

In all, the Monitor and her counsel (and other staff members) met with and/or interviewed more than thirty individuals including: (1) the Mayor's Chief of Staff and Deputy, who made themselves available to answer questions whenever they arose; (2) employees within the Department of Personnel; (3) officials within hiring departments, including personnel liaisons; (4) employees responsible for reviewing the hiring process and making changes; (5) Department of Law attorneys; (6) employees and/or applicants who alleged *Shakman* violations; and (7) at the request of Alderman Ed Smith, members of the Black Caucus of the City Council.

The City also provided the Monitor with thousands of documents which she and her counsel preliminarily reviewed. These documents related to: (1) past hiring practices and procedures; (2) requests for hire, notices of job opportunity, and bid lists; (3) job titles, both *Shakman* covered and *Shakman* exempt; (4) requests to exempt certain positions from decree; (5) internal proposals for redesigning the hiring practices at the City; (6) designation of employees as "paid as" employees; (7) litigation concerning alleged violations of the decree; (8) training materials related to the decree and hiring practices; (9) documents maintained by the Office of Intergovernmental Affairs; and (10) proposed complaint process for violations.

It bears noting that, to date, the Monitor and her counsel have obtained the full cooperation of the City throughout this process. The City has made its employees available for lengthy interviews and placed no restrictions on the interviewing process. Additionally, the Mayor issued a directive to all department heads encouraging employees to cooperate in the Monitor's study and further stating that there would be no retribution against employees for any such cooperation.

Finally, the Monitor sought and received significant input from Michael Shakman, Plaintiff in the underlying action, and his counsel, Roger Fross and Brian Hays from the law firm of Lord, Bissell & Brook. The Monitor met and spoke with Mr. Shakman and his attorneys on various occasions. Furthermore, Plaintiff and his counsel provided the Monitor and her counsel with documents concerning the prior litigation in this case, the Court's various orders, compliance and audit documents, and complaints received from individuals who believe that they are victims of political hiring. The Monitor anticipates their continued involvement and participation in implementing both the immediate and future recommendations.

In the period between August 2, 2005 and September 6, 2005, due to time constraints, the Monitor did not examine the hiring and promotion practices at the Police or Fire Departments. Although these two City departments are subject to the *Shakman* prohibitions, they operate under a slightly separate hiring system that includes the use of outside vendors. Consequently, the matters discussed herein do not relate to these two departments.

City's Current System

As required by the *Shakman* Judgment entered by the Court on June 20, 1983, the City of Chicago filed its "Principles for Plan of Compliance with *Shakman* Judgment" on May 4, 1984. The purpose of the City's Plan of Compliance was to implement the requirements mandated by the Court in its prior orders. To that end, the Plan outlined basic principles that would apply to the City's hiring process and also provided for the adoption of a more comprehensive set of

"Detailed Hiring Provisions" that were to be consistent with the Plan and with the Court's prior orders. The Detailed Hiring Provisions were completed in 1986 and, with the exception of the expiration of certain provisions, have remained substantially unchanged since that date. All City employment rules, regulations, and procedures covering the selection of individuals for employment in *Shakman*-covered positions were to be consistent with the City's Plan of Compliance and its Detailed Hiring Provisions.

The primary goals of the City's Plan of Compliance and Detailed Hiring Provisions were to "exclude politics from hiring for all positions other than Exempt positions" and to "seek to eliminate continuing effects of past patronage hiring violations by the City." Accordingly, the Plan of Compliance and the Detailed Hiring Provisions contained several prophylactic measures intended to exclude politics from all positions other than Exempt positions.

Deficiencies in City's Current System

The Monitor's investigation has revealed that the City has been substantially non-compliant with many of the *Shakman* provisions for a significant period of time. Notwithstanding the objectives of the City's Plan of Compliance and Detailed Hiring Provisions, the City's current system suffers from several significant deficiencies which hinder future compliance with the *Shakman* judgments. The most noteworthy include instances of:

- Improper interference by various hiring departments in the screening and referral of job applicants;
- Failure to identify required job criteria for impartial applicant screening;
- Failure to post notice of select job openings;
- Hiring from a limited pool of preselected applicants;
- Improper involvement by the Office of Governmental Affairs ("IGA") in the hiring and promotion process;
- Incidents of Department of Personnel ("DOP") being asked to place individuals previously deemed unqualified by DOP on Eligibility and/or Referral lists;
- Failure to respond to complaints of politically based hiring; and
- Inadequate staffing and resources for DOP to adequately perform independent screening of job applicants and compliance functions outlined under Detailed Hiring Provisions.

As outlined below, the Monitor has included recommendations for immediate implementation, and recommendations that will require ongoing development for purposes of ensuring future compliance with the *Shakman* judgments. This Preliminary Report also provides recommendations regarding the Monitor's proposed powers, budget and staffing needs. It is important to reiterate that this is a *preliminary report*. It does not purport to present the Monitor's final conclusions or recommendations regarding any proposed mechanisms for ensuring the City's future employment actions are in compliance with the Court's previous Orders. Such recommendations would be premature at this point.

Monitor's Recommendations for Immediate Implementation

I. Interim Hiring and Promotion Process for Next 60 Days

As of May 23, 2005, the City of Chicago enacted a partial hiring freeze covering specific positions. The City has advised the Monitor that if the hiring freeze were to be lifted, the City anticipates hiring and/or promoting approximately 1,100 individuals between September 6, 2005 and November 6, 2005, excluding sworn police and fire officers, recalled seasonal employees or part-time workers.

To ensure that the City's hiring and promotion practices during this interim period are in full compliance with the *Shakman* judgments, the Monitor recommends the following:

- A. The previously established Detailed Hiring Provisions shall remain in full force and effect, subject to the modifications detailed below.
- B. The Department of Personnel shall immediately hire sufficient staff to enable it to **independently** screen eligible applicants for all titles subject to the *Shakman* judgments to be filled during the interim period.
- C. The Monitor shall directly oversee the hiring of such DOP staff, to ensure full compliance with the *Shakman* judgments. The DOP shall obtain Monitor approval prior to hiring any such staff.
- D. The City shall purge all existing eligible lists, referral lists and applications created or filed prior to January 1, 2004, for those positions to be filled during the interim period. The City must notify all such purged applicants that they must reapply for employment with the City in order to be considered. The City shall determine the most appropriate way to provide such notification, subject to Monitor approval. Upon any such purge, the City must fully comply with Section G of the Plan of Compliance related to Posting of Notices of Job Availability.
- E. During the interim hiring period, hiring departments shall play **no** role in screening applicants for inclusion on any list of eligible applicants and referrals, or in scoring applicants as qualified or unqualified. DOP personnel shall directly participate in all interview panels. DOP may independently select representatives from the hiring department to participate in particular interview panels.
- F. Each department and the Department of Personnel shall maintain a timely log of all oral and written communications regarding all applicants, hires, and promotions. The individual hiring department will submit the log to the Monitor for review, as part of the hiring process. As per the Detailed Hiring Provisions, the Department of Personnel shall approve all interview questions to be used in the selection of job candidates and comply with all requirements regarding the interview process, as contained in the Detailed Hiring Provisions. In addition to those requirements, all employees directly involved in a *Shakman* covered employment action shall complete a sworn certification in the form found in Appendix A. The "Shakman Certification" shall be completed contemporaneously with the completion and/or submission of any documentation concerning the employment action in question. This documentation includes, but is not limited to any Request for Hire Forms, Eligibility Lists, Bid Lists,

Referral Lists, Interview Questions, Interview Documentation, Justification for Hire Memos, and Test Results. The purpose of the Shakman Certification shall be for the employee involved in the employment process to attest, under penalty of perjury, that s/he has not been influenced by any political considerations or factors in completing his or her duties.

- G. If, during this interim period the Monitor determines that further modifications need to be implemented to ensure that the employment practices of the City are free from illegal political influence, she shall work with the City to make such modifications by agreement. If no agreement can be reached, the Monitor shall petition the Court for the appropriate relief.

II. Monitoring of Interim Sixty Day Hiring and Promotion Process

- A. The Monitor's staff will randomly audit each stage of the hiring and promotion process. In order for the Monitor to conduct such audits, the City will provide notice of each new position it seeks to fill and each anticipated promotion, contemporaneous with the opening/posting/advertising of the position. On the Monitor's request, the City is to provide all relevant documentation concerning the proposed hire or promotion, including but not limited to Request for Hire Forms, Eligibility Lists, Bid Lists, Referral Lists, Applications, Interview Questions, Interview Documentation, Justification for Hire Memos, Tests and Test Results.
- B. All proposed new hires/promotions must be submitted by the City to the Monitor's staff to randomly review for *Shakman* compliance before any offer of employment or promotion is extended. The Monitor shall notify the City within ten (10) days whether additional information is required for audit before the City extends such offer of employment or promotion. The audit shall be conducted through review of documents, interviews of participants, and any other steps the Monitor deems reasonable, prior to any further action taken by the City to fill the position. All such audits shall be completed as expeditiously as feasible. If no audit is requested by the Monitor within the ten (10) day period as specified herein, the City may proceed with the hire or promotion.
- C. Where any potential *Shakman* violation is suspected or discovered, the City shall be so advised by the Monitor. The City shall cooperate with the Monitor to ensure that there is no actual noncompliance in the hire or promotion.
- D. In the past, failure to properly certify compliance with *Shakman* resulted in no discernible penalties or consequences. Accordingly, for every hire and promotion completed during interim period, the respective Departmental Commissioner, Departmental Hiring Manager and Mayor's office must also submit a sworn certification in the form found in Appendix A, attesting under penalty of perjury, their compliance with *Shakman*. These *Shakman* certifications shall be filed with the Court by the Monitor.

III. Designation of Compliance Officers and Creation of Complaint Procedure for Current and Future Victims of Patronage Hiring and Promotion

A. Factual Background

1. The City's current external *Shakman* compliance audits are substantially out of date and fail to meaningfully identify noncompliance with *Shakman*.
2. The City lacks an effective internal mechanism for receiving, investigating, and remedying employee or applicant complaints of *Shakman* violations.

B. It is inadvisable for the City's Law Department to have responsibility for addressing complaints, in light of the fact that it is charged with defending the City against *Shakman* based litigation.

C. Until a permanent mechanism is developed to receive, investigate and remedy complaints of *Shakman* violations, there should be an interim procedure that allows complainants of *ongoing, current, or future* violations to register complaints and that allows for the prompt investigation and remedy of such complaints.

D. Toward that end, the City shall immediately appoint, with Monitor approval, an individual responsible for receiving complaints from current employees and/or applicants alleging *Shakman* violations or hiring and promotion improprieties. The City shall timely provide the Monitor with these complaints and cooperate with the Monitor's investigation into the complaints. The City shall immediately inform all employees of the identity and contact information for the appointed individual.

IV. Immediate Training on Interim Hiring Plan and *Shakman* Principles

- A. The City has been unsuccessful in adequately providing any meaningful training regarding *Shakman*'s prohibition against political hiring and personnel decisions to relevant personnel within individual departments and the Department of Personnel.
- B. The Monitor and her staff shall immediately provide mandatory training to the City's Department of Personnel analysts and to all hiring personnel, Commissioners, Deputy Commissioners, and department heads within all City departments anticipated to engage in hires/transfers/promotions during the interim period.

V. Redesignation of *Shakman* Exempt Titles

- A. The *Shakman* Decree allows the City to take political factors into account in employment decisions if the City can demonstrate that party affiliation is an

appropriate requirement for the effective performance of the public office involved. See *Branti v. Finkel et al.*, 445 U.S. 507, 518 (1980).

- B. Currently the City can designate positions as *Shakman* exempt with few limitations so long as the number of *Shakman* exempt titles stays below a predetermined number of employees. In addition, the City can change the *Shakman* status of various positions with relatively minimal justification.
- C. Accordingly, since the first designation of *Shakman* exempt positions, the City has amended the *Shakman* exempt titles on over one-hundred (100) occasions. Several of the current *Shakman* exempt positions do not appear to meet the standard announced in *Branti* which requires the City to demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.
- D. The mechanism currently in place has had the perverse effect of using *Shakman* exempt position designation in a manner that is inconsistent with the *Shakman* requirements.
- E. The City must provide a new list of *Shakman* exempt titles to the Monitor within thirty (30) days. Each title must be accompanied by a written explanation that demonstrates that party affiliation is an appropriate requirement for the effective performance of the public office involved.
- F. The Monitor will review the new list of titles and make a recommendation to the Court as to whether the new list of positions should be approved.

VI. Review of Potential Institutional Barriers to Compliance

"Paid As" Positions

- A. The City uses an internal system that allows an employee to be hired into one position, but nonetheless "paid as" if the employee held a different position.
- B. The use of the "paid as" process creates a potential institutional barrier to compliance with *Shakman* by promoting employees through this system without notice of or competition for the newly created promotion.
- C. It is also not clear whether an individual can be hired into a *Shakman* exempt position and then "paid as" a *Shakman* covered position, effectively eliminating the *Shakman* requirements from the hire.
- D. Within thirty (30) days the City should report to the Monitor the feasibility of eliminating or altering the "paid as" process to ensure that these promotions are *Shakman* compliant in the future.

Recall Lists/Reclassifications

- A. The City uses an internal system that allows for the recall of laid off employees through "Recall Lists". The recall process is not subject to the *Shakman* initial hire oversight provisions. The City also allows employees to be reclassified under certain conditions. The reclassification process is similarly not subject to the *Shakman* initial hire oversight provisions. Accordingly, *Shakman* violations

may become institutionalized as a result of employees being recalled or reclassified.

- B. Within thirty (30) days the City should report to the Monitor the feasibility of altering the recall and reclassification system to ensure that these processes are *Shakman* compliant in the future.

VII. Consideration of Executive Order Prohibiting Retaliation

- A. Currently there are limited protections for City employees who come forward to report alleged *Shakman* violations.
- B. The City should formalize its stated commitment to encourage its employees to cooperate with the Monitor by incorporating a "No Retaliation" provision into an Executive Order issued by the Mayor.

Monitor's Recommendations for Future Study

I. Continue Information Gathering and Analysis for Purposes of Reforming Current System to Ensure Future *Shakman* Compliance

- A. Continue to interview individuals and review information regarding City's hiring, promotion, and transfer practices and procedures to further identify weaknesses in the current system.
- B. Solicit input from applicants, current employees, former employees, and other interested individuals.
 - 1. Establish a website with a dedicated e-mail address to allow any person to provide the Monitor with input electronically.
 - 2. Conduct survey of current employees for input regarding patronage issues.
- C. Canvass and review best practices used by other government entities to reduce unlawful consideration of political factors in hiring, promotion, and transfers.
- D. Review potential use of technology and/or e-recruiting as an additional means for reducing the risk of improper political considerations in personnel decisions.

II. Develop Alternative to Current Detailed Hiring Provisions Designed to Significantly Increase Accountability of Hiring Personnel and Ensure Maximum Compliance with *Shakman* Principles

- A. Evaluate use of lotteries for certain categories of positions.
- B. Evaluate potential outsourcing of certain components of the hiring processes.
- C. Evaluate creation of stronger and more independent Department of Personnel.
- D. Evaluate establishment of civil service model.

- E. Evaluate decentralization of hiring process to individual departments.
- F. Evaluate problems with screening, including problems associated with eligibility lists and referral lists.
- G. Evaluate other alternative remedies based on additional information gathered.

III. Analyze Potential Mechanisms for Increasing Transparency in City's Personnel Decision-making Processes

- A. The City's personnel practices should be more open to public scrutiny. Lack of transparency may prevent applicants, current employees, and taxpayers from raising questions or protesting improper politically-motivated personnel decisions.
- B. Lack of transparency also may conceal unlawful consideration of political factors in public employment personnel decisions.
- C. Analyze potential use of public disclosure of information related to successful hires and promotions, including demographic information of successful applicants/promotees. Consider other possible means of increasing transparency.

IV. Analyze Potential Mechanisms for Increasing Accountability for Compliance with *Shakman* Decrees by City Officials and Personnel

- A. Develop a binding and enforceable court certification process for city personnel involved in ultimate hiring and promotion decisions, including high level officials, similar to Sarbanes-Oxley.
- B. Develop other deterrence and enforcement mechanisms to increase compliance with *Shakman* decrees, including assessment of penalties for proven violations (including potential job loss, or potential loss of pension or other benefits).
- C. Implement regular and timely forensic audits of City's compliance with *Shakman* decrees by wholly independent auditor.
- D. Establish impartial, effective entity to adjudicate allegations of *Shakman* violations in the future, under jurisdiction of federal court.
- E. Establish mechanism for entity to receive, investigate, and pursue enforcement actions for complaints of *Shakman* violations.

V. Evaluate Possible Enactment of City Ordinance to Prohibit Political Discrimination in City Employment and Remedies/Penalties

VI. Evaluate Possible Enactment of City Ordinance to Prohibit Retaliation Related to Making or Participating in *Shakman* Complaints or Investigations

Powers Required by Monitor

- I. To date, the City has provided all information requested by the Monitor.

II. To ensure the Monitor's continued ability to perform the specific tasks assigned by the Court and outlined in the recommendations of this Report, the Monitor recommends that she be granted the following limited powers:

- A. Power to subpoena City records;
- B. Power to compel employee interviews; and
- C. Power to receive complaints of alleged *Shakman* violations, compel the production of relevant information from the City regarding such violations, and recommend appropriate relief, if necessary.

Anticipated Staffing and Budgetary Needs

- I. The Monitor, Counsel for Monitor, associate attorneys and their respective support staffs working under the direct supervision of the Monitor and/or Counsel for Monitor will be primarily responsible for implementing and carrying out the key elements of each of the recommendations delineated above. Time spent by these individuals will continue to be charged to the City as provided by the Court's Order dated August 8, 2005.
- II. In addition, the Monitor and her counsel anticipate requiring the assistance of two paralegals on a full-time basis in the next one hundred twenty (120) days to assist with the Monitor's random audits of City's interim hiring and promotions, information gathering activities, document analysis, organization of information from interviews, compilation and organization of relevant information from current employees via surveys, compilation and organization of relevant information from the public via the internet, and assistance with legal research and research regarding fair hiring and promotion practices. Work performed by such paralegals will be billed to the City on an hourly basis at the rate of \$90. Additional administrative support staff assistance will also be required in the next one hundred twenty days. Administrative support staff will be billed to the City on an hourly basis at the rate of \$30 per hour.
- III. The Monitor may retain professionals with expertise in establishment of a dedicated e-mail or appropriate web site, auditing, human resources technology, and government hiring systems, on an as needed basis, to provide input regarding specialized issues related to any proposals under consideration. The City shall be responsible for all fees associated with the retention of such professional(s).
- IV. The Monitor may require the services of additional consultants with specialized expertise, including collective bargaining agreements. The City shall be responsible for all fees associated with the retention of such professional(s).
- V. For consultants identified in Paragraphs III and IV above, the Monitor will notify and consult with the City before hiring any such consultant or expert whose costs are anticipated to exceed \$10,000.

Further Reports

The parties and the Monitor should appear before the Court on October 7, 2005 at 9:00am to provide a status regarding the implementation of the foregoing. At this time, the Monitor shall file a status report identifying the following:

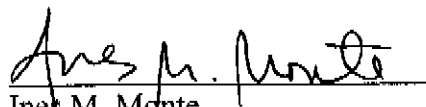
- Recommendations regarding the Interim Hiring and Promotion Plan;
- Progress on implementation of immediate and on-going action items identified here; and
- Additional powers and/or staffing requirements.



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Appendix A

Shakman Certification

With respect to all City jobs that are **not exempt** from the *Shakman* decrees, all City employees are strictly prohibited from directly or indirectly:

- (1) Conditioning, basing, or knowingly prejudicing or affecting any term or aspect of City employment of an existing City employee, upon or because of any political reason or factor;**
- (2) Affecting the hiring of any individual as a City employee because of any political reason or factor; and**
- (3) Knowingly inducing, aiding, abetting, participating in, cooperating with or encouraging the commission of any act which is proscribed by the *Shakman* decrees.**

Political considerations may not enter, in any manner whatsoever, into personnel decisions for *Shakman* covered positions in the City of Chicago.

I certify that I am aware of and am in full compliance with the above stated prohibitions regarding personnel decisions by the City of Chicago. I certify, under penalty of perjury, as provided for by law, that, to the best of my knowledge, political considerations did not enter into the employment actions documented herein. I understand that failure to comply with the above prohibitions and/or failure to submit an accurate Shakman Certification form may result in disciplinary action up to and including immediate termination.

Signature

Printed Name

Date