

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

MICHAEL L. SHAKMAN, et al.,)	
)	No. 69 C 2145
Plaintiffs,)	
)	
v.)	
)	Hon. Sidney Schenkier
COUNTY OF COOK,)	
)	
Defendants.)	

AGREED ORDER

1. On May 5, 1972, by agreement of the parties, this Court entered an order (“1972 Consent Decree”) enjoining the County and other defendants from “conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor.”

2. On January 7, 1994, by agreement of the parties, the Court granted approval of a second Consent Decree (“1994 Consent Decree”) that incorporated the prohibitions of the 1972 Consent Decree and extended it to prohibiting the County from the “conditioning, basing or affecting of the hiring of Governmental Employees (other than for Exempt Positions) upon or because of any political reason or factor . . .”. 1994 Consent Decree, ¶ D. The County agreed to create a new hiring plan to be filed with and approved by the Court. *Id.*, ¶ F.

3. Paragraph O of the 1994 Consent Decree provided for a list of exempt positions, and permits political reasons to be taken into account in hiring to fill those positions. In designating a position as exempt, the County is obligated to adhere to the criteria that an exempt position must involve “policy making to an extent or is confidential in such a way that political affiliation is an appropriate consideration for the effective performance of the job” 1994

Consent Decree, ¶ O(3). The 1994 Consent Decree specified the procedure by which the list of exempt positions could be amended. On January 3, 1996, the Court approved a list of Exempt Positions (“1996 Exempt List”).

4. On February 2, 2007, by agreement of the parties, the Court approved the Supplemental Relief Order (“SRO”). Doc. 587. The SRO provided that the County would create a new, revised hiring plan to be submitted for approval to the Court. SRO § 2(B). This new plan would also include a new list of proposed exempt positions that would be presented to the Plaintiffs for comment and discussion “in a good faith effort to reach an agreement on the list.” SRO, § 2(D). The County’s proposed new Exempt List, as submitted in October 2010, and approved by the Plaintiffs and the Court is attached as Exhibit A to this Order. The SRO also contains a provision stating that the remaining applicable parts of the 1994 Consent Decree would remain in full force and effect. SRO ¶ 4. Consequently, the procedures set forth in Paragraph O of the 1994 Consent Decree for amending the list of exempt positions remain in effect, except that the County may initiate the procedures for amending the list of exempt positions from time to time when it deems it appropriate to do so.

5. Since 1996, the County has made changes internally to the list of exempt positions and has filled those positions outside of the normal hiring process. The Compliance Administrator has identified a number of instances in which the County filled or terminated a position as though it were exempt under the 1994 Consent Decree and SRO, even though the position did not appear on the 1996 Exempt List and Court approval was not obtained for treating the position as exempt. Doc. 1724, Sixth Report of the Compliance Administrator for Cook County (“Sixth Report”).

6. On September 9, 2010, the Plaintiffs filed a Petition to Enforce Consent Decrees and 2007 Supplemental Relief Order (“Petition”) asking the Court, among other things, to enjoin the County from taking any employment action on the basis of political reasons or factors for any position not on the 1996 Exempt List. The Parties have agreed to resolve the claims raised by the Petition through this Order.

7. The Court approves the positions listed in Exhibit A (“2010 Exempt List”) as exempt from the employment plan provided for under Section II of the SRO. This List supersedes the 1996 Exempt List. A number of positions that the County proposes as exempt are in dispute and subject to later resolution by Court order, either by agreement of the parties or determination by the Court. A list of disputed positions is attached as Exhibit B. In addition to the 2010 Exempt List, the parties have come to partial agreement on a list of positions, many previously treated as exempt, that will be deemed Executive Service under the County’s personnel rules and can be designated as “senior manager” positions for which more flexible, but non-political hiring practices will be allowed. Approval of senior manager positions, many of which are addressed in the Group Two positions, will be addressed at a later time, as appropriate. Subject to Court approval, the Parties may amend the 2010 Exempt List from time to time. Such amendments shall only be made pursuant to the following procedures. The President’s Office shall provide Plaintiffs’ Class Counsel and the Compliance Administrator with written notice of the proposed amendment to the Exempt List by personal delivery or e-mail. The notice shall include all supporting documentation, including but not limited to (a) the identity of the Exempt Position, (b) a copy of the current job description for the position and (c) a description of the basis on which the position is proposed as an addition to, deletion from or change to the Exempt List. Plaintiffs’ Class Counsel shall respond with his/her written notice of consent or denial of

consent (including the reasons for the denial of consent) within 14 days of receipt. The County and the Plaintiffs' Class Counsel shall meet and confer in a good faith effort to reach agreement on the amendment. If the Plaintiffs' Class Counsel consent to the request, the Parties will file a motion to amend the Exempt List and the position will be amended on the Exempt List if the Court agrees. If the Plaintiffs' Class Counsel does not approve the requested amendment, the County may file a motion with this Court for final resolution. The Compliance Administrator will report to the Court the nature of dispute over the position and may make a written recommendation as how to resolve the disputed for the Court's determination. The position will not be added to, deleted from, or changed on the Exempt List until final resolution by the Court. The President's Office will propose an internal procedure for reviewing and approving amendments to the Exempt List that will be presented to Plaintiffs' Class Counsel, the Compliance Administrator and the Court for approval and inclusion in the Employment Plan.

8. The County shall not hire or discharge any person for any position on a basis purporting to be exempt from the prohibition of political employment actions under this Order, the SRO or the 1996 Exempt List unless that position is on the 2010 Exempt List or an amendment thereto approved by the Court as provided in paragraph 7, except that the County may discharge individuals from other positions as provided in paragraph 9.

9. The 2010 Exempt List defines exempt positions for purposes of this lawsuit and the SRO as of the date of entry of this Order. The 2010 Exempt List does not determine how individuals hired outside of the County's normal non-political hiring processes under any of the various internal lists, classifications or practices used by the County will be treated for purposes of this lawsuit or the SRO. For purposes of the SRO and the 1994 Consent Decree, this paragraph states the principles applicable to such positions and persons who hold such positions.

(For purposes of this paragraph, a “Current Employee” is any employee of the County on the date of entry of this Order.)

A. ***Group One positions*** (“Both-Lists Group”) are positions, listed on Exhibit Group One, that (i) appear on both the 1996 Exempt List and the 2010 Exempt List or (ii) other positions that appear on 1996 Exempt List and 2010 Exempt List whose title or department changed without altering the exempt nature of the position. Current Employees holding such positions are exempt from the prohibition on the use of political considerations set forth in the 1994 Decree and SRO. A Current Employee holding a Both-Lists Group position is exempted from the protections against employment actions for political reasons provided by the 1994 Decree, the SRO and the employment plan required under Section II of the SRO, may be terminated on the basis of political reasons or factors, and the position may be filled on the basis of political reasons or factors.

B. ***Group Two positions*** (“Formerly Exempt Group”) are Current Employees that were hired into positions listed on Exhibit Group Two that were on the 1996 Exempt List but are not on the 2010 Exempt List. All Current Employees holding positions in the Formerly Exempt Group are exempt from the prohibition on the use of political considerations set forth in the 1994 Decree and SRO, and may be discharged for political reasons or factors. Formerly Exempt Group employees cease to be exempt from such prohibitions if they apply for and obtain a non-exempt position.

C. ***Group Three positions*** (“Unapproved Exempt Positions”) are positions, listed on Exhibit Group Three, that did not appear on the 1996 Exempt List, that the County treated as exempt without Court approval and that may have been filled on a basis that took political factors into account. Any Current Employee holding an

Unapproved Exempt Position who executed a valid, undated, unconditional letter of resignation is exempt from the prohibition on the use of political considerations set forth in the 1994 Decree and SRO, and may be discharged for political reasons or factors. All other Current Employees holding Unapproved Exempt Positions are exempt from the prohibition on the use of political considerations set forth in the 1994 Decree and SRO and may be discharged for political reasons or factors, unless the Current Employee can establish by clear and convincing evidence that he or she had a reasonable expectation that the position into which he or she was hired was one for which employment decisions could not be made on the basis of political reasons or factors. Without limitation, factors that may be relevant to whether an employee had such a reasonable expectation include: (i) whether the employee was hired pursuant to a public posting of the position, (ii) whether the employee was hired on a competitive basis, (iii) whether the individuals responsible for the selection or for approval to hire the employee based the approval upon political factors or considerations, and (iv) whether the employee's records were processed and maintained on the same basis as records maintained for persons hired on a political basis. A Current Employee in an Unapproved Exempt Position who wishes to contest discharge may only seek damages. His or her claim shall be decided by the Court, after such hearing as the Court deems appropriate, or may be referred to the Compliance Administrator for hearing and decision, with the Compliance Administrator functioning as Special Master under Federal Rule of Civil Procedure 53. The employee shall bear the burden of proof and the right to contest his or her discharge shall not preclude the County from filling the employee's position, but the employee shall retain his right to seek damages and an award of his attorney's fees and litigation costs if the

employee is found to have been hired with a reasonable expectation that the position into which hired was one for which employment decisions could not be made on the basis of political reasons or factors.

D. **Group Four positions** (“Union Group”) are positions, listed on Exhibit Group Four, that were on the 1996 Exempt List, that have since been unionized and are now covered by a collective bargaining agreement. Matters related to Union Group employees will be addressed at a later time as appropriate.

E. **Group Five positions** (“County Medical Group”) are positions listed on Exhibit Group Five, that were on the 1996 Exempt List that are now under the control of the Cook County Health and Hospitals System (CCHHS) Board of Directors. CCHHS has stated that it does not base employment decisions for these positions on political factors or reasons. Matters related to County Medical Group employees will be addressed at a later time as appropriate.

E. **Group Six positions** (“The Juvenile Temporary Detention Center and Public Defender Groups”) are positions listed on Exhibit Group Six, that were on the 1996 Exempt List that are now under the control of the Juvenile Temporary Detention Center (“JTDC”) or the Public Defender of Cook County. The JTDC and its employees are the subject of a separate lawsuit pending before Chief Judge Holderman. The Public Defender employees are under the direction of the Public Defender. Matters related to The Juvenile Temporary Detention Center and Public Defender Groups employees will be addressed at a later time as appropriate.

10. Plaintiffs seek a claims procedure to permit recoveries for individuals prejudiced by the County’s prior conduct in creating unapproved exempt positions, hiring for such positions

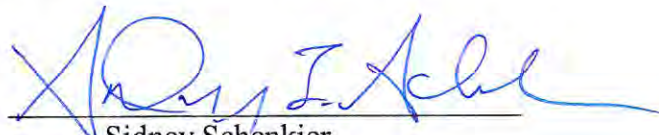
and making employment decisions for such positions. The Court will rule on plaintiffs' request for creation of a claims process if the parties are not able to reach agreement with respect thereto.

11. The scope of this Order is limited to claims of political discrimination in connection with any term or aspect of governmental employment and does not affect any other rights or serve to bar any other claims by any of the individuals holding the position described in this Order. This Order does not increase or diminish the obligations and defenses of the County with respect to Current Employees that arise pursuant to County ordinances, rules and policies or state or federal law.

12. The Orders of September 30, 2010 and October 29, 2010 enjoining certain employment actions pending resolution of the Petition are dissolved.

It is so ordered.

Dated: November 9, 2010



Sidney Schenkier
Presiding Magistrate Judge