

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

MICHAEL L. SHAKMAN, PAUL M.)
LURIE, KENNETH AYERS, ANN M.)
KING, INDEPENDENT VOTERS OF)
ILLINOIS-INDEPENDENT PRECINCT)
ORGANIZATION, MICHAEL)
SULLIVAN, DARRYN JONES, STUART)
MAJERCZYK, RICHARD)
GRAMAROSSA and CONNIE)
GRAMAROSSA, et al.,)
)
Plaintiffs,)
)
v.)
)
COUNTY OF COOK, et. al)
Defendants.)
)

Case No. 69 C 2145
Magistrate Judge Schenkier

**MONTHLY REPORT OF THE SHAKMAN COMPLIANCE ADMINISTRATOR
FOR THE FOREST PRESERVE DISTRICT OF COOK COUNTY
November, 2011**

Jan Carlson, 1*Shakman* Compliance Administrator for the Forest Preserve District of Cook County, by and through his attorney, Peter Monahan, submits this Monthly Report pursuant to the order of the court entered March 5, 2009.

I. INTRODUCTION

Pursuant to the Supplementary Relief Order (“SRO”), entered on March 5, 2009, the *Shakman* Compliance Administrator (the “DCA”)¹ is charged with (1) studying existing employment practices for nonpolitical hiring, promotion, transfer, discipline and discharge, (2) observing actual hiring sequences, (3) assisting the Forest Preserve District (the “District) in establishing a train the trainers program to educate and train supervisors and employees on non-

¹ DCA includes the DCA and/or his staff.

political hiring practices, (4) making recommendations to the Court as to how to resolve issues regarding Shakman exempt positions, (5) making recommendations to the District in formulating a new employment plan (the “Plan”)² and monitoring compliance, (6) evaluating and adjudicating claims filed by individuals who believe they were victims of Unlawful Political Discrimination (“UPD”) during the claim period and (7) filing periodic reports.

The DCA has identified 11 categories of District employment actions for which it will report monthly. This report describes the District’s employment activities and steps taken to implement the new employment plan and other policies and procedures during the month of November, 2011.

II. MONITORING

A. Training and Similar Activities

1. Activities

On November 10, the Director of the Human Resources Department (“HRD”) trained District Maintenance Department supervisors on the process for completing performance evaluation forms and delivering performance evaluations. On the same date, the Director of Compliance (“DOC”) trained the same group of supervisors on their duties under the recently implemented Supplemental Policies (“Policies”).

2. Problems Noted

The DCA was impressed with the content and tone of both of these presentations. As discussed later in this report, subsequent monitoring revealed supervisors did not follow the performance evaluation process, indicating that additional training is necessary.

3. Recommendations

² The Plan was filed on July 17,, 2011. The DCA is monitoring the implementation of the plan.

While training was provided, the DCA recommends that all managers receive more thorough training on writing and conducting the in-person performance evaluations.

B. Job Postings

1. Activities

The District re-posted the position of Resource Ecologist III on November 28. This position was first posted on October 31, and taken down on November 14. According to the District, the position was re-posted because there was a change in the minimum qualifications, as well as an increase in the grade and salary of the position. The District sent emails to all Applicants who applied or began the application for the first posting notifying them that they should re-apply to the new posting.

2. Problems Noted

a. Failure of ATAS Pre-Screening Question to Mirror Preferred Qualifications

The District submitted the new Job Description to the DCA for review, but did not indicate that the job description was for a repost of a position. It was approved prior to posting. The new Job Description removed three of the minimum qualifications in the original posting, and re-categorized them as preferred qualifications.

The initially minimum and later preferred qualification of “Possession of a Pesticide Applicators License recognized by the state of Illinois OR official documentation verifying that the examination has been taken and passed” did not have a corresponding question on the ATAS. It is unclear why this question did not make it onto the system.

The circumstances presented here describe two activities which historically have been used to create an opportunity for an unlawful political hire. In the first scenario, a position was posted, applications accepted and the hiring sequence later terminated when the preselected candidate did not make the eligibility list. The position was later reposted with different eligibility criteria in order to give the preselected candidate another opportunity. In the second scenario, minimum and preferred qualifications were changed as either a pretext for reposting or in order to tailor them to a particular candidate. The DCA is satisfied that the activities \ in this instance were not done for the purpose of fostering an unlawful political hire.

3. Recommendations

The DCA has previously reminded the District that all qualifications, minimum and preferred, on the Job Description must be reflected in appropriate questions on the ATAS in order to assure consistency and transparency for applicants. The DCA also expects the DOC to closely monitor the re-posting of positions, especially if they involve a change in minimum qualifications, in light of the District's history. Additionally, the specific role and method for evaluating of preferred qualifications is not currently addressed in the Employment Plan ("Plan"), and the DCA believes clarification on this issue and applicable amendments to the Plan should be addressed in the near future. As discussed in detail below, the failure of the ATAS to work as anticipated has created some of the issues noted. If the ATAS is not able to do so in the near future, it may be necessary to address these issues through amendments to the Employment Plan.

4. Follow-Up

The DCA will continue to closely monitor the posting of positions on the ATAS, as well as develop its opinion on whether amendments to the Plan are necessary regarding preferred qualifications, and work with the District to that end.

C. Hiring Activity

1. Activities

The DCA's Office monitored the following hiring activities during the month of November:

1. Interviews for Police Officer
2. Validation of applications for Naturalist I
3. Validation of applications for Resource Specialist II
4. Validation of applications for Training and Development Manager
5. Validation of applications for Recreation Supervisor
6. Validation of applications for Administrative Assistant III
7. Validation of applications for G.I.S. Specialist
8. Seasonal employee evaluations at the North Branch and Salt Creek Divisions.

The District informed the DCA of the above activities in advance of when they were to take place, and they were monitored.

2. Problems Noted

a. Curing Application Deficiencies for Internal Applicants

There were four applicants for Resource Specialist II, three of whom were District employees all having the same job title. This position was initially validated on November 2. The HRD employee conducting the validation found only one of the internal applicants eligible. He found that the external applicant and two of the internal applicants did not provide information

that would indicate they met the minimum qualification of having supervisory experience. The monitor reviewed the applications and found, however, that one of the rejected internal applicants did in fact refer to supervisory experience on his resume.

The DOC reviewed the determinations by the HRD employee, and recommended that the Director of HRD (“Director”) make final determinations on eligibility. Before doing so, the Director contacted the Department Head of the hiring department to inquire about the duties of the position, as well as the duties of the title the internal applicants shared. The Department Head advised the Director that the internal Applicants did in fact have supervisory responsibilities.

On November 17, the DOC and the Director reverted all three internal applicants to eligible status based upon the information provided by the Department Head of the hiring department. The Director also expressed concern that they might have to re-post the position if there was only one eligible applicant. She further expressed concerns that it would be paradoxical and create a morale problem if she did not find all of the internal applicants eligible for the position given that they have the same job titles and responsibilities.

The DCA acknowledged and is sensitive to the issues the Director articulated. However, the DCA’s concern is that the District again sought and utilized unique knowledge of the internal applicant’s position to cure deficiencies in their applications. Utilizing knowledge not contained in internal applicants’ application submissions creates inequity because external applicants are not afforded the same benefit. Furthermore, allowing the District to go beyond the ATAS application submission jeopardizes the objectivity and transparency of the validation process. The DCA does not believe there was any UPD or other improper intent on the part of the District with this action. However, the DCA is concerned that this type of leeway with minimum qualifications creates avenues for UPD to occur.

The DCA observed another internal applicant gain the benefit from the District's unique knowledge of skills and experience the applicant had not specifically provided in her application materials. Two of the minimum qualifications for the Administrative Assistant III position were "must be currently employed by the Forest Preserve District in a full-time clerical or administrative position for one or more years" and "three years of full-time work experience using Microsoft Office including Word, Power Point, Publisher, Excel and Access." During the validation process and while reviewing the application of a female employee who had been serving as a laborer with the District for four years and who listed a total of only two years' administrative experience prior to her employment with the District on her resume, the DOC suggested to the HRD employee validating the applications that the applicant should be deemed eligible because female laborers at the District typically perform administrative functions and because this particular applicant had been serving as a union steward, which typically includes administrative responsibilities. The only thing remotely close to an administrative function as a laborer contained in the Applicant's resume was stating that she assists in clerical duties. The DCA feels that it was inappropriate for the DOC to suggest this applicant met the minimum qualifications based on her assumptions of the employee's duties. Furthermore, the DCA does not feel it is the DOC's responsibility to impose her "impressions" and interpretations during the validation process. Rather, it is her role to monitor and assess whether the validation process is in compliance with the Plan. Finally, as with the Resource Specialist II validation process described above, the DCA finds it inappropriate for the District to look beyond the ATAS application to determine whether an applicant possesses minimum qualifications because it defeats the objectivity and transparency of the validation process.

b. Vague Language in Job Description, Minimum Qualifications

The recent posting and subsequent validation of Resource Management positions has highlighted the difficulty in creating an objective standard by which to judge applicants when the words “equivalent”, “similar” or “related to” are used to describe minimum qualifications. These terms necessitate subjective interpretation by the HRD employee conducting the validation, and reasonable people can come to differing conclusions in identical circumstances, leading to inconsistency. The DCA is concerned that those with intent to manipulate the hiring process could use these vague terms to move applicants who might otherwise be ineligible to the interview stage and eventual hire. For instance, the minimum qualifications for G.I.S. Specialist call for a degree in “Geography, Computer Science, Geology, Regional or Urban Planning, Landscape Architecture, or related land based social science.” The DCA noticed an instance where the DOC determined that a History degree fit this category. While History is a social science, it is unclear if it is a “land based social science.” The point being, without further information, this determination is left completely to the subjective interpretation of the validator.

3. Recommendations

The Director of HRD has suggested that department heads provide lists of “equivalent” degrees and experience in advance of each validation process. The DCA agrees, and would like to see these lists submitted at the time the Request to Hire is submitted and the job description is formed. The Plan calls for the Director of HRD to consult with department heads during the formation of all job descriptions when a Request to Hire is submitted. The DCA recommends that the District train its department heads on the proper way to complete a Request to Hire and actively contribute to the development of a complete and specific Job Description in the most effective manner. This gives support to HRD and allows for the best applicant pool to be created. These lists should be submitted at the time the Job Description is created to preserve

transparency and create a standard that provides the best safeguard against UPD and other discrimination in the hiring process.

The DCA has consistently recommended that the District formalize a District-specific validation protocol that creates a step-by-step guide for an HRD employee to utilize. This will provide the best assurance that loopholes for UPD are not created, and provide support for HRD employees. The District has prepared a draft of this protocol and is working with the DCA to finalize it. This will be discussed further in the next report. The DCA also has recommended the DOC revise the Request to hire form to require more detail from department heads regarding the qualifications they are seeking in a potential employee in the requested position.

Finally, it should be noted that the application software program used by the District (Taleo) has improved the application process but has also created a number of significant challenges. Updates to the software have created new problems. For example, the latest vendor-provided service package resulted in the combining of all County, Health System and District job openings in the same listing, and the District no longer has a separate list of open positions that can be posted on its website. Implementation of the program has been further complicated by the fact that the County's Bureau of Human Resources is the only entity having direct contact with the vendor, and the District has not had an opportunity to communicate its concerns and have its problems addressed directly with representatives of the software company. Additionally, there have been a number of functions (such as the ranked applicant list based on preferred qualifications) that were promised by the vendor that are not yet available. The DCA has scheduled a number of meetings in which users of the software program from the District, County, Sheriff's Office and Recorder's Office can discuss their experiences using the system, compare problems encountered and share solutions or "work-arounds" they have developed. The

DCA recommends that these meetings continue and that additional sharing of information between the various users take place on a regular basis. Furthermore, if the software program is not able to provide a number of the functions contemplated in the Employment Plan, it will be necessary to amend the Employment Plan to include procedures that will fill in the resulting gaps.

4. Follow-Up

The DCA will continue to closely monitor all aspects of the hiring process, including the District's activities on ATAS in regards to validating minimum qualifications, as well as the DOC's review of those activities.

D. Performance Evaluations

1. Activity

The majority of the seasonal employees were evaluated at the conclusion of the season in mid-November. The evaluations occurred at several work sites throughout the District on the same morning. The DOC monitored evaluations at two work sites, and the DCA monitored the evaluations at two others. Despite the fact that the HRD trained the supervisors responsible for conducting the evaluations on how to complete the forms and conduct the evaluations, both the DOC and the DCA found several significant issues during the monitoring process.

2. Problems Noted

At one work site monitored by the DCA, a supervisor met with the employees and discussed evaluation forms that had been completed by another supervisor. This was a clear deviation from the procedure discussed during the training session, which required that the evaluator be present at the meeting. At another work site monitored by the DCA, two supervisors conducted the evaluation meetings together, also deviating from the procedure described during

training. Even more egregious is the fact that at that same work location, one of the supervisors expressed disagreement with the District's attendance policy and, via the evaluation form, recommended employees who had exceeded the number of unapproved absences and/or tardies for rehire in violation of the District policy and the clear instructions given during the training session. The same supervisor criticized various District practices throughout the course of the evaluations and in the presence of the employees being evaluated.

The DOC's most significant concern with the evaluation process was the supervisors' confusion over how to address attendance in the evaluations and the distinction between approved and unapproved absences. This is significant because, as referenced above, the District made clear during its training sessions with supervisors and seasonal workers³ that poor attendance would render seasonal employees ineligible for rehire.

Despite this very specific policy, at least one District supervisor approved vacation days for an employee to attend a family reunion.

3. Recommendations

The DCA has several recommendations to improve the performance evaluation process going forward: (1) the process should be formalized in the District's Supplemental Policies Manual, (2) more comprehensive training should be offered to supervisors, and (3) supervisors deviating from the process should be subject to discipline. In addition, with respect to the seasonal laborer position in particular, (1) policies impacting a seasonal laborer's eligibility for rehire should be memorialized in the Plan and (2) responsibility for entertaining requests for

³ In training offered to the supervisors as well as the orientation provided to the employees at the beginning of the season, the Director of HRD stated that absences would be considered on a case-by-case basis and would require documentation such as a doctor's note or funeral notice, etc. in order to be approved. She specifically told employees that vacation days, regardless of whether they were scheduled prior to their hire, would not be approved. As an accommodation, she offered employees the option of starting the season after their scheduled vacations or terminating the season prior to their scheduled vacations to avoid meeting or exceeding the number of absences that would render them ineligible for rehire.

approved absences should be centralized to ensure consistency and reduce the potential for favoritism.

4. Follow-Up Needed

The DCA will monitor additional related training offered to supervisors regarding performance evaluations until he is satisfied with the integrity of the process. A more immediate concern will be to determine how the District utilizes the 2011 seasonal laborer performance evaluations given both the DOC and DCA's concerns regarding the integrity of the process.

E. Hiring Process for Police Officer

1. Activity

The hiring for the Police Officer position has been a long, complicated process. The position was posted on the ATAS in August and remained up for 33 days. There were 333 applications for the position. Following the validation of these applications, 294 applicants were determined to have the minimum qualifications and be eligible for further consideration.⁴

The Hiring Process for Sworn Positions ("Hiring Process") incorporated into the Plan required the District to conduct an Information Session for Police Officer candidates⁵. The District was required to invite no more than 180 individuals to the Information Session. Because there were more eligible candidates than slots at the Information Session, the Plan required the District to randomize candidates to achieve this number.

The District decided that the candidates who, based on their job submissions and resumes, possessed all of the preferred qualifications as well as the minimum qualifications would be designated as "ACE"⁶ candidates. These candidates would be excluded from the randomization process, resulting in an automatic invitation to the Information Session. The two

⁴ For more information on the validation of applications for Police Officer, please see the DCA's September Report

⁵ For more information on the Information Session, please see the DCA's October Report.

⁶ "ACE" is a term used by ATAS to designate applicants who possess some or all preferred qualifications of a position.

preferred qualifications were: (1) prior paid experience as a sworn law enforcement officer and (2) four year or higher degree from an accredited college or university.

Fifty seven applicants answered affirmatively to both of the pre-screening questions on ATAS. The District determined through the validation process that only 45 of those individuals actually possessed both preferred qualifications and were designated as ACE candidates. Based upon the suggestion of the DOC, the District counted experience as a corrections officer as “sworn law enforcement” experience.

The 45 ACE candidates received automatic invitations to the Information Session and the remaining eligible candidates were subject to randomization to narrow the pool to 180.

Surprisingly, only 79 candidates showed up for the Information Session.⁷ All those who attended the Information Session were eligible to take the written examination⁸, which occurred on October 22. All individuals who passed the written exam⁹ were invited to interview for the position.

Sixty-four candidates interviewed for the position on November 9. The interviews were pass/fail, meaning that candidates were not ranked, only given a passing or failing designation. Those who passed were allowed to continue with the process, and those who failed were disqualified from the process. Those who passed the interview were given a polygraph test and subject to a background check. If a candidate was not disqualified by this screening, they were

⁷ The Information Session occurred on October 11. The Hiring Process required the invitations be sent out at least seven days prior to the session, and the District decided an applicant must RSVP to the invitation in order to continue in the process. Of the 180 individuals invited, 105 responded to the invitation, and only 79 of those showed up.

⁸ Three of the 79 that showed up for the Information Session were denied entry because they did not bring the proper verification of minimum qualifications. Two others removed themselves from the selection process after attending the Information Session. Thus, 74 individuals were invited to take the Written Exam.

⁹ The passing score for the written exam was 70. Seventy-two individuals took the exam. (Two individuals invited to take the exam did not show up.) Sixty-seven passed, and 5 failed the exam. For further discussion of the Written Exam, please see the DCA’s October Report.

considered eligible to receive an offer of employment. If the number of eligible candidates at this stage exceeded the number of openings, randomization would be utilized to achieve the number.

The District desired to again exclude candidates who were designated as “ACE” candidates from randomization at this stage. During the interviews, however, the District realized that some candidates had been designated as “ACE” in error. They consulted the definition of a sworn law enforcement officer as it appears in 50 ILCS 705 - 2 which states:

Law enforcement officer" means (i) any police officer of a local governmental agency who is primarily responsible for prevention or detection of crime and the enforcement of the criminal code, traffic, or highway laws of this State or any political subdivision of this State or (ii) any member of a police force appointed and maintained as provided in Section 2 of the Railroad Police Act.

By this definition, only those with police officer experience should have been considered for the ace candidates. Fifteen ACE candidates interviewed, but based on this definition, three of those candidates were improperly designated as ACE candidates.

2. Problems Noted

The District kept the DCA advised in a timely manner of the hiring process for this position and worked closely with the DCA to resolve problems as they arose. Given the issue with the ACE candidates discovered at the interviews and its impact on the hiring process for the position, the DCA, District and Plaintiff’s Counsel felt it was prudent to meet to resolve any issues regarding the preference given to ACE candidates. This meeting took place on November 29.

The District argued that the establishment of a preferred class of applicants designated ACE candidates by ATAS represented a legitimate operational interest in the case of the police officer hiring sequence, and all parties recognized this concern. However, it was determined that the use of the ACE list and disregard of the randomization process were not consistent with the

requirements of the Plan, and the Hiring Process for Sworn positions must be amended to reflect how preferred qualifications would be treated for the position prior to the District moving forward with the hiring of any police officers.

3. Recommendations

It was also recognized at the November 29 meeting that preferred qualifications may be a global issue that impacts a great deal of the District's hiring activity, and will necessitate amendments to the Plan. The Plan does not cover how preferred qualifications will be addressed, making any action the District takes utilizing preferred qualifications outside of the Plan, a serious concern for the DCA. The DCA recognizes that there needs to be an efficient method for amending the Plan, both while the DCA is acting and after sunset of the SRO. The issues the DCA has noted in this Report and previous reports regarding validation, randomization, and interviews for this position illustrates the fact that the Plan does not and cannot account for all circumstances until they are recognized during the implementation of the Plan. The DCA recommends any necessary amendments to the Plan be made as soon as possible, and will continue to work closely with the District to that end, as well as advising Plaintiff's Counsel of any developments in a timely manner.

4. Follow – Up.

The District has continued the hiring process and made contingent offers to Police Officer candidates. This will be discussed in further detail in the December Report. To the extent there have been problems in the hiring process for this position, the DCA will closely monitor future police postings, in particular the posting for Sergeants, to see if these issues have been rectified, and that any amendments to the Plan are effective and adhered to.

E. Hiring of Non-Exempt Employees

The District did not report any new hires of non-exempt employees in November.

F. Hiring of Exempt Employees

The District did not report any new hires of exempt employees in November.

G. Transfers and Temporary Assignments

Since the implementation of the Supplemental Policies, the DOC has been formally monitoring various additional employment actions, including transfers and temporary assignments. She reported one transfer and five temporary assignments in November and provided the DCA with supporting documentation demonstrating compliance with the Supplemental Policies. The DCA reviewed that documentation and is satisfied that the DOC effectively monitored these actions in November. The DCA will continue to monitor the DOC's monitoring efforts until the District has reached Substantial Compliance and will address his observations and impressions in the coming months.

H. Demotions

The District did not report any demotions in November.

I. Disciplinary Actions/Terminations

The District reported several terminations via an Employee Activity Report that HRD generates and produces monthly. The terminations consisted primarily of seasonal laborers whose season concluded in mid-November. Five individuals were terminated through the disciplinary process. The Office of the Independent Inspector General ("OIIG"), which recommended the terminations following investigations, monitored the hearings and reported no deviations from proper protocol.

J. Overtime and Compensatory Time

The DOC, who has been monitoring overtime since the Policies were implemented, provided the DCA with a report of the District's overtime activities for the month of November. She identified two dates on which the Maintenance Department deviated from the Policies. Upon discovering the deviation, the DOC addressed the issue with both the department head and the General Superintendent at a department head meeting. During the meeting, she also reminded all department heads that deviations from the Policies would result in discipline and that only overtime requested in accordance with the Policies would be awarded. She followed up by contacting all department heads and supervisors reminding them that overtime must be approved and requesting forms confirming overtime in November which had not been reported. Finally, she obtained copies of all of the Maintenance Department's overtime records from the Payroll Department in order to confirm that all overtime had been reported.

The DOC provided documentation to the DCA to evidence her activities with respect to overtime. The DCA reviewed that documentation and is satisfied that the DOC effectively monitored these actions in November. The DCA will continue to monitor the DOC's monitoring efforts until the District has reached Substantial Compliance and will address his observations and impressions in the coming months.

III. DOC ACTIVITIES

A. Weekly DCA/DOC Meetings

The DCA met with the DOC on November 8 and November 21 to discuss various District activities and the DOC's role in ensuring the District's compliance with the Plan. During the meetings, the evolving role of the DOC and the above-referenced posting, hiring, and other

employment actions were discussed, as were any concerns (addressed throughout this report) articulated by the DCA.

B. Monthly DCA/OIIG/DOC Meetings

The DOC attended the monthly DCA/OIIG meeting and participated in a discussion regarding various District activities and the DCA and OIIG's monitoring efforts. The DCA believes that all parties benefit from the DOC's presence at these meetings as they provide a forum to discuss issues of mutual concern and an opportunity to address those issues efficiently.

C. Specific Activities

In November, the DOC: (1) monitored the various posting, validation and hiring activities discussed above, (2) disseminated user guides and forms for temporary assignments, overtime and transfers to the department heads and monitored compliance with the Policies as they pertain to actions falling within these categories, (3) trained Maintenance Department field staff on the Plan and Supplemental Policies, (4) monitored supervisor training on the District's protocol for completing and delivering performance evaluations, (5) monitored the delivery of performance evaluations at two work sites and reported to the DCA regarding the same, (6) ensured that the District responded to OIIG reports in a timely fashion, (7) attended bi-weekly department head meetings to address compliance issues and to provide notice regarding upcoming training events, (8) revised the DOC Complaint Form, and (9) attended the referenced meetings with the DCA and OIIG during which all of the above were discussed.

Notably, the DOC reported that the District sent proposed modifications to the Exempt List (including updated job descriptions) to the President of the Cook County Board of Commissioners (the "President") in November. The DCA was not advised of any decisions

regarding the proposed modifications by the President prior to the month's end. The DCA will report on any subsequent related activity occurring during December in the next report.

D. Observations & Impressions

With the Policies and related forms in place and with a substantial portion of the related training completed, the DOC continued to expand her monitoring and reporting role. The DCA believes this role is vitally important as the DOC will be solely responsible for ensuring the District's compliance with the Plan and Policies post-sunset. For this reason, the DCA has been paying particularly close attention to the DOC's monitoring and reporting efforts.

As illustrated by some of the concerns regarding the DOC's involvement in the validation process addressed above, the DCA believes that the DOC may be interpreting her monitoring function more broadly than was envisioned by the parties during Plan negotiations. The DCA fears that the DOC's level of objectivity may become compromised by actively engaging in the employment actions she is charged with monitoring. This issue and the DCA's suggestions for more clearly defining the DOC's role will be addressed more fully in the next report.

IV. OIIG ACTIVITIES

The enabling statute establishing the office of the OIIG provides that office with a broad mandate to investigate matters which includes the authority to investigate allegations of UPD. Additionally, the Plan grants some oversight authority to the OIIG regarding the district's compliance with the Plan. Accordingly, the DCA began monitoring the OIIG's activities related to its UPD investigations and Plan oversight activities in November. To facilitate the monitoring process, the DCA and OIIG discussed the need for more frequent meetings and a formal reporting structure. Those measures will commence in December.

A. Discipline

As referenced above, the OIIG monitored three disciplinary hearings which resulted in documented terminations in November. An OIIG representative attended the hearing of a fourth individual recommended for termination on the last day of the month but that individual is not listed as terminated on the District's November Employee Activity Report ("EAR"). Based upon the DCA's review of other documentation, it appears that the individual was in fact terminated but that this status was somehow omitted from the District's EAR. The DCA will provide further detail in the next report.

The OIIG is not yet staffed to the point it is able to monitor all FPD disciplinary hearings. If this becomes an issue, the DCA may elect to monitor some of the District's disciplinary hearings until OIIG staffing is sufficient. The DCA will address this issue further, if the need arises.

B. Investigations

The OIIG reported six pending investigations potentially involving UPD, three of which are investigations with the Post-SRO Compliant Administrator that the OIIG joined in September 2011. The DCA will review those files to discern the OIIG's investigative process in December and will report his observations and impressions in the next report.

C. Resident Watchman

The OIIG continued to offer constructive input regarding the development of the new Resident Watchman Program (the "Program"). The DCA finds great value in the OIIG's participation and will report on the OIIG's involvement in the coming months.

D. OIIG/DOC Relationship

Upon sunset, the duties and responsibilities of the DCA will be discharged by the DOC and the OIIG. A constructive working relationship between the respective offices is crucial to

achieving substantial compliance and both of the offices recognize the importance of cooperation between them. The DCA is observing the working relationship between these offices and may make recommendations for aiding them in the discharge of their respective duties.

V. TRANSITION

There were no significant developments regarding the transition of responsibilities from the Post-SRO Complaint Administrator to the OIIG in November. The DCA expects that this transition will take place in December at which time the OIIG will assume full responsibility for investigating post-sro complaints regarding UPD until sunset.

VI. MISCELLANEOUS

A. Resident Watchman Program

The DCA continued to meet regularly with the District employees charged with improving the Program to assist with its development. The District remained receptive to the DCA's input and adopted substantially all DCA recommendations aimed at increasing transparency and ensuring consistency. The Program itself was substantially completed and the parties began directing their focus on the Occupancy Agreement. The District's goal is to make all final changes to the Program and complete the Occupancy agreement in December. The DCA will address the feasibility of meeting that goal in the next report.

The DCA finds it worth noting that the District posted a news article about the development of the new Program on its website, along with a description of the application process and selection criteria. The DCA will continue to observe and report on the District's efforts at increasing transparency.

B. Desk Audit Recommendation Implementation

As referenced in the October report, the District formed a steering committee charged with studying and implementing recommendations made by a consulting firm that conducted a District-wide desk audit in the summer of 2011. While the DCA sees the formation of this committee as a positive in terms of the potential for effectuating cultural change, he is perplexed by the fact that the District continues to refuse to allow the DCA to monitor the committee's deliberations despite his assurances that the DCA's role would be limited to evaluating the District's commitment to transparency and the development of objective, politically neutral employment practices.

The DCA feels strongly that monitoring these meetings is the most expedient and least costly method of gathering evidence of a commitment to cultural change, as well as compliance with the Plan. Without a clear understanding of the District's priorities, plans, methods and timelines for implementing any or all of the recommended changes, the DCA's foundation for a finding of Substantial Compliance will need to be built one brick at a time as the changes are implemented.

C. Post-SRO Complaint Administrator Report

The Post-SRO Complaint Administrator completed an investigation regarding a District promotional process in summer 2010 in which two individuals were allegedly hired based upon impermissible political factors. He issued a report in November sustaining the complaint, finding

that one of the two hires was in fact hired based upon political factors. In the report, he recommended that the District, among other things, promote the complainant who had applied for the position. The DCA awaits the District's response and will address it in the next report.

D. General Superintendent Reports

The District responded to six OIIG reports in November as required by the Plan. One of the OIIG reports related to an investigation into whether UPD was involved in the recent Information Technology Manager hiring process. Though the OIIG did not conclude that UPD was involved, he recommended increasing the minimum qualifications of the position in the future and improving protocols for maintaining employee records. The District agreed to both recommendations.

The other five reports related to individuals the OIIG had recommended be terminated for falsifying job application materials. The District terminated all five individuals.

The DCA sees the District's compliance with the OIIG's recommendations as evidence of the type of cultural change that will create the foundation for a finding of Substantial Compliance. The DCA will continue to report on the District's level of cooperation with the OIIG and any efforts taken to prevent recurrence of observed deviations from the Plan in the coming months.

E. SWIPE Program

The County has begun the process of purchasing software that will allow it to track employee attendance electronically. Once purchased, the District will also have access to the software. This is significant from the DCA's perspective because the current method of tracking attendance by paper is vulnerable to abuse based on political reasons.

The DCA finds it noteworthy that the District has requested priority implementation of the program. As the timeline for implementation somewhat uncertain at this point, the DCA will provide periodic updates via the monthly reports.

VI. CONCLUSION

This third monthly report of the DCA details some of the complications encountered in the implementation of the Plan in an actual hiring sequence, raises some questions about the effectiveness of the ATAS and its role in the Plan, and provides an example of the necessity to achieve buy-in from the very important level of department head/supervisor employee in order to effectuate cultural change. The Plan requires a high degree of competence and commitment from all those involved in the hiring sequence which in turn emphasizes the importance of the DOC's role in training, monitoring, and ensuring compliance with the Plan as well as the leadership role of the executive level in demonstrating the importance of adhering to the procedures set forth in the Plan. The District continues to work constructively to address issues with the implementation of the Plan as they arise.

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Respectfully Submitted,

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