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

MICHAEL L. SHAKMAN and	)	
PAUL M. LURIE, *et al.*,	)	**Case No. 69 C 2145**
Plaintiffs,	)	
	)	
v.	)	
	)	
DEMOCRATIC ORGANIZATION OF	)	**Sidney I. Schenkier**
COOKCOUNTY, *et al.*,	)	**United States Magistrate Judge**
Defendants.	)	

CORRECTED MAY 21, 2014 REPORT ON SUBSTANTIAL COMPLIANCE

After almost nine years of intensive oversight of the City of Chicago's hiring and employment practices, we are pleased to report that, in our opinion, the City has achieved "Substantial Compliance" as defined by the *Agreed Settlement Order and Accord*. During this period of active monitoring, the City has adopted a wide variety of reforms, policies, and practices intended to prevent, identify, and address violations of its newly established hiring and employment practices. Having observed the City's commitment to enforcing these new policies over the past several years, we believe that further on-going Court oversight is no longer necessary. These policies have resulted in a more professional and efficient hiring process, and a more transparent and fair set of employment rules. Moreover, these measures should avert wide-spread hiring irregularities today and prevent the re-emergence of the patronage practices of the past. All told, the Plaintiffs, the City of Chicago, and the Monitor's office have devoted substantial time and resources to reach this point. Thus, the Monitor recommends that external oversight of the City's hiring and employment practices be lifted.

In order to more fully explain the basis for this conclusion, below is a summary of the activities and events that preceded the Monitor's opinion that the City of Chicago has achieved Substantial Compliance with the *Agreed Settlement Order and Accord*.

I. INTRODUCTION

On July 26, 2005, the Plaintiffs in the *Shakman* litigation filed an Application to Hold the City of Chicago and its Mayor in Civil Contempt for Violations of the Court Orders ("Contempt Motion"). The Application resulted, in part, from criminal complaints brought by the United States Attorney's Office on July 17, 2005, against four former City officials: former Assistant to the Director of the City's Office of Intergovernmental Affairs ("IGA") Robert Sorich, former Director of Staff Services in the City's Department of Streets & Sanitation ("DSS") Patrick Slattery, former

IGA employee Timothy McCarthy, and former Managing Deputy Commissioner in the DSS John Sullivan. The complaint and subsequent indictments detailed repeated instances of manipulation of interviewing, selection, and hiring processes by City officials to ensure preferential hiring and promotions for candidates pre-selected for political reasons, in direct violation of the Shakman Decrees.

On August 2, 2005, this Court appointed a Monitor, Noelle Brennan, "to ensure future compliance" with the Court's prior orders in *Shakman, et al.*, in response to the Plaintiffs' Contempt Motion. In the August 2, 2005 Order, the Court stated in part:

> The Shakman Monitor, subject to the supervision and order of this Court, shall study the Defendants' existing employment practices, policies and procedures for nonpolitical hiring, promotion, transfer, discipline and discharge.

August 2, 2005 Order, at 3.

On May 31, 2007, the Plaintiffs and City of Chicago jointly submitted an *Agreed Settlement Order and Accord*, which was entered as a Court Order. With respect to the Monitor's role, the *Accord* dictated that:

> The [Monitor], with her counsel and staff, shall continue to actively monitor the City's compliance with the *Accord* until its termination. *Accord*, at 9.
>
> The [Monitor] will facilitate the development of the [City's New Hiring Plans] and may make written objections. *Accord*, at 13.

The *Accord* also established a $12 million fund and a Claim Form process for individuals who believed they were victims of the City's patronage hiring and employment practices. Pursuant to the *Accord*, the Monitor's office was to receive, investigation and adjudicate the completed Claim Forms. *Accord*, 15-20. Finally, under the *Accord*, the Monitor is instructed to "advise the Court whether, in the opinion of the Shakman Decree Monitor, the City is or is not in Substantial Compliance with the Accord." *Accord*, at 10.

On April 29, 2011, the Court entered an additional Order, stating in part:

> To further the discharge of those duties [outlined above], we reaffirm the Monitor's authority to conduct investigations of the City's efforts to obtain substantial compliance, including investigating whether and to what extent the City has addressed and remedied the employment practices brought to light as a result of the *Sorich* case. The Monitor may investigate those employment practices, including the conduct of current and past City employees who engaged in, or have been alleged to have engaged in, assisted or accepted those employment practices. The Monitor may make such recommendations to the City and to the Court as the Monitor deems appropriate as a result of such investigations.

April 29, 2011 Order at 2.

Pursuant to these Court Orders, the Monitor, her attorneys, and her staff have engaged in a wide variety of activities over the past almost nine years, including, studying the City's hiring and related employment practices; investigating the effectiveness of those practices; recommending a variety of reforms to the City's employment practices; actively monitoring its hiring and other employment policies; attending interviews or tests for more than 18,000 candidates; facilitating the development of the General Hiring Plan, the Amended Hiring Plan, the Chicago Police Department Hiring Plan and the Chicago Fire Department Hiring Plan; investigating and adjudicating 1500 Claim Forms submitted by Class Members; conducting twenty-six in-depth discipline investigations for legacy *Shakman* violations not addressed by the City; interviewing more than 500 City employees or applicants to assess the hiring process and detect violations; investigating on-going complaints and hiring sequences; and, filing thirty public reports and pleadings with this Court.

II. PRELIMINARY ACTIVITIES AND INVESTIGATION

Following the August 2, 2005, appointment, the Monitor's initial objectives were to investigate the City's existing employment practices, assess the current compliance with the *Shakman* decrees, and identify systemic problems that would prevent future non-compliance.

At that time, the City operated under a Court mandated hiring plan titled the "Detailed Hiring Plan." That plan was the result of a long-term negotiation between the Plaintiffs and the City and was intended to ensure that political factors did not influence hiring and employment decisions at the City. The Detailed Hiring Plan included lengthy processes and procedures that the City was required to follow to limit the ability of individuals to hire and promote based on political factors. The implementation of the Detailed Hiring Plan and compliance with it was subject to regular external audits. These audits, however, amounted to a review of paper work—meaning, the auditors only reviewed whether City officials filled out the necessary forms that tended to show compliance with the Detailed Hiring Plan. Accordingly, because the proper paper work was completed, the audits did not uncover wide-spread violations. In addition to the audits, one component of the plan required the City to periodically report to the Court whether it was in compliance with the Detailed Hiring Plan, and the City reported that it was for many years.

A. Preliminary Report and Recommendations

The Monitor's preliminary study revealed that the City routinely violated the requirements of the Detailed Hiring Plan. Although the City had a variety of written "policies" mandating compliance with the Detailed Hiring Plan, those policies were routinely ignored. Certain policies, which were key to limiting political influence in hiring and promotion decisions, were regularly violated. Even when policies were "technically" complied with, such compliance was formal, but not substantive. Accordingly, the Monitor's First Report included "Recommendations for Immediate Implementation" as a means to increase immediate compliance with the Court's previous Orders. The Recommendations were extensive and included immediately hiring more

Department of Human Resources ("DHR") employees; eliminating operating department involvement in screening candidates; purging outdated candidate lists; maintaining logs of "inquiries" about select candidates; requiring attestations that no political factors were involved in employment decisions; providing advance notice of all proposed new hires and promotions to the Monitor's office; and, implementing mandatory training on the *Shakman* requirements, among other things.

The City adopted many of these recommendations and they were formally incorporated into a Court Order entered on November 2, 2005. These initial recommendations were intended to instill integrity into the hiring process while the Monitor's office was able to conduct a more thorough study and analysis of the City's hiring and employment processes.

B. Initial Monitoring Period

1. Monitoring and Oversight Activities

During this initial monitoring period, the Monitor's office actively oversaw each stage of the hiring process and continued to identify problematic individual hiring sequences and systemic employment practices. To ensure that each hiring sequence conformed to the newly instituted reforms, the Monitor hired six individuals to audit all aspects of the City's hiring processes, including the proper notification of job listings, the creation of appropriate referral lists, appropriate conduct and scoring at interviews and tests, among other duties. One auditor was housed at DHR and would review each hiring packet and referral list, track all hiring sequences and interviews, flag problems for DHR and the Monitor's office and submit weekly reports regarding her activities. In addition to the Monitor and her Court appointed attorneys, five other part time attorneys were retained to assist in conducting investigations, drafting reports, helping to craft recommendations, and other duties. Finally, the Monitor and her attorneys retained five additional non-attorney part time staff to assist with activities described below. Overall, from the August 2005 appointment, through December of 2006, the Monitor, her attorneys, and staff engaged in the following activities:

- Attended 2224 interviews and tests in the City's Infrastructure Departments to ensure there was no collusion in scoring, to ensure assessment forms were filled out individually, and that each applicant was asked the same core questions;

- Attended 770 interviews and tests in other City departments to ensure there was no collusion in scoring, to ensure assessment forms were filled out individually; and that each applicant was asked the same core questions;

- Reported specific incidents of actual or apparent *Shakman* violations to the City, recommended specific corrective action, conducted investigations, and/or requested that the City conduct its own investigation;

- Audited each hire sequence for *Shakman* compliance before an offer of employment was made, including auditing the screening process, creation of the referral lists, and the ranking of candidates;

- Audited the *Shakman*-Exempt list to identify improper hires and reconcile the over 100 amendments the City had previously filed with the Court;

- Eliminated the City's former practice of shuffling *Shakman*-Exempt "slots" to different positions and/or departments in violation of then existing Court orders;

- Audited *Shakman* certifications for new hires and obtaining missing certifications, if necessary;

- Created and maintained a website for collecting *Shakman* related complaints and information;

- Assessed and reviewed 440 *Shakman* complaints received regarding ongoing or completed hiring sequences;

- Opened 175 investigations into the complaints received regarding ongoing or completed hiring sequences;

- Provided training on *Shakman* principles to more than 200 City personnel, including Department Commissioners, personnel liaisons, DHR staff, individuals in the Mayor's Office, and members of the City Council;

- Attended weekly meetings with officials from the Mayor's Office, the Law Department, the Office of the Inspector General, and, the Department of Human Resources; and

- Met with union officials, individual City department officials and members of City Council and their attorneys.

As mentioned above, during this time period, the Monitor's office was investigating complaints of alleged violations of the *Shakman* decrees. In just seventeen months, the Monitor's office had received 440 complaints of *Shakman* violations and was actively investigating 175 complaints. The investigations entailed interviewing complainants and witnesses, interviewing City personnel, reviewing the relevant hiring packets, reviewing relevant employee and applicant data, and submitting regular reports to the City. Through these investigations, and the activities described above, the Monitor's office became well versed in the intricacies of the City's hiring

and employment practices, and thus better suited to make meaningful recommendations for change.

2. Identifying Systemic Practices Subject to Abuse

During this same time period, the Monitor's office identified a number of systemic employment policies or practices that allowed for individual manipulation of the City's employment practices. These systemic problems were often identified after the Monitor's office received and investigated complaints about a particular practice. Additionally, this period coincided with the United States Attorney's Office's trial and conviction of several senior City officials for activities related to hiring fraud. Information from the trial, which described wholesale manipulation of the hiring process in favor of politically connected individuals, shed additional light on the methods used to perpetrate the fraud and thus helped to inform the Monitor's recommendations.

One problematic practice identified early on was the use of interviews for positions that required a particular skill, which was not tested or measured during the interview process. Using interviews as part of the selection process for these positions created the opportunity for hiring fraud. For example, the Monitor's office received numerous complaints that the interview process for Motor Truck Drivers ("MTD") was a ruse to hire politically connected individuals (a complaint borne out by the subsequent criminal trials). After investigation, the Monitor's office recommended eliminating interviews for MTD. After a series of negotiations, the City agreed to eliminate interviews of MTD's, in favor of a skills assessment, which could then be attended by Monitor staff.

Another problematic practice identified by the Monitor's office was the use of interviews to fill "willing and able" positions and the City's practice for filling laborer positions. Again, the Monitor's office received numerous complaints alleging that the selection process for these positions was rigged in favor of politically connected individuals. After investigation, the Monitor recommended eliminating interviews for "willing and able" positions, in favor of a skills assessment or lottery. Similarly, the Monitor recommended updating the process for selecting laborers, which had been subject to manipulation in the past. The City agreed to implement these recommendations and replaced the interviews with more objective tests and/or a lottery, which Monitor staff could attend.

One of the most significant systemic violations of the *Shakman* decrees and the Detailed Hiring Plan identified during this period was the use of a process called "Acting Up." "Acting Up" refers to a practice whereby individual City employees are selected to act into a higher level and higher paid positions, outside the normal promotional process. The Monitor received several dozens of complaints alleging that employees were selected to act up based on unlawful political considerations, while employees with greater seniority and qualifications were passed over. Upon

investigation, it was discovered that between January 1 and October 15, 2006 alone, over 1,000 employees in the City's six infrastructure departments held acting up positions, and were collectively paid in excess of $1.3 million. Not only did this practice violate the Detailed Hiring Plan, but there was no oversight of the individual departments' use of "Acting Up." Managers and supervisors were in effect promoting employees with unfettered discretion through a non-competitive, undocumented, process. Many individuals acted up for years without having to compete in any selection process. Not only did acting up employees receive the additional pay and title, but they also obtained a decided advantage in seeking the position formally at a later date. Additionally, there was significant evidence that, acting up promotions were given for political reasons.

Initially, the Monitor's office recommended that the "Acting Up" practice be eliminated entirely. The City, however, maintained that process was necessary to manage its workforce effectively. Alternatively, the Monitor recommended critical reforms in this practice and, after lengthy negotiations, the City implemented a new City-wide "Procedure for Use of Acting Up." The key features of that policy included: (1) limiting the time an individual may act up; (2) providing employees a chance to express interest in the acting up assignment; (3) requiring objective and specific criteria for selecting employees to act up; (4) requiring employees acting up for more than ninety days to be removed from their assignment; and, (5) requiring the selected employee, the employees involved in the selection process, and the commissioner or department head to complete *Shakman* certifications.

As discussed in other reports filed over the years, the challenge in implementing any effective "Acting Up Policy" was the inability to enforce and audit the practice. Although the "Acting Up Policy" has gone through several revisions over the years, and improvements have been made, none of these policy variations has been entirely successful in preventing the abuse of acting up or resulted in a meaningful ability to audit the practice. For several years, the Monitor's office audited the use of acting up and regularly identified violations of the policy. The time commitment and level of detail necessary to adequately track acting up, however, was substantial. Over the years, internal City enforcement and auditing of the "Acting Up Policy" has shifted among different departments within the City. Currently, that function resides in the Department of Human Resources and is audited by the Office of the Inspector General. Most recently, the City has updated the policy that more strictly limits the use of acting up, requires uniform coding of acting up hours, and should allow for more efficient and effective auditing.

3. City Cooperation During the Initial Monitoring Period

During this initial period, the City took several significant steps which were instrumental in assisting the Monitor's ability to conduct her various tasks, as assigned by the Court. First, the City hired a new Inspector General, David Hoffman, and gave that office increased authority to combat patronage. Second, Mayor Richard M. Daley issued an Executive Order requiring

individuals who suspected hiring fraud to report those suspicions to the Office of the Inspector General. Third, the City agreed to produce any and all information requested by the Monitor's office in order to assist in her ability to fulfill her function. Importantly, the City agreed that the Monitor's office could contact, interview, and request documents from any employee or official without any advance notice to the Mayor's Office, the Department of Law or any Department Head. The City also agreed to waive the attorney-client privilege during the Monitor's initial investigations into matters that involved privileged materials. The City's openness to sharing information assisted the Monitor's ability to conduct and report upon activities in the early monitoring phase. Additionally, the cooperation and assistance by the Mayor's Chief of Staff, Ron Huberman, was instrumental in implementing many of the early reforms discussed below.

Although the City did cooperate and take many other positive steps to assist the process, it did not actively identify City practices vulnerable to hiring fraud or other manipulation. Rather, the Monitor's office uncovered these practices only through monitoring of the hiring process, auditing individual hire packets, investigating complaints, and interviewing individuals. Had City officials been more proactive during this period, the reform process may have proceeded more quickly.

4. Conclusions and Recommendations

After this initial monitoring period, from August of 2005 through the end of 2006, the Monitor's office concluded that the Detailed Hiring Plan had not and could not ensure compliance with the *Shakman* principles. Thus, in addition to the ongoing reforms discussed above, the City, the Monitor and the Plaintiffs began discussing a framework for a new hiring plan.

III. THE AGREED SETTLEMENT ORDER AND ACCORD

Simultaneous to the events discussed above, beginning in 2006, the City, the Plaintiffs, and the Court spent months negotiating an agreeable framework to resolve the Plaintiff's Motion for Contempt. As a result of these negotiations, on May 31, 2007, the Court entered an *Agreed Settlement Order and Accord*. The *Accord,* like the earlier *Shakman* decrees, includes a prohibition from basing employment decisions on political reasons or factors. Further, the *Accord* provides that the Court retain jurisdiction for ensuring compliance with the *Accord*, for continuing Monitor oversight of the City's hiring and employment practices, and that the City and the Monitor work together to develop a new Hiring Plan.

The *Accord* also provides that Court oversight will cease once the City demonstrates that it is in substantial compliance with the *Accord's* terms. "Substantial Compliance" is defined as:

> 1) the City has implemented the [new Hiring Plans], including procedures to ensure compliance with the [new Hiring Plans] and identify instances of non-compliance;

> 2) the City has acted in good faith to remedy instances of non-compliance that have been identified, and prevent a recurrence;
>
> 3) the City does not have a policy, custom or practice of making employment decisions based on political factors except for positions that are exempt under the *Accord*;
>
> 4) the absence of material noncompliance which frustrates the *Accord*'s essential purpose. The [Monitor] and the Court may consider the number of post-*Accord* complaints that the Inspector General found to be valid. However, technical violations or isolated incidents of noncompliance shall not be a basis for a finding that the City is not in substantial compliance; and
>
> 5) the City has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment.
> *See Accord,* Section I.G. (8).

The creation of the Substantial Compliance framework was a significant step toward eliminating outside monitoring of the City's employment practices. Until the adoption of the *Accord*, there was no provision for the expiration of Court oversight, which had begun decades earlier. Moreover, the Substantial Compliance definition provided a road map for the City to follow to eliminate Court supervision and outside monitoring of its employment practices and procedures.

A. Creating an Effective Compliance Program

One of the deficiencies in the City's prior employment practices was the lack of oversight and compliance. The eradication of unlawful patronage practices in the City depends on a fully functioning and integrated compliance program with both the authority and independence required to be effective. The definition of Substantial Compliance, therefore, includes a compliance component and requires a showing that:

> "the City has implemented the [new Hiring Plans], including procedures to ensure compliance with the [new Hiring Plans] and identify instances of non-compliance;
>
> [and]
>
> the City has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment."

Thus, the City's ability to attain Substantial Compliance was dependent upon the creation of an aggressive and independent compliance program to oversee City hiring and employment practices. The parties and the Monitor agreed that DHR should fulfill the initial gatekeeper function to ensure the hiring and employment rules are followed. However, a secondary level of

review and oversight from a department outside the control of the Mayor's Office and Law Department was necessary to meet the goals of the *Accord*. Although the City agreed that secondary compliance program was required, the Monitor and City disagreed about where that function should be housed.

1. Establishing the Location for an Effective Compliance Program

During the negotiations regarding the new Hiring Plan, the Monitor's office and the Plaintiffs advocated for placing the compliance function in the existing Office of the Inspector General ("OIG"). Between 2006 (when the parties first started discussing the framework of a new hiring plan) until March of 2010, the City rejected that recommendation. Rather, the City wanted to create a new Office of Compliance to handle the monitoring and auditing functions of the proposed new Hiring Plan. The Monitor's office argued that the monitoring and auditing functions carved out under the proposed new Hiring Plan were best housed in the City's investigative branch (the Office of the Inspector General), a department with an established history of independence and a track record of detecting nonconformity with City regulations. Further, the Monitor's office argued that separating the monitoring and auditing functions from the investigative function would diminish the City's ability to effectively identify *Shakman* violations and would create disputes regarding overlapping areas of authority and jurisdiction.

The Monitor was chiefly concerned, however, with the ability of a new Office of Compliance to maintain its independence from the Mayor's Office and the Law Department. A newly created department would lack the credibility and authority to deal effectively with the City's various established departments. Moreover, the proposed Office of Compliance had no track record, history, or experience with monitoring employment practices in the City or dealing with the unique difficulties in eliminating patronage practices. Nevertheless, over the Monitor's and Plaintiffs' objections, the City elected to place the hiring oversight function within the newly established Office of Compliance.

For a period of more than two years, the Monitor's office worked closely with the Office of Compliance to familiarize its leadership with the City's history of patronage violations and the City's new hiring processes and to begin to transition monitoring functions from the Monitor's office to the Office of Compliance. During that period of time, there were numerous disputes between the Office of Compliance and other City departments. Ultimately, the Monitor (and the City) lost confidence in the Office of Compliance's ability to function in its intended role. By the end of 2009, the Monitor's office discovered that the Office of Compliance had failed to follow its reporting requirements in the Hiring Plan. Shortly thereafter, the Office of Compliance leadership left City employment.

The creation of the Office of Compliance led to substantial delay in the City's ability to reach Substantial Compliance and dramatically increased the costs of outside monitoring. The separation of the monitoring, auditing and investigation functions between the Office of

Compliance and the Office of the Inspector General made comprehensive reform challenging, and left both offices without full access to information necessary to examine, assess, and redress problems in a thorough manner.

After the Office of Compliance experiment proved unworkable, in March 2010, the City Council passed an amendment to the Inspector General's enabling ordinance transferring the authority to monitor and report on employment actions from the Office of Compliance to the Office of the Inspector General. Since then, OIG has established a Hiring Oversight division which is intended to ensure compliance with non-political hiring processes both now and after the expiration of the *Accord*. The Hiring Oversight division facilitates the escalation procedure; reviews and audits key processes in the hiring plan; conducts random monitoring of key steps in the hiring process; and, audits the City's compliance with the *Shakman*- Exempt List, the Acting-Up policy, and testing practices, among other duties.

2. Increasing Transparency in the Compliance Program

In order for the City's compliance program to be effective, there must be maximum transparency. To that end, beginning in 2008, the Monitor recommended that the [then Office of Compliance and later] Office of the Inspector General be able to publically report certain information pertaining to *Shakman* and other employment complaints and violations. Such reporting is critical to the goal of increasing public confidence in the City's hiring and employment practices and also replicates an important function of the Monitor's office. The City, however, opposed that recommendation.

In March of 2010, the City reversed course and agreed to the concept of public reporting by the OIG. Pursuant to the March 2010 amendment to the Inspector General's enabling ordinance, the City agreed to a new reporting requirement allowing OIG Hiring Oversight to publicly post quarterly reports that include the number of *Shakman* complaints and escalations initiated, pending, and closed; a summary of the nature of any sustained complaint or escalation; and, whether the City followed recommendations for corrective action. Additionally, OIG Hiring Oversight can now publicly report on its reviews and audits of hiring data and monitoring of hiring processes. In addition, if the OIG conducts an investigation into hiring violations that are sustained, that office can publically report its results, its recommendations and the City's response. This reporting procedure will continue to be a check on the City's employment practices after Court oversight is lifted.

3. Ensuring Office of Inspector General Access to Required Information

In July 2012, the Office of the Inspector General reported to the Monitor its overall assessment of the City's progress towards Substantial Compliance. In its report, the OIG identified several areas of continued risk for political hiring abuses as well as barriers that impede the City's Substantial Compliance with the *Accord*. Two of those barriers were the City's legal position that (1) the Inspector General cannot independently enforce a subpoena (in the event that the Law

Department refuses to do do) and (2) that the Inspector General cannot access documents potentially subject to the attorney-client and/or work product privileges.

Recently, the Illinois Supreme Court addressed the OIG's legal capacity to enforce subpoenas and access materials protected by the attorney-client and work product privileges. That litigation arose during an OIG investigation that involved, among other things, possible *Shakman* violations. The Illinois Supreme Court determined that the Inspector General has no legal capacity to bring a subpoena enforcement action against the City. Ultimately, the Inspector General concluded that the question regarding OIG's independent authority to enforce a subpoena would arise in just a tiny fraction of investigations. However, the issue of access to attorney-client and work product materials could arise much more frequently and result in the OIG having limited access to requested materials. Although the Illinois Supreme Court did not directly decide whether the City can shield information from the OIG based on a privilege, the Inspector General has raised concerns that the City could raise privilege objections with increasing frequency and that he would be without a remedy.

To address this issue, the Law Department and the Inspector General have agreed to a specific protocol to address disputes over privileges, wherein the City will provide detailed privilege logs and answer interrogatory-type questions when it withholds materials based on a privilege. If, after review of that information, the parties cannot resolve a dispute regarding the scope or applicability of a claim of privilege, they can submit their dispute to a third party for a binding resolution. Although this is not a perfect solution, it provides the OIG with the maximum amount of information to perform his function while preserving the attorney-client and work product privileges when appropriate.

4. Assessing the Effectiveness of the Compliance Program

The definition of Substantial Compliance requires the City to have "procedures to ensure compliance with the [new Hiring Plans] and identify instances of non-compliance" and to show "the City has implemented procedures that will effect long-term prevention of the use of impermissible political considerations in connection with City employment." This standard has been met, in the opinion of the Monitor's office. The City's agreement to house the Hiring Oversight function within the Office of the Inspector General (first reached with the Daley Administration and enhanced under the Emanuel Administration) is key to the Monitor's opinion that the City has reached Substantial Compliance. The integrity of the City's hiring and employment practices is contingent upon an independent, vigorous, and effective compliance function. To date, the Office of the Inspector General has assumed the duties previously performed by the Monitor's office, and that office has the ability to report any future violations, should they occur, to the public. Thus, this component of the definition of Substantial Compliance has been met.

B. Creating Effective Hiring Plans and Policies to Eliminate Patronage Practices

The definition of Substantial Compliance requires that "the City has implemented the [new Hiring Plans], including procedures to ensure compliance with the [new Hiring Plans] and identify instances of non-compliance." Specifically, the City was required to create a new General Hiring Plan, a new Chicago Police Department Hiring Plan and a new Chicago Fire Department Hiring Plan for submission and approval by the Court. Through the creation and implementation of comprehensive new Hiring Plans and other measures, the City can meet other components of Substantial Compliance and show that:

> "the City does not have a policy, custom or practice of making employment decisions based on political factors except for positions that are exempt under the *Accord*; [and]
>
> the absence of material noncompliance which frustrates the *Accord*'s essential purpose."

In order to make this showing, the new Hiring Plans would have to include, at a minimum, increased transparency in the hire process; increased accountability, independence, and authority by DHR; training for DHR and the departments; an escalation process whereby individuals could report potential hiring violations; regularly scheduled audits; and, rigorous oversight.

1. The General Hiring Plan

Beginning in 2006, the City, Plaintiffs, and the Monitor began negotiating the terms of a new General Hiring Plan ("new Hiring Plan" or "General Hiring Plan"). The new Hiring Plan attempted to balance the tension between the goal of efficient hiring and the need for appropriate and effective safeguards to prevent the types of hiring abuses that occurred in the past. The new General Hiring Plan was ultimately filed with the Court on August 16, 2007, and finalized in January of 2008, after the Court addressed the Monitor and Plaintiff objections to certain portions of the plan.

a. Restructure DHR

The new Hiring Plan described a "robust DHR" which would "oversee employment actions and [ ] monitor compliance with hiring processes and procedures." The Plan's success required that DHR's leadership and employees gain a comprehensive understanding of the (often complicated) rules and procedures pertaining to City hiring and the expertise to identify and block attempts to deviate from or manipulate the rules pertaining to City employment.

After its initial implementation, Monitor audits revealed that DHR employees did not fully or sufficiently understand some of the intricacies of the new Hiring Plan. The Monitor

recommended and the City agreed that addition training was necessary for DHR employees and relevant departmental personnel on the Hiring Plan's requirements. In 2010, DHR developed General Hiring Plan training and integrated training on patronage prohibitions into new employee orientation, to ensure that all City employees are sufficiently trained. In addition, DHR provides its employees regular training on new policies and procedures and any hiring process issues through regular team meetings.

Under the new Hiring Plan, DHR was reorganized to reflect a renewed focus on tests and other objective selection systems—which significantly reduce the opportunity for manipulation of the hiring process—in place of interviews. A Testing Division and a Testing manager were added to DHR. Additionally, DHR hired a number of recruiters, allowing the City to attract and select the most qualified candidates for more specialized positions.

In addition to strengthening the role of DHR, the new Hiring Plan's provisions were intended to inject transparency and fairness into the hiring system. The Plan's design (and subsequent training and oversight) enabled DHR employees to perform their crucial "gatekeeper" function and assume accountability for managing the hire process.

While the Monitor recommended designating DHR's management positions as *Shakman*-covered in order to insulate DHR from political influence, the City declined to adopt the recommendation. In 2011, however, the City appointed individuals from the Office of the Inspector General to Department of Human Resources Commissioner position and other key leadership positions. Those appointments have resulted in a more robust DHR.

b. Complete Job Analysis

In 2006, the Monitor's office first recommended that the City conduct an independent, thorough, and complete analysis of all City job titles. The Monitor's position was that identifying the job-related skills, knowledge, and abilities that predict success in a position improves the quality of selected candidates. After lengthy negotiations between the City and the Monitor on the scope and methodology of the project, the City retained Valtera Corporation to analyze 850 of its titles.

DHR and Valtera surveyed randomly selected individuals in each title regarding the individuals' day-to-day duties and the level of expertise required to perform those duties. Valtera analyzed the information and revised the existing job specifications as necessary. DHR Classification Analysts independently reviewed each specification and conducted further analysis as needed. Over the past several years, the City has continued the job analysis to cover all or most City titles. Although this project was subject to a number of starts and stops, the City has now completed the job analysis. The analysis and the ongoing reevaluation processes instituted by

DHR over time, should continue to result in up-to-date job descriptions and screening and hiring criteria.

c. Post Jobs Publicly and Accept Electronic Applications

Transitioning toward electronic applications and public job postings were among the Monitor's earliest recommendations. The new Hiring Plan required the City to post jobs on the publicly available City website and accept applications submitted electronically. This has improved the City's capability to track and audit the overall hiring process.

In late 2007, DHR launched the "CAREERS" online job site, a fully automated application and screening system. CAREERS increased the transparency of the hiring process, gave applicants better control of their application information, and provided real-time notification to applicants who do not meet the minimum requirements for positions. Additionally, CAREERS created additional oversight functionality. Within the program, an auditor can view how DHR employees sort, evaluate, and screen applications for City positions; in one instance an auditor reviewing DHR activity was able to detect an unauthorized transaction where the status of an applicant was changed, leading to discipline of that employee.

The new Hiring Plan provided that "[t]he minimum qualifications, testing protocols and job descriptions for each job title shall be posted on the City's website" (emphasis added). Initially, former DHR leadership objected to posting these items on its website. They argued that the General Hiring Plan only required them to post these provisions when a position was open to be filled. Ultimately, however, DHR agreed to post the job descriptions as they were validated through the job analysis project. Accordingly, most of the City's job descriptions, minimum qualifications, and testing protocols (if any) are currently available for public review on DHR's website.

d. Create Uniform Testing Protocols

Beginning in 2006, the Monitor's office has recommended a shift towards objective testing models, in place of interviews, where appropriate. Testing serves two main functions with regard to City hiring: (1) it strengthens the City's ability to get the best candidates possible; and, (2) it injects objectivity into the hiring system, thereby reducing room for manipulation of the hiring process. The new Hiring Plan mandated pre-determined testing protocols for all selection methods that utilized testing, which replaced the City's subjective interview process.

For a period of time, the Monitor's office reviewed each proposed test prior to its use to ensure that test questions were appropriate and testing protocols were in place prior to test administration (and not changed mid-stream to favor particular candidates). During the first phases

of implementation, DHR's process for developing tests and setting their passing scores was largely ad hoc and did not proceed pursuant to the uniform protocols required by the Hiring Plan. After significant negotiations and over the initial objections of previous DHR leadership, DHR now follows a standardized Testing Division Manual, and when possible, DHR uses standard methods in the testing industry (rather than just the City) to set a preliminary passing score for each test. DHR also began to disclose testing protocol information in job postings and make test scores available to candidates on request.

Additionally, the City Council approved DHR's contracting authority to directly purchase off-the-shelf employment tests outside of the City's procurement process. This enhances DHR's ability to "shop" for the most reliable and effective tests from a range of vendors. Currently, DHR uses off-the-shelf exams to test for Police and Fire Communications Operator positions and for a Machinist Apprentice title, among others. This new contracting authority is expected to expand DHR's ability to use testing to fill various positions in the trades and public safety.

e. Utilize the Escalation Procedure

The new Hiring Plan also introduced an escalation procedure allowing DHR Recruiters to raise concerns about hiring decisions to successively higher levels of oversight for resolution. Now, the Office of the Inspector General receives periodic escalations from DHR and has reported that DHR's "increase in utilization of the escalation process shows that DHR employees are being trained properly and taking their 'gatekeeping' responsibilities seriously."

Originally, the escalation procedure required that DHR report instances when DHR is asked to or does deviate from its established rules and regulations. However, in July 2009, many DHR employees expressed concern about potential retaliation for cooperating with the Monitor's Office on hiring issues. The Monitor reported: "On more than one occasion, DHR employees reported that they felt that DHR leadership discouraged employees from working collaboratively with the Monitor's Office." Since that time, leadership has changed within DHR and cooperation between that office, the Monitor's office, and the OIG has drastically improved. The DHR Commissioner has established and maintained open communication with the Monitor's office and demonstrated a commitment to voicing opposition to potentially problematic hiring sequences.

2. Amending the General Hiring Plan

As the new Hiring Plan was implemented and ongoing monitoring continued, it became evident that portions of the Hiring Plan required certain modifications, further explanations, and additional processes. The parties spent several years negotiating changes to the 2007 General Hiring Plan. An agreement had been reached on these new provisions at the end of the prior administration's term in 2010; however, the City elected to delay filing the revised plan until the

new administration had an opportunity to review it. After the Emanuel Administration took office, it filed a modified General Hiring Plan in June 2011 ("Amended Hiring Plan"). Some of the most significant changes are described below.

a. Protect Against Improper Hiring Considerations

The Amended Hiring Plan expanded upon the existing prohibition against political influence in the hiring process to include a prohibition against other "Improper" considerations. An "Improper" consideration is defined as any "consideration constituting preferential treatment which is not job related." This provision is intended to address the recurring problem of proving that a particular job action was motivated by "political" considerations, as opposed to other improper factors, i.e., nepotism or other types of favoritism.

In addition, the Amended Hiring Plan strengthens City employees' obligation to report potential misconduct. This obligation is now clearly mandatory, rather than discretionary. Moreover, the duty to report potential misconduct is triggered not just when political discrimination is alleged, but in a much wider range of circumstances whenever the employee detects another City employee may have allowed improper considerations to influence any term or aspect of employment. DHR employees must report any actual or potential violations of the hiring rules or the possible influence of any political reasons or factors or other improper considerations. Any employee who knowingly fails to report such potential violation to OIG Hiring Oversight may be subjected to discipline, up to and including termination.

b. Create and Enforce Contractor Policy

The Amended Hiring Plan includes a Contractor Policy to prevent the City's past use of non-City employees to work under the City's supervision and control in contravention of City hiring policies. Investigations by the Monitor's office determined that departments had circumvented the City's hiring controls by hiring preselected candidates through outside contractors in spite of: (1) prolonged litigation between the City and the Plaintiffs regarding the hiring of contract employees outside the formal process; (2) several internal City memoranda explaining the legal requirements; and, (3) further prohibitions memorialized in the *Accord* and a Court Order.

The Monitor first alerted the City in 2007 that preselected individuals were being hired through contract agencies in the Planning Department and the Mayor's Office of Special Events. In 2009, the Monitor again reported that officials in the Department of Environment ("DOE") instructed a contractor to hire two preselected individuals who were then sent to work at DOE. In response, the City conducted a review that determined that of approximately 4,000 contract

workers in the City, over 300 were working in City facilities as common law employees, in violation of the prior court orders, City memoranda, and the *Accord.*

The Contractor Policy incorporated into the Amended Hiring Plan prohibits political considerations and City employee interference from entering into a contractor's employment decisions. The Contractor Policy further prohibits City employees from directly controlling or supervising the employees of contractors. The Contractor Policy provides for annual departmental reporting of "all not-for-profit agencies, for-profit contractors or any other organizations or entities providing services for the City on City premises" to the OIG, and requires all City employees who participated in the decision to select a contractor to certify that no political reasons or other improper considerations influenced the decision.

c. Create and Enforce Senior Manager Hiring Process

The 2007 Hiring Plan included a process titled the Senior Manager Hiring Process. This hiring process provides hiring departments with a greater amount of discretion and flexibility in hiring for high level, managerial positions but still includes safeguards to ensure that political factors do not guide hiring. As a precaution against pre-selection by hiring departments, the Senior Manager Hiring Process also includes a gate-keeper role for DHR wherein DHR must review all candidates to ensure they meet minimum qualifications. During the implementation of the 2007 Hiring Plan, the Monitor reported that DHR had failed to adhere to the Senior Manager Hiring Process as it was written. DHR had instituted a policy to refer to departments all candidates who successfully answered computerized "disqualification" questions rather than verifying that candidates met the minimum qualifications for a particular position. Using the computerized disqualification questions as a proxy for DHR's obligation was ineffective, because any individual reading the disqualifying questions could easily discern what answers to give in order to pass through the qualification process. Thus, almost any candidate could pass through to the department, abrogating DHR's role as a gate-keeper.

To address these and other issues that arose during the implementation of the 2007 Hiring Plan, the Amended Hiring Plan included additional detail regarding the Senior Manager Hiring Process. Specifically, among other changes, the Amended Hiring Plan requires predetermined job descriptions and minimum qualifications for each senior manager position, clarifies the role of the DHR in screening and referring candidates, and prescribes a process for maintaining and amending the list of senior manager-designated positions.

d. Standardize *Shakman*-Exempt Positions

The Amended Hiring Plan added detail to the process for modifying the list of titles designated as exempt from *Shakman* prohibitions, including notification to OIG Hiring Oversight.

In addition, in 2012, DHR moved to electronic monitoring of the *Shakman*-Exempt list, which reduced errors in tracking which City employees hold *Shakman*-Exempt titles. These are significant because, before the Monitor's appointment, the City designated positions as *Shakman*-exempt with few limitations, so long as the number of *Shakman*-Exempt positions stayed below a predetermined number of employees. Accordingly, the City had amended the list of *Shakman*-Exempt titles on over one hundred occasions with little to no justification. The Amended Hiring Plan added safeguards to ensure that all *Shakman*-Exempt positions meet appropriate legal standards.

e. Additional Improvements to the General Hiring Plan

Throughout discussions on hiring plan revisions, the Monitor was encouraged by the City's willingness to implement the Monitor's recommendations and its effort to include provisions aimed at preventing past hiring problems. For instance, in previous reports, the Monitor expressed serious concerns about the processes (or lack thereof) used to hire student workers, which resulted in the appearance of impropriety. On its own initiative, the City decided that the Amended Hiring Plan would apply to student workers, which opens these opportunities to more individuals and increases the transparency associated with student hires. The Amended Hiring Plan also contains a new section on Volunteer Workers, which prohibits departments from taking into account political reasons or other improper considerations in selecting workers who are not paid a wage or salary by the City, and provides for DHR facilitation and OIG oversight. These improvements are examples of numerous protocols that were added to the Amended Hiring Plan, which dramatically improved upon the original 2007 Hiring Plan.

3. Developing the Chicago Fire and Police Department Plans

The development of hiring plans for sworn and uniformed titles is also a prerequisite for a finding of Substantial Compliance under the *Accord*. Negotiations over the individualized hiring plans for CPD and CFD languished over several years after the initial approval of the *Accord* in 2007. In 2011, however, the City's new administration renewed the focus on these plans. After some additional negotiations, the City filed and the Court approved, Chicago Police Department Hiring Plan for Sworn Titles, on October 17, 2011. Thereafter, the City filed and the Court approved the Chicago Fire Department Hiring Plan for Uniformed Positions, on December 15, 2011.

a. Creating the Chicago Police Department Hiring Plan

Beginning in 2006, the Monitor's office received a variety of complaints about Merit Promotion process, alleging that it favored politically connected candidates. Although most of CPD's hiring and promotional decisions are subject to Collective Bargaining Agreements ("CBA") and are made on the basis of examinations and skills assessments, up to 30% of promotions to

sergeant and lieutenant, and up to 20% of promotions to detective can be filled through the Merit Promotion process. After investigating the complaints received and reviewing internal City documents, the Monitor's office recommended that the City inject certain safeguards into the Merit Promotion process. Thus, in the original CPD Hiring Plan, the City agreed to include certain protections related to the merit selection process.

Monitoring of the Merit Promotion process by OIG Hiring Oversight, however, revealed deficiencies in the process. By the time the CPD Hiring Plan was implemented in 2011, the Monitor's office had relinquished most monitoring to the OIG. After OIG monitored Merit Board Meetings for Sergeant and Lieutenant promotions in 2013, the OIG determined that "the Merit Promotion process is procedurally unaccountable, comparatively non-transparent, and thus not susceptible to effective oversight as currently structured."

Once these inadequacies were identified, the parties collaborated to design a more transparent and objective process. Notably, high-ranking CPD officials, including Superintendent McCarthy, directly participated in the process, ensuring it would not only allow for OIG oversight and accountability, but that the new process would work operationally for CPD. Under the new process, the Merit Promotion process will now require CPD to identify the hiring criteria used in the promotion process, require interviews of all recommended candidates, and allow for adequate oversight and monitoring by OIG Hiring Oversight. These new processes are now incorporated into CPD's Hiring Plan.

b. Creating the Chicago Fire Department Hiring Plan

Beginning in 2006, the Monitor's office received several complaints alleging that the testing and promotion process in CFD was so cloaked in secrecy, that the process was open to manipulation and political favoritism. Accordingly, during the negotiation of the CFD Hiring Plan, the Monitor's office recommended that the Plan include specific information regarding interview and testing protocols within CFD, and allow for meaningful oversight by OIG. In response, the City fleshed out the CFD Hiring Plan and added a new testing protocol section. The plan provides that the OIG may monitor the examination process and audit any exam materials, including audio recordings of oral examinations or simulation exercises, and the IGO may receive test score breakdowns and question testing vendors about the scoring process. The City also agreed to limit the life of eligible candidate lists to eight years and required written justification for retiring a list early.

As with CPD, most of CFD's hiring and promotional decisions are subject to Collective Bargaining Agreements and are made on the basis of exams and skills assessments. However, similar to Merit Selection in CPD, CFD uses a Performance Selection process for a limited number of promotions which is outside the usual testing and assessment process. Although this process is

not regularly used in CFD, the parties sought to incorporate the interview process included in CPD Merit Promotion into CFD Performance Selection. Again, the parties engaged in a collaborative process, which involved senior members of CFD, to devise a more robust process that will allow for meaningful oversight by OIG and increased accountability and transparency in CFD promotion practices. These new processes are now incorporated into CFD's Hiring Plan.

c. Creating Transparency and Accountability in the Assignment Process in CPD and CFD

In addition to the Merit Promotion process, the OIG raised concerns regarding how assignments are made at CFD and CPD. Specifically, the OIG noted that there was no discernible process for how assignments were awarded in the departments and that certain assignments were highly desirable and/or tended to lead to Merit Promotions (in the case of CPD). Once again, the applicable department, the Law Department, DHR, OIG, and the Monitor's Office worked together to develop a process that would allow the OIG to monitor assignments without hindering the operations of CPD and CFD.

The new assignments policy in CPD achieves several important goals. First, it identifies "biddable" districts and units, and duty assignments for Police Officers and Sergeants. The policy also creates a process by which Police Officers, Sergeants, and Lieutenants can bid on vacancies within CPD. Most importantly, the policy outlines a process for Non-Bid Unit Assignments. Under the new policy, the openings will be posted electronically and include job specific criteria and desired characteristics. Candidates will submit their applications electronically and qualified candidates will be interviewed.

Likewise, the new CFD policy regarding assignments identifies how various assignments are filled (via bid, seniority or on the basis of qualifications). Furthermore, assignments to "Specialized Units" will be posted electronically and the postings will include minimum qualifications. Following the posting of a vacancy, individuals who meet the minimum qualifications will be interviewed, and the interviews will be followed by a consensus meeting, much like under the City's General Hiring Plan.

Importantly, both CPD and CFD's policies regarding assignments give OIG the access to the electronic systems where openings are posted, allow for OIG monitoring of interviews, and empower the OIG to review any and all documentation and investigate further when appropriate.

Although there was a substantial four year delay between the entry of the *Accord* and the filing of the CPD and CFD Hiring Plans in 2011, those Plans and the amendments to those plans have resulted in a more transparent, fair, and open hiring process. These Plans, in combination with the Amended Hiring Plan demonstrate that the City has "implemented the [new Hiring Plans],

including procedures to ensure compliance with the [new Hiring Plans] and identify instances of non-compliance" as required by the *Accord*.

4. Other Reforms and Policies Instituted by the City

a. Personnel Rules and Other Employment Actions

The 2007 General Hiring Plan required that City amend its Personnel Rules to codify procedures for employment actions not covered by the General Hiring Plan, such as discipline, transfers, assignments, layoffs, and reinstatement, etc. Although the Personnel Rules were amended in 2010, the amendments included very few definitions or actual procedures for instituting any of these employment actions. Thus, beginning in early 2014, the parties negotiated changes that will become part of the City's updated Personnel Rules. These new rules will go into effect after the notice and comment period expires.

b. Reclassifications

The Monitor's office first recommended that the City take steps to prevent the reclassification process from being used to circumvent *Shakman* rules in its First Report to the Court on September 6, 2005. In 2008, the Monitor again identified reclassification process reform as a necessary step towards Substantial Compliance. In 2012, OIG Hiring Oversight issued a report that identified deficiencies in the reclassification process, including instances where reclassification was used as a work-around to the general hiring process. In the report, the OIG made several recommendations to establish clear guidelines and roles to increase accountability and ensure compliance with the *Accord* and the Amended Hiring Plan.

In 2014, the City implemented a new reclassification rule, making clear that "reclassification may not be used as a means for providing salary increases or a promotional tool or in lieu of disciplinary action." Moreover, the new rule allows DHR to require the department to post the reclassified position under certain circumstances. Amending the reclassification rule was a collaborative effort from OIG, DHR, and the Monitor's office. The new reclassification rule should improve the process of reclassification and prevent that process from being used to circumvent hiring rules.

c. Disqualification from Rehire of Individuals Terminated for Cause

In 2006, the Monitor recommended that the City create a policy to ensure that an employee fired from the City for serious misconduct not be rehired by the City at a later date because of his clout. To that end, the Monitor recommended that the City identify candidates previously fired for cause for further review to determine whether the individual is eligible for re-employment with the City. Thereafter, the City implemented a system whereby if an employee was fired for serious

misconduct, the City would deem the individual ineligible for rehire. Other lesser violations would result in the individual not being eligible for rehire for a period of one year.

On occasion, however, employees that were permanently ineligible for rehire at the City would appear on the payroll of sister agencies or the City Council. Notably, Monitor and OIG inquiries revealed at least seven favored individuals who transferred to sister City agencies or the City Council after being terminated from the City (or those who resigned while under inquiry). Thus, in April of 2009, the Monitor recommended that the City direct or request that sister agencies and the City Council honor the City's ineligible for rehire list.

In February of 2014, the Mayor's Office sent a letter to all City sister agencies explaining that the City has compiled an Ineligible for Rehire list and asking the agencies to join the City in not hiring the individuals on the list. The Mayor's Chief of Staff personally called representatives at each sister agency and received a commitment that the agencies would honor the Ineligible for Rehire list. The City's recent steps should address this issue with respect to the sister agencies. Despite numerous recommendations and letters sent to the City Council by this office, the City Council has not agreed to honor the Ineligible for Rehire list.

d. Tracking of Grievance Settlements and Side Agreements

In a July 2009 Report, the Monitor raised objections to the City's use of settlement agreements and side agreements with unions that serve to override or deviate from rules in the Hiring Plan. The Monitor recommended that DHR police these proposed agreements more closely, and address those situations where Hiring Plan rules are violated. Thereafter, the OIG reported "operating departments continue to unilaterally settle hiring-related grievances directly with labor unions without the involvement of DHR or notification to OIG Hiring Oversight." Excluding DHR from agreements that effectively subvert the City's Hiring Plans frustrates DHR's role as gatekeeper of City hiring and reduces the transparency of the City's employment practices. The OIG urged, and the Monitor agreed, that "it is imperative that DHR be involved in all matters related to employment actions and labor disputes to ensure that departments are operating in compliance with City Rules, Hiring Plans, and the *Shakman* Accord." In June of 2013, the City implemented rules requiring departments to track and report grievance settlements and side agreements that implicate hiring these rules. This newly implemented process should allow OIG Hiring Oversight to track and address problems that may result from these settlements and side agreements.

5. Effectiveness of Hiring Plans and Other Policies

In total, the Amended Hiring Plan, the CPD Hiring Plan, the CFD Hiring Plan and these additional policies discussed above have helped the City to demonstrate that it "implemented the [new Hiring Plans], including procedures to ensure compliance [with them]" "does not have a policy, custom or practice of making employment decisions based on political factors;" and that there is no "material noncompliance which frustrates the *Accord*'s essential purpose" as required to meet the definition of Substantial Compliance in the *Accord.*

C. Remediating Past Shakman Violations

Part of the definition of Substantial Compliance requires a showing that: "the City has acted in good faith to remedy instances of non-compliance that have been identified; and prevent recurrence." Two key components of remediation involve (1) compensating victim of past unlawful patronage practices; and (2) issuing discipline to current City employees who were implicated in past hiring fraud.

1. Adjudicating the *Shakman Accord* Claim Forms

The *Accord* required the City to establish a $12 million claim fund to compensate Class Members for injuries (including but not limited to back pay, front pay, emotional distress, or compensatory damages) arising out of alleged violations of the 1972 or 1983 *Shakman* Decrees that occurred between the period of January 1, 2000, and May 31, 2007. (*Accord* Part III(A)). Pursuant to the *Accord* and the Court's subsequent orders, the Monitor was responsible for assessing whether each Claimant was eligible for relief under the settlement fund and, if so, the amount of relief to be awarded. No Claimant could be awarded more than $100,000 total, from the claim fund. (*Accord* Part III (E)(1)).

Claimants were required to submit completed claim forms to the Monitor's office by September 28, 2007. In total, the Monitor received 1586 claims. Of those claims, 1424 claimants were eligible to receive monetary awards.

In order to review, investigate, assess eligibility, and determine award amounts for each Claimant, six attorneys (including the Monitor) and three additional staff members spent six months working on this project. In total, the project required in excess of 1500 attorney and staff hours.

In assessing award amounts for each eligible Claimant, the *Accord* required the Monitor to consider all relevant factors and evidence regarding a particular claim, including: (1) the ratio of applicants to the actual number of positions filled; (2) the facts presented regarding the alleged violation; (3) the salary of the position sought; (4) the economic benefit of the action at issue and

number of eligible recipients; (5) the strength of the evidence presented; (6) the amount of the claim fund; and (7) the number of claims submitted.

Each Claim Form underwent two levels of review, and most claims underwent three levels of review. During the first level of review an attorney determined whether the Claimant was eligible for relief, the number of hiring sequences complained of; the type of hiring sequences; whether there were other claims for the same violation; the strength of any evidence presented; the specificity of patronage evidence; and whether other evidence (e.g., trial testimony) regarding the alleged violation existed. The second review included a deeper analysis of the claim, conferring with the Office of the Inspector General, reviewing job histories, reviewing documentation from hiring sequences, reviewing past complaints, and reviewing similar complaints involving the same hiring sequence/department/hiring authorities. During the second review, the attorney also considered any evidence that the Claimant was either a beneficiary of or participant to political patronage. Next, there was a third attorney review for those claims that were designated to receive above average award amounts. This review consisted of comparing and contrasting the strength of some claims and a dialogue regarding whether a Claimant should be eligible for a higher award amount. Finally, for those Claimants who were designated to receive the highest award amounts, a committee of attorneys reviewed each claim form and accompanying evidence for individual monetary determinations and comparisons.

The Monitor's review of the Claim Forms demonstrated that many Claimants alleged violations by the same group of distinct individuals. Some of those individuals still held high-ranking positions within the City of Chicago and, despite testimony and evidence presented during the *Sorich* and *Sanchez* trials with regard to their practices, had evaded any form of discipline over these violations.

2. Investigating Past Violations and Recommending Discipline

Since 2006, the Monitor has repeatedly asked the City to investigate and, if appropriate, discipline high-ranking City employees who were implicated in hiring fraud detailed during the *Sorich*, and later *Sanchez*, trials. The City has provided various reasons for not investigating past hiring fraud or issuing discipline. As the Monitor previously reported:

> As the parties and the Court are well aware, the Monitor's office never set out to conduct these investigations itself. On the contrary, the Monitor repeatedly requested that the City investigate and take appropriate disciplinary action with respect to employees involved in the hiring fraud described in the *Sorich-Sanchez* trials. Despite repeated requests, the City simply refused. *See* January 30, 2014 Monitor Court Filing.

Unfortunately, the City's refusal to conduct these investigations itself significantly delayed its ability to attain Substantial Compliance and increased the cost of outside monitoring. Specifically, because of the scope of the project, it required work by four attorneys (including the Monitor) and three non-attorney staff and took close to three years to complete. Collectively, the project required approximately 3900 attorney and staff hours.

Because the City was unwilling to act, the Monitor's office sought to conduct the investigations itself, believing that a failure to complete this project was a barrier to Substantial Compliance. Thus, in March of 2011, the Monitor sought clarification of her authority to conduct the investigations. The Court entered an Order on April 29, 2011, confirming the Monitor's authority to investigate "to what extent the City has addressed and remedied the employment practices brought to light as a result of the Sorich case." The Court stated, "The Monitor may investigate those employment practices, including the conduct of current and past City employees who engaged in, or have been alleged to have engaged in, assisted or accepted those hiring practices. The Monitor may make such recommendations to the City and to the Court as the Monitor deems appropriate as a result of such investigations." (Dkt. 2203 at 1-2).

Beginning in late 2011, the Monitor's office and OIG began a preliminary review to determine the universe of employees that may be warrant further investigation. Initially, the Monitor and OIG identified approximately eighty (80) individuals for whom some evidence suggested that they had engaged in hiring fraud or other misconduct in violation of the *Shakman* rules. The offices jointly determined that the Monitor's office investigations would focus on the Department of Transportation, the Department of Aviation, and the Department of Streets and Sanitation, and the OIG would focus on the Department of Water Management, the Department of General Services, and the Department of Fleet Management.

After determining that many of the potential targets had retired or left City employment, the Monitor opened investigation into twenty-six then-current employees. The investigations included the following activities by the Monitor's office: under-oath interviews of twenty-five employees; review of materials from the United States Attorney's Office; review and analysis of specific hiring packets; review of the trial transcripts and exhibits from the *Sorich* and *Sanchez* trials; review of thousands of City employee emails; and review of City hiring rules and policies in effect during the relevant time period.

After the investigations were complete, the Monitor's office drafted detailed Reports to the City, along with an appendix of supporting materials, and recommendations for discipline. The City, in response, largely accepted and implemented these recommendations. Ultimately, the Monitor's office recommended discipline for sixteen employees, two of whom left City employment while an investigation into their conduct was pending. Of the remaining fourteen employees, the City accepted the Monitor's recommendations for discipline for ten of the

individuals and issued a lower than recommended level of discipline for one individual. The City rejected discipline recommendations for three individuals. The recommended discipline ranged from a written warning to termination. In addition, the City agreed to bar six of those individuals from participating in any aspect of the City hiring process going forward. Finally, the City took measures to prevent the two employees who left while investigations were pending from being rehired by the City in the future. The OIG recommended discipline for one individual in Fleet Management and the City accepted the OIG's recommendation.

Conducting the investigations and issuing discipline for individual violations was key, in the Monitor's opinion, to the City's ability to attain Substantial Compliance. The City needed to send a message to current employees that the City will not tolerate violations of the *Shakman* rules, particularly by individuals in high-ranking positions. It was similarly important to identify City employees involved in past hiring fraud and bar them from further involvement in hiring. Although there were disagreements along the way, the project was successful only because of a significant degree of cooperation between the Monitor's office, OIG, and the Corporation Counsel's office. This cooperation, along with the Court's willingness to provide assistance and instruction when the parties reached an impasse, made completion of the project possible and helped the City demonstrate that it has "acted in good faith to remedy instances of non-compliance that have been identified; and prevent recurrence."

IV. CONCLUSION

For the reasons described above, and those outlined in the May 15, 2014 Monitor Opinion, the Monitor recommends that the Court find the City of Chicago in "Substantial Compliance" with the *Agreed Settlement Order and Accord*.

Respectfully submitted,

s/ Noelle Brennan

Dated: May 21, 2014

Shakman Decree Monitor

Noelle Brennan
Danielle Hoffmann
Noelle Brennan & Associates, Ltd.
20 S. Clark St., Suite 1530
Chicago, IL 60603
(312) 422-0001