

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

MICHAEL L. SHAKMAN, et al.,)
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Plaintiffs,)
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v.) Case No. 69 C 2145
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) Judge Wayne Andersen
DEMOCRATIC ORGANIZATION OF COOK COUNTY, et)
al.,) Magistrate Judge Schenkier
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Defendants.)
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INTERIM REPORT OF THE COMPLIANCE ADMINISTRATOR

Jan Carlson, Forest Preserve District of Cook County’s *Shakman* Compliance Administrator, by and through his attorney, Peter Monahan submits his interim report to the Court pursuant to the Order entered by this Court on March 5, 2009.

INTRODUCTION

On January 14, 2009 pursuant to the Preliminary Supplemental Relief Order (“SRO”), this Court appointed Jan Carlson, to serve as the Forest Preserve District of Cook County’s *Shakman* Compliance Administrator (“DCA”) to ensure the Forest Preserve District’s (“the District”) future compliance with the prior Consent Decrees entered in 1978 and 1994, (“Consent Decrees”) respectively. The 1978 Consent Decree prohibited the District from conditioning, basing or knowingly prejudging or affecting any term or aspect of government employment, with respect to one who is at the time already a government employee, upon or because of any political reason or factor. The

1994 Consent Decree incorporated the 1978 decree's prohibitions and extended those prohibitions to include the District's hiring practices, with certain exclusions.

SUPPLEMENTAL RELIEF ORDER

The SRO, entered on March 5, 2009, orders the DCA to study existing employment practices, policies and procedures for non-political hiring, promotion, transfer, discipline and discharge. Further, the DCA is to observe actual hiring sequences, assist in formulating a new hiring plan, monitor compliance, adjudicate pre-SRO claims, aid in establishing a training program to educate and train supervisors and employees on non-political hiring practices, make recommendations to the Court as to how to resolve issues regarding *Shakman* exempt positions, file periodic reports, and various other duties.

SUBSTANTIAL COMPLIANCE

Section III.D.8 of the SRO defines "Substantial Compliance." Among other factors, Subsection III.D.8(2) requires the District to have acted in "good faith" to remedy instances of non-compliance that have been identified and prevent a re-occurrence. Subsection III.D.8(4) requires the "absence of material non-compliance which frustrates the 1994 Consent Decree and the SRO's essential purpose." Further, Section I.E requires the District to "...cooperate with the DCA in connection with the DCA's efforts to oversee and ensure implementation of portions of the Consent Decrees and the SRO, including providing reasonable access to all relevant documents, non-privileged documents and to current employees at all levels."

The factors of Substantial Compliance outlined above are interconnected and progressive, building upon each other, and at all times require good faith action and cooperation by the District. Thus, it is not sufficient that "instances of non-compliance" be identified and remedied, or that there is an "absence of material non-compliance." Rather, the identification and remediation of "instances of non-compliance" and the "absence of material non-compliance" must be the result of the good faith initiative and cooperation of the District and not chiefly through the efforts of the DCA. Where the identification and remediation of "instances of non-compliance" and the "absence of material non-compliance" are due largely to the efforts of the DCA and not through the good faith efforts of the District, Substantial Compliance will not be achieved or certified.

RESOURCE TECHNICIAN POSITION

From August 28, 2009 through September 11, 2009 the District posted and accepted applications for the position of Resource Technician. Among the minimum qualifications listed on the posting were (1) graduation from an accredited college or university with a bachelor's degree in forestry or related natural resources sciences or (2) a high school diploma or GED plus four years of "professional work experience" in natural resource

restoration, arborist work, light and/or heavy equipment operation, or other landscape/agricultural work. Additionally, the posting indicated applicants had to have the “[k]nowledge of the basic principles and concepts related to ecology and plant physiology [and]...[k]nowledge and ability to identify plants that are native and invasive to Cook County.”

The District Personnel Department received a total of 15 applications and determined that eight applicants were ineligible due to lack of minimum qualifications. The remaining seven applicants were deemed eligible for further consideration, their names were included on the eligibility list, and they were scheduled for interviews. Two of those applicants did not appear for their scheduled interviews. The remaining five were interviewed and all were offered positions. Because there were a total of six vacancies, an employee who had applied for a Resource Technician position in an earlier posting was given the position at approximately the same time.

THE DISTRICT’S REPORTED HIRING PROCESS

The District has advised the DCA that it follows specific procedures when processing applications and making hiring decisions. According to the District, all openings are posted at the Bureau of Human Resources and on the District’s website for a period of fourteen days. When the application period expires, members of the District’s Personnel Department screen all applications to determine which applicants possess the minimum qualifications listed on the job posting. Applicants whose applications indicate they do not have the minimum qualifications listed on the posting are considered ineligible. Applicants whose applications indicate they have the minimum qualifications are placed on the eligibility list and scheduled for interviews with managers in the applicable hiring department. Interview participants include three management members of the hiring department, each of whom ranks the candidates based on the results of the interviews and completes a candidate evaluation form. If there are candidates who were interviewed and ranked pursuant to a previous posting of the position, they may also be considered eligible for selection if the previous posting occurred within one year.

With respect to criminal convictions, the District takes the position that applicants will not be automatically disqualified if they have conviction records and that an individual assessment will be made to determine whether the conviction relates to the individual’s suitability for the specific position. If someone does not give accurate information about his or her record of convictions on the application form, however, he or she will be found ineligible or terminated.

DCA’S MONITORING OF RESOURCE TECHNICIAN HIRING PROCESS AND IDENTIFICATION OF CONCERNS

The DCA, through his staff, reviewed the applications and monitored the interview and selection process for the Resource Technician posting described above. DCA monitors raised questions about the District’s actions in the initial screening of applications and at various subsequent stages in the hiring process. It did not appear that

stated procedures were being followed. DCA staff also wrote to and met with the District about this posting, raising a series of questions and requesting additional information, explanation and documentation over a period of approximately five months. Unfortunately, the information provided was not responsive or raised additional questions about the District's conduct. The following issues remain:

(1) Inconsistency in Interpretation of Minimum Qualifications:

During the initial application screening process, a DCA monitor found that one of the candidates whose name was included on the Resource Technician eligibility list did not have the minimum qualifications listed on the posting, and she considered him to be ineligible. The candidate's only relevant experience consisted of two years of part-time work and two years of weekend work as a general laborer for several landscape companies. Specifically, his application indicated that he mowed lawns, planted flowers and did "a little cutting and pruning" and "general maintenance on equipment." The monitor concluded that this background did not meet the minimum requirement of four years of "professional work experience" described in the posting. The monitor also noted that this individual was one of only two who applied for the position on the first day it was posted, which well could be an indication that the individual was given advance notice of the job opportunity.

The DCA requested additional information and input from the District regarding its finding of eligibility. When questioned about the fact that this candidate performed landscaping work for four years on a part-time or weekend basis, the District indicated that it did not take into account whether previous work experience was part-time or full-time; only the years of experience mattered. When asked on what basis this individual's landscaping experience was considered "professional" as required by the posting, District personnel maintained that the word "professional" was not used "in the sense of work experience." Rather, they interpreted it to relate to whether the person had "worked at a job." In support of this interpretation, the District provided a copy of an e-mail from the Chief of the Cook County Bureau of Human Resources and stated that he supported this interpretation.

DCA Concerns: The employment of this individual raises a number of concerns about the District's adherence to its procedures and the consistency of its practices. First, the District's interpretation of the word "professional" does not make sense, nor does it match any usual definition of the word, especially in an employment context. Contrary to the District's contention, DCA staff met with the Bureau Chief after the meeting with District representatives, and he indicated he did not agree with the District's interpretation. Second, the DCA feels that, given the expansive manner in which the District interprets "professional," its job postings are misleading and likely keep the number of applicants artificially low. This conclusion is borne out by the fact that, despite the current economy and the relatively high compensation and benefits offered by the District, it received a total of only 15 applications in response to the first Resource Technician posting and a total of 16 applications to the second posting. If the posting

had indicated that four years of part-time landscape work met the minimum qualifications, it is reasonable to expect literally thousands of applications.

(2) Inconsistency in Application of Minimum Qualification Standard:

A DCA screening monitor noted that another of the eight candidates whose name was on the eligibility list did not have *any* of the minimum qualifications described in the posting and found him ineligible as well. He had neither a relevant degree nor any remotely related work experience. The District's screeners nevertheless decided he was eligible, placed his name on the eligibility list and scheduled him for an interview. On the other hand, other individuals who applied for this position were disqualified from further consideration based on their lack of minimum qualifications. The monitor also noted that, like the candidate discussed above, this candidate was recorded as applying on the first day of the application period, August 28. Making it even more questionable is the fact that this individual's application was dated August 26, 2009, which was two days before the position was officially posted.

The DCA asked for additional information and documents to explain why this candidate was deemed eligible and scheduled for an interview despite his lack of any of the minimum qualifications. The District stated that the screeners decided he was eligible because they felt his business and supervisory background put him "well above [other applicants] in terms of experience." When questioned why they would consider such experience relevant to the job in question, the District representatives stated that they felt it was a matter of "management discretion," which entitled them to consider whatever background they felt would be appropriate. In the words of the District's Chief Attorney, the District feels it is its prerogative to "make tough decisions and exercise their discretion when it is appropriate to do so." The DCA also asked the District why another applicant for this position who indicated on his application that he had over 25 years of experience in construction, including significant supervisory experience, was found ineligible for further consideration due to his "lack of relevant experience." The District did not explain the difference in its conclusions.

DCA Concerns: This contradictory approach and selective application of eligibility criteria raises serious questions about the objectivity, transparency and consistency of the District's selection process. The inconsistent and contradictory approaches of the District in this one situation alone indicate that that process is not operating as it should and will not prevent the type of politically motivated hiring required by Shakman.

(3) Questionable Role of Interview Process:

A DCA monitor present at the interviews reported that the interviewers discussed the above candidate's lack of minimum qualifications during their meeting after the interview. They also referred to his lack of minimum qualifications on their written evaluation forms. Nevertheless, they rated the candidate as "acceptable" or above in every category on the evaluation form. Similarly, the interviewers of the employee hired from the previous posting ranked him the lowest of all candidates interviewed, noting on

the evaluation forms that he was “very limited as to his abilities...appears to have little initiative...[and] at best he is marginally acceptable.” One noted that he did not know the meaning of the word “ecology” and he misidentified a plant.

These facts gave rise to the question of when, if ever, any applicant who was placed on an eligibility would be considered ineligible for an employment offer based on the interview process. When questioned, District staff confirmed that, unless disqualified based on criminal background or failure to appear for an interview, all candidates who are placed on the eligibility list are ranked by the interviewers and they are selected for employment in the order in which they are ranked. If there are five positions open and five people interviewed, all will be offered a job, regardless of their relative ranking. Furthermore, if there are more ranked candidates than openings, the remaining candidates (who are by definition the lowest ranked) may be offered employment if the openings become available within twelve months, regardless of their interview scores.

DCA Concerns: The DCA is concerned about this situation because it appears that, with very few exceptions, any applicant who is considered eligible after screening and is placed on the eligibility list will be offered employment. The interview process is not used to cull the most qualified applicants from the eligibility list. Rather, it is used to determine the order in which those on the list will be offered employment, and employment within a year is almost assured. This may be an appropriate practice for low or unskilled positions. This is troubling when applied to more skilled jobs, however, because it creates a situation where the Department of Personnel is determining who will be hired, and the hiring department is determining only the order in which hiring will occur. The members of the hiring department are presumably the best qualified to decide whether someone who, on paper, appears to have the minimum qualifications for the position is actually qualified. Having those decisions made by the Department of Personnel prevents that from happening. Naturally, this concentration of decision-making authority raises significant Shakman concerns, especially in light of the expansive interpretation of minimum qualifications and management discretion employed by the Department of Personnel as described above.

(4) Criminal Backgrounds and Re-Employment of District Employees Previously Fired:

Two applicants for the second Resource Technician posting and one applicant for the first posting indicated on their applications that they had prior criminal convictions. In one case, the conviction was for “assault after an auto accident” in 1985 and “accessory to murder” in 1989. This applicant was interviewed and recommended for hire, but he was deemed ineligible after an investigation by a member of the District’s legal staff. Another applicant indicated he was convicted of “aggravated domestic battery (Class 2 felony) in June of 2005.” This individual was interviewed and hired. No investigation of his conviction was conducted. The third applicant stated he was convicted of a “misdemeanor” in 1989 (the specific violation is not described), and that he was placed on probation and did community service. He also indicated that he was employed by the District previously and had been terminated only four months earlier because he gave

incorrect information about his conviction record on his employment application. Specifically, he stated he “did not mark conviction box correctly.” This individual was also hired.

DCA Concern: This inconsistent approach to conviction records is of concern because it allows for differential treatment of applicants. The DCA asked the District to explain whether it had conducted an investigation of the second applicant given the general description of his conviction. The DCA also asked the District to explain its policy regarding the reemployment of applicants who had previously been terminated by the District for providing incorrect conviction information on their applications. In response, the District’s Chief Attorney indicated that the District did “not have detailed records regarding which employment applications have/have not been forwarded to the District’s Legal Department for review.” He also referred to a Cook County Ordinance that states, “No persons shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment... Any person who is found to be in violation of this section shall, for a period of five years, be ineligible for appointment to or employment in a position in the County service, and if he/she is an officer or employee of the County shall forfeit his/her office or position.” The Chief Attorney stated he was not previously aware of this ordinance and believes it is not being followed.

The DCA is aware that consideration of prior criminal convictions in the employment setting is subject to a number of legal issues. Nevertheless, it appears there is no standard procedure or protocol for determining when and whether a criminal history will be investigated, when it will result in disqualification and what effect a previous termination by the District will have on subsequent applications. This lack of consistency and clear procedure creates another situation in which political considerations can come into play without detection.

CONCLUSION

Jan Carlson, by and through his attorney, Peter Monahan, hereby respectfully files this Interim Report.

Respectfully Submitted,

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