

**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.)	

**FOURTH 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 Fourth Interim Report:

I. INTRODUCTION

The Court’s August 19, 2021 order (at §8) extended the potential target date for filing a Motion to Dissolve the Assessor’s Consent Decrees¹ 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, to December 29, 2021. Based on that target date, the AO’s “preview date” for the motion is November 29, 2021. Also, in connection with that target

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.

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

This is the Fourth Interim Report. It follows the ACA's June 6, 2021 First Interim Report ("First Interim Report"), August 16, 2021 Second Interim Report ("Second Interim Report") and September 27, 2021 Third Interim Report ("Third 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 there isn't any partisan employment decision-making where there ought not to be." 8/18/21 Tr. at 7-8.

The prior Interim Reports 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. This report will do the same.

These areas include:

1. AO/HR failure to provide HR Employment Plan and Employee Handbook Training;

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.

2. AO/HR failure to provide the Employment Plan Supervisor Training;
3. AO/HR General Hiring process Employment Plan violations, with particular attention to the Valuations Department; and
4. AO/HR deficiencies in Shakman-related policy implementation and enforcement.

The Fourth Interim Report will address: (1) the AO/HR's progress regarding these areas, 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 Third Interim Report

The AO completed (or has nearly completed) three hiring sequences under the General Hiring process since (or right before) the Third Interim Report: (1) Senior Human Resources Generalist (two vacancies) (2) Residential Field Inspector (two vacancies); and (3) Incentive Senior Analyst (one vacancy).⁴ Two General Hiring processes are underway: (1) Industrial Commercial ("IC") Field Inspector (two vacancies); and (2) Community Outreach Liaison (one vacancy). This report focuses on Employment Plan violations during those hiring sequences that open the door to subjectivity and partisan decision-making.

1. IC Field Inspector: Hiring process not followed

- May 13, 2021 - Position posted.
- June 15, 2021 - Validation Meeting resulting in four Candidates on the Validated Eligibility List; interviews not scheduled.
- October 4, 2021 - Court status where Deputy of HR said the position would be reposted because "there was a limited candidate pool, and so we wanted to repost to try to expand

⁴ The ACA gave feedback to the AO/HR on the Incentive Senior Analyst hiring process on October 19, 2021; no material Employment Plan violations were identified.

and widen the candidate pool.” *See* 10/4/21 Tr. at 21.

The October 4, 2021 status was the first time that the AO/HR indicated that it was not going to proceed with the IC Field Inspector hiring process.

- October 5, 2021 - ACA advised the AO/HR that reposting the position and not completing the already-started hiring process violated the Employment Plan (*see, e.g.*, Section VII.N (Interview List to be created based on Validated Eligibility List; no provision allowing Deputy to stop ongoing process and repost)).

The Deputy of HR’s response was to support Deputy of Valuations’ request to repost – without recognition/acknowledgment of the Employment Plan violation.

- October 8, 2021 - Deputy of HR indicated that hiring process would proceed and an attempt would be made to interview the four Candidates on the Validated Eligibility List.
- November 10, 2021 - No interviews have been scheduled and no indication that HR has attempted to schedule them.

Attempts by the Deputy of Valuations to stop ongoing hiring processes because he purportedly was dissatisfied with the candidate pool is nothing new. This is what he tried to do with the Manager of Data Collection and IC Junior Analyst hiring processes that resulted in the September 3, 2021 Joint Status Report to the Court with AO/HR promised remedial measures. That the Deputy of Valuations would try it again – and the Deputy of HR would countenance it – indicates that neither the Deputy of Valuations nor HR understand and/or accept the Employment Plan’s requirements.

At this time, the four Candidates eligible for interviews applied for the IC Field Inspector six months ago. Whether any or all of them remain interested in the position cannot be known until they are invited to interview. Over a month has passed since the AO/HR agreed to proceed with the hiring process with no interviews scheduled or any indication that HR is attempting to do

so. Given the time lapse, continuing to “slow walk” the interviews (and further decrease Candidate eligibility) undermines the hiring process.

2. Residential Field Inspector – Deputy of Valuations’ Improper Justification to Hire⁵

There were three Candidates ranked on the Interview Panel Ranking Form for the two Residential Field Inspector vacancies with a fourth Candidate listed as “not ranked” by the Interview Panel. In a September 9, 2021 Justification to Hire (“JTH”), the Deputy of Valuations selected the top two ranked Candidates to fill the two vacancies. In addition, the Deputy of Valuations’ September 9, 2021 JTH took the position that the two remaining Candidates should “no longer be considered for future vacancies for this position.”

- Section VII.R.6 of the Employment Plan requires Candidates ranked by an Interview Panel be placed on an Interview Panel Ranking List that is “valid and may be used for purposes of filling vacancies for the posted Position for a period of 12 months from the date created.”
- Section VII.S of the Employment Plan requires the Deputy of the Hiring Department to review the Interview File and select the final Candidate(s) by submitting a JTH “setting forth the objective basis or bases for the hiring with an explanation of the justification for the selection.”

The Deputy of Valuation’s September 9, 2021 JTH included the following Sections VII.R.6 and VII.S violations:

- The third-ranked Candidate on the Ranking List was ranked by the Interview Panel and is eligible for consideration if another Residential Field Inspector vacancy occurs in the 12 months after the June 16, 2021 Ranking List. The Deputy of Valuations has no authority under the Employment Plan to unilaterally remove the Candidate from future consideration.
- The fourth Candidate who was not ranked, is on the Ranking List and is eligible for consideration if another Residential Field Inspector vacancy occurs in the 12 months

⁵ The ACA gave the AO/HR feedback on the Residential Field Inspector hiring process on October 18, 2021, that was more extensive than that contained here. It included HR’s providing an incomplete Posting File, that, to the ACA’s knowledge, has not been remedied. The Third Interim Report (at 4 - 5) noted the over three-month delay in the AO/HR’s making offers for this position.

after the June 16, 2021 Ranking List. The Deputy of Valuations has no authority under the Employment Plan to unilaterally remove him from future consideration.

The Deputy of Valuations improperly refusing to consider ranked Candidates is not a new issue. This is precisely what he tried to do with the Manager of Data Collection and IC Junior Analyst hiring processes that resulted in the September 3, 2021 Joint Status Report to the Court with AO/HR promised remedial measures.

The ACA has received no indication that HR told the Deputy of Valuations Paulson that his September 9, 2021 JTH violated Section VII.R.6 and VII.S and that he has no authority to ban Candidates on the Interview Panel Ranking List from future consideration for the Residential Field Inspector position.

3. Senior Human Resources Generalist: HR lack of understanding of validation process⁶

The Validation Meeting for the Senior HR Generalist positions, pursuant to Section VII.M of the Employment Plan, was on August 11, 2021. Based on that Validation Meeting, the ACA has concerns that the Senior HR Generalist who was present and did the AO/HR's validation does not understand the validation process.

The ACA's concerns are based on the following:

- Senior HR Generalist improperly found an Applicant eligible even though the application materials demonstrated he did not have the five years of HR or related experience required to satisfy the Minimum Qualification of "five years" of full-time experience in human resources, personnel management and employee relations;
- Senior HR Generalist improperly found an Applicant eligible even though the application materials demonstrated that his primary job duties were unrelated to and

⁶ The ACA gave the AO feedback on the Senior Human Resources Generalist hiring process on October 15, 2021, that was more extensive than that contained here. It included HR's providing an incomplete Posting File, which remains a recurrent issue.

did not satisfy the Minimum Qualification of experience in “human resources, personnel management and employee relations;” and

- Senior HR Generalist improperly found Applicants eligible based on her personal view of whether they should be able to do the job based on her analysis of their work experience – instead of whether the application materials showed that the Applicants satisfied the position’s Minimum Qualifications and Preferred Qualifications – as Section VII.M.2 of the Employment Plan requires.

The Senior HR Generalist corrected her erroneous validation decisions based on instructions on the validation process from the ACA/Interim DOC’s monitor who attended the Validation Meeting. But for the ACA/Interim DOC’s monitor, it appears that unqualified Applicants would have been included on the Validated Eligibility List and interviewed.

HR’s duty of implementing the Employment Plan to avoid partisan decision making requires an understanding of its provisions and competence to carry them out. This seems to be lacking as to the Senior HR Generalist involved in this hiring process.

The AO/HR has not done much hiring since the Third Interim Report so the ACA’s basis to assess Employment Plan compliance is limited. That one hiring process, Incentives Senior Analyst, was accomplished without material Employment Plan violations is a positive development. Based on the IC Field Inspector and Residential Field Inspector processes, hiring in Valuations remains a concern. The violations described at this late date are sufficiently serious to question 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. Employment Plan Mandated Annual HR 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 IV.F and focus on what is required for HR to administer the Employment Plan and the Employee Handbook competently.

As of the Third Interim Report, neither HR Personnel Employment Plan nor Employee Handbook training had been conducted. That situation has not changed.

On August 9, 2021 and August 10, 2021, the ACA provided comments on the “HR Role in Hiring” training deck received from the AO/HR on July 27, 2021. That deck addressed the Employment Plan only; the Employee Handbook was not covered (a fact that was mentioned in the ACA’s comments). On September 27, 2021, the AO/HR provided a revised training deck that addressed the Employment Plan only. On October 4, 2021, the ACA provided additional comments.

At the October 7, 2021 status, the Deputy of HR indicated that a revised training deck (or decks) covering Employment Plan and Employee Handbook training programs for all HR personnel would be provided. To date, the ACA has not received any such materials.

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 training for Supervisors.⁷ The purpose of this training is to go beyond the Employment Plan training required under Section IV.F and focus on those sections of the Employment Plan, primarily related to the various hiring processes, which Supervisors must implement.

As discussed at the August 18, 2021 and October 4, 2021 statuses, the Second Interim Report (at 10) and the Third Interim Report (at 8), the AO/HR never has conducted Supervisor Employment Plan training. As reflected in the August 7, 2021 order (at §5.B), the Deputy of HR indicated at the October 4, 2021 status that the AO/HR hoped to provide a draft training deck by the end of October 2021. *See* 10/4/21 Tr. at 29. The ACA has not received a draft training deck.

C. Employment Plan Mandated Annual Employee Handbook Training is due in November 2021

Section IV.F of the Employment Plan requires annual comprehensive mandatory training of all employees to ensure that they are aware of and knowledgeable about the Employee Handbook. The AO/HR last conducted Employee Handbook training on November 17 – 19, 2020. So this annual training is due. While Employment Plan training previously was presented “live” in 2019 and on Zoom in 2020, the AO has indicated that this year’s training will be recorded and presented online via its learning management system.

On November 2, 2021, the AO indicated that five training decks related to Shakman-related policies, some with multiple subparts, were on the AO’s Teams system: (1) General Policies I and II; (2) Overtime and Comp Time; (3) Standards of Conduct; (4) Time and Attendance I and II; and

⁷ Section IV.F of the Employment Plan also requires annual comprehensive training on the Employment Plan for all employees. The AO last presented that training in May – July 2021 so this training is not currently due.

(5) Training Policies. On November 9, 2021, the AO indicated an additional training deck for Performance Management was on the AO's Teams system. As of November 10, 2021, the AO was in the process of making these decks available for the ACA for review.

As the ACA indicated at the October 4, 2021 status: "At this late stage of the proceedings...we don't think it's our role to redoing training." 10/4/21 Tr. at 23. The ACA will provide high-level comments regarding the training's adequacy. Given the volume of the training decks that comprise Employee Handbook training, the AO and ACA are discussing the timeframe and viability of ACA review based on the AO's schedule for rolling out the training.

D. Employment Plan Mandated Annual Supervisor Employee Handbook Training is due in December 2021

Section IV.E of the Employment Plan requires annual comprehensive Employment Employee Handbook training for Supervisors. The purpose of this training is to go beyond the Employee Handbook training required under Section IV.F and focus on those sections of the policies in the Employee Handbook that Supervisors must implement. The AO/HR last conducted Supervisor Employee Handbook training on December 11, 2020 and December 14, 2020. So this annual training is due in December 2021. The AO has not provided the ACA with a draft of this training.

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 October 7, 2021 order (at §2) reflected the need for HR Employment Plan training: "It is important for HR to become the experts in implementing the [Employment] Plan so the [Employment] Plan truly can stand as a pillar of a durable remedy."

The Court also has 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.” 6/9/21 Tr. at 27. And the October 7, 2021 order (at §1) noted “the need for the Assessor staff generally, not just HR, to learn to implement the [Employment] Plan and [Employee] Handbook.” For that to be accomplished, the Supervisor training required by Section IV.E of the Employment Plan is critical.

The continued absence of HR Employment Plan and Employee Handbook training and Supervisor Employment Plan training is a threat to the Assessor’s implementation of a durable remedy. That the AO timely and effectively present employee and Supervisor Employee Handbook also is key for the Assessor’s implementation of a durable remedy – particularly in light of the policy implementation issues described in the ACA’s prior Interim Reports and below.

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

A. Reclassification

The AO does not often reclassify positions so the ACA has had limited opportunity to monitor and report on AO Reclassification policy compliance. On September 30, 2021, the Deputy Assessor of HR sought to reclassify the HR Generalist position to a Senior HR Generalist position by filling out the Request for Reclassification Form and sending it to the Director of HR (as required). As indicated below, both the Deputy of HR and the Director of HR violated the Reclassification policy.

The Request for Reclassification Form did not comply with the Reclassification policy:

- Section 3.1.B.1 – The Deputy Assessor of HR identified the “Position Title to be Evaluated for Reclassification as “Senior HR Generalist;” the correct position was the position the employee currently holds - “HR Generalist.”

- Section 3.1.B.4 – The Deputy Assessor of HR did not include the basis for the reclassification other than listing a few “Sr level duties” that the employee performs or describe how her duties and responsibilities as a HR Generalist have changed.
- Section 3.1.B.4 – The Director of HR apparently did not adequately review the Request for Reclassification Form as she did not ask the Deputy of HR to provide the required information.
- Section 3.1.B.6 – The signature line for the Deputy Assessor on the Reclassification Request Form is positioned above the NPCC language – not below as are the HR and Assessor’s signature lines. So it is not clear whether the Deputy’s signature is confirming the NPCC attestation. While not a current policy violation, we expect to recommend that the Deputy Assessor signature line be moved below the NPCC language.

On October 1, 2021, the Director of HR signed the Reclassification Form and recommended that a “desk audit be completed to complete approval of this reclassification.” On October 4, 2021, the Director of HR emailed the DOC indicating that the DOC should (1) review and sign off on the reclassification request; and (2) follow up with the Director of HR with any questions. On October 4, 2021, the Deputy of HR emailed the DOC with additional explanations for the reclassification request.

The Deputy of HR and Deputy of HR violated the Reclassification policy:

- Section 3.2.A – The Deputy of HR and Director of HR did not review the Request for Reclassification Form and related documents to ensure that the Reclassification evaluation request was supported by the documentation and information provided.
- Section 3.2.B – The Director of HR sent the Request for Reclassification Form to the DOC for sign off too soon as DOC sign off is to occur only after a Desk Audit.
- Section 3.2.C - The Director of HR sent the Request for Reclassification Form to the DOC for sign off too soon as DOC sign off is to occur only after HR reviews the result of the Desk Audit and recommends, *inter alia*, whether or not the position should be reclassified and the position description changed.

On October 4, 2021, after the DOC was asked to sign off on the reclassification request, the ACA emailed the Deputy of HR indicating the steps necessary for Reclassification, as described in the policy. While HR commissioned a Desk Audit, and DOC sign off was scuttled,

neither the Deputy of HR nor the Director of HR has provided a policy-compliant Request for Reclassification Form.

B. Performance Evaluations

The ACA/Interim DOC monitored all of the eight AO Performance Evaluations between September 1, 2021 and October 25, 2021: two 90-day Performance Evaluations and two 180-day Performance Evaluations of new hires or current employees in new positions, and four annual Performance Evaluations.⁸

On November 4, 2021, the ACA provided the AO with detailed feedback on its compliance with its Performance Evaluation policy between September 1, 2021 and October 25, 2021. While the ACA's November 4, 2021 feedback was more extensive, this report focuses on policy violations involving subjective decision-making that would allow for political discrimination:

1. The ACA/Interim DOC continued to be excluded from Supervisor Meetings (§3.5)⁹ (one performance evaluation)

ACA/Interim DOC exclusion from the supervisory deliberative process ("Supervisor Meetings") in violation of Section 3.5 of the Performance Evaluation policy has been the subject of the ACA's prior Interim Reports.¹⁰ The problem has not been remedied.

⁸ The Performance Evaluation policy was revised, effective September 22, 2021. The two 90-day Performance Evaluations were under the prior policy. Although the Deputy of HR indicated at the October 4, 2021 status that the AO would begin using a new automated Performance Management tool for the annual performance evaluations, *see* 10/4/21 Tr. at 31 – 32, the new system was not utilized for the first four annual performance evaluations (three in HR and one in Policy) held during the week of October 11, 2021.

⁹ The section in the parentheses refers to the relevant policy provision.

¹⁰ 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.

The AO/HR improperly excluded the ACA/Interim DOC from Supervisor Meetings related to one employee in Valuations that resulted in revised Performance Evaluation forms that changed the employee's overall score from 3.1 to 2.7 to 3.0.¹¹ To her credit, the Deputy of HR stopped the process and got it back on track.

At the October 14, 2021 status, the Deputy of HR indicated that the AO's enhanced technological capabilities should remedy the pattern of improperly excluding the ACA and DOC from Supervisory meetings in violation of Section 3.5. On November 9, 2021, the AO trained supervisors on the use of the automated Performance Evaluation tool. Based on the report of the two ACA monitors who attended, the new tool does not automatically include the ACA in supervisory correspondence and whether the DOC and Compliance Analyst are included was unclear. On November 9, 2021, the ACA raised the notice issues with the Chief Legal Counsel/acting Shakman Liaison, which currently are under discussion. The ACA will advise the Court as to the effectiveness of the automated system in her next report.

2. HR failed to timely schedule and/or issue performance evaluation during probationary period. (§3.4) (four performance evaluations)

The foundational piece of the Performance Evaluation policy is conducting the performance evaluations in the timeframe required. The AO/HR failed to do this with four probationary performance evaluations:

- One 90-day Performance Evaluation was held more than five weeks late. There also was no Performance Expectations meeting (as Section 3.4 also requires).
- Three 180-day Performance Evaluations for new employees have not taken place. They are weeks late. There has been no indication from the AO/HR that they are to be scheduled.

¹¹ This performance evaluation process began in early July 2021 and extended through September 2, 2021, prior to the DOC's tenure.

3. 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) (one performance evaluation)

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 one of the 90-day performance evaluations, that did not occur.

4. Deputy or Immediate Supervisor failed to initial comments or sign the Performance Evaluation Form (§3.5) (one performance evaluation)

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 one of the performance evaluations reviewed.

5. The AO/HR has not explained why a Valuations employee’s 90-Day Performance Evaluation was reduced four times resulting in a return to her former position

The Second Interim Report (at 14 – 15) described the 90-day performance evaluation of a Valuations employee where the ACA/Interim DOC improperly was excluded from monitoring the Supervisor Meetings as a 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.

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. Despite repeated requests from the ACA, no report has been provided.

C. Discipline

The ACA monitored all AO/HR disciplinary activity from September 9, 2021 through October 25, 2021. Since September 9, 2021, two disciplinary actions were completed and five were initiated. A total of nine disciplinary actions are pending.

On November 4, 2021, the ACA provided the AO with detailed feedback on its compliance with the Discipline policy from September 9, 2021 to October 25, 2021. While the ACA’s November 4, 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)
 - a. *Discipline in the two disciplinary actions that concluded was untimely*
 - Discipline requested on April 13, 2021; issued on September 28, 2021 (process lasted approximately 5½ months)
 - Discipline requested on April 14, 2021; issued on October 8, 2021 (process lasted nearly six months)
 - b. *One disciplinary action has been pending for six months*
 - c. *Three disciplinary actions have been pending for nearly three months*

At the October 4, 2021 status, the Deputy of HR “acknowledge[d] that there has been a significant backlog with the regard to...timely addressing and investigating discipline.” 10/4/21 Tr. at 33. That backlog has not been addressed.

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

Of the five disciplinary actions that were initiated during the September 9, 2021 - October 25, 2021 review period, three described the alleged misconduct but failed to identify the rule or policy allegedly violated. 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.

3. Failure to issue Discipline in accordance with principles of progressive discipline

HR received a single Request for Disciplinary Action Form (“RDAF”) but issued two Disciplinary Action Forms (“DAFs”): (1) written reprimand for performance issues on January 21, 2021, February 18, 2021 and February 22, 2021 in violation of §19(s) (failure to apply payment to correct account); and (2) written reprimand for performance issues on March 15, 2021 in violation of §19(p) (failure to work up on-line division).

Issuing two DAFs with the same level of discipline (written reprimand) based on one RDAF violates the requirement of progressive discipline. The ACA advised the Director of HR of this policy violation on October 20, 2021. HR has not taken remedial action.

D. Operational Training

At the October 4, 2021 status, the Court indicated that a Shakman concern relating to operational training is “boundless supervisory discretion [with] certain employees getting a pass on mandatory training and others being enforced on them.” 10/4/21 Tr. at 37 – 38.

The ACA reviewed the AO/HR’s Notices of Employment Action for the AO’s six operational training opportunities from August 1, 2021 through October 15, 2021. On October 26, 2021, the ACA provided the AO with feedback on its Training policy violations in August 2021.

On November 3, 2021, the ACA provided the AO with feedback on its Training policy violations from September 1, 2021 through October 15, 2021.

While the October 26, 2021 and November 3, 2021 feedback was more extensive, it included:

- AO/HR failure to follow the procedures necessary to complete a Training Request form (one training)
- AO/HR failure to ensure all (and only) employees in identified positions and units were invited to mandatory trainings (Section 2.A) (two trainings)
- AO/HR failure to sufficiently identify the specific positions to receive mandatory training (Section 2.B) (one training)
- AO/HR failure to require employees in identified operational unit to attend mandatory training (Section 2.B) (two trainings)
- AO/HR failure to provide information on required makeup sessions for employees who failed to attend 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 attendance at training session (Section 2.B) (one training)
- AO/HR untimely/no notice to ACA/Interim DOC (Section 2.F; Article XII) (two trainings)

E. Time and Attendance

The ACA monitored the AO/HR's time and attendance policy enforcement September 2021. On October 27, 2021, the ACA provided feedback on the AO/HR's policy compliance.

While the October 27, 2021 feedback was more extensive, it included:

- Repeated supervisory failure to follow policy did not result in Counseling or Discipline (three supervisors)
- Employees with Unexcused Absences (Departing Early or Late Arrival) without supervisor approval not Disciplined (§2.5) (one employee)

- 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) (1 supervisor)
- Supervisor failed to note and initial Excused Late Arrivals and Early Departures not trained, Counseled or Disciplined (§2.6) (four supervisors)
- Supervisor allowed improper use of vacation leave not trained, Counseled or Disciplined (§3.2) (six supervisors)
- 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.

F. Telecommuting

The ACA reviewed four Notices of Employment Actions related to Telecommuting for the period August 1, 2021 through October 15, 2021. Three of the NEAs did not comply with the Telecommuting policy. The policy violations included:

- The AO's documentation authorizing telecommuting was inadequate to support the request (Article V, Section 5.5) (three NEAs)
- The AO did not provide the ACA with timely notice of the approved Telecommuting request (Article V, Section 5.5.C) (one NEA)

Also, 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 has not responded.

G. PIPs

From September 1, 2021 through October 15, 2021, the ACA monitored the only operative PIP - for a management-level employee in the Legal Department based on his unsatisfactory job performance. The employee's Supervisor asked for and received ACA review of and comments on the PIP before it was issued. This led to a PIP form and Initial PIP Meeting (which is as far as the process went through the review period) that was substantially policy compliant.

The AO/HR's PIP implementation deficiencies/policy violations addressed in the prior Interim Reports largely involved PIPs in Valuations. Those PIPs have been completed. Presumably, there will not be additional PIPs in Valuations until the annual performance evaluations are completed. Given the many issues with the Valuations PIPs, how the AO/HR implements the next round will be important in assessing whether the AO has a durable remedy.

H. Other Shakman-related Policies

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

The Shakman-related policy deficiencies/violations identified above have, for the most part, been the subject of prior Interim Reports. That they continue casts doubt that the AO/HR has the "objective firewalls," *see* 6/9/21 Tr. at 30, necessary to guard against partisan decision making.

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

a. Addition/Reclassification of Senior HR Generalists

The AO filled the Senior HR Generalist position that formerly was held by the now Director of HR. The selected candidate began employment on October 25, 2021.

The AO added a second selected Senior HR Generalist position. The selected candidate is expected to begin employment on December 6, 2021.

The AO’s effort to reclassify the HR Generalist position to a Senior HR Generalist position – and eliminate the HR Generalist position – is ongoing. If completed, the current HR Generalist will become a Senior HR Generalist.

b. Director of Training

While the AO has indicated an interest in filling the Director of Training position that has been vacant since June 2021, the ACA has not received any documentation (*e.g.*, Request to Hire) related to the initiation of that hiring process.

2. Human Resources – Assessment

a. Deputy of HR/Shakman Liaison

The Deputy of HR has been on a leave of absence since mid-October 2021, so the ACA cannot comment on her performance since then. However, the Deputy of HR is largely responsible for ensuring the HR provides a firewall against partisan decision making. That the Deputy of HR was willing to allow the Deputy of Valuations to terminate the IC Field Inspector hiring process, discussed above, raises concerns about her understanding and/or ability to implement the Employment Plan. Also, the continued Shakman-related policy implementation issues discussed above, including her inability to properly initiate the Reclassification process, raises concerns about her ability to implement the Employee Handbook.

b. Director of Human Resources

The ACA has had limited dealings with the Director of Human Resources since the Third Interim Report. The ACA assumes that the Director of Human Resources continues to work hard to execute her upgraded role.

c. Senior HR Generalists

The ACA (and ACA monitors) have not yet met or interacted with the new Senior HR Generalist. The ACA has concerns about the existing Senior HR Generalist's ability to perform certain aspects of her job in compliance with the Plan, as reflected, above, regarding the Senior HR Generalist hiring process.

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 is a key component in the firewall against partisan decision making.

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 ten weeks.

For the DOC to demonstrate that she is part of the firewall, she will have to demonstrate both the ability to do the job and the ability to make an independent, credible determination of whether the AO has achieved Substantial Compliance, which is a pre-condition to termination under the Agreed Order (at Section III.F.2).

Given where the case stands, “on the job training” will not suffice to ensure the DOC’s present ability to be part of the firewall. The DOC must be able to show that she currently is able to fulfill her duties and responsibilities under the Employment Plan.

The ACA understands that the DOC has been involved in preparing AO training and the AO’s proposed Employment Plan and Employee Handbook revisions – all of which should be good ways to become familiar with the foundational documents. The DOC also appears to be taking a more active role in reviewing and commenting on Notices of Employment Actions and has provided one report to the Assessor regarding her activities. Still to be assessed is whether the DOC is recognizing material Employment Plan and Employee Handbook violations; effectively communicating appropriate remedies to the Assessor/AO; and whether the Assessor/AO is heeding her advice.

On a more granular level, the DOC should be able to demonstrate that she understands the validation process, which presumably can be accomplished by validating applications and participating in the Validation Meetings for hiring processes that are initiated. Also, the DOC is

investigating an allegation of Unlawful Political Discrimination. Her investigative report should provide a basis for assessing her investigative skills.

The Court did not underestimate the hurdle of getting up to speed quickly, as it indicated at the October 4, 2021 status: “[I]t’s just extremely difficult having...arrived when you did to be able to assess everything given our timeline...It’s an enormous task.” 10/4/21 Tr. at 7. Neither does the ACA. But that is where we find ourselves.

As to the DOC’s independence, the Agreed Order cannot terminate without a certification that, after appropriate review and inquiry, the DOC believes the Assessor has achieved Substantial Compliance. Agreed Order at Section III(F)(2). A credible certification requires more than, as the DOC suggested at the October 4, 2021 status, a conclusion that the AO “seems to have been acting in good faith in an effort to remedy the instances of noncompliance” or mere reliance on the AO’s “recitations that they don’t have a policy, custom or practice of making their employment decisions on political reasons or factors.” 10/4/21 Tr. at 11-12. As the Court indicated, that is merely “the baseline” and “in the context in which we’re at, it’s about making sure that there is a durable remedy so that what happened in the past does not repeat or at least as far as possible. So that’s the purpose of having the [Employment] plan and objective policies as well as transparency.”

The AO cannot demonstrate a “durable remedy” until (1) the Deputy of HR and her team demonstrates that it is capable of fulfilling the AO’s obligations under the Agreed Order and the Employment Plan; and (2) the DOC demonstrates that she effectively can fulfill the DOC’s duties and responsibilities under the Agreed Order and Employment Plan.

VI. STATUS OF EMPLOYMENT PLAN AND EMPLOYEE HANDBOOK/SHAKMAN-RELATED POLICY REVISIONS: INCOMPLETE

Plaintiffs long have indicated that a Motion to Dissolve (joint or by the AO only) must include: (1) a revised Employment Plan; and (2) a revised Employee Handbook, along with implementing forms, as a revised Employee Handbook is required to effectuate the Employment Plan. Both are preconditions to a durable remedy. Neither revision is complete.

A. Status of Revisions to Employment Plan

The AO sent Plaintiffs and the ACA a revised version of the Employment Plan on October 9, 2021. Plaintiffs and the ACA provided their consolidated revisions and comments on November 5, 2021. The revisions by the AO and Plaintiffs/ACA are not insignificant.

The parties and the ACA have agreed that the AO will review Plaintiffs/ACA's changes and accept those to which the AO agrees. Following that, the parties and ACA will discuss unresolved issues.

B. Status of Revisions to Employee Handbook/Shakman-related policies

The AO sent Plaintiffs and the ACA a revised version of the Employment Plan on October 28, 2021. It is under Plaintiff/ACA review. The ACA expects that Plaintiffs/ACA's consolidated comments and revisions should be provided to the AO by or about the end of November 2021.

VII. MOTION TO TERMINATE: REASONABLENESS OF 11/29/21 MOTION PREVIEW DATE AND DECEMBER 29, 2021 MOTION DEADLINE

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. The October 4, 2021 order (at §9) retained those dates but stated: "The unexpected DOC resignation earlier this year, plus the unexpected delays in the projects described in this order, might very well favor an extension of the deadlines."

The current motion preview date of November 29, 2021 is less than three weeks away. While the AO/HR is working towards Substantial Compliance, the ACA views the current schedule as unrealistic given where things stand, as described in this report. The ACA suggests that the dates be extended 60 days – with a preview date of the AO’s motion to Plaintiffs and the ACA by January 28, 2022, and a termination motion deadline of February 25, 2022.

The ACA is hopeful that the AO will be in a position to preview a motion by January 28, 2022 that the ACA will be able to join by February 25, 2022. To do so, the ACA would expect the AO/HR to have completed the following items required by the Agreed Order and/or Employment Plan:

- Agreed revised Employment Plan
- Agreed revised Employee Handbook/Shakman-related policies
- Successful completion of HR Employment Plan and Employee Handbook training
- Successful completion of Supervisor Employment Plan Training
- Successful completion of Employee Handbook Training (all employees)
- Successful completion of Employee Handbook Training (supervisors)

Additionally, as Plaintiffs’ Counsel said at the October 4, 2021 status: “[W]e need to see more of the implementation and following the plans and the office when they...find a violation or they find somebody that’s not quite doing what they’re supposed to do under the plan, how that gets called to the person’s attention and corrected...[T]hat’s what we’re looking for now...to see the implementation and the ability of the office to police itself.” 10/4/21 Tr. at 14. To that end, the ACA would expect to see:

- Successful completion of hiring processes (preferably including Valuations) without material Employment Plan violations

- Successful implementation of automated Performance Evaluation system, including, but not limited to, inclusion of DOC and ACA in Supervisory Meetings
- Successful implementation of other Shakman-related policies without material policy violations

Finally, given how crucial HR and the DOC are for the Assessor to demonstrate a durable remedy against partisan decision making, the ACA would expect to see:

- Demonstration of HR's competence to fulfill duties and responsibilities under the Agreed Order and Employment Plan
- Demonstration of DOC's competence to fulfill duties and responsibilities under the Agreed Order and Employment Plan and make credible, independent assessment of Assessor's compliance efforts.

As the Court said at the October 4, 2021 status: “[N]o one is asking for...100 percent compliance, but I am looking for substantial compliance and a good faith effort.” 10/4/21 Tr. at 12. If the Assessor successfully completes the items required by the Agreed Order and Employment Plan, demonstrates substantial compliance and a good faith effort regarding the rest, and HR and the DOC demonstrate they can fulfill their assigned duties and responsibilities, the ACA will be pleased to join a motion to terminate.

Dated: November 10, 2021

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I, Matthew D. Pryor, the undersigned, do hereby certify that on November 10, 2021, I electronically filed a true and correct copy of the foregoing **Fourth 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