

**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

**FIFTH REPORT OF THE SHAKMAN COMPLIANCE ADMINISTRATOR  
FOR THE FOREST PRESERVE DISTRICT OF COOK COUNTY**

Jan Carlson, *Shakman* Compliance Administrator for the Forest Preserve District of Cook County, by and through his attorney, Peter Monahan, submits this Fifth 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”)<sup>1</sup> 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-political hiring practices, (4) making recommendations to the Court as to how to resolve issues

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<sup>1</sup> DCA is defined as the Compliance Administrator and/or his staff.

regarding Shakman exempt positions, (5) making recommendations to the District in formulating a new employment plan (the “Plan”)<sup>2</sup> and monitoring compliance, (6) evaluating and adjudicating claims filed by individuals who believe they were victims of Unlawful Political Discrimination during the claim period and (7) filing periodic reports.

In his Fourth Report, the DCA summarized the evaluation and adjudication of claims. The DCA concluded the claim process in late 2010 shortly after the new administration took office. Since the adjudication of the claims, the DCA has focused on working with the new administration and Plaintiffs’ counsel to develop a transparent Employment Plan and Supplemental Procedures, to agree to a Director of Compliance (“DC”) job description and to monitor posting and the selection process for the DC. In addition, the DCA assisted the District and the Cook County Office of the Independent Inspector General (the “OIIG”) to formalize the monitoring, auditing and investigating roles of the OIIG with respect to the District.

Significant progress has been made since December 2010. Since the DCA’s appointment in March 2009 through November 2010, the cooperation received by the District had been less than satisfactory, in terms of document production for the claims adjudication, with respect to monitoring hiring sequences and with respect to developing a transparent Plan and procedures. The prior administration failed to demonstrate the necessary commitment to cultural change, failed to convey a message to the rank and file that unlawful discrimination would not be tolerated and continued to make employment decisions on an ad hoc basis not governed by transparent procedures. This lack of cooperation and commitment resulted in unnecessary costs to the taxpayers and delays toward reaching Substantial Compliance. The one exception to this non-cooperative approach was the hiring of a *Shakman* liaison (the “Liaison”) in November 2010

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<sup>2</sup> The SRO requires the DCA to assist the District in formulating a new Hiring Plan for submission to the Court for approval. The parties have agreed that the plan will address and/or reference all employment actions and will be titled an Employment Plan.

only weeks before the prior President left office.

Since December 2010, the new President and the new General Superintendent have taken a much more cooperative approach with the DCA and a much more proactive approach toward achieving Substantial Compliance. The new administration retained the Liaison, hired a Deputy Superintendent, replaced the former Human Resources Director, replaced the Director of the Maintenance Department, hired an independent consulting firm to conduct desk audits of the entire work force, finalized the Plan, which has been filed and approved by the court and developed Supplemental Procedures for other employment actions. In addition, the District has conducted interviews and selected a Director of Compliance, and adopted the OIG ordinance officially recognizing the jurisdiction of that office as to the District. The efforts of the new administration and specifically the Liaison and the new Director of the Human Resources Department (the “HRD”) have resulted in the District making more progress toward Substantial Compliance within the last ten months than it made in the prior 21 months.

The DCA is encouraged by the President’s and the General Superintendent’s willingness to cooperate and to make progress toward Substantial Compliance and the eventual sunset of the SRO. The hiring of competent, professional individuals in the General Office, the HRD and the Liaison to spearhead the compliance effort in the short-term and to establish lasting transparent procedures in the long-term demonstrates a sincere effort to change the culture of the District. Notwithstanding this new and refreshing approach, there is significant work that remains: the District must implement the Plan; the parties and the DCA must agree to policies that provide for transparency in other employment actions including but not limited to transfers, promotions, overtime, discipline and discharge; the District must implement these additional procedures; the District must continue training managers; and supervisors must train the rank and file employees

on unlawful political discrimination and unlawful political contacts as well as the provisions of the Plan and the policies; and the parties must finalize an Exempt List. In addition, the DCA must monitor the implementation of the Plan and Supplemental Procedures, the Director of Compliance and the OIIG for a sufficient time to ensure that the District has substantially complied with the provisions of the SRO.

This report details the requirements for Substantial Compliance as set forth in the SRO, identifies the new procedures and policies developed and implemented by the District and the remaining work required.

### **SUBSTANTIAL COMPLIANCE**

In order to recommend Substantial Compliance to the Court, the DCA will think in terms of sound public policy, transparency and managerial excellence. The Forest Preserve District of Cook County is the largest of its kind in the country. It strives also to be the best. The use of political influence in the hiring, promotion, transfer, discipline or discharge of district employees dilutes the ability of policy makers and top management to fairly and adequately manage its work force. The introduction of politically protected individuals who do not carry their share of the load or who do not meet the minimum qualifications for the job in which they are placed adds to the cost of government services in many ways, especially when, from time to time, they are found in management.

The SRO requires the following before there can be a finding of Substantial Compliance:

1. The District has implemented the New Employment Plan, including procedures to ensure compliance with the Plan and on an on-going basis identify instances of non-compliance;
2. The District has acted in good faith to remedy instances of non-compliance that have been identified, and in each case develop a plan to prevent a recurrence;
3. The District does not have a policy, custom or practice of making employment decisions based on political factors except for Exempt Positions;

4. The absence of material noncompliance which frustrates the 1994 Consent Decree and the SRO's essential purpose. The DCA and the Court may consider the number of Post-SRO complaints that the IGO found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the District is not in substantial compliance; and
5. The District has implemented policies and procedures that will effect long-term prevention of the use of impermissible political considerations in connection with employment with the County. (SRO, III.E.8).

Although the SRO includes five requirements or essential factors in the definition for substantial compliance, the DCA believes these requirements overlap and that the District needs to demonstrate the following in order to achieve Substantial Compliance: (1) it must have established and implemented new transparent employment procedures, including the Plan, that will effect the long-term prevention of unlawful political discrimination in employment actions, (2) it must have acted in good faith to remedy instances of non-compliance with the SRO and must have instituted structures and procedures to ensure that instances of Unlawful Political Discrimination will continue to be remedied and (3) it must have demonstrated a change from a culture of political favoritism to a culture free from political discrimination.

**1. The District has established and implemented new transparent employment procedures, including the Plan that will effect the long-term prevention of unlawful political discrimination in employment actions.**

Since December 2010, the District prioritized the development of the Plan and worked with the DCA and the Plaintiffs' counsel to finalize the Plan. This effort was spearheaded by the Liaison. The District's Plan was filed with this Court on July 14, 2011 and entered pursuant to Court order on July 18, 2011. In addition to the development of the Plan, the District gave a high priority to professionalizing HRD and hiring a Director of Compliance. These are critical steps toward achieving Substantial Compliance. The Plan includes transparent procedures which clarify expectations and requirements for applicants and all individuals involved in the employment processes. Professionalizing the human resources function and hiring the Director

of Compliance are essential to implementing the Plan and procedures. The DCA is impressed with the District's hire of a new Director of the HRD and the care taken with the District's posting, interviews, and hiring of the Director of Compliance. The DCA will continue to monitor the implementation of the Plan including the training on and use of the Plan and the online application system as well as the functioning of the Director of Compliance

**A. The Shakman Liaison**

In late 2010 the District dedicated a full-time employee to achieving substantial compliance with the SRO. The Liaison has streamlined communications, established deadlines and goals and has facilitated a cooperative effort toward compliance. While the Liaison's contributions are not limited to this first requirement of substantial compliance, the efforts made by the Liaison have been so central to the District's progress, the DCA wanted to note this accomplishment at the outset.

**B. The Plan and Procedures**

Since January 2011, the DCA has met regularly with the Liaison, the Director of HRD and counsel to develop the Plan as required by the SRO. The DCA and the District also met with Plaintiffs' counsel. Through the tenacity of my staff, invaluable input from Plaintiff's Counsel and a tremendous amount of work by the District, the parties and the DCA were able to agree on a Plan which was filed on July 14, 2011. The Plan includes transparent procedures that are necessary to prevent unlawful political discrimination in employment actions. Rather than making decisions based on political reasons or factors, the District, pursuant to the Plan, will be required to make decisions based on merit and clear criteria.

In addition to finalizing the Plan, the District has developed transparent procedures for other employment actions including, but not limited to, promotion, transfers, overtime,

performance evaluations, assignments, discipline and discharge. The procedures for these and other employment actions are addressed superficially in the Cook County Personnel Rules but the District has developed more detailed and transparent procedures to ensure that political factors cannot and will not be considered in making these employment actions and that clear expectations are set for employees and applicants.

### **C. The Human Resources Department**

As stated above, the hiring of a professional Human Resources Director is a significant step toward achieving Substantial Compliance. The District's human resource is its most important and costly asset. The 2011 FPD budget (at page 41) places the cost of this resource at \$38,346,948; or 67% of the District's total operating expenditure. Careful management of this resource is critical to the mission of the District and to the taxpaying public. Therefore, transparent procedures and competent personnel are needed to implement newly introduced procedures. The Director of the HRD plays a central role in ensuring that the District is following transparent employment procedures and is not making employment decisions based on unlawful political considerations. The Director of HRD, with the assistance of the Director of Compliance, will also be responsible for ensuring that the District's employees are trained on the provisions of the Plan and Supplemental Procedures. The new administration's decision to hire an experienced, competent and professional Director of HRD demonstrates to the DCA that the District is committed to making the necessary cultural change.

The District also contracted with a Human Resources consultant to conduct desk audits of each position within the District. The purpose of the desk audits is to ensure that accurate job descriptions exist or are developed to reflect the actual duties of each position. In addition, the desk audits will help identify positions that are under-utilized or over-utilized in hopes of

reducing waste. The District has asked its Department Heads to respond to the findings of the desk audits and intends to roll out a plan to implement certain recommendations. The DCA applauds the District's hiring of an independent third party to conduct these audits and to implement the recommendations. The DCA has monitored a representative sample of the desk audits and will review the final reports of the consultant and the related organizational charts.

**D. Director of Compliance**

In late August 2011, the District hired a Director of Compliance (the "DC"). The DC is a non-exempt position which reports directly to the General Superintendent and works closely with the HRD and the OIIG. The Director of Compliance will assist in implementing the Plan and Supplemental Procedures. One of the first major duties of the DC is to train the District managers and supervisors on the provisions of the Plan and Supplemental Procedures and to investigate and report on violations of the Plan and procedures. As with the Director of HRD, the DC will play a critical role in ensuring that the District implements and follows transparent procedures instrumental to the prevention of Unlawful Political Discrimination.

**E. Application Tracking System**

The SRO also requires the District, with the input of the DCA, to conduct a good faith analysis of the feasibility of creating an application tracking system. The District has adopted the County ATAS system, known generally as "TALEO". TALEO was originally used by the City of Chicago and it was hoped that it would work equally as well for Cook County. One of the purposes of TALEO is to increase transparency in the hiring processes which will help eliminate the consideration of political factors in employment actions. Unfortunately, the implementation of the system has not been seamless. From a *Shakman* perspective, the TALEO system has a number of problems including the inability to post a No Political Consideration

Certification for signature by applicants as well as employees involved in the hiring process; the inability to randomize eligibility lists; the inability to sort applicants depending on whether they possess preferred qualifications; and the inability to generate accurate eligibility lists. In addition to the functional problems with Taleo, the District relies on the County's Bureau of Human Resources for TALEO support. It appears that the County has not adequately trained the users of TALEO; both the County and the District employees involved in the employment processes must, and are receiving better training on the TALEO system. The on-line application system is an integral part of the hiring process. The migration of this system from the city to the county has proven to be more difficult than anticipated. Because of its size, the District is not experiencing as many problems, but it remains that the County must fix both the system and user problems to ensure that the automated, on-line application system is fully functional.

**F. Past Monitoring of Employment Actions**

Since shortly after his appointment, the DCA has monitored District employment actions. In the past, the District did not have written procedures for these actions and the DCA's monitoring revealed problems with the District's HR function. In spring 2011, the DCA monitored the hiring processes for seasonal laborers, lifeguards, aquatic center managers and cashiers. At the time that this monitoring took place the parties had not yet agreed to the Plan, but agreed to substantially follow the provisions of the Plan to fill these positions. The DCA did not find any *Shakman* violations while monitoring these hiring sequences but did make recommendations to the District regarding the process. The DCA will continue to monitor employment actions under the Plan as well as the DC's involvement in the implementation of the Plan.

**G. Train the Trainer**

The HRD in conjunction with the Director of Compliance will be responsible for training the District staff on the Plan and procedures. The District has conducted some interview training but has to train its senior staff and managers on the provisions of the Plan, once implemented. The DCA will monitor this training effort until the responsibility for which can be transferred to the Director of Compliance.

#### **H. Exempt List**

The District has agreed to revisit its current Exempt List which was filed with the Court as part of the District's Plan of Compliance in 2004. Between 2002 and 2003 the District work force was reduced from 1013 positions to 540 positions but the number of exempt positions remained constant at 39 positions. The DCA has discussed his concern; and in addition, that some of the positions listed on the Exempt List are not in fact confidential employees or policy makers and should be deleted from the List. As a part of the Employment Plan now on file with the Court, the District has agreed to review and revise the job descriptions for Exempt Positions, including minimum qualifications, and that they will not employ any person in one of those positions who does not meet those minimum qualifications. In addition to revising the Exempt List, whether or not the District, in fact, lives up to its commitment to ensure that all Exempt employees meet the minimum qualifications for the Exempt Position will be critical to the District achieving Substantial Compliance.

#### **I. Present and Future Monitoring of the Plan and Procedures**

Since the Employment Plan was filed, the District has hired a Division Superintendent in the Maintenance Department and a GIS Manager in the Planning and Development Department and has posted for the positions of Police Patrol Officer, Civil Engineer III, Naturalist I, Training and Development Manager, Resource Specialist II and Recreation Supervisor. The DCA

monitored all aspects of the hiring of the Division Superintendent and GIS Manager, and is in the process of monitoring the pending hiring actions.

Of particular interest to the DCA is the police hiring process. As noted in the last report, many claims resulted from the tainted hiring processes in the Police Department. The new administration has worked with the DCA and the Plaintiffs' counsel to develop a transparent, multi-step process for this hiring. The DCA has been monitoring this ongoing process and will report on this as well as additional hires in its next report.

The DCA will also monitor additional employment actions that are governed by the Supplemental Procedures and the County Personnel Rules. Recently the DCA sent his monitoring protocol to the District. With minimal exception the District did not take issue with the protocol. Additionally, the District will monitor the training on the Plan and Supplemental Procedures and the DC's involvement in the training and the employment actions.

As noted above, the District has made significant changes in HRD, has developed and begun the implementation of transparent procedures, has held training sessions on the Plan and has hired a Director of Compliance. The District has kept the DCA apprised of these changes and developments and where appropriate the DCA has monitored the District's activities. The DCA will continue to monitor the implementation of the Plan and supplemental procedures as well as any training and will monitor the office of the Director of Compliance during its developmental stages. The monitoring conducted thus far indicates that the District's commitment to change is real, but the DCA will need to monitor a range of activity under the Plan before certifying Substantial Compliance.

- 2. The District has acted in good faith to remedy instances of non-compliance with the SRO and has instituted structures and procedures to ensure that instances of unlawful political discrimination will continue to be remedied.**

In order to achieve Substantial Compliance, the District must demonstrate that it has acted in good faith to remedy instances of non-compliance that have been identified and prevent a recurrence. The District took positive steps toward remedying problems identified in the Pre-SRO claims process. In addition, the District recently adopted the OIIG ordinance, has responded to recommendations made by the OIIG with respect to non-political wrongdoing and adopted and implemented the political contact log and associated training. The District's responses to the recommendations of the OIIG and the Post-SRO Complaint Administrator relating to complaints of Unlawful Political Discrimination, to the extent applicable, will help to establish that the District is serious about remedying Unlawful Political Discrimination.

**A. The Pre-SRO Claims**

As detailed in the DCA's Fourth Report, in many instances the District failed to follow identified procedures and/or failed to apply procedures consistently when making employment decisions. At times HRD and other departments made decisions based on political connections rather than merit. The DCA determined that this was especially true in the Maintenance and Police departments. In addition to hiring a Director of HRD with human resources experience, the District also replaced the Director of the Maintenance Department and has instituted a new process for testing police officers and sergeants that will be administered by an independent third party. Recently, the District posted for the police officer position. Although some questions remain, the DCA believes the steps taken by the District provide evidence that the District is committed to remedying past problems and creating a culture free from political discrimination. The DCA will have to monitor the implementation of the procedures, however, to determine whether this commitment is thoroughgoing and lasting. We will join the newly hired Director of Compliance in monitoring carefully the upcoming hiring sequence.

## **B. The OIIG**

In early 2011, the District Board officially adopted the OIIG ordinance. Although the District previously had not objected to the OIIG's investigations of complaints of Unlawful Political Discrimination, unlawful political contacts and fraud, waste and abuse, the official adoption is a positive step toward establishing permanent structures to combat wrongdoing.

The OIIG has conducted a number of investigations of complaints alleging wrongdoing by District employees. Only a few have involved allegations of Unlawful Political Discrimination and the OIIG did not sustain many of these complaints. The OIIG has, however, sustained complaints relating to waste, fraud and abuse and the District has followed the recommendations of the OIIG including disciplining and terminating employees, as well as providing necessary training. The OIIG has also sustained complaints of Unlawful Political Discrimination in connection with the County. The DCA has reviewed the OIIG investigation reports relating to the District and the County and is satisfied with the recommendations made by the OIIG and the responses by the District.

In conjunction with the District, the DCA and the County, the OIIG has implemented the political contact log. Pursuant to the log, all employees in the District will be required to log all political contacts made, whether lawful or unlawful, regarding applicants for employment or other employment actions. The District notified all employees of this requirement by including an explanatory letter from the President, the OIIG and the DCA with employees' recent paychecks and the OIIG conducted training of the District's department heads and other managerial staff. To date, the OIIG has opened a number of investigations and has met with various public officials regarding such contacts.

### **C. The Post-SRO Complaint Administrator and Post-SRO Complaints**

Another indicator of how the District has remedied Unlawful Political Discrimination and developed policies to prevent its recurrence is the District's response to the findings of the Post-SRO Complaint Administrator (the "Post-SRO CA"). To date, 15 individuals have filed post-SRO Complaints. Four of these individuals withdrew their complaints. The Post-SRO CA has issued two reports of investigation, not finding any evidence of political discrimination. Currently, there are 9 pending investigations. The DCA will review any additional Post-SRO CA's investigation reports received and will monitor the District's responses to any positive findings. The DCA has also proposed a plan for the transition of duties regarding Post-SRO complaints from the Post-SRO CA to the OIIG. The DCA feels strongly that he needs to monitor the OIIG's handling of individual complaints prior to making a determination of Substantial Compliance. To date, the DCA is pleased with the OIIG investigations but would like to monitor how the OIIG functions without assistance from either the DCA or the Post-SRO CA.

The District's formal adoption of the OIIG ordinance as well as its responses to the pre-SRO claims and OIIG recommendations demonstrate the District's good faith effort to ensure that instances of political discrimination be remedied. The DCA will continue to monitor the OIIG as well as the District's responses to OIIG recommendations and findings of the Post-SRO CA.

### **3. The District has demonstrated a change from a culture of political favoritism to a culture free from political discrimination.**

Both the President and General Superintendent have sent a clear message to the District department heads, supervisors and rank and file that the manner in which the District previously operated will no longer be tolerated. The President and General Superintendent conveying their

commitment to staff and all employees is necessary but only the first step. In order to achieve Substantial Compliance the District needs to commit the necessary resources to achieving this goal. By tasking the Liaison, the Director of HRD and the legal department with working with the DCA to achieve compliance, the District has demonstrated by word and action that substantial compliance is a priority and it is committed to making the necessary cultural change.

The District has made personnel changes at the highest levels to ensure that its processes are implemented in a fair and transparent manner. In addition, the District has ensured that all employees have received training on *Shakman* and Unlawful Political Discrimination, that all department heads and senior staff have received training on the contact log, that all employees have received an explanation of the contact log and that all individuals involved in employment actions have received training on processes. Adoption of the OIIG ordinance and filling the Director of Compliance position also demonstrate the District's commitment to long term prevention of and creating a culture free from political discrimination.

The DCA, however, must see more evidence of cultural change prior to recommending a finding of substantial compliance. Personnel have been hired and procedures have been developed but the true test is whether the transparent procedures are followed. This includes not only the procedures for hiring, promotion and overtime but also the procedures for filling exempt positions, training staff and investigating complaints of plan violations and Unlawful Political Discrimination. The DCA will turn his efforts toward monitoring of the implementation of these procedures.

## **CONCLUSION**

Since the new administration has taken office, the District has made significant progress toward Substantial Compliance. The development of a Plan, the hiring of a Director of

Compliance and the adoption of the OIIG ordinance are major steps toward demonstrating the District's commitment to eradicating Unlawful Political Discrimination. There is, however, still work to be done. The District must implement the Employment Plan and Supplemental Procedures and must train its personnel. In addition the DCA must continue to monitor this implementation as well as the functioning of the OIIG and the Director of Compliance.