

**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.)	

**SIXTH 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 Sixth Interim Report:

I. INTRODUCTION

The Court’s January 19, 2022 order (at §12) 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 August 8, 2022. Based on that target date, the AO’s “preview date” for the motion was July 25, 2022. Also, in connection with that target date, the

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.

Court ordered the ACA to provide a Sixth Interim Report by May 3, 2022, that was extended to May 4, 2022 by court order.

This is the Sixth 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"); September 27, 2021 Third Interim Report ("Third Interim Report"); November 10, 2021 Fourth Interim Report ("Fourth Interim Report"); December 13, 2021 Supplement to Fourth Interim Report ("Supplement to Fourth Interim Report") and February 15, 2022 Fifth Interim Report ("Fifth 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-

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.

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. Revising the Employment Plan and the implementing forms.
2. Revising the Employee Handbook and the implementing forms.
3. Completing annual Employment Plan-mandated Training.
4. AO/HR hiring in compliance with the Employment Plan, with particular attention to the Valuations Department.
5. AO/HR compliance deficiencies in Shakman-related policy implementation and enforcement.
6. Director of Compliance (“DOC”) and Human Resources’ (“HR”) effectiveness in fulfilling their responsibilities under the Agreed Order and Employment Plan.

The Sixth Interim Report will address: (1) the AO/HR’s progress regarding these areas; and (2) the reasonableness of the July 25, 2022 AO preview date for a potential motion to dissolve and the August 8, 2022 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 Fifth Interim Report

1. Completed hiring

The AO completed two hiring sequences under the General Hiring process since the Fifth Interim Report: (1) FOI Specialist (Legal Department); and (2) Assistant Manager of Taxpayer Information (“TPI”) – Branch Office. While there were issues with these hiring sequences, including the recurring issue of HR’s failure to provide a complete Posting File, the hiring sequences were otherwise materially compliant with Section VIII of the Employment Plan.

2. Hiring in progress

The AO has initiated five General Hiring sequences since the Fifth Interim Report via a fully executed Request to Hire (“RTH”), *see* Section VII(D) of the Employment Plan: (1) TPI Specialist (TPI Department); (2) Manager of Legal Services (Legal Department); (3) Industrial Commercial (“IC”) Senior Analyst (Valuations Department); (4) IC Junior Analyst (Valuations Department); and (5) Manager of Commercial Valuations (Valuations Department). The status of these hiring sequences is indicated in the chart, below.

3. Duration of hiring sequences

As duration has been an issue, here is an update on how long General Hiring sequences have taken/are taking since the Fifth Report:

POSITION/ DEPARTMENT	DATE OF RTH	CURRENT STATUS	DATE OF OFFER	DAYS FROM RTH TO CURRENT STATUS
FOI Specialist/Legal	10/25/21	Completed	2/18/22	116 days
Asst. Mgr. TPI – Branch/TPI	1/26/22	Completed	4/20/22	84 days
TPI Specialist/TPI	2/10/22	Validation Meeting (4/11/22)	N/A	83 days
Mgr. of Legal Services/Legal	2/23/22	Ranking Meeting (4/28/22)	N/A	70 days
IC Sr. Analyst/Valuations	3/14/22	Validation Meeting (5/5/22)	N/A	51 days

Mgr. Commercial Valuations/Valuations	4/14/22	Posting Expires 5/19/22	N/A	N/A
IC Jr. Analyst/ Valuations	4/18/22	N/A	N/A	N/A

This chart indicates that the duration of the hiring sequences varied and continues to do so. As with the hiring sequences discussed in the Fifth Report at pp. 3 - 6, including the FOI Specialist, to the extent they are taking longer than the AO might wish, delay is not attributable to the ACA.

4. Valuations Hiring

As indicated in the Court’s March 4, 2022 order at §3(C), it will be “a major step forward for Valuations [hiring] sequences to go reasonably smoothly.” *See also* 3/3/22 Tr. at 17, 19.

As indicated above, the AO started the Valuations’ IC Senior Analyst hiring sequence in mid-March, 2022. The process barely has proceeded as the validation meeting is scheduled for May 5, 2022. One of the other two Valuations positions for which there is signed RTH, Manager of Commercial Valuations, was recently posted; IC Junior Analyst has not yet been posted. The ACA will report on these Valuation hiring sequences in the next report.

B. Hiring Under the Actively Recruited Hiring Process Since the Fifth Interim Report

The AO completed one hiring sequence under the Actively Recruited Hiring process since the Fifth Interim Report: Director of Learning (in the Administrative Operations Department). The Actively Recruited Hiring process may apply to higher level supervisory or technical positions. As this process does not require randomization and allows the AO to choose who will be interviewed, it generally moves faster than the General Hiring process.

The Director of Learning hiring sequence was completed in 71 days from the date of the executed Request to Hire that initiates an Actively Recruited Hiring process under Section VIII(B)

of the Employment Plan (12/14/21 RTH – 2/23/22 offer). This was shorter than AO/HR hiring under the General Hiring process. While HR failed to provide a completed Posting File, the hiring sequence otherwise was materially compliant with Section VIII of the Employment Plan.

The AO/HR has not done much hiring since the Fifth Interim Report so the ACA's basis to assess its Employment Plan compliance is limited – although the three hiring sequences that were completed were materially compliant. As the AO has not completed any hiring sequences in the Valuations Department since the Fifth Interim Report, the major milestone of materially compliant Valuations hiring has yet to be achieved.

III. EMPLOYMENT PLAN AND IMPLEMENTING FORMS: REVISIONS NEARLY COMPLETE

The parties and ACA indicated at the March 3, 2022 status that the Employment Plan and implementing forms were nearly complete. *See* 3/4/22 Order at §4. Since that time, additional revisions were made to the Employment Plan and the forms. At this point, it appears that the revisions should be final. The ACA expects Plaintiffs will file a motion to amend soon.

IV. EMPLOYEE HANDBOOK /SHAKMAN-RELATED POLICIES AND IMPLEMENTING FORMS: REVISIONS INCOMPLETE

As the Court indicated at the March 3, 2022 status, completing the Employee Handbook will be an important milestone as a step forward. 3/3/22 Tr. at 23. *See also* 3/4/22 Order at §6. Neither the Employee Handbook/Shakman-related policies nor the implementing forms have been completed.

A. Shakman-related policies except for Time and Attendance

The Shakman-related policies – excluding Time and Attendance – have gone through multiple rounds of revisions since the March 3, 2022 status. The AO sent its last version to

Plaintiffs and ACA on April 28, 2022. This should be the final version, or very close to the final version, from the parties' and ACA's perspective. However, as the AO indicated at the March 3, 2022 status, 3/3/22 Tr. at 25, the AO's union has 21 days to review and object to employment policy changes which potentially could give rise to the union's right to bargain.

The AO has indicated that it sent the then-current version of the Employee Handbook to the union on or about April 11, 2022. The AO also has indicated: the union has objected to certain of the policy revisions; the AO and union have met; two more meetings are scheduled for the week of May 4, 2022; and the AO hopes to resolve the disputes by May 11, 2022. Time will tell whether the AO achieves this goal. Also, the AO has indicated that it has not given the union the additional policy changes since April 11, 2022 and those also will have to be addressed.

B. Time and Attendance

As indicated in the Fifth Interim Report, the AO indicated that it was going to propose a new, substantially revised Time and Attendance policy on or about January 24, 2022. The AO sent Plaintiffs and the ACA a substantially revised Time and Attendance policy over five weeks later, on March 2, 2022, the eve of the March 3, 2022 status.

By way of background, the parties and ACA had agreed to a revised Time and Attendance policy on or about August 17, 2021, after months of negotiation. The AO's first draft of a revised Employee Handbook, sent to Plaintiffs and the ACA on October 28, 2021, included a Time and Attendance policy based on the August 2021 policy. The many versions of the Employee Handbook that were exchanged between October 2021 and January 2022 were based on the August 2021 policy ("Version #1").

The AO's March 2, 2022 version of the Time and Attendance policy purportedly was based on the policy of County Offices under the President, that the ACA understands has over 10,000

employees, including the Cook County Health and Hospitals System, as opposed to the approximately 230 employees in the AO. (“Version #2”). The AO’s Version #2 substantially departed from the AO’s current Time and Attendance policy (and apparently the policies of the prior Recorder of Deeds and current County Clerk), including eliminating the definitions and standards required for the transparency, consistent enforcement and DOC/ACA ability to monitor/audit that Shakman requires.

Here is a chronology of the Time and Attendance policy beginning March 2, 2022:

- March 2, 2022 – AO Version #2 to Plaintiffs/ACA
- March 17, 2022 – ACA proposed revisions to Version #2 to AO
- March 23, 2022 – ACA/AO meeting; AO indicated desire to go back to Version #1 and AO provided revisions to Version #1
- March 25, 2022 – ACA/AO met again to discuss AO’s revisions to Version #1
- March 29, 2022 (approx.) – AO met with Plaintiffs (ACA not included); AO indicated desire to use Version #2
- April 13, 2022 – ACA/Plaintiffs revisions to Version #2 to AO
- April 28, 2022 – AO revisions to Version #2 to Plaintiffs/ACA

Plaintiffs/ACA are reviewing the AO’s April 28, 2022 revisions to Version #2 that appear to accept most, but not all, of Plaintiffs/ACA’s proposed revisions. The ACA expects that Plaintiffs/ACA’s comments/revisions will be provided to the AO before the May 10, 2022 status.

Once the parties and ACA have a final version, the AO has indicated that it must be provided to the union that has 21 days to review and object. Any objections apparently must be resolved or may become the subject of bargaining. This suggests the final Time and Attendance policy will not be finalized until the end of May 2022 or early June 2022 - at the earliest.

C. Implementing Employee Handbook Forms

Plaintiffs/ACA sent the AO comments on the AO's proposed revisions to the 16 forms implementing the Employee Handbook by March 29, 2022 (most had been sent earlier). The AO/HR provided a revised draft on May 2, 2022, which Plaintiffs and ACA are reviewing. The ACA is unclear about the need for union review of the Employee Handbook implementing forms and whether that may cause additional delay.

The inability to complete the "important milestone" of the Employee Handbook and implementing forms is unfortunate, in and of itself. It also is unfortunate because it delays the AO/HR's ability to provide the annual Employment Plan-mandated that, in turn, affects the timeline to sunset, as discussed below.

V. STATUS OF EMPLOYMENT PLAN MANDATED TRAINING: NOT COMPLETED

A. Annual HR Employment Plan/Employee Handbook 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 IV.F and focus on what is required for HR to administer the Employment Plan and the Employee Handbook competently.

1. HR Employment Plan Training: Completed

As discussed in prior reports, HR Employment Plan training was completed on November 10, 2021.

2. HR Employee Handbook Training: Not Completed

Based on the incomplete status of the revisions to the Employee Handbook and implementing forms indicated above, the HR Employee Handbook training has not been completed so the training schedule in the March 4, 2022 order at §7(A) will not hold. The ACA anticipates the AO will propose a revised schedule at the May 10, 2022 status.

B. Annual Supervisor Employment Plan Training: Completed

Section IV.E of the Employment Plan requires annual comprehensive Employment Plan training for Supervisors. 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.

The Supervisor Employment Plan training was substantially completed on or about March 4, 2022. As indicated in the Fifth Interim Report, the ACA provided significant comments to the training deck before the deck was finalized. On April 4, 2022, after reviewing the revised training deck and watching the videotaped training, the ACA gave the AO/HR additional substantial comments (in the form of a 29-page chart).

C. Annual all Employee Handbook Training: Not Completed

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. Since the AO/HR last conducted all Employee Handbook training on November 17 – 19, 2020, this annual training was due in November 2021. Plaintiffs and the ACA agreed that it made sense to continue the training until the Employee Handbook and implementing forms were revised.

Based on the incomplete status of the revisions to the Employee Handbook and implementing forms indicated above, the schedule in the March 4, 2022 order at §7(B) will not hold. The ACA anticipates the AO will propose a revised schedule at the May 10, 2022 status.

D. Annual Supervisor Employee Handbook Training: Not Completed

Section IV.E of the Employment Plan requires annual comprehensive 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. Since the AO/HR last conducted Supervisor Employee Handbook training in December 2020, this annual training was due in December 2021. Plaintiffs and the ACA agreed that it made sense to continue the training until the Employee Handbook and implementing forms were revised.

Based on the incomplete status of the revisions to the Employee Handbook and implementing forms indicated above, the schedule in the March 4, 2022 order at §7(C) will not hold. The ACA anticipates the AO will propose a revised schedule at the May 10, 2022 status.

E. All Employee Annual Employment Plan Training: Due in June 2022

Section IV.F of the Employment Plan requires annual comprehensive training on the Employment Plan for all employees. The AO last presented that training in or about June 2021 so this training is due until in or about June 2022. *See* 1/19/22 Order at §5(B). The ACA expects the AO will indicate its plan to complete this training at the May 10, 2022 status.

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

A. Performance Evaluations

1. Annual performance evaluations

Between December 1, 2021 and February 4, 2022, the AO conducted its second annual performance evaluation cycle of non-Exempt employees. The total number of non-Exempt performance evaluations was 170 of which the ACA monitored 94 (more than half). The ACA expects to give the AO a detailed analysis of policy compliance deficiencies, issues with the automated tool and recommendations for going forward before the May 10, 2022 status. The AO and ACA also have agreed to “de-brief” after receipt of the ACA’s analysis to discuss how the process and the automated tool can be improved to promote policy compliance.

While the ACA identified a variety of compliance issues that will be discussed in the forthcoming analysis, items that have the potential to affect the transparency and consistent enforcement (all of which have been raised in prior ACA analyses) include:

- inadequate explanations or no explanations for poor scores;
- inconsistent or inaccurate annual review periods;
- excluding the DOC and/or ACA from supervisory deliberations;
- supervisory failure to sign Performance Evaluation Form;
- supervisory failure to complete Performance Evaluation Form for interim supervision of 90 or more days; and
- inconsistent application of performance metrics in the Valuations Department.

All that being said, completing the annual cycle is an accomplishment and AO compliance appears to have improved from last year’s initial outing.

2. 90-day and 180-day performance evaluations

Between December 1, 2021 and February 4, 2022, the AO conducted: (a) three 90-day Performance Evaluations, of which the ACA monitored two; and (b) five 180-day Performance Evaluations, of which the ACA monitored three.

Of greatest concern was the AO's failure to conduct four 180-day Performance Evaluations and failure to conduct three Performance Expectation Meetings. Also of concern was the AO's failure to timely conduct two 90-day Performance Evaluations. Failing to conduct and/or timely conduct performance evaluations and Performance Expectation Meetings are material policy violations that have been raised in prior reports.

B. Discipline

As of April 22, 2022:

- seven conduct-related AO/HR disciplinary actions were pending; and
- three time and attendance-related AO/HR disciplinary actions were pending.

Between January 1, 2022 and April 22, 2022:

- five conduct-related AO/HR disciplinary actions were concluded (one because an employee resigned);
- two time and attendance-related AO/HR disciplinary actions were concluded; and
- one conduct-related AO/HR disciplinary action was not completed because the employee resigned.

The ACA provided the AO with two detailed analyses of general Discipline policy compliance deficiencies since the Fifth Interim Report:

- March 24, 2022 – AO/HR compliance deficiencies from January 1, 2022 to February 28, 2022.
- April 25, 2022 – AO/HR compliance deficiencies from March 1, 2022 to April 22, 2022.

While the ACA's feedback/analysis was extensive, this report is limited to significant, recurring Discipline policy violations with the potential to affect the transparency and consistent enforcement (all of which have been raised in prior ACA analyses):

1. HR failed to issue Discipline in a timely fashion. (§1)
 - Of the seven disciplinary actions that were concluded between January 1, 2022 and April 22, 2022, one took nearly five months to complete and two took over six months to complete.
 - Of the ten disciplinary actions pending as of April 22, 2022, nine have been pending between over three months and as long as eight months.
2. Request for Disciplinary Action Form failed to identify the rule or policy allegedly violated. (§4(A)(2)) (multiple employees)
3. HR improperly refused to investigate alleged misconduct that raised material issues of fact (§4(A)(3)) – until error raised by ACA (two employees)
4. HR failed to determine whether investigation was warranted – either on a timely basis or at all (§4(A)(3)) (four employees)
5. HR's investigative summary was deficient (§4(C)(1)) (four employees)
6. HR's Disciplinary Action Form was deficient (§4(C)(1)) (four employees)

C. Time and Attendance

The ACA has provided the AO/HR with 18 written analyses on AO/HR's material failure to enforce material violations of the Time and Attendance policy since Assessor Kaegi took office in December 2018.⁴ These 18 analyses, referenced in prior reports, described the violations in

⁴ The dates and subjects of the ACA's 18 analyses were: 2/25/19 - Points Discipline Discontinuation Feedback; 2/18/20 - General Feedback on Attendance Policy Non-Compliance; 3/17/20 - January 2020 Feedback; 5/31/20 - Feb 1, 2020 - March 15, 2020 Feedback and questions re Policy Compliance from 3/16 - 5/11/20 (post-office shutdown); 7/21/20 - March 16, 2020 - June 30, 2020 Feedback; 8/17/20 - Addendum to 7/21/20 Feedback; 9/9/20 - July 2020 Feedback; 9/18/20 - Feedback on employee July/August 2020 attendance issues; 12/22/20 - ACA Supplement to ACA's 17th Report (re: Time and Attendance Training); 2/1/21 - December 2020 Feedback; 2/26/21 & 3/15/21 - January 2021 Feedback; 4/8/21 - February 2021 Feedback; 5/22/21 - March/April 2021 Feedback; 7/15/21 - May 2021 Feedback; 9/18/21 - June - August

detail (e.g., dates, supervisors, employees, section of policy violated). The ACA's analyses often were accompanied by spreadsheets with even greater detail. The ACA's analyses have been summarized in prior reports.

As described in prior reports, HR failed in its duty to enforce the Time and Attendance policy. The job was outsourced to the Payroll Manager, in the Administrative Operations Department, who did not understand the policy. Her lack of understanding (despite her best efforts) was demonstrated by her many purportedly "training" emails to Supervisors advising them erroneously of policy violations and failing to recognize violations that did occur.

As the above discussion suggests, to the extent the AO/HR attempted to enforce the time and attendance policy, it was done inconsistently. The ACA analyzed AO/HR time and attendance administration/enforcement from January 2021 to January 2022 and gave the AO a detailed analysis (accompanied by spreadsheets) on March 9, 2022. The AO/HR did not respond to the ACA's March 9, 2022 analysis.

While the ACA's March 9, 2022 analysis was more detailed, HR's poor administration/enforcement of the Time and Attendance policy that resulted in inconsistent enforcement included:

- Supervisors did not consistently determine when to issue a counseling versus a verbal reprimand, resulting in employees being treated differently for the same time and attendance violation.
- Supervisors/HR failed to issue counseling/discipline for significant time and attendance violations – yet issued counseling/discipline for minor time and attendance violations.

2021 Feedback; 9/21/21 - Addendum to 9/18/21 Feedback; 10/27/21 - Sept 2021 Feedback; 12/15/21 - Oct/Nov 2021 Feedback.

- Supervisors did not consistently determine when to issue a counseling/discipline for a time and attendance violation and when a time and attendance violation should go unpunished.
- Supervisors did not consistently determine how many time and attendance violations must occur before issuing a counseling/discipline.
- The AO/HR refused to counsel or discipline FLSA-exempt Supervisors who failed to carry out their supervisory responsibilities under the Time and Attendance policy – while FLSA non-exempt employees were counseled/disciplined for time and attendance violations.

None of the findings in the ACA's March 9, 2022 analysis were new as they has been included in the ACA's various 2021 analyses (as demonstrated by the March 9, 2022 spreadsheets).

HR could have used the ACA's many analyses to determine: (1) what training was needed to abate confusion about the policy; (2) which Supervisors and employees needed to be counseled or disciplined; and (3) how to monitor policy violations more effectively and ensure consistent and fair policy enforcement. But the AO/HR ignored the ACA's analyses (with the occasional exception of erroneously claiming the ACA's analysis was wrong).

Also, the Time and Attendance policy has been revised many times at the AO's request. These revisions did not give rise to AO/HR policy enforcement. In light of the longstanding time and attendance enforcement issues, as discussed with the Shakman Liaison, the ACA would expect the AO/HR to present a plan designed to achieve transparent and consistent time and attendance compliance.

D. Overtime

The ACA reviewed 15 Notices of Employment Actions and supporting documentation since the Fifth Interim Report regarding Overtime from December 1, 2021 to February 28, 2022. The ACA gave the AO/HR detailed analyses of compliance deficiencies on March 14, 2022 (five

NEAs in December 2021 analysis); March 29, 2022 (five NEAs in January 2022 analysis); and April 20, 2022 (five NEAs in February 2022 analysis).

As has been the case in prior reports, none of the 15 NEAs wholly complied with the AO's Overtime policy. The Overtime policy violations - affecting the Legal, Administrative Operations, Valuations, Taxpayer Services Departments – that have been described in many prior reports won't be repeated here.

Also, HR's longstanding pattern of not timely providing the NEAs and supporting documentation to the DOC and ACA in accordance with Article XII (essentially within a week after completion) extended to all 15 NEAs reviewed, with some being months late. While the ACA (and DOC) agreed that the NEAs and documentation could be provided via Teams (as opposed to email notice), HR consistently has failed to tell the ACA when new Overtime documentation was added to Teams (the ACA is unsure about the DOC). When notice was given, the information usually was inadequate to identify the specific Overtime – that compounded the problem.

These HR practices have made it difficult (and sometimes impossible) for the ACA to effectively monitor AO/HR Overtime policy compliance. The AO/HR recently indicated that will improve its practices. The ACA will report further in the next report.

E. Telecommuting

As in many workplaces, telecommuting has become a regular part of how the AO conducts its business. The Telecommuting policy is designed to ensure the transparency and consistent policy application that Shakman requires. Since telecommuting went into effect, the ACA has reviewed all Notices of Employment Action and supporting documentation provided.

The ACA has given the AO/HR periodic detailed analyses that identified Telecommuting policy compliance deficiencies, requested information about how the Telecommuting policy was being applied (*e.g.*, employees in the same position title being treated the same, absent documented explanations) and requested revised or missing NEAs to accurately document the telecommuting (that HR rarely supplied). AO/HR Telecommuting policy compliance deficiencies have been identified in prior reports.

The ACA reviewed 17 Notices of Employment Action and supporting documentation since the Fifth Interim Report regarding Telecommuting from December 1, 2021 through February 28, 2022 affecting all or nearly all AO Departments. The ACA gave the AO/HR detailed analyses of compliance deficiencies on March 14, 2022 (six NEAs in December 2021 analysis); March 29, 2022 (eight NEAs in January 2022 analysis); and April 20, 2022 (three NEAs in February 2022 analysis).

Of the 17 NEAs, only one wholly complied with the Telecommuting policy.

The policy violations included:

- Neither Chief Deputy Assessor nor Department Deputy approved extending Emergency Teleworking beyond an initial 10-day period.
- HR failed to provide documentation that Deputy determined employee could work remotely with minimal disruption to operations. (§5.5(B))
- HR failed to provide DOC and ACA with timely notice of the approved Telecommuting request (§5.5.C)

F. Operational Training

The ACA reviewed 10 Notices of Employment Action and supporting documentation since the Fifth Interim Report regarding AO's operational training opportunities from December 1, 2021 through February 28, 2022. The ACA provided the AO with detailed analyses regarding AO/HR Training policy compliance on March 14, 2022 (three NEAs in December 2021 analysis); March

29, 2022 (two NEAs in January 2022 analysis); and April 20, 2022 (five NEAs in February 2022 analysis). None of the NEAs were wholly policy compliant.

While compliance has improved, the notices of the training to the DOC and ACA remain chronically untimely (in violation of Article XII). Also, HR failed to insure employees attended mandatory make-up training, as Section 2(B) requires, for three of the 10 operational trainings.

G. PIPs

The Fifth Interim Report indicated that one management-level employee was on a PIP based on his unsatisfactory job performance. That PIP concluded without material policy violations.

The AO/HR has indicated that eight AO employees will be placed on PIPs based on their overall average scores on their annual performance evaluations. This should provide a good opportunity for the ACA to assess the AO/HR's ability to comply with the AO's revised PIP policy. The ACA will report further in the next report.

H. Other Shakman-related Policies

The ACA has no basis to comment on the Interim Assignment, Temporary Assignment, Reclassification or Layoff/Recall policies as the ACA did not receive NEAs for those Employment Actions since the Fifth Interim Report.

The Shakman-related policy deficiencies/violations identified above have, for the most part, been the subject of prior reports. While compliance is improving, additional work will be required for the AO/HR to demonstrate the "objective firewalls," *see* 6/9/21 Tr. at 30, necessary to guard against partisan decision making.

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

A. Human Resources

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 Staffing

As the AO indicated, the AO has completed its expansion of HR staffing that is comprised of the Deputy Assessor of HR, Director of HR and four Senior HR Generalists. *See* 3/3/22 Tr. at 49. The HR function is supported by a Payroll Manager in the Administrative Operations Department.

2. Director of Learning and Development

The Director of Learning and Development position, although not part of the HR function as it is in the Administrative Operations Department and reports to the CAO, assists HR with the Employment Plan mandated training and training on Shakman-related employment policies.

As indicated above, the Director of Learning and Development position (vacant since June 2021) has been filled. The selected candidate’s date of hire was March 28, 2022.

3. Human Resources – Assessment

The ACA continues to have concerns about the HR function, as indicated in prior reports. However, there seems to be a greater effort by the HR Senior Generalists to comply with the

Employment Plan for the hiring sequences and provide information that is required by various Shakman-related policies.

B. Director of Compliance

1. Competence

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 her employment on August 23, 2021 and has been on the job for over eight months. She appears to be identifying more issues in real time. While the DOC provides weekly reports regarding her activities and that of the Compliance Analyst, these reports rarely describe compliance issues that have been identified and actions recommended to the AO/HR to correct them. The ACA offered to meet with the DOC weekly to discuss compliance matters but that offer was not accepted.

2. 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). For this certification to be meaningful, it must be independent and credible.

As indicated in the Fifth Interim Report (at 25), the DOC had not identified a single compliance deficiency in Employment Plan or Employee Handbook implementation that she has deemed material since assuming the job. That remains the DOC’s position. *See* DOC 3/15/22 Semi-Annual Report at 16 (no “substantial compliance issues during reporting period”; 14

references to “technical” violations). In fact, material compliance issues have occurred – for example, HR’s failure to prepare a proper “Justification to Hire,” a bedrock of Shakman compliance, for the Community Outreach position – which the DOC erroneously claimed at the March 3, 2022 status was a “technical violation.” 3/3/22 Tr. at 39.

The DOC apparently continues to believe that all that is required to achieve Substantial Compliance is the absence of Unlawful Political Discrimination. *See* 3/3/22 Tr. at 36. The Court attempted to disabuse the DOC of that idea at the October 4, 2021 status.⁵ The DOC’s position at the March 3, 2022 status was that a durable remedy and Substantial Compliance had been achieved. *See* 3/3/22 Tr. 44. Since the parties and ACA agree that is not the case (otherwise the AO presumably would have filed a motion to dissolve), the ACA continues to have concerns that the DOC will perform her duties under the Employment Plan effectively post-sunset.

HR and the DOC are key component in the firewall against partisan decision making. 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 and that any certification of Substantial Compliance that she may offer is independent and credible.

⁵ At the October 4, 2021 status, not much more than a month into the job, the DOC claimed the AO “seems to have been acting in good faith in an effort to remedy the instances of noncompliance” because the AO says “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. The Court responded 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.” 10/4/21 Tr. at 12.

VIII. MOTION TO TERMINATE: REASONABLENESS OF JULY 25, 2022 MOTION PREVIEW DATE AND AUGUST 8, 2022 MOTION DEADLINE

The March 4, 2022 order (at §12) extended the date of the sunset motion to August 8, 2022, with a preview date of the AO's motion to Plaintiffs' and the ACA to July 25, 2022, and the ACA's Final Report to July 7, 2022. Based on the AO's inability to complete the Employee Handbook and most of the Employment Plan-mandated annual trainings, the limited hiring (particularly in Valuations) and continuing implementation issues of Shakman-related policies, these dates appear unrealistic.

The ACA and Shakman Liaison have conferred about the need to extend the dates. Additional discussions are contemplated, including with Plaintiffs, before the May 10, 2022 status, at which time the ACA expects the AO, Plaintiffs and ACA will suggest revised agreed dates.

Dated: May 4, 2022

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING

I, Matthew D. Pryor, the undersigned, do hereby certify that on May 4, 2022, I electronically filed a true and correct copy of the foregoing **Sixth 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