

**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,)	
)	Wayne R. Andersen
v.)	United States District Court Judge
)	
DEMOCRATIC ORGANIZATION OF)	
COOK COUNTY, et al.,)	
Defendants.)	

**AUGUST 7, 2008 STATUS REPORT REGARDING IMPLEMENTATION OF
CITY'S NEW HIRE PLAN**

The Monitor, Noelle C. Brennan (“Monitor”), by and through her counsel Beth Davis and Sarah Brown of the law firm of Noelle Brennan & Associates, Ltd., submits this Report of the Monitor pursuant to the Order of the Court entered on August 2, 2005 and pursuant to the *Agreed Settlement Order and Accord* entered on May 31, 2007.

On August 2, 2005, the Court appointed the Monitor “to ensure future compliance” with the Court’s prior orders in *Shakman, et al. v. The Democratic Organization of Cook County, et al.*, Case No. 69 C 2145, in response to the Plaintiffs’ Application to Hold the City of Chicago and its Mayor in Civil Contempt for Violations of the Court Orders (“Plaintiffs’ Application for Contempt”). In order to resolve the Plaintiffs’ Application for Contempt and various other pending motions, the parties agreed to and the Court entered an *Agreed Settlement Order and Accord* (the “*Accord*”) on May 31, 2007. The *Accord* provided for ongoing monitoring of the City’s hiring processes and that the Monitor shall prepare and file periodic reports with the Court regarding ongoing compliance efforts by the City. This Report focuses on the status of the City’s implementation of the New Hire Plan, filed with the Court on August 16, 2007. It does not address other compliance issues or concerns and is not intended to be a comprehensive assessment of the City’s obligations under the New Plan.

I. HISTORY OF THE NEW HIRING PLAN

The City of Chicago’s new Hiring Plan (the “New Plan”) is a major component of the *Accord* and part of the overall resolution of forty years of litigation between the City and the Plaintiffs regarding patronage practices in the City of Chicago. Since the appointment of a Monitor, one of her primary roles has been to facilitate negotiations between the City and the Plaintiffs regarding an acceptable replacement for the Detailed Hiring Plan. Over the past three years, the parties agreed upon and the Court approved a variety of amendments to the Detailed Hiring Plan. Although these changes occurred in a

piecemeal fashion, they were nonetheless improvements over the Detailed Hiring Plan and were eventually incorporated into the New Plan. Throughout negotiations over the New Plan, the parties have attempted to balance the tension between the goal of efficient hiring and the need for appropriate and effective safeguards to prevent the types of abuses that occurred in the past. The New Plan is a culmination of the parties' extensive efforts and cooperative negotiations. Many components of the New Plan are a result of carefully deliberated and agreed upon provisions that may or may not be standard human resources "best practices." These provisions, however, reflect consideration of the City's hiring needs within the reality of the City's hiring past.

Over the course of negotiating and developing an alternative hiring plan, in 2006, the City retained Hewitt Associates ("Hewitt") to provide human resources expertise and assist with drafting a new hiring plan. The Plaintiffs, the City and the Monitor spent several months working with Hewitt to develop a hiring plan. In late April of 2007, Hewitt produced a highly technical report regarding how the City's hiring systems should be redesigned. Due to the length and complexity of this report, and concerns regarding the ease of its implementation, the City, the Plaintiffs and the Monitor all agreed that a much condensed hire plan was required. Accordingly, with the consent of the parties, the Monitor and her counsel submitted a draft of the New Plan in mid-May of 2007 for the City and the Plaintiffs' review. Additional extensive deliberation, discussion, and redrafting continued regarding various components of the draft of the New Plan and the proposed New Plan was filed with the Court on August 16, 2007. As a result of the prolonged negotiations, the New Plan contains many terms of art that the participating parties agreed to when discussing various components of the New Plan.

If the New Plan is implemented as intended, the resultant hiring system should largely prevent hiring abuses in the future, absent the oversight of a federally appointed monitor. It envisions a "robust" DHR and includes many different processes and procedures designed to create roadblocks to pre-selection and provide lasting deterrence against manipulation of the City's hiring system. Each piece is vital to the New Plan in that the components have far greater strength as a whole than as separate parts. If any one aspect is weakened, the door opens for a return to the hiring manipulations of the past. Thus, instances of non-compliance this soon after the adoption of the New Plan are particularly disturbing and need to be addressed as quickly as possible.

II. RELATIONSHIP BETWEEN THE NEW PLAN AND "SUBSTANTIAL COMPLIANCE"

The *Accord* provides that it will terminate on or after December 31, 2008 if the Court determines that the City is in substantial compliance with its terms. "Substantial Compliance" is defined as being met if the City can demonstrate that:

- 1) the City has implemented the New Plan, including procedures to ensure compliance with the New Plan 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).

Thus, at a minimum, all components of the New Plan must be implemented before the City can demonstrate it is in "substantial compliance" with the *Accord*. This Report focuses only on the implementation of the New Plan.

NON-COMPLIANCE WITH KEY COMPONENTS OF PLAN

Portions of the New Plan have been in effect for over a year. Nevertheless, the City and the Department of Human Resources have failed to comply with certain provisions. Much of the recent non-compliance coincided with the departure of the former Commission of DHR in February of 2008. As previously reported the former DHR Commissioner was instrumental in implementing new hire procedures and was committed to fair hiring practices. A new Commissioner was appointed in July of 2008 and the Monitor's office hopes to work with him to move DHR towards increased compliance with the New Plan. Below are some of the major areas in which improvement is required.

A. DHR'S FAILURE TO VERIFY MINIMUM QUALIFICATIONS FOR THE SENIOR MANAGER HIRING PROCESS

The Senior Manager Hiring Process provides hiring departments a great deal of "discretion and flexibility in hiring" due to the high-level, managerial nature of the positions. 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 for certain qualifications.

Specifically, the Senior Manager Hiring Process provides that DHR will *only* send resumes to a hiring department for individuals who meet the minimum qualifications for

the position.¹ DHR has failed to implement the Senior Manager Hiring Process as it is currently written. Rather than verify that candidates meet the minimum qualifications for a particular position, DHR sends all candidates who successfully answer computerized “disqualification” questions to departments. According to a Deputy in DHR, the decision that DHR would stop manually verifying minimum qualifications was made at a January, 2008 meeting with DHR, the Mayor’s Office and the Law Department. The Monitor’s Office was not present nor was it informed of the decision.

Both common sense and recent experience demonstrate that using the computerized disqualification questions as a proxy for DHR’s obligation under this hiring process is ineffective. Any individual reading the disqualifying questions can easily discern what answers she must give in order to pass through the qualification process. Without any verification by DHR to determine whether a candidate’s resume reflects that she meets the minimum qualifications, almost any candidate can pass through to the department, abrogating DHR’s role as a gate-keeper. The Monitor has repeatedly advised DHR, the Law Department and the Mayor’s Office that this process violates the New Plan. The City, however, continues to violate this provision.²

The following example illustrates the problem. In May of 2008, the Department of Fleet Management scheduled interviews for Manager of Vehicle Maintenance, a Senior Manager position. Five of the six candidates scheduled for interviews did not appear, based on a review of their respective resumes, to meet the minimum qualifications for the position. Two of those candidates clearly did not meet the minimum qualifications. On May 27, 2008, the Monitor’s office sent an email explaining why the five candidates appeared not to meet the minimum qualifications and requesting that the interviews be postponed to address the problem. The Deputy Commissioner of Employment Services in DHR refused to cancel the interviews and did not offer any explanation or support for the proposition that the candidates in question were indeed qualified. Thereafter the Monitor sent an email response stating, in part:

I do not understand why DHR would refer for interviews candidates that do not meet the minimum qualifications for a position. This is a direct violation of the Court’s order.

Notwithstanding the concerns raised, DHR continued to refuse to cancel the interviews.³ Notably, in a later hiring sequence for the same title in which DHR *did* conduct a verification of minimum qualifications, the two candidates referenced above were rejected because they lacked the minimum qualifications for the position.

¹ **Minimum qualifications:** refers to the basic requirements a candidate must possess before being considered for a position.

² The City has repeatedly claimed that the Monitor’s office agreed to this deviation in the Senior Manager Hiring Plan. That claim is simply inaccurate.

³ Upon notification of the issue, the Department of Fleet Management agreed to cancel the interviews.

In addition, for several months, DHR was not limiting its referral of candidates to those who successfully answered the disqualifying questions. Earlier this year, DHR was referring every candidate who did not affirmatively *disqualify* himself through the City's computerized application system's disqualification questions. In other words, if a candidate did not answer the questions, he was still referred. After this situation occurred during an Assistant Commissioner hiring sequence in Aviation, the Monitor related her concerns to DHR. In response, DHR maintained the candidate should still be referred to Aviation for interviews because at the time the candidate applied it was DHR's "business practice" that any candidate who did not disqualify himself would be referred to the department. Thus, under DHR's "business practice" even candidates who did not claim to be qualified for a position would get referred for interviews.

Not only is this practice a violation of the New Plan, but it results in unqualified candidates being sent to departments for interviews. For example, the Department of Streets and Sanitation was recently sent in excess of 60 applicants for interview for a single position. After reviewing these applicants, the department determined that only two candidates were actually qualified for the position. In many instances, DHR's failure to review applications for minimum qualifications results in an overwhelming number of resumes being sent to departments for review. DHR recently sent 431 applications to the Mayor's Office of Special Events for a single vacancy. This could easily result in highly qualified applicants never receiving consideration due to the volume of applications a department must review for each vacancy. If departments were only sent applications for candidates meeting the minimum qualifications for each position, as the Senior Manager Hiring Process requires, the quality of candidates interviewed would increase. Not only does DHR's practice create inefficiencies, it creates the opportunity for manipulation by the hiring department and it is a violation of the Accord.

B. FAILURE TO CONDUCT AN INDEPENDENT JOB ANALYSIS

As discussed in previous reports, one of the Monitor's primary recommendations for ensuring a fair and open hiring system is the completion of an independent and thorough audit/analysis of all current job titles to ensure that they accurately reflect job duties, appropriate minimum qualifications and screening/hiring criteria.⁴ A thorough job analysis would result in accurate *pre-determined* job descriptions⁵ with meaningful *pre-determined* minimum qualifications and appropriate *pre-determined* screening and hiring criteria. As reported in the Annual Report of the Monitor for 2006:

⁴ **Screening Criteria:** refers to the list of characteristics that are "preferred" but not required.

Hiring Criteria: refers to the list of characteristics upon which candidates are assessed during the final stages of the hiring process.

⁵ **Job Description:** refers to the document internal to DHR which describes the position and includes the minimum qualifications and the duties/expectations associated with a position. This term is used interchangeably with the terms **Job Specification** and **Class Specification**.

Job Posting: refers to the document DHR posts on its website to fill a particular open position. This term is used interchangeably with the term **Job Announcement**.

Qualifying and hiring criteria for a given position are drafted by the departments where the vacancy exists. No mechanism currently prevents departments from manipulating the criteria in order to favor a particular applicant or provides any safeguards on this front.

Annual Report of the Monitor for 2006 at page 18. To prevent this problem, the Monitor's 2006 Report recommended a "Comprehensive Audit of Hiring Criteria and Job Positions." *Id.* at 20.

Without such an analysis, hiring departments are readily able to manipulate qualifications and "preferred" skills on a hire by hire basis by requiring specific skills and/or attributes that are tailored to a pre-selected candidate. Because DHR lacks the expertise that the hiring department has regarding particular projects, changes in work, etc., the hiring department will always be better suited to "justify" repeated changes to particular positions. A comprehensive job analysis would limit such potential manipulation of the system because all changes in minimum qualifications, screening criteria, hiring criteria, duties, tests, or other qualifications would be analyzed against the pre-existing data from the analysis. This data would provide DHR with the requisite information it needs to meaningfully police department-initiated changes to job descriptions and duties.

Another key component of the job analysis was the creation of a comprehensive list of titles that will use testing as part of the selection process. As previously reported, one of the Monitor's key recommendations for the New Plan was the increased reliance on implementing tests and/or other objective selection systems in place of interviews. Such processes would significantly reduce the opportunity for manipulation of the hiring process. As noted in the December 17, 2007 Report of the Monitor, the New Plan requires that the City create a comprehensive list of job titles that will be filled with the use of such tests. Although this list has been started and DHR has posted the current list of titles on its website, the list is not complete and likely cannot be properly completed without the job analysis.

Previously, following extensive negotiations, the City had agreed to conduct such an analysis and the provision was incorporated into the New Plan. Specifically, the New Plan requires that:

DHR, in conjunction with outside consultants, shall review existing job titles to determine minimum qualifications, testing protocols and appropriateness of job descriptions. The DHR may modify or delete job titles after such review.

Moreover, any posting of a vacant position will include:

[T]he position's predefined job description, predefined minimum qualifications, predefined hiring criteria, predefined test score requirements, whether or not an

interview will be conducted, whether or not the position will be filled through random selection, and any other relevant information.

Prior to presenting the agreed upon provisions to the Court and incorporating them into the New Plan, the Monitor and her counsel had extensive discussions and negotiations with the City regarding what the job analysis would entail. In early December of 2006, the City informed the Monitor and her counsel that it had retained Hewitt Associates (“Hewitt”) to develop the New Plan. Thereafter, the Monitor, Hewitt, individuals from the Mayor’s Office and DHR had repeated meetings about components of the New Plan. Similar to the Monitor’s recommendations, Hewitt recommended that:

The City undertake a comprehensive job analysis initiative to validate the minimum qualifications, screening, and hiring criteria for all City positions to which this report applies. We see this as a critical driver of the quality of selected bidders and candidates resulting from the new hiring process.

Hewitt also stated:

Hewitt recommends that the hiring criteria for all assessments—both tests and interviews, be developed through a comprehensive job analysis initiative that focuses on identifying those job-related skills, knowledge, and abilities that predict success in that position.

In June of 2007, Hewitt began a job analysis for a limited number of titles in the Department of Human Resources (35) and all non-interview titles (131). Hewitt was scheduled to complete its analysis of these titles in October 2007. This initial process was referred to as the “Wave I Job Analysis.” Thereafter, job analyses were to be performed for the titles in Waves II through VI. For reasons not relevant here, the Hewitt job analysis never progressed beyond Wave I. In January of 2008, the City reported to the Monitor that the Hewitt analysis had ceased and that DHR was in the process of obtaining approval of new Master Consulting Agreements to find a new entity to perform the job analyses for Waves II through VI. In February of 2008, the previous Commissioner of DHR moved to the Graphics Department. Thereafter, despite several requests for information, the Monitor received no further update on the job analysis until June of 2008.

The preliminary information provided indicates that the City has retracted its agreement to conduct full job analyses. Because the Monitor’s office is currently investigating this matter, this Report cannot make any definitive conclusions as to the City’s adherence to the prior agreements and related provisions of the New Plan. At the conclusion of the investigation, any necessary Report will be filed with the Court. Failure to conduct a meaningful analysis of all job titles will eliminate a key safeguard against hiring manipulation.

C. FAILURE TO POST EXISTING JOB TITLES, QUALIFICATIONS AND DESCRIPTIONS

According to the New Plan, “[t]he minimum qualifications, testing protocols and job descriptions for each job title shall be posted on the City’s website and any other sites where City jobs are regularly posted” (emphasis added). This provision, like the job analysis, was intended to create transparency in the hiring process and further reduce the ability to favor particular candidates for individual positions by altering hiring criteria or preferences. This provision was specifically proposed by the Monitor (in conjunction with the Plaintiffs) to the City on May 31, 2007 and accepted by the City thereafter. Notwithstanding the specific language and the intent of the parties, the City has now refused to comply with this provision.

In a July 25, 2008 memo to the Monitor, DHR stated that it did not read the New Plan to require the posting of all job descriptions. Rather, DHR interpreted that provision to simply require it to post a job when the job was open to be filled. Although it is evident that posting an open job is appropriate, the New Plan requires that *all* job descriptions be available for public review at any time, whether the position is open or not. This will serve two vital functions: 1) to educate the public about City jobs; and 2) to limit manipulation of a particular *open* job when it is posted to be filled. DHR asserts that “It is not practical, nor prudent to post a class specification...on the website. Each time a position is requested for hire a ‘job’ description is created with the specific duties required for that vacancy in that particular department.” This is precisely the reason that a centralized posting of all positions is so important – there should be a maximum amount of oversight on any department’s discretion to change the qualifications for a job each time it is posted. Moreover, the public would have the opportunity to compare any open posted job with the predetermined qualifications, duties, etc.

This provision was explicitly included in the New Plan and was a condition upon which the Monitor and Plaintiffs agreed to the overall plan. Thus, the City’s decision to reinterpret this provision essentially changes the terms of the New Plan. If the City maintains this position, the Monitor and Plaintiffs will have to determine whether new objections to the overall plan should be filed and ask the Court to resolve the dispute.

D. FAILURE TO INDEPENDENTLY REVIEW CHANGES TO JOB DESCRIPTIONS

Compounding the problems with the incomplete job analysis and the failure to post all job descriptions described in sections two and three above, DHR recently informed the Monitor’s office that it is now reviewing job descriptions on a “just in time” basis. In other words, rather than independently reviewing job descriptions for accuracy, DHR reviews job descriptions when the department seeks to post the position for hire. This “just in time” process creates the opportunity for manipulation.

For example, the Department of Planning and Development recently sought to a fill the Economic Development Coordinator position. Before the job was posted, the

department requested a change to one of the minimum qualifications. Specifically, the department requested that the minimum qualifications be changed to allow a Bachelor's degree in Architecture to qualify as an acceptable equivalency to the Master's degrees already listed on the job description. DHR allowed the change, the position was posted, and an applicant who has worked as an Architect in the Planning Department since 2005 was deemed qualified and referred to the department for interviews. Notably, before the change in minimum qualifications, it is not clear that this candidate would have been deemed qualified. Regardless of whether this change may have been valid as part of an independent job review, DHR's "just in time" approach allows departments to tailor minimum qualifications to particular candidates.

When DHR changes a minimum qualification for a particular job, it often produces little documentation, which only serves to further exacerbate the problem. Changes to minimum qualifications were supposed to be tracked by the City's computerized application system. However, the Monitor's office recently learned that when a job is re-posted, the new posting deletes the last posting in the computer system. Thus, any revisions to the text of the last job posting, including the job description and minimum qualifications, cannot be tracked in the new system.⁶ Unless DHR provides the Monitor's office with hard-copy documentation reflecting the change and the reasons for the change, the Monitor's office will likely be unaware of changes to the minimum qualifications after a job is initially posted.

For example, in September and October of 2007, the O'Hare Modernization Project ("OMP") posted a Projects Administrator position that required a candidate to have a Bachelor's Degree in one of several disciplines directly related to the work which the Projects Administrator would be performing. After receiving a referral list, OMP decided not to conduct interviews. Instead, the position was re-posted in February of 2008 and the minimum qualifications were changed so that they only required a Bachelor's Degree, not a Bachelor's Degree in a specific discipline. A current employee of the City, who had worked with OMP in his current position, but who had not originally qualified for the position because of the degree requirements, was subsequently selected. The hire packet contained no documentation as to why the change to minimum qualifications was made, or why a candidate who was deemed unqualified under the original posting suddenly qualified for the position. There was no way to track the change or the reason for the change in DHR's computerized system. In light of the circumstances, it appears OMP may have pre-selected the candidate.

Although these examples of apparent pre-selection may have plausible legal explanations, the processes used by DHR to allow changes to minimum qualifications and the lack of computerized tracking of such changes creates the opportunity for ongoing manipulation by hiring departments.

⁶ This is especially problematic for Senior Manager titles which are often generic titles with unique job descriptions and minimum qualifications and, because of shorter posting periods, must often be posted multiple times and tend to include various revisions.

E. FAILURE TO ADHERE TO UNIFORM TESTING PRACTICES

Testing is an integral part of the New Plan. For years, the City's subjective interview process was used to select favored candidates for hires and promotions. Without an objective testing component to these hiring sequences, there were few barriers to manipulation. 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.

As part of its new efforts to implement testing for positions across the City, the City has hired a Testing Manager and seven Testing Administrators. The testing staff has prepared tests for a number of positions on the non-interview list pursuant to its obligations under the New Plan. Unfortunately, the testing process has been largely ad-hoc and is not proceeding pursuant to the uniform protocols required by the Hiring Plan. As a result, the testing process is not fully serving the purpose of minimizing hiring manipulation.

1. LACK OF PRE-DEFINED TESTING PROTOCOLS

The New Plan mandates that "[p]re-determined testing protocols shall be developed for all non-interviewed positions to be tested." The New Plan states that "DHR shall establish minimum, predefined, threshold passing scores for all tests." To date, the City has failed to craft an overall approach to the testing process. The rules ("protocols") regarding each test should be developed *prior* to test administration. For example, if DHR or a department is permitted to change a required passing score (or to first establish one) after administration of a test, the objectivity that testing injects into the process is lost. In light of a history of problems with tests and scoring, and to ensure that testing protocols are in place prior to test administration, the Monitor's office now reviews each proposed test. Prior to Monitor review, DHR must complete a questionnaire that requires it to establish several testing components prior to administration, including the following: 1) how the tests will be scored; 2) how those scores will be used; 3) whether there is a minimum passing score; and 4) whether the test will be used as part of the interview process and if so, how it will be factored into a candidate's overall score.

This pre-administration review is intended to ensure that testing protocols are not changed mid-stream to favor particular candidates. Despite this process, on several occasions, the protocols reviewed and approved for an individual test were changed by DHR without notification to the Monitor's office. For example, after the Monitor's staff reviewed a test for OEMC Communications Operator I, DHR changed the weight of the test and the passing score. These after-the-fact changes resulted in one individual passing the test who would not have passed under the agreed-upon protocols. Whenever someone makes changes to testing protocols following test administration, it raises concerns about the neutrality of the process used to select those candidates.

The same issue arose with the test for Aviation Security Officer. According to the New Plan, no individual can be placed on an interview list if he has failed a required test. However, candidates for Aviation Security Officer were allowed to interview regardless of whether or not they had passed the required test. DHR “proposed” this change to the Monitor’s office in an e-mail *after* the test and interviews had already been administered. DHR also utilized a different minimum passing score to evaluate the tests than the one previously approved. A similar situation occurred with the test for Finance Assistant Payroll Administrator. Post-hoc changes to pre-determined testing protocols can lead to the same problems that arise when changes are made to interview rating forms to favor pre-selected candidates.

2. LACK OF PRE-ESTABLISHED TESTING TITLES

Despite the requirement in the New Plan that DHR develop a comprehensive list of titles where tests will be used, there is still no agreed upon complete list. Although much progress has been made, the lack of a comprehensive list of titles prevents consistency. If the list of titles were addressed as a whole, DHR could ensure that titles with similar duties and requirements would be treated in the same way. Currently, that consistency is lacking. For example, individuals applying for a Plumbing Inspector position in the Buildings Department are required to take and pass a test. When the City sought to fill the same position in the Department of Water Management, it wanted to conduct interviews and forego any testing.

These inconsistencies create opportunities for manipulation or, at the very least the appearance of manipulation. Not only is the list of titles not complete, but the City’s website does not identify whether tests are even required for particular open titles, which is required by the New Plan. For example, between July 1 and July 21, 2008, 32 positions that require a test were open and posted on the City’s website. Of those 32, only two referred to the fact that a test would be administered. None of the listings described any of the test protocols.

3. LACK OF A PRE-ESTABLISHED LIBRARY OF TESTS

Instead of creating pre-approved pools of questions to ensure that tests do not have to be re-created each time they are given, the City is creating each test on a “just in time” basis. This means that a limited number of test questions are being created as positions are filled. It also means that for each test, DHR relies on questions provided by the “subject matter expert” in the hiring department at the time the hiring department is seeking to fill the position. Again, the process leaves open the possibility of manipulation because the hiring department can dictate the test questions. Although the institution of a significant number of tests is a major undertaking and requires sufficient resources, such resources should be devoted to complete the process as required. Moreover, as discussed above, if the agreed upon job analysis had been completed, the creation of tests would be more uniform and therefore less time-consuming.

4. REFUSAL TO PROVIDE TEST SCORES

The New Plan mandates that candidates have access to their scores following administration of a test. The Monitor's office has received several complaints that individuals requested their scores from DHR personnel and were denied that information. For example, this past year DHR refused to provide a candidate his score for the October 2007 Water Foreman of Construction Laborers exam and again for a sub-foreman test in April of 2008. Due to DHR's denial of his requests, the candidate suspected that the department had pre-determined who would be selected. Although DHR has indicated that it will now provide test scores if it receives requests in writing, several departments apparently have not been given instructions on this matter.

5. NEED TO PROVIDE ADDITIONAL TRAINING

Testing Administrators must be trained in both test administration and *Shakman* processes to avoid test manipulation at the testing site. In some cases, Testing Administrators and departments have been unprepared to administer tests. For example, in the hiring sequence for Water Marine Deck Hand, neither the Testing Administrators nor the department brought a score key to the Skills Assessment. Interviewers created a numerical score key on the spot for an assessment that was originally intended to rate each task as pass or fail. The hastily-created score key made very little sense and removed all intended objectivity from the process.⁷

6. ONGOING PROBLEMS WITH THE FOREMAN PROMOTIONAL PROCESS

Finally, despite the fact that the parties have been addressing testing for foreman positions since 2006, the established testing protocols continue to not be followed. Thus, although DHR recently asserted that it is "100% in compliance with the Foreman Promotional Process," that assertion is inaccurate. On the contrary, as of mid-June 2008, DHR's testing team was still not complying with the Foreman Promotional Process. According to the court approved process, a candidate for foreman must take a three part test. The candidate must receive a score of 70% or above on *each* part of the exam to pass the entire exam. It recently came to light that some employees in DHR were not aware that candidates were required to receive 70% or above on Part III of the Foreman Promotional Process in order to be considered. For example, DHR approved hire packets for two individuals for Fleet Garage Attendant in Charge who did not receive passing scores on Part III of the Foreman Promotional Process. The Monitor's staff notified DHR of the problem on June 11, 2008. Two days later, DHR submitted another hire packet for Plumbing Inspector in Charge that failed to comply with the Foreman Promotional Process rules.

The Foreman Promotional Process also requires that individuals who pass all three parts of the exam must be selected based on their seniority and overall score on the

⁷ To the best of the Monitor's knowledge, none of the DHR Employment Services employees have received meaningful *Shakman* training.

exam. However, the Monitor recently learned that some DHR employees had never been informed that candidates were to be put into bands for selection via seniority and scores. If DHR does not adhere to the protocols that have been created, there is no point in going to the effort to develop them.

F. FAILURE TO PROVIDE NOTICE OF INTERVIEWS AND TESTS

The City and the Monitor's office have had a long-standing agreement that the City shall provide notice of all interviews and tests. The monitoring of interviews is an essential component of the Monitor's work. With certain exceptions, the City is required to provide the Monitor's office with five days notification of any interview or test.⁸ Over the past several months, however, DHR's compliance with this agreement has decreased. As of July 2008, out of a total of 334 hire sequences that involved interviews or tests in 2008, the City failed to provide notification of interviews or tests in at least 35 sequences. This is a failure rate of approximately 10%. Although this percentage may not seem alarmingly high, when one considers that one of the primary duties of the Monitor is to monitor interviews and tests, the failure rate is significant.

More importantly, DHR failed to notify the Monitor's office of several interviews and tests for hiring sequences that had been subject to ongoing and long-lasting negotiations. For example, the Monitor was not provided notice for an interview sequence for Administrative Assistant positions in the Fire Department.⁹ The Monitor, the Law Department and the Fire Department had been in negotiations about the filling of these positions for months prior to the interviews. As a result of a variety of complaints and acting up concerns, the Fire Department had posted and reposted these positions. The Monitor, the Law Department and DHR all reviewed and approved the referral lists prior to providing them to the department. However, although it was crucial for the Monitor's office to attend those interviews, because DHR failed to provide the required notification, no one was in attendance. While DHR may consider this to be one mistake regarding notification, it impacted a number of prior negotiations and agreements pertaining to this sequence.

Although 100% compliance may be impossible, DHR can (and has in the past) perform better than it has in the recent past on this issue.

III. CURRENT NEGOTIATIONS REGARDING CHANGES TO THE NEW PLAN

Some portions of the New Plan continue to be negotiated. Although the City, Plaintiffs and Monitor are currently working on these provisions, the provisions must be finalized and implemented before the Court can determine if the City is "substantially compliant." As demonstrated above, it is imperative that the parties have time to assess

⁸ For Senior Manager positions, the City is required to provide 48 hour notice.

⁹ Although the title indicates a lower level position, these are actually highly paid and senior slots in the Fire Department.

whether the City is successfully performing any new requirements so that issues may be addressed, and if necessary, presented to the Court.

A. SUPPLEMENTS TO THE NEW PLAN

The New Plan does not include specific hiring processes for sworn and uniformed titles in the City's Police and Fire Departments (hereinafter "CPD" and "CFD"). The hiring processes for Police and Fire still remain to be developed and presented to the Court for approval. Historically, the City has used outside vendors for the development and administration of tests to establish eligibility and promotion lists for various sworn and uniformed titles in these departments. As discussed in previous reports, these hiring processes have not been problem-free. Specifically, the Monitor's office has received a number of complaints regarding some of the testing protocols in CFD and the use of the merit promotions system in CPD. Both CFD and CPD are in the process of developing hiring plans and these areas will require close attention during the development of the new hiring plan for these two departments.

The New Plan also requires that the parties agree to and file with the Court the following information: 1) a list of the titles for which DHR will provide the department a list of candidates to be interviewed that is organized in random order (XI.B.1); and 2) a list of titles for which DHR will provide the department a list of candidates to be interviewed that is organized according to the candidates' screening criteria (XI.B.2). This has not yet been accomplished.

B. REVISIONS TO THE NEW PLAN

Over the past several months the City, the Monitor's office and the Plaintiffs have discussed the need to add detail and clarification regarding existing provisions of the New Plan. To date, the parties have discussed 1) clarifying and providing additional detail to the Senior Manager Hiring Process; 2) modification of the Department of Law's hiring process; 3) clarifying and expanding provisions of the Student Worker Hiring Process; and 4) revisions to the list of titles on the Exempt List and on the Senior Manager List.¹⁰

1. SENIOR MANAGER HIRING PROCESS

Over the course of the past several months, the Monitor's office, the Plaintiffs, the Law Department, the Compliance Office and DHR have identified and discussed gaps and/or deficiencies in the current version of the Senior Manager Hiring process. In particular, the Senior Manager Hiring process does not currently describe the following requirements with sufficient detail:

- the hiring department must submit for DHR approval all Senior Manager job descriptions *prior* to initiating the hire process;

¹⁰ The Monitor has been told that other revisions have been discussed internally at the City as well that are not listed herein.

- any request by the hiring department for changes to the pre-existing job descriptions must be accompanied with a memo justifying the changes;
- any revised job description must be posted on the City's publicly available website once approved by DHR;
- whenever feasible, the hiring department individual who screens the applications should not also be an interviewer and/or the hiring official/decision-maker;
- each Senior Manager interview should include at least two interviewers who shall complete Assessment Forms and thereafter reach a consensus, when possible.

As a result of these omissions in the Senior Manager Hiring Process there was (and continues to be) confusion regarding the proper procedures in Senior Manager hiring sequences. For example, some departments took the position that they could change the job description and/or the screening criteria each time they hired for the same title. This would, as described above, allow a department to tailor a job description and/or screening criteria for a pre-selected candidate. In addition, if the department allowed one individual to act as screener, interviewer and hiring manager, the possibility of pre-selection would substantially increase. As a result of numerous discussions regarding the above identified concerns, the parties have circulated a supplemental description of the Senior Manager Hiring Process to be incorporated into the Court approved process. This process involved soliciting recommendations from the Monitor's office, the Department of Law, the Office of Compliance, the Plaintiffs and DHR and is expected to be finalized shortly.

2. DEPARTMENT OF LAW HIRING PROCESS

Currently, the Law Department is subject to the Attorney Hiring Provisions approved by the Court in 1989 and attached to the New Plan as Exhibit I.7. For several months, the City has engaged in ongoing internal discussions about revising the hiring processes for the Law Department. As a result of these discussions, the Law Department and the Plaintiffs have been in negotiations to revise those processes. As there has been no agreement reached to date, the Monitor's office has not been provided with any new proposals. If and when a new proposal is agreed upon, such proposal shall be presented to the Court for approval.

3. STUDENT WORKER HIRING PROCESS

The Court approved Plan for Hiring Student Workers is attached to the New Plan as Exhibit I.5 (commonly referred to as the "Student Intern" Hiring Process). Pursuant to the Student Intern process, departments have a great deal of flexibility when hiring interns and are permitted to hire students without complying with the general hiring provisions of the New Plan. For example, Departments are permitted to recruit student workers from a number of forums including job fairs, conferences and work study programs. Often the Department's recruitment efforts result in a large pool of candidates for the Department's student intern position(s). When the Department has completed recruiting for the position, the Department decides who it wants to hire and forwards its

recommendation and paperwork to DHR. Although the Plan requires the Department to submit certifications stating that its chosen candidate was not picked based on political affiliation, the current Plan does not require the Department to offer any explanation why it selected one candidate over another. Similarly, hiring departments are not required to interview any candidates or provide any reason for why they interviewed some qualified candidates but not others. These gaps have led to considerable confusion and can delay the hiring process.

After monitoring recent hiring sequences for student intern positions, it is evident that the student hiring plan should require Departments to inform DHR of the factors it considered when it selected a student intern candidate for hire or selected a candidate to participate in interviews. For example, during one student intern hiring sequence a department determined that twenty-one applicants met the hiring criteria for the position. The department decided to interview only two of the qualified candidates. The Monitor's Office reviewed the hiring sequence and brought the hire to the attention of the Office of Compliance because it was not clear why or how the department had selected only two candidates for interview. In turn, the Office of Compliance asked an individual in the department to clarify how he/she decided to interview the candidates. The department did not (or could not) explain the specific analysis and/or criteria used to pare the list of candidates from twenty-one to two. The candidate who was eventually selected had worked in that same department in the past.

After this hiring sequence, the Monitor's Office and the Office of Compliance discussed various ways in which the Student Intern process could be refined and improved. After soliciting input from other departments, a proposal will be forthcoming for review by the City and the Plaintiffs.

4. REVISIONS TO EXEMPT LIST AND SENIOR MANAGER LIST

Positions which are hired pursuant to the Exempt Hiring Process are attached to the *Accord* as Exhibit II.G. The City can modify the Exempt List so long as the total number of Exempt Positions does not exceed a 10% increase (by category) of the overall Exempt positions and subject to certain notice provisions. The Monitor and the Plaintiffs have the right to object to the addition of titles that, in their opinion(s), do not comport with the legal requirements for exempt positions.

Positions which are hired pursuant to the Senior Manager Hiring Process are attached to the *Accord* as Exhibit II.E. (2). There is no process for adding or deleting titles subject to the Senior Manger Hiring Process. During the course of discussions with the City, the Monitor and the City have agreed that there should be such a process and that this process should mirror the process for changes to the Exempt List. In addition to discussions regarding the process for modifying the lists, discussions between the City and the Plaintiffs regarding specific titles is ongoing. Once agreement is reached on these issues, a proposal will be filed with the Court for approval.

CONCLUSION

As described above, the New Plan is not yet finalized. In addition, some provisions that are finalized are not being adhered to by the City. Thus, the Monitor's office, the City and the Plaintiffs should continue working together to finalize and properly implement the New Plan.

Respectfully submitted this 7th day of August, 2008.

____s/ Noelle C. Brennan_____

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