

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL L. SHAKMAN and)	
PAUL M. LURIE, <i>et al.</i> ,)	Case No. 69 C 2145
Plaintiffs,)	
)	Wayne R. Andersen
v.)	United States District Court Judge
)	
DEMOCRATIC ORGANIZATION OF)	
COOK COUNTY, <i>et al.</i> ,)	
Defendants.)	

ANNUAL REPORT OF MONITOR FOR 2006

The Monitor, Noelle C. Brennan (“Monitor”), by and through her counsel, Ines M. Monte of the law firm of Brennan & Monte, Ltd. and Susan E. Cox of the Law Offices of Susan E. Cox, submits this Annual Report pursuant to the Order of the Court entered on August 2, 2005.

I. APPOINTMENT OF SHAKMAN DECREE MONITOR

The principles embodied in the *Shakman* Decree are grounded in Constitutional rights guaranteed to all persons and apply to all government hiring. “Political belief and association constitute the core of those activities protected by the First Amendment,” the Supreme Court has explained. *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Patronage, the Court explained, “can result in the entrenchment of one or a few parties to the exclusion of others” and “is a very effective impediment to the associational and speech freedoms which are essential to a meaningful system of democratic government.” *Id.* at 370-371. Thus, although some may espouse the view that patronage is a preferred system, supporting the implementation of such a system is tantamount to supporting the denial of rights guaranteed by the Constitution.

On August 2, 2005, the Court appointed a Monitor “to ensure future compliance” with the Court’s prior orders in *Shakman, et al. v. The Democratic Organization of Cook County, et al.*, Case No. 69 C 2145, in response to the Plaintiffs’ Application to Hold the City of Chicago and its Mayor in Civil Contempt for Violations of the Court Orders. Following the August 2, 2005 appointment, the Monitor and her counsel conducted a preliminary study of the City’s existing employment practices. Since that time, the Monitor and her staff have actively overseen the City’s hiring processes. Hiring at the City has not been impeded under the Monitor’s supervision. In fact, the City has hired significantly *more* employees under the Monitor’s oversight than in prior years. From August of 2005 through July of 2006, the City hired 6,231 employees, a substantial increase over the same period during the previous two years when the City hired only

5,304 individuals between August 2003 and July 2004 and 5,601 employees from August 2004 through July 2005.

The Monitor's initial objective was to investigate the City's existing employment practices in order to detect potential impediments to the City's ongoing compliance with the *Shakman* judgments and to identify systemic problems which may lead to such future noncompliance. On September 6, 2005, the Monitor issued her "First Report" that included "Recommendations for Immediate Implementation" as a means to increase immediate compliance with the Court's previous Orders. See Appendix A. The City agreed with many of these recommendations and they were formally incorporated into a Court Order entered on November 2, 2005. See Appendix B. Since the September 6, 2005 First Report, the Monitor and her counsel have filed several status reports outlining some of the work conducted by the Monitor's office. See Appendix C.

The Monitor's September 6, 2005 report concluded, in part, that that the City had been substantially non-compliant with many of the *Shakman* provisions for a significant period of time. Since that time, the City's compliance with the *Shakman* Decree has significantly increased. For example, the City's Department of Human Resources ("DHR") now conducts all screening of applicants and creates all referral lists. The hiring departments no longer submit names of candidates to DHR or add names to referral lists. There has been no evidence that DHR has received and/or acted upon any inappropriate recommendations from any individual in the Office of Intergovernmental Affairs or the Mayor's Office. There is no evidence that the type of overt manipulation of interviews presented during the criminal trial of *USA v. Sorich, et al.* continues to exist. As explained below, however, additional measures are necessary to increase compliance now and to ensure future compliance.

II. MONITOR'S ACTIVITIES

A. Information Gathering

A significant part of the Monitor's activities continue to focus on gathering information and viewpoints from multiple constituencies. The Monitor and her staff meet on a weekly basis with officials from the City of Chicago to discuss reform initiatives, issues related to specific hiring sequences, and a myriad of topics that relate to eliminating the unlawful use of political considerations in City employment. The Monitor and her staff also regularly meet with management and personnel at the Department of Human Resources. Notably, an individual from the Monitor's office is present and available at the Department of Human Resources on a daily basis.

The Monitor's office has also continued to meet with officials within individual City Departments, including the Department of Aviation, the Department of Water, Streets and Sanitation, the Department of General Services, the Chicago Public Libraries, the Fire and Police Departments, and others. Often, these meetings arise because of compliance issues or questions raised by the Departments. Similarly, the Monitor and her staff have met regularly with representatives from various unions, to discuss specific

union issues related to the City's compliance with the law and reform of employment practices. The Monitor's office regularly meets with the Plaintiffs' counsel to discuss these same issues. Finally, the Monitor has also met with the City Council's attorneys, the Black Caucus and their attorneys, and any other interested individuals who request a meeting.

Generally, the employees with whom the Monitor has worked with at the City of Chicago have been receptive to changing past employment practices. In particular, the Mayor's Chief of Staff and the Commissioner of the Department of Human Resources have been actively attempting to implement fair and open employment practices. Nonetheless, there remains an element of resistance to the *Shakman* principles expressed during a limited number of interviews and/or discussions with City employees and a small group of Aldermen. These individuals have openly expressed a preference for a patronage system and believe that the advantages of such a system outweigh any ill effects. Thus, these same individuals are adverse to the requirements of the *Shakman* Decree and its resultant restrictions on the employment practices at the City. The activities of the Monitor and her counsel are an attempt to counter these pockets of resistance.

B. Oversight of City Hiring

One of the primary findings in the Monitor's initial report was that the Department of Personnel (now known as "DHR") had abdicated its role under the existing Detailed Hiring Plan to screen qualified candidates for open City positions and create appropriate referral lists for the City Departments to use for their pool of qualified applicants to interview. Instead, City Departments were screening applicants for positions, sometimes with the motive of ensuring that favored candidates were included on the interview lists. Further, as the United States Attorney's federal prosecutions have made plain, improprieties often occurred in the interview and rating process of candidates. Finally, despite apparently widespread violations of the *Shakman* decree, the Monitor found no evidence of any investigation by the Department of Personnel into any complaints made regarding potential *Shakman* violations during her initial investigation into City hiring.

To address these concerns on a going-forward basis, the Monitor and her counsel retained several individuals to serve as auditors for all aspects of City hiring, including the proper notification of job opportunities; the creation of appropriate referral lists; proper conduct of interviews, testing, and scoring of candidates; and related actions. These auditors, who currently number six, are trained in both City hiring and the *Shakman* decree prior to beginning their work. One auditor is based at DHR and is responsible for performing a variety of crucial monitoring functions, including auditing hiring packets, reviewing referral lists, tracking all hiring sequences and interviews, and responding daily to issues and questions presented by the City's personnel analysts and personnel liaisons related to compliance with the *Shakman* decrees.

The Monitor requires forty-eight hour notification prior to the commencement of any interview.¹ The purpose of this notification is to allow the Monitor and her staff to assign an auditor to the hiring sequence if one is deemed necessary. Although there were difficulties with this requirement initially, most Departments have adapted to this requirement. The Monitor has the discretion to cancel an interview if sufficient notification is not given and has done so on occasion. Similarly, there have been a limited number of instances where no notice has been provided to the Monitor at all. Those interviews generally have to be repeated to allow for auditing.

As set out in the tables below, the Monitor's staff has audited close to 3,000 interviews to help ensure that the hiring is in accordance with the *Shakman* decree. Although the auditors have attended interviews in most departments, auditing activities have focused on the City's Infrastructure Departments, given their history of improprieties. In addition, when the Monitor and her staff are alerted to a potential problematic hiring sequence by a complainant, that hiring sequence is audited, if possible.

INFRASTRUCTURE DEPARTMENT INTERVIEWS AUDITED

AVIATION DEPARTMENT	771
FLEET MANAGEMENT	92
GENERAL SERVICES	105
STREETS AND SANITATION	394
TRANSPORTATION	86
WATER MANAGEMENT	776

OTHER CITY DEPARTMENT INTERVIEWS AUDITED

Administrative Hearings	4	Department on Aging	4
Department of Buildings	75	Business Aff. & Lic.	29
Children & Youth Serv.	15	City Clerk's Office	31
Construction & Permits	17	Consumer Services	13
Cultural Affairs	12	Environment	25
Finance	30	Fire Department	11
Health Department	41	Housing Department	27
Human Resources	26	Human Services	5
Inspector General Office	12	Law	11
Library	3	Mayor's Off. Spec. Events	8
Off. Emer. Manag. & Comm.	77	O'Hare Modernization Prog.	32
Planning	10	Police	161
Procurement	35	Revenue	34
Treasurer	4	Zoning	18

¹ The Monitor has recently requested, but not required, that she be provided one week notice of any interviews scheduled.

The auditors help ensure that there is no collusion in scoring; that rating sheets are filled out individually; and that each applicant is treated fairly and questioned consistently. The auditors collect the rating sheets and copy them immediately after the interview has concluded so that there can be no change to them after the conclusion of the interview process. These documents are kept in the Monitor's files. The auditors also assist in ensuring that each applicant meets the minimum requirements for the position as stated on the "A" form. The auditors do not question applicants, nor do they advise the interviewing panel on how they should score the applicants.

After each interview, the auditors draft a memo on the hiring sequence and include any questions which were directed to them by the interview panels. The auditors attach the appropriate paperwork for the hire, including the A form, referral list and rating sheets to the memorandum, which are circulated to the Monitor and her staff and kept in a file at the Monitor's office. Each week, the auditing team meets with the Monitor and her counsel to discuss the week's work and to discuss any problems which have occurred and to discuss possible solutions which have included, from time to time, a new set of interviews. Beginning recently, the auditor at DHR has also prepared a weekly memorandum reporting the status of those hires which have been questioned by members of the Monitor's staff. In this way, the Monitor can track DHR's response to issues raised. The Monitor and her counsel report problematic hiring sequences to the City.

Hiring sequences where the interviews are not actively audited are also reviewed. Specifically, the Monitor's DHR auditor reviews and tracks every "A" form (request for hire) and each referral list. Before a candidate's hire can be processed, the auditor reviews the entire "hire packet" including the referral list, the A form hiring criteria, the interview scoring sheets and the application or resume. If any of the steps in the hiring sequence are suspect, the auditor notifies both the Monitor and DHR and the hire is not processed until it can be further reviewed.

The auditors are an integral and necessary component of the Monitor's work. Their presence helps to prevent the practices which occurred in the past and which violated the decree. Their efforts, and those of DHR and new personnel in the departments responsible for hiring, have resulted in a much fairer and open hiring process. In fact, the hiring practices which were the subject of the federal prosecutions have been largely dismantled through these efforts. Although hiring errors still occur and institutional and other barriers persist, the presence of the auditors has done much to prevent further violations of the decree.

C. Complaint Investigations

As noted in the Monitor's First Report, a significant deficiency in the City's employment system is the absence of an effective and credible internal City process for responding to complaints of unlawful politically-based employment practices. Beginning in September of 2005, the Monitor was tasked with investigating such complaints, with the agreement of both parties. Based on the Monitor's initial recommendations, the City also designated a new "*Shakman* Complaint Officer" in DHR to receive *Shakman*-related

complaints. Complaints received by the City's *Shakman* Complaint Officer are promptly forwarded to the Monitor's office for investigation. Current City employees have been notified about this new avenue for registering complaints. Complaints may also be submitted through email via the Monitor's website at www.ShakmanMonitor.com. Finally, complaints often come directly to the Monitor's office. As part of the investigation process, the Monitor's office has implemented a comprehensive system for receiving, tracking, reviewing and responding to any complaints received regarding current or recent alleged *Shakman* violations in City employment.

To date, the Monitor's office has received more than 440 complaints for review. Not all complaints received by the Monitor fall within her jurisdiction. For an investigation to be undertaken, a complaint must allege specific conduct that: (1) relates to employment actions based on improper political factors; (2) is believed to have occurred since the Monitor's appointment on August 2, 2005; and (3) directly involves the City of Chicago and its departments. Over 175 complaints are currently under active investigation by the Monitor's staff. Files are assigned by department to an attorney on the Monitor's staff who directs the investigation. Paralegals assist in the investigative process. Investigations typically involve detailed interviews of the complainant, other witnesses, and other appropriate City personnel. Additionally, any relevant records related to the job action at issue are evaluated, along with any other available information or documents. The attorneys and staff involved in these investigations meet on a regular basis to discuss the status and progress of the investigations and to share information that may be useful in identifying and addressing systemic problems.

In certain cases the file is shared with the City's Inspector General Office. Typically, the Monitor's office prepares the complaint and its investigative results and then meets with a representative from the Inspector General. If the complaint is one that the Inspector General's Office believes is within its jurisdiction and is sufficiently timely, the Inspector General's Office assumes responsibility for investigating that complaint and the Monitor's investigation ceases. This work sharing agreement allows the Inspector General to recommend appropriate discipline where applicable and prevents duplication of efforts by both offices.

Significant benefits have been obtained as a direct result of this complaint process. As an initial matter, the City has been able to improve its on-going compliance with the *Shakman* Decrees and the Detailed Hiring Plan in the immediate short-term. In numerous cases where there has been an adequate basis to conclude that a complaint is well-founded, the Monitor has requested the City to take specific corrective action, as discussed below. Moreover, systemic problems have been identified and addressed.

D. Development and Implementation of Reforms

1. SYSTEMIC REFORMS

Information learned through auditing activities and complaint investigations has led to broad-based reforms in the City's employment practices. Key examples include

reforms to the hiring process for Motor Truck Drivers (“MTDs”), reforms in the hiring process for laborers, reform of an informal promotion practice known as “acting up,” and implementation of a City-wide system that identifies individuals previously terminated “for cause” by the City if or when such individuals reapply.

a. Elimination of Interviews for MTD Positions/MTD Pools

The City employs MTDs across several City departments. MTD drivers are needed at different times by different departments and are generally qualified to work in several departments. The City has also employed “seasonal truck drivers.” Some of these seasonal MTDs are hired for snow removal work, for example, and are laid off after the winter season. This has created a patchwork of different MTD positions within the different departments which employ MTDs.

A number of complaints regarding the hiring and promotion of MTDs have been brought to the Monitor’s attention. Complainants alleged that seasonal MTDs were promoted to permanent career service positions based on political connections rather than merit. Complainants have also alleged that the interview process for MTDs was used to hire “clouted” individuals over others, regardless of skill and/or experience.

The Monitor’s office raised these concerns with the City. The City, in turn, had been in the process of negotiating a new kind of MTD position: cross-departmental pool MTDs who could be utilized in four of the main departments which use MTDs as the needs of the City’s departments changed. These departments are Aviation, Transportation, Water Management and Streets and Sanitation. The pool concept would allow the City to dispense with hiring of seasonal MTDs who would be laid off and rehired yearly and instead (with certain limited exceptions), have qualified MTDs move from one department to another based on need.

Although the pool concept should eliminate many of the complaints regarding promotion from “seasonal” to permanent career service positions, it does not address the allegations of manipulation of the interview process. When the City conducted MTD interviews for the Department of Water Management in April of 2006, the Monitor formally requested that the City abolish interviewing for entry level MTDs. This request was prompted by a number of factors, including observations by the auditors of widely disparate scoring of candidates and the use of scoring criteria (such as “oral communication skills”) that were unrelated to the actual work performed by MTDs. In addition, a disproportionate number of selected candidates had very recent seniority dates with the City which were after December 2005. Finally, the Teamsters Union raised concerns that the City was violating its members’ seniority rights, but also that certain of the successful applicants were, in fact, political hires.

The Monitor concluded that there were enough “red flags” to require disposing of the list that had been generated from the interview process. None of the successful bidders had been notified about the results, thus redoing the hiring sequence should not have caused any disruption to these employees. The Monitor recommended that the City

agree to a process which would eliminate the need for interviews, but would focus on previous driving and work experience as a way of gauging qualifications for the job.

The newly agreed upon hiring process for MTDs is as follows. Internal applicants for the position will be ordered into a list by seniority. These bidders will then take a pass/fail driving test. The successful applicants' work histories then will be examined to determine whether their attendance is adequate by a pre-determined formula and whether they have been suspended from work based on discipline records. The successful applicants will then be selected in seniority order.² External pool applicants will be assessed similarly, but the list of those with the required licensure will be randomized (instead of ordered by seniority). These applicants also take a pass/fail driving test and those who pass will be selected for open positions by lottery order. The elimination of the interview process in favor of more objective measures will decrease the likelihood of manipulating the MTD hire process in the future.

b. Creation of Lottery for Laborer Positions in City

Among various recommendations made by the Monitor and agreed to by the City was the recommendation that the City purge all existing eligibility lists and referral lists that had been created by the City prior to January 1, 2004. *See* Appendix B. Such a purge was recommended due to significant concerns about the integrity of these lists. On May 3, 2006, the City's Corporation Counsel contacted the Monitor's office to advise that the City had actually not purged all eligibility lists as previously agreed. Specifically, the Monitor was advised that the City's eligibility list for the title of "Laborer" had not been purged. The Laborer eligibility list had been created more than six years earlier and contained approximately 20,000 names of job applicants who had applied for the title at that time.

The City alerted the Monitor that in attempting to fill approximately 60 "Hand Laborer" positions within the Department of Streets and Sanitation in the spring of 2006, the City had been using the unpurged Laborer eligibility list. Many of the individuals on this list were no longer viable job candidates, either because they could not be reached at their stated address or phone number, or they were no longer interested in or available for the job.

Based on numerous complaints of improprieties in filling Laborer positions in Streets and Sanitation, the Monitor concluded that the City's request to continue using the unpurged list must be brought to the attention of the Court and the Plaintiffs. The Monitor filed a motion related to this issue on May 4, 2006. *See* Appendix D. As a result, the parties entered into an agreement for filling these 60 Laborer openings that permitted filling the slots as expeditiously as possible, with adequate oversight. The Agreed Order entered by the Court on May 5, 2006 provided that the City would be allowed to utilize the unpurged eligibility list only for the purpose of filling those 60

² Eventually, the City would like to also use previous work performance as part of the hiring criteria, but, until more objective and verifiable means are developed to determine performance, the Monitor's view is that this is inadvisable.

Hand Laborer openings in Streets and Sanitation, as long as the list was randomized anew in a manner that was open and transparent and that permitted review by the Court and the Monitor. *See* Appendix E.

Upon completion of these 60 hires, however, the City had to purge the list. In order to fill any future Laborer vacancies, the City was required to create a current eligibility list, so these vacancies could be filled expeditiously and fairly. The City proceeded with creation of a new eligibility list for the Laborer titles, with direct oversight from the Monitor's office. First, the City informed all affected individuals about the recently purged list. Purge notifications were sent by the City to the entire list of applicants on the old eligibility list advising the applicants of the need to reapply and of the new application period and locations. A Job Announcement for the Laborer title was prepared and the position was opened for application from May 14, 2006 through May 27, 2006. The City also used press announcements to publicize the opening of the title, in addition to using its normal job posting processes.

Over 15,000 individuals submitted new job applications for the Laborer title. The City, with oversight from the Monitor, used a lottery process to randomize the list of job applicants. Since the creation of the new Laborer lists³ each of the Infrastructure Departments have hired Laborers from these lists, with the oversight of the Monitor. Although certain complaints regarding the hire of specific laborers have continued to be lodged with the Monitor, investigations conducted thus far indicate that these hires were completed pursuant to the lotterized list and were subject to political manipulation. Thus, although complaints will likely continue to be made regarding these coveted positions, both the City and the Monitor are now equipped to investigate quickly whether any improper influence occurred in any particular hiring sequence.

c. Reforms to the City's "Acting-Up" Practice

"Acting Up" refers to the discretionary selection of certain City employees to perform higher level and/or higher paid positions. This City practice was particularly problematic because it violated the *Shakman* Decree's Detailed Hiring Plan. Significant numbers of employees had historically been hand-picked by supervisors to "act up" for extended periods of time, sometimes as long as several years, without any formal selection process or the use of any objective criteria. The Monitor received dozens of complaints alleging that certain employees had been selected to "act up" based on unlawful political considerations. Employees complained that individuals with greater seniority and better qualifications had been passed over for "acting up" assignments in favor of less qualified politically connected individuals. Union employees that are "acting up" receive additional pay for their work. Although non-union employees "acting up" may not receive additional compensation, they do gain valuable experience that can provide a decided advantage in permanently obtaining the higher position at a later date.

³ There are six different "Laborer" lists to account for the different Laborer titles.

The inherent problems with this informal promotion practice are clear. Managers and supervisors “promote” employees into these positions with unfettered discretion in this non-competitive selection process. As the following table demonstrates, between January 1, 2006 and October 15, 2006 at least 1,000 different employees within the City’s six infrastructure departments held “acting up” positions. These employees received additional pay and experience in the title as a result.

Department	Total # People Acting Up	Total Payment Acting Up
General Services	86	\$342,586.58
Fleet	100	\$140,399.06
Streets & Sanitation	402	\$576,893.79
CDOT	13	\$20,012.32
Aviation	91	\$83,501.91
Water	373	\$145,211.39
Totals for Infrastructure	1,065	\$1,308,605.05

Thus, in a period of ten (10) months the City paid over one million dollars for individuals that “acted up” into promotions for which they did not have to compete.

There are, however, benefits in allowing some form of “acting up” to be available in the City. In certain cases the ability to quickly select an employee to “act up” into a position may be critical for the City’s legitimate operational needs. For example, a position may need to be filled temporarily, as when an employee is selected to “act up” during an incumbent’s medical leave of absence.

After carefully studying the City’s existing “acting up” practice, the Monitor recommended certain reforms. As a result, the City recently agreed to and implemented a new City-wide “Procedure for Use of Acting Up.” See Appendix F. The key features of the new policy include: (1) limiting the total time any individual may be selected to act up within any given year; (2) providing employees notice of the anticipated “acting up” assignment and equal opportunity to express interest in the assignment; (3) requiring the use of objective and specific criteria for selecting employees who “act up”; (4) requiring employees “acting up” for more than ninety days as of November 24, 2006 to be removed from their “acting up” assignment; and (5) requiring the selected employee, all those involved in his or her selection and the respective commissioner or department head to complete *Shakman* certifications as part of the selection process. These reforms are intended to minimize the potential abuse of “acting up” while providing the City the flexibility to meet its operational needs. The City has begun educating departments on the new “Procedure for Use of Acting Up.” The Monitor intends to work cooperatively with the City to ensure on-going compliance with the new policy.

d. Reform to DHR’s Screening Protocol

The Monitor received a complaint alleging *Shakman* violations following a hiring sequence for Aviation Motor Truck Drivers in the fall of 2005, prior to the elimination of

interviews for these positions, discussed above. The complainant alleged that several individuals hired as MTDs had previously been terminated “for cause” by the City. The complainant asserted that these individuals were being favored for political reasons. During this investigation, it was determined that DHR had no system for identifying applicants who had been previously terminated for cause by the City if or when such individual reapplied to the City. Although individual departments often were aware of previous “for cause” terminations, that information was not shared with other departments. Thus, a person fired from Streets and Sanitation could be rehired in Aviation.

The Monitor investigated this complaint and obtained a list of all Aviation MTDs hired in the fall of 2005 who had previously been terminated by the City (i.e., before they were hired in the fall of 2005). The list contained seven individuals whose employment histories indicated that each had been terminated by the City for disciplinary reasons (marked under Termination Reason as “Termination – Disciplinary” or “Discharge”) and hired into Aviation in the fall of 2005. (These hires were distinct from MTDs who were previously “laid off” and designated as “terminated”-- but not for disciplinary reasons.) The Monitor’s office also interviewed individuals involved in that hiring sequence who confirmed that a manager had raised objections to the rehire of certain individuals and had brought those objections to a more senior hiring official. The more senior hiring official instructed the manager to process the questioned hires. (The more “senior hiring official” has since been removed from her position and reassigned to a position with no personnel responsibility.)

As a result of this investigation, the Monitor recommended that DHR implement a system whereby any individual previously terminated for cause could be identified before that individual was rehired by the City. DHR informed the Monitor that it had also recently identified this deficiency and had been working with the Inspector General’s Office to implement such a system. Further, the Monitor has recommended that any individual previously terminated for cause not be eligible for rehire with the City.

2. SPECIFIC CORRECTIVE ACTIONS

Where possible, the Monitor’s office has made specific recommendations for discreet corrective action to avert or promptly correct possible *Shakman* violations discovered via monitoring or investigating complaints, especially when the hiring sequence at issue has not been completed. Thus, the violation, if there is one, can be averted *before* it actually happens. In some instances, these recommendations have involved specific adjustments in particular job actions.

Additionally, the Monitor has recently instituted a practice of preparing memos to the City outlining complaints and/or problems with recent or ongoing hiring sequences. In response, the City is given an opportunity to promptly review and correct problematic hiring decisions or sequences. In many instances, the City freezes the hiring sequence until remedial or corrective action, if appropriate, can be decided upon. For example, in approximately twenty different hiring sequences, the City has ordered that the entire

interview process be repeated. Often, where interviews are repeated, the City has mandated that different individuals conduct the new interviews to eliminate any potential impropriety. In other instances, referral lists have been corrected, and hiring decisions have been revisited. Similarly, information brought to the attention of the City by the Monitor has resulted in counseling and/or training of individuals involved in City hiring regarding proper procedures and, in other instances, the City has removed certain individuals from having any personnel decision-making authority. In still other instances, the City and the Monitor have agreed to postpone filling certain positions until appropriate remedial action can be agreed upon.

Some examples where corrective actions for discrete violations include a few instances where the Monitor discovered and notified the City that interviewers had altered their scores for specific candidates after the Monitor's auditor collected the original rating sheet. In response to one such instance, the City demoted one individual and provided training to another. In response to another such instance (where the alterations were minor and did not impact the candidate selected), the City counseled the individual. On one occasion, the Monitor discovered that interviewers altered the rating sheets for *all* candidates. The altered scores resulted in the selection of a different candidate than the one who had initially been deemed most qualified. Upon investigation by the City, the offending individual admitted that he and the other interviewer collaborated on their scores and altered the rating sheets. The City ordered that the hiring sequence be repeated. Although that interview sequence will be repeated, the failure by the City to discipline the offending individuals constitutes an inadequate response to the investigation. Thus, the Monitor has continued to investigate this matter.

Similarly, although the City is often willing to repeat interview sequences identified as problematic, it is reluctant to conclude that any substantive *Shakman* violation has occurred based on circumstantial evidence. Thus, without an admission from an employee that he or she explicitly relied upon prohibited political factors in taking an employment action, the City will not conclude that a substantive *Shakman* violation has occurred. This reluctance impedes the City's ability to ensure continuing and increased compliance in the future.

3. CHANGES TO HIRING BY THE IGO, CPL AND DHR

In an effort to assist certain departments with extraordinary and/or unusual hiring needs and in response to requests by the City, including the Inspector General's Office and the Chicago Public Library, the Monitor's office provided direct assistance with screening and hiring and in obtaining Court approval to modify prior Orders in order to expedite hiring.

For example, the Inspector General contacted the Monitor in late 2005 seeking assistance in formulating a specialized hiring process that would both ensure expedited hiring capabilities and maintain independence for his office. Consequently, the Monitor facilitated an agreement between the parties on a new hiring process for the Inspector General's Office (IGO) to meet that office's specific needs. *See* Appendix G. Under that

plan, the IGO can recruit candidates directly, receive applications at their office, screen candidates independently, and conduct Hiring Committee meetings to discuss the candidates' qualifications after the interviewers have evaluated each candidate independently. As a result, the IGO's office has hired approximately thirty (30) new employees since late 2005.

The Monitor is permitted to sit in on all IGO Hiring Committee meetings at which candidates are discussed and reviews all paperwork related to the IGO hires. The Monitor also reviews all completed Hiring Files and retains this documentation. This collaboration has ensured that the IGO has the opportunity to fill its hiring needs in a prompt and efficient manner while protecting the integrity of the *Shakman* decree and its goals.

In late May of 2006, representatives from the Monitor's office were asked to meet with officials of the Chicago Public Libraries ("CPL") to discuss CPL's concerns about the City's process for screening job applicants for certain positions. CPL's primary concerns related to their need to fill numerous existing "Librarian" and "Library Associate" vacancies throughout the City's libraries before the close of the school year and the on-set of the summer reading season. Specifically, CPL officials had concerns that the referral lists generated by the Department of Human Resources (formerly known as the Department of Personnel) for interview purposes would not yield viable candidates for hiring purposes in a timely fashion because: (1) these referral lists have historically been outdated and have included job applicants who were no longer available or interested in the position to which they had applied; and/or (2) in the past, these referral lists have sometimes contained few or no viable candidates because the applications had not been properly screened for specific requirements for different positions.

After discussions with CPL and City officials including representatives from the City's Law Department, the Department of Human Resources, and the Mayor's Office, and with the agreement of the Plaintiffs, the Monitor's office agreed to assist CPL meet its hiring needs expeditiously by screening applicants for various Library Associate and Librarian I through Librarian IV vacancies for a limited period beginning in May of 2006 to the present. As part of this process, the Monitor's office reviewed all current on-line and paper applications and resumes of candidates for these positions and compiled referral lists of candidates for interviews for various vacant positions. To date, the Monitor's Office, with the full cooperation of the Department of Human Resources and CPL, has successfully created referral lists for numerous vacancies in the following vacant positions: Librarian I (Cataloguing), Librarian II (Cataloguing), Librarian III (Branch Manager), Librarian IV (Branch Manager) and Children's Library Associate. As a result, CPL has been able to interview, select and hire well-qualified candidates for numerous vacancies in a timely manner. The Court was advised of the parties' agreement to have the Monitor play this role.

E. Additional Activities of Monitor

In addition to the foregoing work, the Monitor and her counsel were actively involved in the attempted resolution of motions and petitions filed in the case. Specifically, at the request of the Court and with agreement of the parties, the Monitor and her counsel engaged in substantive legal and mediation work in attempts to reach agreement between the parties on a number of disputed issues. Finally, the Monitor and her staff have also engaged in other activities, including:

- Requiring that the Department of Human Resources (DHR) conduct all scoring and screening for all *Shakman* covered positions;
- Ensuring that notice of the City's purging of applications submitted prior to January of 2004 was disseminated;
- Auditing of the *Shakman* Exempt position list and eliminating the City's former practice of moving *Shakman* Exempt positions from one department to another in violation of then existing Court orders;
- Auditing of the newly required *Shakman* certifications signed by each individual involved in each stage of hiring for *Shakman* covered positions and requiring the City to obtain the missing certifications where necessary;
- Maintaining a *Shakman* Monitor website for collecting and disseminating information about City employment practices;
- Providing training on *Shakman* principles to all Department Commissioners, personnel liaisons, DHR employees, the Mayor's Office and the City of Chicago Aldermen;
- Establishing a protocol for sharing information with the Inspector General's office regarding information and complaints received by the Monitor's office;
- Brokering agreements between the parties resulting in Agreed Orders presented to the Court.

III. ADDITIONAL REFORMS UNDER CONSIDERATION

A. *Shakman* Exempt Positions/Senior Management Hires

In her Initial Report to the court, the Monitor stated that she would further examine how the City was implementing its *Shakman* exempt list. She preliminarily concluded in her first Report that there were many titles included in the list which did not seem to meet the standard articulated in *Branti v. Finkel*, 445 U.S 507, 518 (1980) which disallows political affiliation from consideration in employment unless it is an

appropriate requirement for the effective performance of the job positions. Her further review of the list revealed that there were many titles which in one department would be “exempt” from the requirements of the *Shakman* decree, but in another department would be covered. Further, the list had been amended so many times that the City had substantial difficulty producing a list which actually reflected the reality “on the ground” in the departments. Although the City was required to maintain such a list under the decree, the only list which could be generated was, in fact, highly inaccurate. To correct this, the plaintiffs agreed that the City could file an amended list with the Court which accurately set forth those positions filled in the City (or would be filled) which currently were *Shakman* exempt. The City filed such a list with the Court.

One reason that the *Shakman* list has been such a patchwork of titles is that the exemptions had been used by the City to allow managers maximum discretion to pick senior hires. That is, these applicants are not picked for their political affiliation *per se*, or because political affiliation is necessary to accomplish the job duties, but because the managers hiring them wanted discretion to pick whom they believed was best suited for the position without going through the requirements of the Detailed Hiring Plan.

The Monitor and the City, with substantial feedback from the Plaintiffs, began to work toward a plan which would allow managers to exercise discretion in picking the City’s senior management team, but would still provide enough safeguards (which then could be audited) to ensure that political factors were not guiding the hire. In that way, the *Shakman* exempt slots would be used for those positions which are truly political, and not simply to avoid the Detailed Hiring Plan.

The Monitor first drafted a proposal for Senior Manager Hires and a revised *Shakman* Exempt list in January 2006 which it presented to the City and Plaintiffs. Both sides offered revisions to these proposals. In March, the City and Plaintiffs, under the Court’s supervision, began to negotiate a settlement of the Plaintiffs’ claims against the City which would include an agreed *Shakman* exempt list, as well as a list of senior management hires to which a less restrictive hiring process would apply.

B. Hire Process for Foremen in Infrastructure Departments

In addition to the reforms in hiring MTDs, the City has taken the lead in reforming and standardizing the process for hiring MTD foremen. Although this process is still being formalized, the City plans on using a combination of testing (written and oral) and interviews to select appropriate foremen for MTDs. The City has shared its proposed written testing materials with the Monitor and her counsel for comment. In addition, the City, the Monitor and her counsel and the affected unions have met regarding the implementation of the tests and to address fairness concerns. The City intends to roll out its MTD Foremen testing by the end of the year. The MTD Foremen testing is intended to be a pilot for using the same type of testing in other Foremen positions within the Infrastructure departments. The new testing proposed by the City for the Foremen positions, with proper oversight, will result in a significant improvement over the interview process currently in use.

C. Fire and Police Potential Reforms

The Monitor has received several complaints alleging political discrimination in the Police and Fire departments. In the Fire Department, the complaints have centered on the testing procedures for fire battalion chiefs and other supervisory positions. Complainants allege that the Fire Department has failed to promote certain disfavored candidates on the battalion chief promotion list. The allegations asserted that although the Fire Department needed additional battalion chiefs, it elected to pay overtime to existing chiefs in order to avoid awarding any promotions. In 2005 the City paid \$2.9 million in overtime to existing fire battalion chiefs. In the spring of 2005, the Fire Department held a new exam for battalion chiefs which generated a new rank order list for that position. For that test, the oral component of the examination was weighted the same as the written test and seniority/experience for the first time, but the answers given by applicants were not recorded in any way. Complainants allege that the oral examination is deliberately scored higher for favored candidates to ensure a place on the promotion list even though their written test scores are not as high as other candidates. Because the oral test answers for candidates are not preserved, there is no way to test this allegation. Accordingly, the Monitor has recommended to the City that these oral examinations be recorded and preserved in the future.

With respect to the Police Department, almost all of the complaints that the Monitor has received deal with Merit Promotions. In the usual promotion process, sworn police officers seeking promotion up the ranks take a civil service exam (except for promotions to Captain for which the civil service exam has been abolished). Applicants do not receive the results of their exam but do receive their ranking on the promotion list, which is based on their exam score and on their seniority. Generally, promotions are subsequently made in the rank order.

The Merit Promotion system, however, allows 30% of promotions to occur outside the testing process and without regard to an individual's rank order. Thus, applicants at the bottom of the rank order list can jump ahead to the top. The rationale for this process is to reward those officers who do not test well, but nonetheless have proven to be commendable officers in the field. The Merit Promotion selections are made by exempt rank personnel (Commanders, Deputy Superintendents, and Deputy Chiefs). Their picks are reviewed by a Merit Board (comprised of the deputy superintendents) which narrows down the list and forwards it to the Superintendent who makes the final selections for merit promotions.

In response to complaints regarding the Merit System selection process, the Monitor discovered that there are no *Shakman* safeguards to ensure these selections are not politically motivated. Complainants allege that some individuals are promoted not based on ability but due to their relationship with the Superintendent's office, the Mayor or an alderman. One retired Commander reported that he received phone calls from an Alderman requesting that he nominate someone for a Merit Promotion. There is nothing, *per se*, improper about an Alderman recommending an individual for a Merit Promotion. In fact, many Aldermen may know the officers that work in their Wards and may be

making recommendations based on their observations and familiarity with that officer's work.

Notably, the Monitor is not aware of any actual *Shakman* violation with respect to the Merit Promotion system. Rather, she has merely received complaints of such violations. Nonetheless, because of the lack of *Shakman*-type safeguards with respect to the Merit Promotion system, she would recommend that the City review the process and institute such safeguards for future promotions.

D. Chicago Public Library Hiring Plan

The Chicago Public Library has proposed a hiring plan to centralize hiring within the Library itself for certain professional titles. The plan calls for more detailed bid forms and job postings, more targeted recruitment efforts, and for CPL's own human resources department to take over the screening of candidates and creation of referral lists for certain positions in order to expedite the hiring process and meet CPL's business needs. The proposed plan is under review and has not been finalized.

E. Development of Standardized Procedures

The City has recognized many of the problems which are outlined below in Section IV and has begun to address them with the Monitor's input. One important step in this direction is the development of uniform standards for the use of lack of attendance statistics and discipline data in promotion decisions which, until this development, had been applied differently throughout City departments. Similarly, the City has also developed written guidelines for conducting interviews which will improve the process and make it more uniform and fair throughout the City. Finally, the City has begun to use controlled testing in the infrastructure departments to assess skills required for certain titles.

IV. ONGOING COMPLIANCE BARRIERS

A. Interview Procedures

Despite the Monitor's oversight of interviews and hiring sequences, certain areas of potential abuse remain in the City's current interview procedures. These areas permit potential manipulation of the interview process for prohibited purposes. The following issues continue to present compliance barriers and should be examined.

1. Interview Bias

The current interview process does little to prevent an interviewer from "assisting" a preferred candidate by steering the applicant to appropriate interview question responses. Additionally, it is not difficult for an interviewer to score a particular applicant very highly to skew the result in the applicant's favor.

2. Use of One Name Referral Lists

On occasion, DHR will have only one qualified applicant or bidder apply for a position. When DHR provides a department with a “one name” referral list, the Monitor attempts to closely review the hiring sequence. In some instances, there are benign explanations for the one name referral list. However, a one name referral list might also be the product of the failure to adequately post the position in order to reduce the number of individuals competing against a favored applicant. Where there is an indication of such impropriety, the hiring sequence is redone.

3. Manipulation of Job Criteria

Qualifying and hiring criteria for a given position are drafted by the departments where the vacancy exists. No mechanism currently prevents departments from manipulating the criteria in order to favor a particular applicant or provides any safeguards on this front. In cases where the qualifying or hiring criteria are suspect, Monitor has required a review of the criteria to help ensure that the criteria are not being improperly used to eliminate or reduce real competition for the position.

4. Manipulation of Referral Lists

Another practice that can improperly influence the hiring process occurs when a department strikes a candidate from consideration for an interview. Currently, the department has the ability to review the referral list provided by DHR and to strike candidates from consideration, provided a justification is given. The auditors have encountered instances when candidates were stricken from the interview list though they appear qualified for the position based on their applications. In these cases, the justification for striking the applicant has been closely reviewed.

5. Interview Questions

There are virtually no existing safeguards within the City designed to ensure that interview questions are appropriate and reflect the actual criteria for the positions. When departments rely on outdated or immaterial interview questions to evaluate applicants, the interview is ineffective and open to potential manipulation. For example, the City continues to subjectively rate applicants on interview questions that relate to a basic objective job requirements. Sometimes these questions are as basic as “do you live in Chicago?” and “do you have a valid license?” Subjectively rating candidates based on answers to such questions is inefficient and subject to abuse.

6. Discord Between Interview Questions and Rating Criteria

A related problem in the City’s current interview procedures is that the hiring criteria used to rate an applicant’s interview does not correlate to the information solicited by the interview questions. For example, applicants are often rated on their writing skills, without any method of measurement. Similarly, interviewers often assess

and score hiring criteria such as “previous satisfactory performance in positions involving similar duties within the City” even if the interviewer is unfamiliar with an applicant’s prior performance. Consequently, this provides an avenue for manipulating an applicant’s interview score.

B. Aldermanic Recommendations

Another problematic area in ensuring on-going compliance with *Shakman* involves Aldermanic recommendations for employment actions. A number of the City’s Aldermen have raised concerns about their ability to recommend applicants and employees for hire or promotion at the City. During *Shakman* training provided to the Aldermen and in conversations with various Aldermen, the Monitor has consistently informed the Aldermen that recommendations based on personal knowledge of an individual’s job-related skills, work experience, or other job-related qualifications are permissible. Recommendations based on political activities, associations and/or views, however, are clearly prohibited from being considered for *Shakman* covered positions.

In order to eliminate even the appearance of impropriety, the Monitor has suggested (although not required) that Aldermen submit job recommendations in writing. Despite all of this, however, certain Aldermen continue to make job recommendations that are not in writing and/or that do not appear to be based on relevant job-related factors. For example, in one case, an Alderman recommended an employee for transfer based on the employee’s purported “excellent work record” even though that employee had just received a disciplinary suspension. Another Alderman simply instructed the Department of Streets and Sanitation to promote a recently hired Motor Truck Driver from “seasonal” to “permanent” (a highly coveted promotion) without any justification at all. In another instance, an Alderman requested the rehire of a recently laid off employee based on the employee’s status as a “good employee” despite the fact that the employee had received two separate disciplinary suspensions within the prior six months. Thus, despite *Shakman* compliance by the vast majority of Aldermen in the practice of recommending hires and promotions, there must be a system in place to audit Aldermanic recommendations which may improperly interfere with a hiring sequence.

C. City’s Compliance with Agreements

A recurring difficulty in monitoring City hiring arises from a lack of cohesiveness in the City. Thus, although the Monitor may reach agreements with the Mayor’s Office, DHR and the Law Department, those agreements are not always adhered to by all departments within the City. For example, despite repeated directives from the Mayor’s Office to each department that notice of any interviews must be given to the Monitor at least 48 hours in advance, some departments still fail to comply with this agreement. Similarly, despite the City’s agreement that all interviews will be conducted by more than one individual and that all rating sheets will be individually and contemporaneously completed, some departments continue to conduct interviews with one only interviewer and/or fail to contemporaneously complete the rating sheets. In fact, on a few occasions, despite explicit instructions from the Mayor’s Office, DHR and/or the Law Department,

interviewers have altered scores for particular candidates after the Monitor collected the original rating sheets.

The City also failed to honor an agreement reached between members of the Mayor's Office, the Law Department and the Monitor. As described above, after numerous concerns were raised regarding the Water Department's interviews for career service Motor Truck Drivers in April of 2006, the Monitor requested and the City agreed to eliminate interviews from the hiring process for MTDs and rely instead, upon testing and other objective factors. That agreement was explicitly intended to apply to those Water Department MTD hires in April of 2006. After these MTDs were hired and notified of the hire, it was discovered that the City had, despite the agreement with the Monitor, relied upon the suspect interview scores in making the MTD hires. As a result, those hires had to be rescinded causing significant disruption to the workers who believed they were selected for the MTD positions.

There have also been breaches of agreements that have been formalized in different Court Orders. For example, despite the Order that all applications and lists from before 2004 be purged, the City failed to purge the Laborer's list discussed above. As a result, there was a delay in hiring and need to modify the Court's order. This also resulted in a substantial amount of additional work on the part of the Monitor's office. Similarly, as discussed in the Monitor's Status Report of March 23, 2006, the City also initially failed to comply with the requirement that *Shakman* Certifications be signed *prior* to the hiring of any individual. As a result, the Monitor's office and the City were required expend hundreds of hours reviewing *Shakman* Certifications to identify and obtain missing or incomplete certifications. Thus, the Monitor's role has included not simply making recommendations and reaching agreements with the City on reforms in hiring, but has also required auditing compliance with even these agreements.

V. RECOMMENDATIONS

- ESTABLISHMENT OF AN EFFECTIVE ANTI-PATRONAGE POLICY
- ON-GOING OVERSIGHT OF HIRING PROCESS
- IMPROVEMENTS IN JOB APPLICATION PROCESS
- COMPREHENSIVE *SHAKMAN* TRAINING FOR PERSONNEL EMPLOYEES
- INCREASED ACCOUNTABILITY FOR PERSONNEL EMPLOYEES
- COMPREHENSIVE AUDIT OF HIRING CRITERIA AND JOB POSITIONS
- IMPROVEMENTS IN INTERVIEW PROCESS
- INCREASED ACCOUNTABILITY FOR NON-COMPLIANCE
- PERFORMANCE MANAGEMENT FOR DHR
- REGULAR TRAINING FOR ALL EMPLOYEES ON *SHAKMAN* PRINCIPLES
- ELIMINATION OF INTERVIEWS FOR "WILLING AND ABLE" POSITIONS
- IMPROVEMENTS IN DHR'S SCREENING

Respectfully submitted this 4th day of December, 2006

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