

**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
COOK COUNTY, et al.,)	United States Magistrate Judge
Defendants.)	

THIRD REPORT OF THE SPECIAL MASTER

On November 18, 2014, the Court directed the Special Master, along with her staff and appointed legal counsel, to: (i) investigate the scope and reason for any violation of the 1972 Decree regarding the Illinois Department of Transportation (“IDOT”); (ii) recommend measures that may be necessary or appropriate to prevent any recurrence; (iii) assess the implementation of those efforts to ensure that they are effective; (iv) address whether positions in IDOT labeled as *Rutan*-exempt were properly exempt under applicable legal principles; and, (v) make recommendations for how to remedy any violations of the 1972 Decree. *See* Order Appointing a Special Master for IDOT, Dkt. 4202 ¶ 3.

The process of fulfilling these obligations is ongoing. This report will provide a summary of progress since the filing of the Second Report of the Special Master (“Second Report”) on August 20, 2015, including ongoing projects. The Special Master and her staff have continued to investigate IDOT’s employment practices to determine the full extent of past *Rutan* violations, potential current *Rutan* violations, and practices within IDOT that are vulnerable to future manipulation. The Special Master has made and will continue to make recommendations to IDOT on an ongoing basis, some of which IDOT has implemented.

As explained more fully below, the level of cooperation between IDOT and the Special Master’s office has significantly improved since the filing of the Special Master’s Second Report on August 20, 2015. However, as detailed below, IDOT failed to honor its obligation to provide advance notice of certain hiring activities which resulted in the Special Master’s inability to

assess IDOT's current compliance with the *Rutan* principles. We believe, however, that the reason for the oversight has been identified and, hopefully, corrected on a going forward basis.

I. IDOT AND SPECIAL MASTER WORKING RELATIONSHIP GREATLY IMPROVED

The collaborative relationship between IDOT and the Special Master's office has improved significantly in several ways following the Second Report. For example, IDOT now consistently provides the Special Master with at least seven days' advance notice of its intent to fill any *Rutan*-exempt positions. When the Special Master's office has questions about any of these positions, IDOT promptly provides the requested information. Similarly, IDOT now provides weekly reports containing *Rutan*-covered job postings and interview schedules, as well as monthly reports of transfers, hires, and promotions to the Special Master's office. When requested, IDOT also provides this office with the necessary information to attend and monitor selected *Rutan*-covered interview sequences. IDOT and CMS allowed a member of the Special Master's staff to attend a CMS *Rutan*-Certified Interview Training on September 2-3, 2015. Moreover, IDOT and the Special Master's office have developed an ongoing and regular dialogue regarding a variety of issues or questions.

Finally, the Special Master and one of her staff recently met with Maggie Hickey, the State of Illinois' new Executive Inspector General. Based on the mutual goals of the respective offices, the Special Master expects to work closely with the Office of the Executive Inspector General ("OEIG") moving forward.

II. SUMMARY OF IDOT'S IMPLEMENTATION OF SPECIAL MASTER'S RECOMMENDATIONS

A. Identifying *Rutan*-Exempt Positions

In the Special Master's Second Report, we requested that IDOT submit a proposed list of titles/positions that IDOT contends are properly designated as *Rutan*-exempt within forty-five (45) days from the filing of the Second Report. After numerous discussions, it was agreed that IDOT would provide the Special Master's office with the requested list on a rolling basis. To date, IDOT has designated forty-six (46) positions that it asserts are properly *Rutan*-exempt.

IDOT's process for designating these positions begins by reviewing the position descriptions on Internal Personnel Requests ("IPRs") by the relevant bureau to determine

whether they are accurate. If the descriptions are not accurate, they are set aside to be updated by the respective bureau. If the descriptions are accurate, then senior IDOT officials determine, based on the position descriptions and other investigation, whether the position described is properly designated exempt.

The Special Master's office reviews the lists provided by IDOT as they are received and informs IDOT whether there are any questions and/or objections to particular positions as *Rutan*-exempt. To date, although no formal objections have been raised, the Special Master has expressed concerns and/or questions about the *Rutan*-exempt designation of a small number of positions. As this process continues, and during the upcoming months, IDOT and the Special Master will work collaboratively in an attempt to reach agreement on what titles/positions are properly *Rutan*-exempt. We anticipate that the Plaintiffs will become involved in this process and in the event that the parties are unable to agree on the proper designation of particular titles/positions, we will seek guidance from the Court.

B. Notice of Intent to Make *Rutan*-exempt Appointments

In the Special Master's Second Report we reiterated our request that IDOT provide advance notice prior to filling any *Rutan*-exempt position. Starting in September 2015, IDOT began providing the Special Master with advance notice of its intent to fill specific positions that are designated *Rutan*-exempt. This notice period allows the Special Master to respond with questions, concerns, or objections prior to IDOT appointing people into the exempt positions. The Special Master and IDOT have discussed the Special Master's concerns regarding certain positions, and the issues have been addressed and resolved or set aside for further consideration.

C. Notice of *Rutan*-covered Postings and Interviews

In the Second Report, the Special Master also renewed her request that IDOT provide this office with regular reports of job postings, interviews, hires, transfers, and promotions. IDOT has mostly complied with that request with one large exception, which is more fully discussed below. Providing the advance notice and information allows the Special Master's office to track what positions are being filled, the interviews for such positions, and determine whether a representative from the Special Master's staff member should monitor a particular sequence. Additionally, it allows this office to monitor potentially problematic sequences, identify any potential deficiencies in the sequence, and make recommendations. IDOT providing this

information and responding to additional requests/questions has increased the efficiency of the process and allowed real time monitoring.

As noted above, there was an exception to IDOT providing advance notice regarding the interviewing and hiring of seasonal “Snowbirds.” When reviewing data in November of 2015, the Special Master’s office discovered that, despite IDOT’s agreement to provide notice of all job postings and interviews, IDOT did not provide our office with notice of interviews for seasonal Snowbird positions. Rather, IDOT conducted 516 face-to-face interviews and hired hundreds of Snowbirds for the upcoming winter season without the Special Master’s awareness or ability to monitor the interview process.

As the Special Master discussed in her Initial Report, the hiring and rehiring of Highway Maintainers, including the seasonal Snowbirds, is an area susceptible to manipulation due to a number of variables. *See* Initial Report at 22-23. As noted in the Initial Report:

The Snowbirds are hired or recalled directly by the respective district personnel offices with very little oversight from the central office. The Office of Finance and Administration sets a headcount for the districts; however, the interviews and selection of candidates occurs in the districts without Central Personnel’s direct involvement. The different districts appear to have a variety of processes for hiring or recalling the Snowbirds that vary widely. This variation is not, on its face, equivalent to a *Rutan* violation; however the lack of uniformity combined with the lack of oversight increases the likelihood of manipulation.

Complainants who have contacted the Special Master’s office allege that even when IDOT appeared to utilize the *Rutan* process for hiring or recalling Snowbirds, individuals were processed outside the approved process for *Rutan*-covered positions and many of those hires have political connections. One of the Clout Lists submitted by the Plaintiffs, attached hereto as Exhibit 2, reveals that at least ten Snowbirds were hired after being recommended by former Chicago Alderman Richard Mell.

Initial Report at 22-23.

When questioned, IDOT immediately apologized for the oversight and explained that the failure to provide notice of the interviews was due to the fact that the decentralized hiring process for Snowbirds. In a decentralized process, the central personnel office posts the jobs but individual district offices arrange and conduct the interviews without notifying the central office in advance. IDOT has since provided some information regarding the completed Snowbird interview sequences and hiring. While our office will continue to review a sample of Snowbird interview files, our ability to conduct a meaningful review after-the-fact is limited.

III. DEVELOPMENTS REGARDING EXISTING STAFF ASSISTANTS

As reported in the Special Master's Initial Report, in September of 2014, IDOT sought to lay-off all then existing Staff Assistants. In response, the Teamsters brought suit against the State of Illinois. The Teamsters litigation, which challenged IDOT's proposal to lay off 55 Staff Assistants in September 2014, *Teamsters Local 916 v. Pat Quin et al.*, No. 2014-CH-352, ended by Stipulation of the parties. The parties filed the Stipulation in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois on September 14, 2015. Ultimately, IDOT did not lay off the fifty-five (55) Staff Assistants and forty-two (42) of those Staff Assistants remained at IDOT. As a result of the Stipulation, eight (8) of the remaining Staff Assistants, who had achieved "certified" status through *Rutan*-covered positions held prior to working as a Staff Assistant, were transferred to vacant *Rutan*-covered Teamsters positions at IDOT. The remaining thirty-four (34) Staff Assistants at IDOT are allowed to continue at IDOT either for six months from the date of the Stipulation or the duration of an agreed upon posting and hiring process required by the Stipulation, whichever is later. Under the Stipulation, IDOT agreed to post and fill at least sixty *Rutan*-covered Teamsters positions (Technical Manager IV or lower, and equivalent Management Technician or Engineering Technician titles) for which the remaining Staff Assistants are eligible to apply and participate in the *Rutan* interview process. The Stipulation requires notice to the Special Master at least seven (7) calendar days before any Staff Assistant is interviewed pursuant to the Stipulation. The Special Master's office will have (and has had to date) a staff member present, where possible, to monitor all interviews in which Staff Assistants are candidates under the Stipulation.

IV. SUMMARY OF SPECIAL MASTER'S INVESTIGATION

A. In Person Monitoring of *Rutan*-Covered Interviews

Following the Second Report, the Special Master's staff began attending *Rutan*-covered interviews in person. As previously mentioned in the Second Report, "[o]n-site monitoring of *Rutan*-covered interviews has proven to be particularly helpful in identifying systemic employment practices in the Special Master's previous monitoring appointment." Second Report at 13. Real time monitoring of specific interviews enables the Special Master's staff to observe whether those particular interviews are conducted in a politically unbiased and uniform manner. Additionally, while it is not possible to have staff from the Special Master's office present at

every interview sequence, attending a portion of interviews can have an impact in a larger sense by creating an atmosphere of vigilance, awareness, and emphasis on fairness. In person monitoring of *Rutan*-covered interviews will be ongoing. Thus far, the Special Master's office has monitored eleven (11) interview sequences, which involved observing dozens of candidate interviews. The Special Master has continues to express concerns regarding IDOT's ongoing use of former Staff Assistants as interviewers in *Rutan*-covered interview sequences. The parties are continuing to discuss the matter.

B. On the Record and Informal Interviews of Current and Former IDOT Employees

The Special Master and her staff have conducted interviews of current and former IDOT employees in the course of their investigation. Both on the record and informal interviews have occurred and our office anticipates scheduling additional interviews in the future. The purpose of these interviews is to fulfill the Special Master's duties under the Court's Order and gain further insight into the former Governor's Office's involvement and circumstances surrounding past *Rutan* violations. Moreover, this process will enable the Special Master to make specific recommendations to safeguard against similar violations in the future.

III. CONCLUSION

The Special Master wants to commend IDOT and the current Governor's Office for their improved collaboration with our office since the filing of our Second Report and their continued commitment to reform their employment practices in order to prevent future violations of the 1972 Decree. We look forward to continued collaboration with the parties.

Respectfully submitted,

/s/ Noelle C. Brennan

Dated: January 7, 2016

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