

The Monitor's Annual Report for 2006 concluded, in part, that the City's compliance with the *Shakman* Decree had significantly increased since September of 2005. The 2006 Report also noted that the City's Department of Human Resources ("DHR") was screening all applicants and creating all referral lists and that "[t]he hiring departments no longer submit names of candidates to DHR or add names to referral lists." See Appendix A at page 2.

Since that filing, the Monitor has uncovered isolated instances in which certain hiring departments did, in fact, submit names of candidates to DHR and sought to, or actually did, add those names to referral/interview lists. Moreover, although the Monitor has not uncovered the *type* of wholesale overt manipulation of interviews presented in the criminal trial of *USA v. Sorich*, et al., other, more subtle, types of manipulations of the hiring process have surfaced. Thus, whereas the City's compliance had substantially increased during 2006, the same cannot be said for the City's compliance in 2007. Nevertheless, the City's overall compliance as compared to pre-2005 still shows a marked improvement over the conditions reported on in September of 2005.

This Report provides: (1) an overview of several key activities conducted by the Monitor and her staff pursuant to the *Accord*; (2) a description of systemic compliance initiatives; (3) a summary of specific violations and corrective actions undertaken in 2007; and (4) compliance deficiencies requiring immediate redress.

I. KEY ACTIVITIES OF MONITOR IN 2007

The May 31, 2007 *Accord* supersedes and replaces the 1983 *Shakman* Consent Judgment. The 1972 *Shakman* Consent Judgment remains in effect. Under the *Accord*, the City continues to be prohibited from basing employment decisions on political reasons or factors. The Court retains jurisdiction for ensuring compliance with the *Accord* and the Monitor shall continue to engage in active oversight of the City's hiring and employment practices for the duration of the *Accord*. In addition to the Monitor's continuing oversight of the City's employment practices, under the *Accord*, the Monitor is to facilitate the development of the City's New Hiring Plan and adjudicate claims submitted by alleged victims of patronage and issue awards from a \$12 million settlement fund.

Additionally, the *Accord* provides that it will terminate on or after December 31, 2008 if the Court finds that the City is in substantial compliance with its terms. "Substantial Compliance" is defined as being met if the City can demonstrate that:

- 1) the City has implemented the New Plan, including procedures to ensure compliance with the New Plan and identify instances of non-compliance;
- 2) the City has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence;

3) the City does not have a policy, custom or practice of making employment decisions based on political factors except for positions that are exempt under the *Accord*;

4) the absence of material noncompliance which frustrates the *Accord*'s essential purpose. The [Monitor] and the Court may consider the number of post-*Accord* complaints that the Inspector General found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the City is not in substantial compliance; and

5) the City has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment. *See Accord*, Section I.G.(8).

The City may initiate a Substantial Compliance review on or after December 31, 2008. To do so, the City must submit a Certification by the Commissioner of the Department of Human Resources stating that she finds the City in Substantial Compliance with the *Accord*. The City must also submit a Declaration by the Mayor stating that he believes the City is in Substantial Compliance with the *Accord*. Within thirty days thereafter, the Monitor must advise the Court whether, in her opinion, the City is or is not in Substantial Compliance with the *Accord*. If, in the Monitor's opinion, Substantial Compliance has not been achieved, the City may request a hearing. If, after such hearing, the Court finds that the Monitor's opinion is contrary to the "preponderance of the evidence," then the Court shall terminate the *Accord*. If, after such a hearing, the Court does not terminate the *Accord*, it shall remain in effect and the City may re-initiate the Substantial Compliance review in six months.

A. Adjudication of Claims

The *Accord* requires the City to establish a \$12 million fund to compensate Class Members for any and all injuries arising out of alleged violations of the 1972 or 1983 *Shakman* Consent Decrees between the period of January 1, 2000 and May 31, 2007.¹ Individuals seeking to recover a monetary award from the Claim Fund were required to complete and submit a signed Claim Form and Release to the Monitor's office by September 28, 2007. Each Claim Form was to include a sworn statement setting forth the individual's claims including: 1) the date of the alleged violation; 2) a description of the violation; 3) a description of the damages suffered; and 4) certain identifying information. Pursuant to the *Accord*, within ninety days thereafter the Monitor is to assess whether each Claimant is eligible for relief under the Claim Fund and, if so, the amount of relief to be awarded.

To date, the number of Claim Forms received totals approximately fifteen hundred. In assessing any award amount for each eligible Claim Form, the Monitor is to

¹ There is a separate complaint and remedial process administered by the City of Chicago's Inspector General's Office for individuals that allege violations of the prohibition against patronage practices occurring after May 31, 2007.

consider all relevant factors and evidence regarding a particular claim, including, but not limited to: 1) the ratio of applicants to the actual number of positions filled; 2) the facts presented regarding the alleged violation; 3) the salary of the position sought; 4) the economic benefit of the action at issue and number of eligible recipients; 5) the strength of the evidence presented; 6) the amount of the Claim Fund; and 7) the number of claims submitted.

As Claim Forms were submitted to the Monitor's office, each Claim Form was logged into a computer system with certain tracking information including the following: an individual claim number; the name and social security number of the claimant; contact information; the date the Claim Form was received; and the department in which the alleged violation occurred. In addition, single page questionnaires were completed that summarized the nature of the complaint; the decision-maker accused of patronage; the beneficiary of the violation; whether the claimant complained previously to the Monitor's office (or the City); whether the complaint was within the liability period of January 2000 to May 31, 2007; whether the required documents were signed; and what, if any, other information the Monitor's office already possessed about the individuals or hiring sequences implicated.

At the close of the submission period, the Monitor and her counsel began conducting initial reviews and assessments of each Claim Form. The Claim Forms were initially separated by department (i.e., Aviation, Streets and Sanitation) and then assigned to a particular attorney. The initial review consists of determining whether the claimant alleges a timely violation against the City; the number of hiring sequences complained of; the type of hiring sequences (e.g., whether they are high volume "laborer" positions or low volume "general foreman" positions); the strength of any evidence presented (e.g., documents demonstrating that claimant applied for and was qualified for a particular position); and the specificity of the patronage evidence. The initial review also includes determining whether independent evidence relevant to the alleged violation exists. For example, were the complained of sequence(s) discussed in the testimony and/or exhibits from the *Sorich* trial? Did the Monitor's own investigations uncover evidence of improper practices during a particular hiring sequence? Did representatives from the Monitor's office attend interviews or tests regarding the complained of sequence? Does the complained of sequence involve individuals accused of wrongdoing in other instances? Finally, the initial review assesses whether the *complainant* was the beneficiary of patronage in other instances. Based on an analysis of the above-described information, each Claim Form is preliminarily assigned to one of five tiers. Tier One contains the weakest claims and Tier Five contains the strongest claims.

After the initial reviews are completed for each Claim Form, the Claim Forms will be reassessed to determine what, if any, additional investigation is required. Additional investigation methods may include: examining work histories; examining hiring packets, including eligibility lists, referral lists and interview rating forms; conducting interviews of complainants; and conducting interviews of other individuals with knowledge. Ultimately, assignment of monetary awards for each Claim Form will be based on an amalgamation of all relevant evidence.

Pursuant to the *Accord*, within ninety days of the Claim Form deadline the Monitor is to determine whether each claimant is eligible for recovery and if so, the specific monetary award for each eligible claimant. The deadline for these determinations is currently December 27, 2007. In light of the large number of Claim Forms received, however, the Monitor anticipates seeking an extension of ninety days from the Court. The motion for extension shall be filed before December 27, 2007.

B. Development of New Hiring Plan

Pursuant to the *Accord*, the Monitor and her counsel have performed a substantial amount of work facilitating the development of a new hiring plan to replace the City's previous Detailed Hiring Provisions (the "New Plan"). The Monitor's work on the development of the New Plan, however, began well before the final entry of the *Accord*. In January of 2007, the Monitor and her counsel participated in the first of several in-depth meetings with City officials and a group of private consultants from Hewitt Associates retained by the City of Chicago's Law Department to draft the City's new hiring plan. The Monitor provided detailed input to these individuals, both verbally and in writing, regarding the key principles that should guide the formulation of the City's new hiring plan. These included recommendations that the City decrease its reliance on the interview process for selecting candidates in favor of an objective selection process utilizing written tests, skills tests, and lotteries where appropriate; streamline the job application process and create a more uniform and objective system for scoring applicants as minimally qualified for various positions; establish an effective recruiting component within the City's Department of Human Resources to attract and select the most qualified candidates for more specialized positions; and finally, that the City establish an effective monitoring system to minimize unlawful political patronage through the use of random auditing and monitoring of hiring decisions, on-going audits of compliance with the New Plan, and effective measures to detect and respond to any non-compliance.

Over the next several months, the Monitor, her counsel, City officials and representatives from Hewitt Associates continued to have regular meetings to discuss the content of the hiring plan. By late April of 2007, Hewitt Associates produced a highly technical report regarding a redesign of the City's hiring systems. This technical report proved to be somewhat cumbersome and the City, the Plaintiffs and the Monitor were all concerned that it would result in an ineffective replacement for the City's Detailed Hiring Provisions. Accordingly, with the consent of the parties, the Monitor and her counsel drafted and submitted a new hiring plan document in mid-May for the City and Plaintiff's review. Additional extensive deliberation, discussion, and redrafting continued regarding the various components within this new plan. The parties and the Monitor eventually reached agreement on the majority of components to be included within the City's redesigned hiring plan. These agreed upon components are reflected in the City's proposed "New Plan" which was filed with the Court on August 16, 2007.

The City's filing, however, failed to include two important features that had been strongly recommended by the Monitor and the Plaintiffs: (1) the placement of monitoring

and auditing of the City's compliance with the New Plan in the existing Audit Division of the Inspector General's Office; and (2) the requirement that all contacts by Alderman, the Mayor's Office or any other elected officials regarding the employment of a particular job seeker or employee remain transparent and reported. As required by the *Accord*, on September 27, 2007, the Monitor filed a detailed written report to the Court regarding the nature of these disputed issues along with recommendations for resolution of these issues for the Court's determination. The City's proposed New Plan, along with the Monitor's recommendations and the written response of the Plaintiffs and others, remain pending before the Court.

The City is currently in the process of implementing the agreed upon components of the New Plan. Part of this implementation involves the development and launch of its new "CAREERS" online job site. The new "CAREERS" online job site has been redesigned to: (1) give applicants better control of their application information, including immediate access to the status of their pending job applications, (2) provide "real-time" notification to applicants if they do not meet the minimum requirements for positions; (3) improve tracking capabilities for the City's overall hiring process; and (4) create a fully automated application system that should eventually lead to more effective and efficient hiring in the City and that should allow for the meaningful audit of the City's employment practices. The City is still transitioning from its previous on-line application and paper system to its new CAREERS system, which is still in development. Screening of "old" on-line applications that were "in process" when the new CAREERS system was recently launched has not been completed. The design, analysis, configuration, test and launch of the CAREERS system for all positions across the City are also still in process.

The City, the Monitor and her counsel have also been involved in other on-going projects required by the redesign of the City's hiring processes. For example, the Monitor has strongly supported the use of effective skills and/or knowledge tests to identify the most qualified applicants for certain positions in City government. The City's proposed New Plan adopts this principle and reflects an increased reliance on objective testing in the hiring process. However, the New Plan does not yet include the essential comprehensive list of job titles that will actually be filled with the use of such tests. The Monitor has pressed for the completion of a comprehensive job analysis of positions across the City. Such a job analysis is crucial for both designing and implementing any tests to fill various positions across the City. The Monitor and the City anticipate supplementing the New Plan with the actual titles that will be filled with the use of tests after the City completes its job audit.

As also noted in the New Plan presented by the City to the Court on August 16, 2007, a specific hiring process for sworn and uniformed titles in the City's Police and Fire Departments remains to be developed and presented for Court approval. Historically, the City has used outside vendors for the development and administration of tests to establish eligibility and promotion lists for various sworn and uniformed titles in these departments. These hiring processes have not been problem-free. For example, in June of 2007, the Monitor's office received several complaints regarding alleged

problems with the Police Lieutenant Oral Examination that had been administered without notice to the Monitor in January of 2007. In mid-June, the City scheduled a “redo” of this oral examination that was open to all previous test-takers and that would use the same questions from the previous exam. The Monitor’s office received complaints alleging that individuals with political connections might have access to the correct answers for purposes of the redo. The Monitor’s office raised concerns about the possibility of manipulation of the hiring process directly to the Mayor’s office and the Department of Law, and requested that the City consider an alternative resolution. The City declined and proceeded with the “redo” using the previous questions.

Other potential problems with the hiring processes in the City’s Fire and Police Departments continue to surface. As noted in the Monitor’s Annual Report for 2006, some problems involve the testing process used for selecting fire battalion chiefs and other supervisory level employees in the City’s Fire Department and the use of merit promotions for police officers. All of these areas will require close attention during the development of the new hiring plan for these two departments.

C. Ongoing Monitoring of Hiring Processes

As described in the 2006 Annual Report, the Monitor’s activities continue to include information gathering and active oversight of the City’s hiring process. The Monitor and her staff continue to meet on a weekly basis with officials from the City of Chicago to discuss a variety of hiring-related issues, including ongoing efforts to improve the hiring process and any recently identified hiring irregularities. The Monitor and her staff have developed a system whereby the City is informed of any problematic hiring sequences and/or practices during the weekly meetings and/or through memorandum or letters.

1. Overseeing Interviews and Tests

Much of the information regarding problematic hires, promotions and/or processes continues to be gleaned from the Monitor staff’s presence at interviews and tests. As previously reported, individuals from the Monitor’s staff attend interviews to 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. Moreover, at the conclusion of each interview series, all rating sheets are collected and copied so that there can be no alterations after the conclusion of the interview process. After each interview series, a memo is prepared identifying any pertinent information and is shared with the rest of the Monitor’s staff.

Since the Annual Report filed on December 4, 2006, more than 1820 interviews have been audited. In total, the percentage of the interviews audited by the Monitor’s staff is approximately 30% of the interviews conducted by the City overall.

INFRASTRUCTURE DEPARTMENT INTERVIEWS AUDITED

AVIATION	316
FLEET	14
GENERAL SERVICES	32
STREETS AND SANITATION	12
TRANSPORTATION	34
WATER MANAGEMENT	142

OTHER CITY DEPARTMENT INTERVIEWS AUDITED

Administrative Hearings	11	Animal Care and Control	4
BIS	15	Budget Management	13
Buildings	33	Business Affairs and Licensing	85
CYS	55	City Clerk	60
Construction and Permits	14	Consumer Services	10
Cultural Affairs	13	Environment	12
Finance	19	Fire	74
Graphics	4	Health	43
Housing	85	Human Relations	8
Human Resources	93	Human Services	32
Library	4	Mayor's Office	1
MOPD	4	MOSE	43
MOWD	5	OEMC	118
OMP	17	Planning	39
Police	252	Procurement	15
Revenue	86	Zoning	4

In addition, approximately 1775 tests have been audited by the Monitor's staff since the Annual Report was filed on December 4, 2006. As explained above, at the Monitor's suggestion, the City has started the process of replacing and/or supplementing interviews with tests in order to help ensure that the best qualified candidates are selected. The tests audited range from mass group exercises at the Mayor's Office of Special Events and Police, to MTD driving tests and trade specific exams given as part of the new Foreman Promotional Process.

CITY DEPARTMENT TESTS AUDITED

AVIATION	91
FLEET	41
MOSE	850
POLICE	550
STREETS AND SANITATION	144
TRANSPORTATION	8
WATER	90

2. Auditing Hiring Documents

Aside from overseeing interviews and tests, a member of the Monitor's staff continues to be based at the City's Department of Human Resources on a full time basis. This role is critical for identifying and investigating irregularities in the hiring process. Duties performed by this individual include: a thorough examination of each referral list sent to each department, including reviewing the criteria for each position to be filled; comparing the minimum requirements to the job descriptions; reviewing and assessing any changes to the minimum requirements and/or hiring/screening criteria; ensuring that positions are posted for the requisite period of time; verifying use of and fairness of the lottery process; ensuring all applicants for given position are scored; reviewing history of eligibility list; reviewing DHR analysts' screening data and assessments; verifying removal of any political references on candidates' resumes; and investigating any prior rejections of other referral lists. Similarly, when reviewing hiring packets for the selected candidates, the Monitor's DHR auditor examines each packet to ensure *Shakman* certifications are complete; the rating sheets are complete; information on the rating sheets is consistent with the selection made; the selected candidate's resume supports the selection choice; the memos and notes from the interviews support the selection choice and that no other irregularities occurred during the selection process. When the vacant position involves a test, the DHR auditor reviews the test results and ensures the test results are consistent and accurate.

3. Processing Complaints

Finally, the Monitor's office continues to receive a fair number of complaints regarding alleged *Shakman* violations, including allegations of rigged interviews and of violations of the City's Acting-up policy. To date, the Monitor's office has received more than 685 complaints for review. The *Accord* provides that complaints of patronage practices occurring after May of 2007 should be presented to the Inspector General's Office for investigation. In light of the Monitor's and the Inspector General's respective but overlapping mandates, each newly received complaint is reviewed for appropriate action. First, the Monitor's office advises each new complainant that he or she should contact the Inspector General's office directly. Second, a determination is made regarding whether the complaint falls under the jurisdiction of the Inspector General, the Monitor or both. For example, a complaint alleging a rigged hiring sequence is relevant to both the Inspector General's and the Monitor's duties. Thus, although the Monitor's office refers the complaint to the Inspector General for investigation, the Monitor's office may simultaneously put a hold on the suspect hiring packet to prevent any further violation. In some instances, the Monitor's office will conduct an initial investigation and then forward its results to the Inspector General's Office for additional investigation. In other instances, the Inspector General's office will defer the investigation to the Monitor's office.

As discussed in the Monitor's September 27, 2007 Report and Recommendations Regarding City of Chicago's Proposed "New Plan," the centralization of the monitoring and investigation functions of the City's new hiring plan would likely increase efficiency

and effectiveness. If, however, those functions are ultimately split between the new Office of Compliance and the Inspector General's office, the two departments should establish a formal protocol for the sharing of information.

II. SYSTEMIC COMPLIANCE INITIATIVES

During the course of overseeing the City's hiring and promotion practices, the Monitor's office has identified certain systemic deficiencies. The City and the Monitor have worked together to remedy these deficiencies and have worked to institute certain broad-based reforms. Key examples include the creation of a Foreman Promotional Process, the institution of attendance and discipline standards for employees seeking promotion, and the establishment of rules prohibiting the manipulation of City hires through the use of outside contractors.

A. Creation of Foreman Promotional Process

Information gathered through complaints, interview auditing and through other evidentiary sources suggests that some promotions to foreman in the various trade positions were subject to political manipulation during the interview process. Beginning in late 2006, the City and the Monitor's office sought to create a new process that would inject an objective measure of skill into the foreman selection process. The Monitor and her counsel held a series of meetings with individuals from the Mayor's Office and the Law Department in an attempt to draft a new Foreman Promotional Process. The Monitor initially proposed that the selection process be limited to testing. Because the positions at issue are all skilled trade positions, using a test to fill these slots would guarantee selection of the individual with superior technical skills. The City, however, sought to retain an interview component in the selection process because of the supervisory skills necessary for these positions.

In an effort to assess both technical and supervisory skills, the Monitor and City agreed to a three part process comprised of two tests and an interview. *See* Foreman of Laborers Promotional Plan, attached as Appendix B. The City has agreed to use this process for all Foreman Titles, attached as Appendix C. Part I of the process is a twenty question multiple choice and true/false test covering three topics: Personnel Rules; Ethics; and *Shakman* Compliance. For any given test, the questions will be drawn from a pool of questions in order to help ensure that the same test is not used twice. This test is designed to ensure candidates have a basic level of knowledge that is essential to a manager/supervisor role. Only those individuals with a score of 70% or higher will advance to the next stage of the process.

Part II is a practical application test that measures basic aptitude for supervisory skills and technical skills. This test is a five question short answer test that covers three areas: the ability to use and complete forms and reports (i.e., a Report of Occupational Injury or Illness Form or Vehicle/Equipment Crash/Damage Report Form); key responsibilities and/or expectations of employees the applicant will supervise; and technical questions designed by each department to test the applicant's knowledge of the

particular skill required by the applicant. Only the applicants with a score of 70% or higher will advance to the next stage of the process.

Part III of the Foremen Promotional Process is the interview stage. A pool of questions on supervisory ability maintained by DHR will be available for the departments to select, depending on their respective needs. Other questions that are more department specific may also be added, upon approval by DHR. The interview will consist of five questions each with a value of 20 points and 70% shall be deemed a passing score. Any department is free to opt out of the Part III interview stage, so long as the department notifies DHR in advance of any administering of tests.

Each applicant that received passing scores for all three (or two if interviews are waived) parts will have a final score that is the average of the three individual scores. Scores are then ranked with scores greater than or equal to 90 deemed "Most Qualified," scores greater than or equal to 80 and less than 90 deemed "Highly Qualified" and scores greater than or equal to 70 and less than 80 deemed "Qualified." Selections will first be made from the Most Qualified category in order of seniority, and subsequently from the Highly Qualified and Qualified categories in seniority order, as needed.

To date, the City has administered approximately ten hiring sequences pursuant to the Foremen Promotional Process. During the Monitor's auditing of these tests, problems have been identified with the scoring of some of the Part II written tests. In some cases, two test proctors independently score each test answer booklet and when finished the two scores are averaged to produce a final number that determines whether or not the candidate proceeds to the final round of the process (Part III). However, due to the form of the questions, each proctor can subjectively determine how to score the answers, and this process has led to some inconsistent scores for the same answer. Thus, one scorer will have a candidate passing the test, but another scorer will fail the same candidate. Another problem identified is that in some Part II tests no technical skills questions are included at all. Because the purpose of the Part II test is to evaluate technical and practical skills related to the trade position at issue, the lack of technical questions seriously undermines the objectivity of the test. After alerting the City of these problems, the Monitor and the City have worked on improving the system. In order to account for the scoring problem, the Department of Human Resources will rescore any problematic tests already completed and will be responsible for scoring all tests going forward. With respect to the content of the tests, the City has committed to revising Part II tests to ensure the inclusion of technical questions. It is likely that additional modifications are required and those should be addressed going forward. For example, the Monitor has suggested the City use multiple choice questions for Part II tests to eliminate subjectivity in scoring. In addition, she has recommended that Part II questions focus more heavily on technical skills. It is anticipated that these recommendations will be instituted in the future.

B. Institution of Uniform Attendance and Discipline Criteria

Prior to 2007, the City did not use uniform guidelines regarding attendance or discipline when assessing an individual's promotional consideration. In 2006, the City, in conjunction with the Monitor's office, developed guidelines for utilizing the attendance and discipline history of candidates who were selected for promotion through the interview and/or testing process. Under the new policy, any individual with the equivalent of seven (7) cumulative days of unexcused absences or seven (7) cumulative days of disciplinary absences during the previous twelve (12) months is ineligible for promotion. Thus, employees with a recent history of attendance and/or discipline deficiencies will not be rewarded with promotions. Clearly the use of some objective attendance and disciplinary standards is an improvement over the past practice. Since the implementation of this policy, however, two issues have been highlighted that should be addressed.

First, the Monitor recently suggested that the City revise the policy after reviewing a hire packet. The current policy permits an individual with 6.5 days of unexcused absences *plus* 6.5 days of disciplinary suspension to be eligible for promotion, although an individual with 7.5 days of unexcused absences and *no* disciplinary suspension days would be ineligible. This discrepancy was not considered prior to the City's implementation of the policy, and such an outcome was not the intended consequence of the new policy.

Second, the Monitor also recently discovered that City departments were given the *option* to "opt out" of using the attendance and discipline criteria for promotions within their departments. After discussions between the City and the Monitor's office, the City has determined that it will require *all* departments to use the criteria beginning in 2008, unless a collective bargaining agreement requires otherwise. Notably, nothing in the policy prevents any department from using a *more* restrictive policy, so long as it applies that policy uniformly.

Despite the concerns raised above, the institution of this policy helps ensure that employees' attendance and disciplinary history is taken into account when determining promotions. The City's decision to make this policy mandatory will help to increase fairness and equity in promotion decisions.

C. Prohibition Against Using Contractors to Subvert Hiring Rules

Another systemic reform recently instituted is a formal rule prohibiting City employees from using contract assignments to subvert City hiring rules. This issue came to the Monitor's office attention when the office conducted an investigation into a suspect hiring sequence in the Department of Planning ("Planning") after discovering the following events. In March of 2007, Planning conducted interviews of two internal City candidates for a Senior Research Assistant. Neither candidate was offered a position due to a purported lack of qualifications. Subsequently, Planning requested a new referral

list² that would include outside applicants. Planning received a new interview list of four candidates. During the regular auditing of the second series of interviews for the position, the Monitor's office detected evidence of potential pre-selection. Specifically, based on the answers to the questions, the predetermined qualifications and the work product that the interviewees brought to the interview, the selection of the successful candidate appeared suspect. At the Monitor's request, the City agreed to redo the interviews. The third round of interviews produced the same results and raised the same concerns regarding pre-selection.

The Monitor's office conducted an investigation that revealed that the successful candidate had been a student intern in Planning from November 2004 until January 2007, where he performed the duties of Senior Research Assistant. In January of 2007, the Commissioner of the Department of Human Resources began more strictly enforcing the rule that student interns actually be students. As a result, the intern was forced to vacate his position because he was no longer a student and had not been enrolled in any courses since February of 2006. Also in January of 2007, the department decided to "outsource" that same position to an outside contractor. The outside contractor hired the former intern and he continued to perform the duties he had previously performed as a student intern, which were the same duties as the now vacant Senior Research Assistant position. The investigation also revealed that supervisors in Planning had expressly directed the contractor to hire the Planning intern because the department was no longer permitted to employ him. During his transition from a City "student" intern to an employee of the outside contractor, the individual in question never left his duties or his desk at Planning. When Planning sought to fill the Senior Research Assistant position permanently, the former intern was selected on both occasions. The Monitor's investigation concluded that the hiring sequence had been manipulated in contravention of the City's hiring rules.

This issue arose again when the Monitor's office conducted an investigation into a hiring sequence in the Mayor's Office of Special Events ("MOSE"). In this instance, the Department of Human Resources' Compliance Division alerted the Monitor's office to a suspicious hiring sequence in MOSE. MOSE originally sought to fill a Special Events Coordinator ("SEC") III position in early summer 2006. It appeared that MOSE had delayed requesting an interview list for this position until one of its interns graduated from college in May of 2006. Despite the fact that the intern did not meet the qualifications for the SEC III position, due to an error in DHR, the intern was referred for the position, interviewed, and then selected by MOSE. DHR's Compliance Department rejected the hire packet after noticing that both of the interviewers involved in the selection process were listed as that candidate's employment references. Subsequently, DHR discovered the candidate did not meet the minimum qualifications for the position in the first instance, and should not have been eligible to even interview for the position.

After DHR rejected the candidate and informed MOSE it could not hire the former intern, MOSE sought to reclassify the position as an SEC II, a position that would more closely align with the intern's years of experience. The Monitor's investigation

² A "referral" list is the equivalent of an "interview" list. These terms are used interchangeably herein.

revealed that the department specifically sought to downgrade the position to award the slot to the former intern. However, DHR's review of the criteria for the downgraded position revealed that the former intern *still* did not qualify for the position and she was not included on the list of candidates referred to MOSE for interviews. Instead of choosing a candidate from the list provided by DHR, a list that had produced several qualified candidates for selection, MOSE requested another referral list. This request was denied.

At this point, a Deputy Director in MOSE explicitly stated in an e-mail to DHR that he was awaiting the institution of the Senior Manager Hire Process before filling the position so that he could personally place the former intern on the referral list. (The Senior Manager Hire Process is part of the new *Accord* and allows departments to recommend candidates based on the presumption that the positions filled under this process are high level manager positions). Careful wording in the subsequent Senior Manager posting, including a new Spanish language fluency requirement, allowed the former intern to meet qualifications she did not meet previously. The Deputy Director requested that the former intern be included on the senior manager hire referral list and she was referred to MOSE for interview.

While this was happening, the intern could no longer continue in her position at the City due to her graduation. She was then placed on the payroll of an organization that contracted with the City. During that period, the former intern continued to perform duties in MOSE, retaining her City work phone number, email and job title. She has remained on the contractor's payroll for more than a year-and-a-half while MOSE has repeatedly attempted to manipulate the hiring process in order to provide her with a permanent position.

Upon notification of these two instances of manipulation of hiring sequences through the use of contractors, the City instituted a formal rule prohibiting City employees from "subvert[ing] the City's hiring process, procedures and prohibitions by seeking to have a City contractor hire an employee or a subcontractor." Memorandum from Lori Healey to Department Heads, dated August 14, 2007. Moreover, the City forwarded these investigative results to the Inspector General's office. The Inspector General's office has not concluded its investigation. The Inspector General has stated, however, that the City is free to take corrective action, so long as the Inspector General's office is given an opportunity to weigh in first. To date, the City has taken no disciplinary action.

III. SPECIFIC VIOLATIONS AND CORRECTIVE ACTIONS

In addition to the systemic reforms discussed above, the Monitor's office regularly reports specific incidents of actual or apparent *Shakman* violations to the City. Depending upon the nature of the incident, the Monitor makes a recommendation for specific corrective action, a request for additional information, and/or a request that the City conduct its own investigation. Since the Monitor's 2006 Annual Report, the Monitor's office has identified and investigated many specific incidents of hiring improprieties, including hiring sequences in the Department of Fleet Management, the

Department of Housing, the Department of Transportation and the Fire Department, as summarized below.

A. Department of Fleet Management

During late 2006 and 2007, the Monitor's office has identified several instances of *Shakman* violations in the Department of Fleet Management. In one instance, Fleet managers manipulated bid lists, let valid interview lists expire and collaborated with an individual in the Department of Human Resources in an effort to hire two specific candidates for Equipment Dispatcher positions. When Fleet initially sought to fill the two slots in late 2005, the two preferred candidates lacked the minimum requirement of one year's experience and thus did not appear on the list of interviewees. Notably, despite the fact that these candidates failed to meet the minimum qualifications for the Equipment Dispatcher position, each candidate was "acting" as an Equipment Dispatcher at the time. Because the candidates did not qualify for the job at that time, Fleet let the list expire and requested a new list after the two candidates had met the one year requirement. The candidates still did not appear on the list, and Fleet allowed that list to expire. In late 2006, Fleet requested yet another list and the preferred candidates both appeared on the list. These two candidates were selected for the two Equipment Dispatcher positions they had been, at that point, acting into for a year and a half despite being the least senior of all the candidates who bid for the title. A Deputy Commissioner in Fleet was involved in the manipulation of this sequence.

After the Monitor's office relayed the results of its investigation to the City, the City agreed to redo the hiring sequence and forwarded the Monitor's investigative results to the Inspector General's Office. Despite the obvious manipulation of this hiring sequence, the Monitor's office later discovered that the two pre-selected employees were permitted to continue "acting up" into the Equipment Dispatcher position for an additional three months and in violation of the City's Acting Up policy. The individuals were finally removed from the acting positions after an additional complaint was raised by the Monitor. The Inspector General's office has not concluded its investigation. To date, the City has taken no corrective action.

B. Department of Housing

In late 2006 and 2007, the Monitor's office has identified instances of *Shakman* violations in the Department of Housing. In one instance, the Monitor's office conducted an investigation that revealed that Housing had manipulated an interview sequence in order to ensure selection of a particular candidate by rejecting a valid interview list, manipulating the content of an interview list and communicating inappropriately with DHR. Specifically, in 2006, the Department of Housing sought to fill the position of Housing Director of Rehabilitation Construction. Before any interviews were even conducted, Housing contacted DHR about being "dissatisfied" with the list and asking for additional candidates. At the same time, Housing asked DHR to modify the screening criteria and re-run the eligibility list. By doing that, Housing was ensuring that a current Housing employee could be included on the new eligibility and interview list. Indeed, a

note made by the DHR analyst indicates that the Housing Personnel Director told her that she wanted a particular candidate on the list. *Accordingly*, the new candidate, who had not originally even applied for the job, was placed on the referral list and then selected for hire. The two Deputy Commissioners that selected the candidate gave him perfect “5”s during the interview.

When the Monitor notified the City of the investigation results, the City proposed to redo the hiring sequence, and DHR Commissioner King disciplined the DHR employees involved in the situation. The Monitor’s office, however, had continued concerns about the involvement of Housing employees in this process and conducted additional investigation into the matter. That investigation revealed that in addition to the role that Housing’s personnel liaison played in manipulating the process to have an internal candidate placed on the referral list, senior management in the department had been involved in getting the internal candidate on the referral list as well. Some of those same managers went on to interview the candidates and select the internal candidate for hire. Upon notification of this additional information, the City suspended the department’s Personnel Liaison for a week. No action was taken with regard to the senior managers purportedly involved in the manipulation.

Also in 2006, the Department of Housing sought to fill the position of Housing Development Coordinator. An audit by DHR’s Compliance Unit revealed that candidates marked on the interview sheet submitted by the department to DHR as not being interested in interviewing had either never been contacted about the position or never given the opportunity to interview. Interviews conducted by the Monitor’s office in April of 2007 confirmed this fact. In particular, one candidate who was alleged to have declined the interview had previously been told that the department already had a candidate “in mind” for the job. Another candidate who was alleged to have declined to interview stated that she was never contacted about the Housing Development Coordinator position. Another candidate who was alleged to have declined the interview stated that his interview was cancelled the day it was scheduled to take place. Finally, the candidate that Housing *did* offer the position to was a former Mayor’s Office employee. As noted above, Housing’s Personnel Liaison was suspended as a result of this issue in conjunction with the hiring sequence mentioned above. The City also agreed to redo this hiring sequence. No other corrective action was taken.

C. Department of Transportation

The Monitor’s office was notified by the City’s *Shakman* Complaint officer of *Shakman* violations in the Department of Transportation in January of 2007. At that time, DOT was seeking to fill four specific positions: Project Manager; Project Coordinator; Projects Administrator; and Coordinating Engineer II. Prior to the posting and interviewing for any of these positions, a Deputy Commissioner sent an email identifying the four pre-selected candidates she intended to hire for each position. The email stated in pertinent part:

The Project Manager at \$84,264 that we are trying to get for [name omitted]. Human Resources was supposed to post an announcement to fill that specific position ... [name omitted] checked through the month of December and never saw it posted.

The Project Coordinator at \$51,228 for [name omitted]. I wanted to get an idea when this one will be authorized.

The Projects Administrator at \$58,884 for [name omitted]. I wanted to get an idea when this one will be authorized.

The Coordinating Engineer II for [name omitted]. I wanted to get an idea when this one will be authorized. ...

During the course of the Monitor's office investigation, the Deputy Commissioner admitted that she had, in effect, "promised" these positions to the candidates she intended to select. Upon questioning, the Deputy Commissioner denied knowing that she had done anything wrong or violated any rules. In response, the City suspended the Deputy Commissioner for one week and provided her with *Shakman* training.

D. Fire Department

In mid-2007, the Monitor's office conducted an investigation into two related hiring sequences for the Administrative Assistant positions in Support Services and Administrative Services in the Fire Department. These positions are the equivalent of Battalion Chief and report directly to the Deputy Commissioner of the department. The Monitor's office reviewed these hiring sequences as a result of the following facts: each selected candidate waived her interview for the position in the alternate department; each selected candidate had been hand picked to perform the relevant duties in their respective departments prior to the posting of the position; and the Monitor's office received several complaints about these hires. During the course of the investigation, the Monitor's office discovered that one of the selected candidates had been ordered to work from home for several months in 2007 to evade detection for violation of the City's Acting Up policy. She was directed to do so by one of her superiors following increased monitoring of the Acting Up policy. As a result of this investigation, the City forwarded the information to the Inspector General's office. The Inspector General's office has not concluded its investigation. To date, the City has taken no corrective action.

E. Other Departments

In addition to the specific incidents and corrective actions described above, other problematic hiring sequences identified by the Monitor's office in 2007 have included:

- Department of Aviation, Assistant Commissioner: Selected candidate*³ had been acting up since October 2004; other candidates appeared better qualified for the position. City agreed, in early 2007, to redo hiring sequence. To date there has been no new selection.
- Department of Aviation, Operating Engineer A: One of the selected candidates* had a history of acting up, had been in violation of the City's reformed Acting Up policy and was one of the least senior individuals that applied for the opening. The Monitor requested the interviews be redone. The City has proposed to re-conduct the entire sequence of hires.
- OEMC, Aviation Communications Operator: Two selected candidates did not meet minimum qualifications; one candidate's resume included a reference to political volunteer work; the other candidate had been previously terminated from a Security Officer position in Aviation. Upon notification by the Monitor's office, the Commissioner of DHR revoked the offers of employment.
- Department of General Services, C-Engineers: In response to the Monitor's notification that C-Engineers in DGS were in violation of the Acting Up policy, the City advised that these individuals were receiving increased pay for acting up into A-Engineer positions when unsupervised on the rotating shift. The City reclassified these C-Engineer positions as A-Engineer positions. The positions were filled based on seniority within DGS C-Engineers. The remaining vacancies were then opened to C-Engineers across the City.
- Aviation, Operating Engineers: A complaint received by the Monitor's office alleged that the assignment of shifts was used to reward and/or punish employees for political reasons or other purposes. The Monitor's office discovered that O'Hare's Chief Operating Engineer had complete discretion to assign Operating Engineers to work shifts, including coveted shifts referred to as "day jobs." The City agreed to utilize shift transfer requests submitted by employees and to honor them by seniority to fill these positions.

IV. COMPLIANCE DEFICIENCIES REQUIRING IMMEDIATE REDRESS

Although the Monitor's office continues to identify and address systemic and individual problems in the City's hiring processes, progress is hampered by the City's failure to: (a) remedy problems; (b) implement and enforce Acting Up Policy; (c) accurately report violations; and (d) meaningfully enforce consequences for non-compliance with hiring rules.

³ Where the selected candidate is asterisked, the individual appears on the so-called "Clout List" presented during the criminal trial of *USA v. Sorich, et al.*

A. Failure to Remedy Problems

As reported in the Monitor's 2006 Annual Report, in many instances where the Monitor has reported problems and/or complaints regarding specific hiring sequences, the City agreed to suspend or redo those hiring sequences. Despite the agreement to suspend or redo a hiring sequence, however, the City in some cases permitted the improperly selected candidates to continue to "act" into the position (in some cases, for over a year). This "remedy" actually compounded the original violation or problem that required the hiring sequence to be redone or suspended. Some examples include:

- Department of Water, Foreman of Electrical Mechanics: Selected candidate answered the fewest number of technical questions correctly and had been acting in position for approximately four years. In early 2007, City agreed to redo hiring sequence. Recently, the Monitor discovered that the Water department allowed the improperly selected candidate to "act" into the position of Foreman of Electrical Mechanics for much of 2007 in violation of City's reformed Acting Up policy.
- Department of Water, Foreman of Pipe Yards: Selected candidate* had history of acting up from Construction Laborer to Stores Laborer to Foreman of Pipe Yards for period of approximately five years. City agreed to redo hiring sequence in early 2007. The Monitor discovered that candidate was allowed to continue to "act" into position of Foreman of Pipe Yards for at least six months in 2007 and in violation of the City's reformed Acting Up policy. Sequence was repeated and same candidate was selected.
- Department of Water, Plumbing Inspector in Charge: One selected candidate* and another selected candidate had history of acting up and Monitor raised concerns about interview process. City agreed to redo hiring sequence in early 2007. The Monitor discovered that both candidates were allowed to continue to "act" in position of Plumbing Inspector in Charge for several months after the sequence was halted and in violation of the City's reformed Acting Up policy.
- Office of Emergency Management Communications, Deputy Director of Internal Secure Operations: Selected candidate* failed to meet the minimum qualifications for the position but had nonetheless been acting in position for two years. City agreed on January 10, 2007 to actively recruit for candidates that met the minimum qualifications. Recently, the Monitor discovered that OEMC allowed the candidate to continue to "act" into the position of Deputy Director of Internal Secure Operations for the entirety of 2007 in violation of City's reformed Acting Up policy. The City recently notified the Monitor that the position is now *Shakman* exempt and the originally selected candidate who did not meet the stated qualifications for the position will be formally promoted.
- Department of Fleet Management, Manager(s) of Vehicle Maintenance: Selected candidates had been "acting" into position for six and three years respectively,

referral list had been manipulated, and other candidate who was not selected appeared better qualified. In early 2007, City agreed to redo the hiring sequence. Subsequently, the Monitor discovered that Fleet allowed the two selected candidates to continue to “act” into the positions in violation of the City’s reformed Acting Up policy.

- Department of General Services, Foreman of Laborers: Selected candidate* had history of “acting” up for period of seven years and problems were identified with interview process. City agreed, in early 2007, to redo hiring sequence. Recently, the Monitor discovered that DGS allowed the selected candidate to continue to “act” into the position of Foreman of Laborers after the sequence was halted in violation of City’s reformed Acting Up policy.

B. Failure to Implement and Enforce Acting Up Policy

A major area requiring immediate redress is the implementation and enforcement of the City’s Acting Up policy. As discussed in the Monitor’s 2006 Annual Report and the more recent Report and Recommendations Regarding City of Chicago’s Proposed New Plan, “acting up” (the process by which individuals are selected to fill higher-rated titles without going through a competitive process, often receiving higher pay and an advantage in the eventual hiring process for the permanent position) has been one of the major areas in which political patronage has negatively affected City hiring practices. Many of the *Shakman* complaints received by the Monitor’s office have alleged that individuals are chosen to act up based on political connections, leading to systemic violations of the *Shakman* Decree that have gone unchecked for years.

As noted in the Monitor’s earlier filings, the Monitor first requested changes to this process in the spring of 2006. However, it was not until late 2006 that any prohibitions were put into place for departments with regard to acting up. In January of 2007 the City assured the Monitor that every long-term actor had been removed, yet in March of 2007, the Monitor and her staff discovered that hundreds of individuals who had been acting up for years remained in those roles, in violation of the Acting Up policy.

These violations continued because the City failed to audit departmental compliance with the Acting Up policy in any meaningful way for several months. After these violations were brought to the City’s attention by the Monitor, the City began to “audit” the process, but there was still very limited compliance. This was due in part to the fact that the audit functions were bounced back and forth between the Department Human Resources and the Department of Law, with no one ultimately accountable for the process.

To date, many employees have been acting for longer than the ninety (90) day period permitted under the Acting Up policy established in 2006.⁴ For example, one particular employee in the Department of Fleet Management who had been acting since

⁴ In August of 2007, a revision of the Acting Up policy changed the ninety day (90) limit for each individual to act up per calendar year to an equivalent of five hundred and twenty (520) hours.

1995 was not removed from this acting up assignment until late March of 2007, only to be returned to the acting up position less than two months later. In the Department of Water, one individual has been awarded at least one hundred and sixty-five (165) days of Acting Up in 2007 alone, in clear violation of the policy.

Because there is no procedure in place for holding departments accountable for violations of the Acting Up policy and the City's internal auditing has been inadequate, departments regularly provided inaccurate information to City officials responsible for auditing compliance. For example, in a meeting with the Department of Law and the Department of Human Resources in April of 2007, one department's Personnel Director claimed that her department had no employees "acting up." This was not true. In fact, the Monitor and her staff discovered that the department has had more than fifty (50) employees acting up, many of whom were acting at the time the statement was made.

Since this issue was first raised in early 2006, the City has taken steps to correct the problems caused by Acting Up. It has modified the policy several times in response to concerns posed by the Monitor, it has conducted training for the departments to increase compliance with the policy, it has met with individual departments to address issues of functionality, it has removed some employees from acting up assignments upon notification that there was a violation, and it is in the process of developing a method for tracking Acting Up in the future. There are significantly fewer long-term acting-up employees today than there were one year ago, however, compliance remains inadequate.

The City's on-going failure to effectively monitor compliance with the reformed policy coupled with the failure to take any disciplinary action when violations occur is certain to result in on-going violations. Some steps the City could take to increase compliance include: (1) maintaining accurate records of acting up time for each employee, including the specific dates on which the employee acted and the number of hours acted on that day; (2) conducting monthly audits of departments to identify every individual who has acted up for greater than five hundred and twenty (520) hours in the past twelve (12) months; (3) issuing discipline to department officials who permit violations of the policy; and (4) taking prompt action to remove any employee who is in violation and to prevent further violations from occurring.

C. Failure to Accurately Report Violations

As noted previously, in many instances the Monitor's office requests that the City conduct its own investigations into problematic hiring issues. The Monitor's office relies upon the results of these investigations in assessing whether a problem exists. Accordingly, it is crucial and expected that all information provided by the City is both truthful and complete. Recently, however, the Monitor's office has discovered serious breaches of the City's obligation to be truthful and complete when reporting on potential violations.

For example, on December 13, 2007, the Monitor's office discovered that senior members of the Department of Law provided materially misleading and inaccurate information to the Monitor in response to a request for an investigation. On October 9,

2007, the Monitor's office sent a memorandum to the City notifying the Law Department, the Mayor's Office and DHR of complaints received regarding promotions to Field Officer in the Fire Department. After conducting an initial investigation, the Monitor's office was concerned that eligible candidates from the existing Field Officer promotion list were not being promoted into budgeted and vacant positions. Rather, the City determined to conduct a new Field Officer test before making any hires, despite existing vacancies. The Monitor's initial investigation produced some evidence that the Fire Department's decision to not hire off of the existing list may have been made in order to favor new test takers.

In response to the Monitor's request that the City investigate these allegations, senior members of the City's Law Department provided a five-page memorandum with fifty pages of supporting documentation to the Monitor's office justifying the Fire Department's decision. In this memorandum, the City claimed the Fire Department's decision was dictated by the Collective Bargaining Agreement with the Union. In particular, the Law Department Memorandum stated that the City was bound, as of January 1, 2007, to establish a new Field Officer examination and eligibility list. Based on this Memorandum, the Monitor agreed to close her investigation. Subsequently, it was determined that the information provided by the City was false.

Other incidents of inaccurate reporting by the City have also been identified. For example, after the Monitor's September 27, 2007 Report, several members of the City's Law Department denied having any knowledge of the allegation of retaliation referenced in that Report. The Monitor's office, however, confirmed that the employee had sent an e-mail to individuals in the Law Department specifically complaining that she believed they were retaliating against her for having reported a violation to the Monitor's office.

Again, in a letter dated August 2, 2007, the Department of Law assured the Monitor's office that a particular individual had been removed from an acting up position. Despite that assurance, that individual actually continued to act up for several additional months. In another instance, the Department of Law advised the Monitor that several individuals had been removed from their acting roles, when a quick audit by the Monitor and her staff proved otherwise. In Streets & Sanitation, for example, at least seven individuals continued to act far beyond the March 2007 date on which the Department of Law maintained they had been removed.

In other cases, the City has knowingly allowed Acting Up policy violations to go unchecked. For example, the Office of Emergency Management and Communications ("OEMC") was in violation of the City's Acting Up policy for over a year without consequence. The City failed to report this ongoing violation, instead making an internal decision to allow the violations to continue.

D. Failure to Enforce Consequences for Non-Compliance

Appropriate corrective action in cases of past and present non-compliance with City hiring rules is critical for ensuring adherence to these rules and for deterring future hiring infractions. For that reason, an area of significant concern for the Monitor's office has been the City's lack of action with regard to current City employees that were directly implicated in *Shakman* violations as reflected in testimony provided during the criminal trial of *USA v. Sorich, et al.* and in affidavits or sworn admissions in related cases. After numerous discussions with the Monitor, although the City has relieved a few employees from any present involvement in hiring, few corrective or disciplinary actions have been taken, even after the City's own Inspector General has recommended termination as the appropriate disciplinary action for one such employee. To date, the Mayor's Office and the City's Law Department have reported that the City is still reviewing the appropriate corrective actions to take with respect to these current employees. The City had previously explained that it did not want to interfere with or affect any pending criminal prosecutions or investigations by the United States Attorney's office by taking employment or disciplinary actions against any such employees.

As of October 9, 2007, however, the City was formally advised by the United States Attorney for the Northern District of Illinois that the City *may proceed* with any employment and disciplinary decisions notwithstanding the pendency of federal prosecutions, as long as the City first apprises the U.S. Attorney's office of those individuals who might be investigated or disciplined by the City. As the City was informed, the United States Attorney's Office will request a delay in the City's action if there is any concern that it may adversely affect a particular federal investigation or trial.

Accordingly, there should be no impediment to taking appropriate corrective action for past and present hiring violations. It is imperative that the City do so as promptly as possible.

V. CONCLUSION

Pursuant to the Accord, the Monitor shall file her next semi-annual report in June of 2008. In the interim, the Monitor's office anticipates working collaboratively with the City to address the issues reported on herein.

Respectfully submitted this 18th day of December, 2007

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