor, the undersigned, do hereby certify that on September 27, 2021, I electronically filed a true and correct copy of the foregoing **Third Interim 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