

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

**MICHAEL L. SHAKMAN and  
PAUL M. LURIE, et al.,  
Plaintiffs,**

**v.**

**DEMOCRATIC ORGANIZATION OF  
COOK COUNTY, et al.,  
Defendants.**

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) **Case No. 69 C 2145**  
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) **Sidney I. Schenkier**  
) **United States Magistrate Judge**  
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**FOURTH 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.

Since the filing of the Third Report of the Special Master (“Third Report”) on January 7, 2016, 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 vulnerable to future manipulation. In addition, the Special Master and her staff have been monitoring implementation of previous recommendations and continuing to make recommendations on an ongoing basis.

Consistent with past practice, the Special Master circulated a draft of her Fourth Report on May 27, 2016, to the parties for comment. After further analysis of the Technician Trainee hiring program, on June 7, 2016, the Special Master circulated a Supplemental Report containing the Analysis of 2016 Technician Trainee Proposed Hires. On June 13, 2016, IDOT submitted its Response & Proposed Changes to Fourth Report (“IDOT’s Response”). After reviewing IDOT’s Response, the Special Master made certain revisions and changes to the draft Fourth Report and

addressed certain contentions from IDOT's Response where appropriate. Thereafter, on June 27, 2016, the Special Master circulated a Revised Fourth Report. On July 7, 2016, IDOT's General Counsel, the Governor's Office, and the Special Master and staff participated in a conference call to discuss and address additional concerns raised by the Revised Fourth Report. As a result of that conversation, the Special Master's office agreed to make certain modifications to the proposed Fourth Report and IDOT agreed to withdraw its initial Response. This Final Fourth Report incorporates those changes we deemed appropriate.

**I. STEPS TAKEN BY IDOT TO COOPERATE WITH SPECIAL MASTER'S OFFICE AND INCREASE COMPLIANCE**

Since the filing of the last report, IDOT has continued to cooperate with the Special Master and has taken certain steps toward achieving future compliance with the 1972 Decree, including the following, some of which are discussed more fully later in this Report.

A. IDOT has provided weekly reports of *Rutan*-covered job postings and advance notice of job interviews. This gives the Special Master's office an opportunity to determine which hiring sequences it believes require either in-person monitoring or a request for additional information. This advance notice has allowed the Special Master's staff to attend more than forty hiring sequences, and in particular, to focus on those hiring sequences where current Staff Assistants are applicants.

B. IDOT has continued to review and update certain *Rutan*-exempt position descriptions. To date, IDOT has provided 88<sup>1</sup> titles that it believes are properly *Rutan*-exempt for review by the Special Master's office. Additionally, prior to filling any *Rutan*-exempt positions, IDOT provides at least 7 days' notice and a copy of the job description. IDOT's Chief Counsel, or his designee, also provides personal assurance that the job description is accurate and that the duties described therein are the duties to be performed by the selected candidate. In certain instances, the Special Master has requested additional information regarding particular titles designated as *Rutan*-exempt. On occasion, the Special Master's office has raised concerns about some of IDOT's *Rutan*-exempt designations.

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<sup>1</sup> On July 15, 2016, IDOT produced an additional 26 titles that it believes are *Rutan*-exempt for review. That review has not yet started, but will commence shortly.

**C.** IDOT has acknowledged that some currently designated *Rutan*-exempt positions might not properly qualify as *Rutan*-exempt, and some of those positions have been eliminated (or will be eliminated). Notably, a comparison between a list of *Rutan*-exempt titles created in April of 2015 and one created in June of 2016 shows a reduction of dozens of *Rutan*-exempt positions.

**D.** IDOT provided the Special Master's office a preview of the ongoing reorganization of IDOT, including providing its most up-to-date reorganization charts. IDOT has also briefed the Special Master's office about transfers, the creation of new jobs, and elimination of others as a result of the reorganization.

**E.** IDOT consulted with the Special Master and the Plaintiffs regarding the need to modify the settlement agreement it reached with the Teamsters (the "Stipulation") over IDOT's elimination of the Staff Assistant positions. This revised Stipulation will allow IDOT to eventually settle the Teamster's litigation and eliminate the Staff Assistant position entirely.

**F.** The Special Master and her staff have repeatedly visited IDOT's Central Office to investigate or gather information on particular topics. Additionally, the Special Master's office regularly requests copies of personnel-related documents electronically. In each of those instances, the IDOT employees have provided all requested information, often on an expedited basis. They have also assisted in explaining IDOT processes and procedures.

**G.** As discussed more fully below, IDOT suspended the summer 2016 Technician Trainee Program and committed to improving that process after the Special Master identified a number of issues pertaining to the program.

**H.** On June 13, 2016, IDOT's Secretary, Randall Blankenhorn, sent a memo to Senior IDOT staff laying out IDOT's obligations to comply with the Shakman Decree.

While the Special Master acknowledges IDOT's efforts, as further discussed herein, significant work lies ahead. As explained more fully below, there are a number of recommendations that IDOT has not implemented. The Special Master recognizes that many recommendations are difficult to implement and is open to alternative suggestions. Failing to implement changes, however, delays substantial compliance.

## **II. PROPOSED MASS HIRE OF SUMMER TECHNICIAN TRAINEES AND ENGINEERING TECHNICIANS**

### **A. Lack of Advance Notice of Interviews**

In the Third Report, the Special Master reported that IDOT failed to provide advance notice of winter seasonal highway maintainer (“Snowbird”) interviews and hires, which resulted in the hiring of hundreds of individuals without any monitoring or oversight. *See* Third Report at 4. Subsequently, the Special Master’s office learned that IDOT also failed to provide advance notice of approximately 30 winter technician hires in early 2016. Despite assurances that advance notice would be provided going forward, in late April 2016, IDOT did not provide advance notice of the interview and/or selection process for the Summer Engineering Technician (“ET”) and Summer Technician Trainee (“TT”) Programs.<sup>2</sup>

On April 25, 2016, IDOT notified the Special Master’s office that interviews for the TT positions had begun and assessment of the ET positions was in progress. IDOT explained that 2016 was the first time that IDOT’s Central Personnel oversaw the ET and TT hiring processes, which were historically handled at the district level. Despite what was a good intention (*i.e.*, to achieve uniformity of process by centralizing the hiring), there was a breakdown in communication and the Special Master was not provided with the required advance notice. Notably, these TT and ET positions are supposed to be for a limited duration, with relatively modest pay, and without benefits or job security. Once notice was provided, the Special Master was able to reassign staff to monitor most of the scheduled TT telephone interviews. The first thirty-seven interviews, however, which occurred over the first two days, were not monitored.

### **B. Plan to Hire Summer ET and TT Employees**

IDOT intended to hire a total of 161 ET employees and 131 TT employees for the summer of 2016. In its initial review of these programs, the Special Master’s office identified three potential concerns. First, whether the large number of hires was based on a verified need. Second, whether some of the position descriptions were outdated and/or inaccurate. Third, whether the limited applicant pool for the TT positions, which included a significant percentage of individuals

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<sup>2</sup> IDOT provided notice of the job postings for the positions but did not provide subsequent notice of the selection process. ET candidates are not interviewed; rather, they are selected based on grading of application materials. However, because IDOT intended to select and hire 161 new employees through the ET process, advance notice of that process should have been given to the Special Master’s office.

with relatives that currently worked for IDOT, suggested inadequate dissemination of the job opportunities.

With respect to the number of hires, each District office provided Central Personnel with a requested number of TT and ET employees for the summer. Those numbers, however, were based primarily on the previous year's numbers and were not independently verified. The lack of verification creates the ability for a particular district to peg its hiring requests to a predetermined number that is not necessarily based on need.

Regarding the position descriptions, the Special Master had requested the position descriptions for the summer TT and ET positions. In response, IDOT produced 70 pages of assorted position descriptions and technical position classification requests for 13 distinct working titles without any explanation as to which position description was used for which district or why the descriptions differed. The position descriptions produced included many contradictions between and among the 13 distinct working titles. Many of those positions had the same title but conflicting designations or job duties. Conversely, in some instances, positions with different working titles had virtually identical job descriptions and position purposes. It was not abundantly clear why some of these positions were designated as ET or TT and, in many instances, the designations seemed arbitrary.<sup>3</sup> What was clear, however, was that IDOT intended to hire employees with identical working titles to do different job duties and employees with different working titles to do identical job duties.

With respect to the applicant pool, the Special Master's preliminary review noted that a high percentage of applicants had relatives working at IDOT and many had held several "temporary" jobs at IDOT. This information raised concerns regarding whether and how the job postings were disseminated and whether individuals without connections to IDOT were aware of the job opportunities.

On May 2, 2016, the Special Master and her staff held a conference call with senior IDOT personnel regarding these issues. At that time, the Special Master requested that IDOT delay

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<sup>3</sup> According to IDOT, ET positions typically perform duties that are engineering related, while TT positions typically perform administrative duties. However, the documents IDOT produced did not follow that distinction, as explained here. Additionally, serious concern remains to the overall designation of the administrative positions as "technical" instead of "code." Were the administrative positions properly labeled as code positions, they would be subject to CMS oversight. However, as "technical positions," they are exempt from the statewide personnel code and left solely to IDOT's discretion.

making offers to any ET and TT candidates until the Special Master could conduct further analysis of the overall program and the candidate selection process. To accommodate IDOT's request that any review be conducted expeditiously (so as to not delay the hires), the Special Master's staff traveled to Springfield on May 3, 2016 and spent two days reviewing TT and ET files and documentation.

**C. Analysis of Applicants/Selected Candidates for Technician Trainee Positions**

IDOT received 310 applications for the summer TT positions throughout the various districts. From this pool of applicants, IDOT identified 109 applications it deemed incomplete and ineligible.<sup>4</sup> IDOT offered phone interviews to the remaining 201 candidates. Each candidate was offered a fifteen-minute interview time slot and each interview was conducted by the same *Rutan* certified interviewers. The interviews occurred across multiple days from April 25 through May 11, 2016. Monitors from the Special Master's office attended as many interviews as possible in person or over the phone.

The Special Master's review of the TT program uncovered a number of disturbing trends, including: (1) a significant percentage of the applicants have relatives employed by IDOT; (2) a significant percentage of the applicants with IDOT relatives were slated to receive offers; (3) a large percentage of the applicants have been employed or are currently employed by IDOT and were slated to receive offers; and, (4) a large number of candidates have had multiple "temporary" jobs for extended periods of time. At a minimum, these trends suggest that IDOT is not adequately publicizing the TT positions outside of IDOT.

Once the Special Master's office presented IDOT with the Supplemental Report containing the Analysis of 2016 Technician Trainee Proposed Hires, IDOT suspended the TT hiring process until various improvements could be made. That is certainly a positive step. Absent the Special Master's analysis, however, IDOT intended to complete these hires without any further investigation, notwithstanding the numerous questions that had been raised.

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<sup>4</sup> Candidates for TT and ET positions were required to submit an application (PM 2420 for TT and PM 2425 for ET), an Authorization for Release of Criminal History (CMS 284A/"CMS A"), and a Self-Disclosure of Criminal History form (CMS 284B/"CMS B"). ET Candidates were also required to submit an official college transcript. If all of the above were not submitted timely, IDOT considered the application incomplete.

### Overall Results of Technician Trainee Candidate Analysis

As discussed above, IDOT scored the applications of 201 candidates for the TT position.<sup>5</sup> Of those candidates, 100 applicants indicated they had a relative working at IDOT and 82 applicants had previous IDOT work experience. After the interview process, IDOT was intending to offer 121 applicants summer positions. Of those intended offers, 67 identified having a relative employed at IDOT and 65 identified having previous IDOT work experience. Thus, the ratio of applicants that IDOT intended to hire with IDOT relatives and/or previous IDOT experience was mostly proportionate to the overall applicant pool. Additionally, certain districts had long term “temporary” hire employees that moved from one temporary position to another, thereby undermining the very intent of the temporary hire. The chart below breaks down by district: the number of completed applicants for each District; the offers each District office intended to make; the number of applicants with an IDOT relative; the number of applicants slated for offers with an IDOT relative; the number of applicants slated for offers with previous IDOT employment; and the number of applicants slated for offers with either an IDOT relative and/or previous IDOT employment.

<b>District</b> <b># Applicants</b> <b># Offer</b>	<b>Overall Applicants w/ IDOT Relative</b>	<b>Applicants Slated for offers with IDOT Relative</b>	<b>Applicants Slated for offers IDOT Experience</b>	<b>Applicants Slated for Offers with IDOT Relative and/or Experience</b>
<b>District 1</b> <b>63 Applicants</b> <b>38 Offers</b>	30 of 63 total applicants with IDOT relative (48%)	23 of 38 applicants slated for offers identified IDOT relative (60%)	20 of 38 applicants slated for offers had previous IDOT employment (52%)	28 of 38 applicants slated for offers with IDOT relative and/or previous IDOT employment (73%)
<b>District 2</b> <b>14 Applicants</b> <b>13 Offers</b>	10 of 14 total applicants with IDOT relative (71%)	9 of 13 applicants slated for offers identified IDOT relative (69%)	7 of 13 applicants slated for offers had previous IDOT employment (54%)	11 of 13 applicants slated for offers with IDOT relative and/or previous IDOT employment (85%)

<sup>5</sup> Candidates could select two separate IDOT facilities/locations for consideration on their applications. Although we attempted to eliminate duplicates, throughout this report, the number of offers calculated may include candidates offered a position at their first or second choice location.

<b>District 3</b> <b>12 Applicants</b> <b>12 Offers</b>	9 of 12 total applicants with IDOT relative (75%)	9 of 12 applicants slated for offers identified IDOT relative (75%)	3 of 12 applicants slated for offers had previous IDOT employment (25%)	10 of 12 applicants slated for offers with IDOT relative and/or previous IDOT employment (83%)
<b>District 4</b> <b>10 Applicants</b> <b>6 Offers</b>	4 of 10 total applicants with IDOT relative (40%)	3 of 6 applicants slated for offers identified IDOT relative (50%)	4 of 6 applicants slated for offers had previous IDOT employment (66%)	5 of 6 applicants slated for offers with IDOT relative and/or previous IDOT employment (83%)
<b>District 5</b> <b>6 Applicants</b> <b>5 Offers</b>	2 of 6 total applicants with IDOT relative (33%)	0 of 5 applicants slated for offers identified IDOT relative (0%)	2 of 5 applicants slated for offers had previous IDOT employment (40%)	2 of 5 applicants slated for offers with IDOT relative and/or previous IDOT employment (40%)
<b>District 6</b> <b>60 Applicants</b> <b>19 Offers</b>	24 of 60 total applicants with IDOT relative (40%)	10 of 19 applicants slated for offers identified IDOT relative (52%)	12 of 19 applicants slated for offers had previous IDOT employment (63%)	15 of 19 applicants slated for offers with IDOT relative and/or previous IDOT employment (78%)
<b>District 7</b> <b>7 Applicants</b> <b>6 Offers</b>	4 of 7 total applicants with IDOT relative (57%)	3 of 6 applicants slated for offers identified IDOT relative (50%)	3 of 6 applicants slated for offers had previous IDOT employment (50%)	5 of 6 applicants slated for offers with IDOT relative and/or previous IDOT employment (83%)
<b>District 8</b> <b>22 Applicants</b> <b>10 Offers</b>	10 of 22 total applicants with IDOT relative (45%)	3 of 10 applicants slated for offers identified IDOT relative (30%)	9 of 10 applicants slated for offers had previous IDOT employment (90%)	9 of 10 applicants slated for offers with IDOT relative and/or previous IDOT employment (90%)
<b>District 9</b> <b>13 Applicants</b> <b>12 Offers</b>	7 of 13 total applicants with IDOT relative (54%)	7 of 12 applicants slated for offers identified IDOT relative (58%)	5 of 12 applicants slated for offers had previous IDOT employment (41%)	10 of 12 applicants slated for offers with IDOT relative and/or previous IDOT employment (83%)



Based on the applicant pool, which included a large proportion of individuals with IDOT relatives or previous IDOT experience, it is not surprising that a large percentage of individuals slated for offers had some IDOT connection. Moreover, the review of the underlying paperwork, applications, and interview process itself did not identify any manipulation in the actual interviews and selection of particular candidates. As reflected above, however, the makeup of the applicant pool itself skewed the selection process in such a way as to overwhelmingly favor applicants with IDOT relatives or applicants who had previous IDOT experience. In some districts, 90% to 100% of the candidates that identified an IDOT relative were slated to receive offers. (*See e.g.*, District 2 (9 of 10 candidates with relative selected); District 3 (9 of 9 candidates with relative selected); and District 9 (7 out of 7 candidates with relative selected)). Moreover, four different sets of siblings were slated to be offered TT positions; some of whose parents worked in the same District where they were to be hired into. The limited applicant pool suggests that IDOT did not sufficiently advertise these positions in an open and accessible forum to capture a broader range of candidates, including candidates with no connection to IDOT.

The review also demonstrated that, in some district offices, IDOT is misusing the “temporary” classification to keep employees on the payroll for extended periods of time. Some Districts selected candidates that had held years-long multiple “temporary” positions without any apparent break in employment (District 1; District 6; District 8; District 9). Other Districts hired (and intended to hire) the same individuals repeatedly year after year (District 1; District 2; District 7; District 8; District 9).

#### **D. Analysis of Applicants/Selected Candidates for Engineering Technician Positions**

IDOT informed the Special Master’s office that it received 257 applications for the summer ET positions. IDOT also reported that it screened out approximately 149 applications as either incomplete, untimely or for failure to meet the minimum educational requirements.<sup>6</sup> The remaining applications were scored by Central Personnel using a 27-point scoring rubric based on education and engineering experience. As set forth above, ET candidates were not interviewed; rather, selections were made based solely on application scores.

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<sup>6</sup> The summer ET program is designed for engineering students who have completed their first year of college studies.

Our review did not uncover any apparent *Rutan* violations in the summer ET selection process, and we understand IDOT has made the ET job offers.<sup>7</sup> However, the review did identify a concern with IDOT's screening process. IDOT initially screened out approximately 149 applications as either incomplete, untimely, or for failure to meet educational requirements.<sup>8</sup> A majority of these applicants were screened out because the candidate failed to submit an official original college transcript. IDOT explained that it accepted sealed official original transcripts through the mail or via PDF directly from the college or university. As a policy, IDOT did not accept copies of official transcripts. This requirement, however, is inconsistent with the language used in the job posting and application instructions. Thus, many qualified candidates were excluded based on an incomplete application, notwithstanding the instructions provided by IDOT.

The ET job posting states applicants can either mail or fax the application and required documents to IDOT and lists the fax number. The ET Summer Application states, "A copy of your most recent official college transcript must be submitted by posting deadline." (emphasis added). The use of the word "copy" on the ET job application creates genuine confusion as to the requirements. Further, stating on the job posting that candidates may fax in applications and required documents suggests that copies of official documents will be accepted. After this anomaly was reported to IDOT, it agreed to correct the ambiguity moving forward.<sup>9</sup>

As discussed further below, the ET applicant pool was more diverse than the TT applicant pool and had far fewer applicants with IDOT relatives or previous IDOT employment. The ET applicants came from a diverse group of colleges and universities across the country, including: Columbia University (New York), Northern Illinois University, Purdue University (Iowa), University of Iowa, University of Illinois, Urbana-Champaign, Northwestern, St. Louis University, Grand Valley State, Southern Illinois University, University of Illinois--Chicago, Clemson, Iowa

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<sup>7</sup> Although IDOT approved 161 ET positions for hire, our review indicates fewer offers were actually made because so many applicants were screened out as incomplete.

<sup>8</sup> As discussed in more detail further below, IDOT marked applications complete that lacked the required affidavit disclosing relatives employed at IDOT.

<sup>9</sup> Our review noted one other area of concern. The cutoff score for ET candidates selected to receive offers varied greatly by district. IDOT explained that no minimum score applied across all districts; rather, the Central Office decided on the cutoff score within each district *after* candidates were scored and based on the number of ET positions approved for the district. In some districts, IDOT accepted scores as low as 5 out of 27. Although our review did not reveal any apparent manipulation, setting the cutoff score after the fact increases the opportunity for manipulation.

State, University of Wisconsin, Tennessee State, University of Dayton, and University of Alabama, among others.

**E. Technical Trainee Job Postings Must Be More Widely Disseminated**

The make-up of the TT applicant pool is clearly problematic. IDOT explained that the ET and TT positions were posted on the IDOT intranet (accessible to internal and external candidates), on the CMS “Work for IL” website, and hard copies were posted at each District office. IDOT explained that it does not send job postings directly to colleges or universities, but it participates in job recruitment fairs and certain colleges/universities are familiar with IDOT positions and encourage their students to apply. Based on our review, it appears that colleges and universities were aware of and encouraged their students to apply to the ET positions, but not the TT positions.

As discussed above, the ET candidates came from colleges and universities across the country. Moreover, far fewer ET applicants had IDOT relatives than the TT applicants. Whereas the percentage of **ET** applicants with IDOT relatives ranged from approximately **4% to 41%**, depending on the district, the percentage of **TT** applicants with IDOT relatives ranged from approximately **33% to 75%**, depending on the district. Additionally, as discussed above, many of the TT applicants had prior IDOT experience and held numerous temporary IDOT positions over a period of several years, although that was less true of the ET applicants. The Special Master suggests that IDOT broadly disseminate both the TT and ET job postings to attract a broader candidate pool outside of candidates that have a pre-existing connection to IDOT. Dissemination of both the TT and ET job postings to college and university career centers would likely enhance the candidate pool for both positions. The Special Master also suggests that all positions have some minimum requirements.

**F. Other Anomaly in Application Process**

There was another anomaly in the TT and ET application process. IDOT’s Central Office has strictly enforced the requirement that each applicant (for any position) include all information and data requested on the application form. If any requested forms, information, or data is missing, IDOT will deem the application “incomplete” and not consider it further. Here, however, IDOT accepted incomplete applications for the TT and ET positions. The TT and ET applications require applicants to identify whether they have any relatives employed by IDOT. If they answer “yes,” the candidate “**must attach a detailed explanation**” to the application. (bold in the original). Despite this requirement, many selected candidates failed to attach the required detailed

explanation, but were nonetheless slated to receive offers. It is unclear why IDOT made an exception in this process.

#### **G. IDOT's Initial Steps to Address the Above Concerns**

In response to the Special Master's concerns noted above, and detailed in the draft Fourth Report and Supplemental Report, the Secretary of the Department of Transportation, Randall Blankenhorn, issued a memorandum to IDOT Senior Officials regarding compliance with *Rutan* principles in employment practices. As part of that memorandum, Secretary Blankenhorn explained that IDOT suspended the summer TT program for 2016, and that it agreed to take the following steps to improve the process going forward:

- Revamp the seasonal hiring process for TTs, ETs and Snowbirds to ensure transparency, reliability and fairness;
- Impose time limitations on temporary intern employment;
- Develop job descriptions for both monthly and hourly Snowbirds and tailor job applications and interview criteria to those specific job descriptions;
- Review and revise job descriptions for all existing temporary positions to ensure accurate descriptions of the anticipated job duties and afford more correlation between the hiring process and actual job duties;
- Create a form to justify the operational need for any part-time hire requests; and
- Resolve confusion over the transcript submission practices.

The Special Master commends IDOT for agreeing to take these initial steps and for its continued cooperation towards achieving substantial compliance with the Shakman Consent Decree.

### **III. SPECIAL MASTER'S ONGOING INVESTIGATION**

#### **A. Monitoring *Rutan*-Covered Interviews**

The Special Master's staff continues to attend a selection of *Rutan*-covered interview sequences. Since the Third Report, the Special Master hired three additional staff members to monitor interviews in Springfield and the surrounding area at a lower cost to the State. The Special

Master's office has monitored 47 interview sequences<sup>10</sup>, which included more than 100 individual candidate interviews. Twenty-three of the interview sequences monitored were covered by the Stipulation under the Teamsters litigation.<sup>11</sup> Nineteen of those 23 Stipulation-covered interview sequences involved candidates who were Staff Assistants when the Stipulation period began. A significant number of other sequences monitored included former Staff Assistant interviewers. The Special Master and her staff prioritized these sequences because of past abuses related to the Staff Assistant position and improper political influence. *See* Initial Report at 5-17; *see generally*, OEIG Report.

Notably, during the monitoring of interview sequences that involve Staff Assistants, the Special Master's office has identified or detected no efforts to manipulate the hiring process in favor of the Staff Assistants. Similarly, in monitoring other interview sequences, we have identified no systematic efforts to manipulate the interview process in favor of politically connected candidates (but see one sequence discussed below).

That being said, in some instances, the Special Master's office has alerted IDOT to issues that were observed, such as the advantage afforded to candidates currently temporarily assigned to the position for which they are interviewing for a permanent job. IDOT and the Special Master's office discussed changes that can be made to IDOT's temporary assignment practices going forward (*e.g.*, limiting duration of temporary assignments).

In addition to monitoring interview sequences in person, the Special Master and her staff continue to analyze the paperwork from numerous completed sequences. Recently, the Special Master and her staff analyzed the paperwork for one completed sequence where the evidence suggested that an appointed official from Springfield was given preferential treatment during the screening process that led to an interview. The Special Master's office brought that instance to IDOT's attention after investigating. The Special Master's investigation revealed that if the

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<sup>10</sup> This number includes the TT phone interviews and in-person sequences monitored by the Special Master's staff.

<sup>11</sup> *See* Third Report at 5. "The Teamsters litigation, which challenged IDOT's proposal to lay off 55 Staff Assistants in September 2014, *Teamsters Local 916 v. Pat Quinn et al.*, No. 2014-CH-352, ended by Stipulation of the parties....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."

applicant screening tool was strictly applied to this particular candidate, allowing for no inferences regarding the candidate's prior work experience (as it was for other applicants), the candidate would not have been selected to interview. According to IDOT, based on its own investigation, it found no basis to believe that the candidate was improperly selected to interview. Nonetheless, the Special Master recommends that IDOT develop clearly-written applicant screening tools that decrease the potential for improper manipulation, as the Special Master does not agree with IDOT's assessment that political influence was absolutely not a factor.

Through ongoing monitoring, the Special Master and her staff ensure that the majority of sequences conform to the principles of *Rutan*. The potential presence of a monitor at *Rutan*-covered interviews and the analysis of paperwork after the fact generally encourage uniformity and consistency of process. As the Special Master continues to make ongoing recommendations for eliminating sources of possible political manipulation, in-person and after-the-fact monitoring of *Rutan*-covered interviews will be ongoing.

#### **B. OEIG Monitoring *Rutan*-Covered Interviews**

The Office of the Executive Inspector General ("OEIG") has staffed and funded a Division of Hiring and Employment Monitoring. The Special Master is working collaboratively with the Director of the Division, Erin Bonales, and her team. Our office shared its monitoring processes with the division in anticipation of an increased role by the OEIG. To date, the OEIG's Division of Hiring and Employment Monitoring has monitored a number of hiring sequences and our respective offices have been able to share information regarding that process.

#### **C. Temporary Assignments**

The Initial Report of the Special Master stated:

"Temporary Assignments" and "Interim Assignment Pay" ("IAP") are processes whereby an employee "temporarily" performs the duties of a higher ranked position, at a higher rate of pay. Temporary Assignments [typically] result in a three percent pay increase. IAP assignments result in a pay increase of four to eight percent; however, the rate of increase does not appear to be uniformly determined. Neither Temporary Assignments nor IAP assignments permanently change the employee's job title or position on paper.

Data provided by IDOT during our investigation shows that between 2010 and 2014, **more than 1600 employees** were Temporarily Assigned into higher paying positions. That practice allows managers to unilaterally promote employees without any CMS or central office personnel oversight and without any competitive process.

See Initial Report at 23.<sup>12</sup>

As the Special Master's investigation into IDOT's use of Temporary Assignments ("TAs") continued, additional issues were identified. As discussed, the Special Master's staff observed that IDOT's current use of TAs gave some candidates an advantage in the *Rutan*-covered interview process; candidates interviewing for permanent placement into the positions where they were temporarily assigned were afforded a significant advantage. According to IDOT's own policies, TAs were not supposed to last longer than 120 days. However, personnel records from 2015 showed that the majority of employees in TAs were assigned for more than the 120 day limitation—with many of the assignments lasting well over a year.

As a result of our investigation, the Special Master recommended that IDOT limit the use and duration of all TAs. Our office further recommended that IDOT develop a process for determining how TAs are assigned that allows equal opportunity to the pool of qualified candidates, rather than favoring a single employee.

IDOT informed the Special Master that it implemented a new TA renewal policy. In order to submit a renewal to Central Personnel, the requesting department must attach an IPR to the TA renewal request. Creating and submitting an IPR for approval is the first step in filling any position with a permanent full-time employee. IDOT believes that requiring departments to prepare the position for a permanent hire should decrease the number of long term TAs. The Special Master will continue to monitor IDOT's use of TAs.

#### **D. Snowbirds Investigation and Hires for 2016-2017**

As discussed in the Third Report, due to the decentralized interview process for Snowbirds in IDOT's district offices, IDOT failed to notify the Special Master of Snowbird interviews and "conducted 516 face-to-face interviews and hired hundreds of Snowbirds for the [2015-2016] winter season without the Special Master's awareness or ability to monitor the interview process." See Third Report at 4.

Since those employees were hired, the Special Master and her staff have reviewed hundreds of documents relating to the Snowbird processes. Our investigation uncovered certain issues in the hiring process. For example, in certain sequences the scoring guidelines were not followed, scores

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<sup>12</sup> "The only difference between the terms ["Temporary Assignments" and "Interim Assignment Pay"] are the pay grades they impact and the applicable pay increase. Interim Assignment Pay is generally for pay grades 16 and higher and occurs less frequently than Temporary Assignments." See Initial Report n. 20. The discussion here is specific to the use of Temporary Assignments.

were added incorrectly, and panelists' notes for the same candidates were contradictory or inconsistent. These issues raise concerns about potential manipulations of the process and should be addressed prior to the 2016-2017 Snowbird interviews.

On July, 12, 2016, IDOT provided the Special Master's office with materials regarding IDOT's anticipated Snowbird hiring process for the 2016-2017 winter season. The parties will work collaboratively to ensure that any problems from last year's hiring process are addressed in advance. The Special Master's office appreciates IDOT's proactive approach to this matter.

#### **IV. DEVELOPMENTS REGARDING EXISTING STAFF ASSISTANTS**

As discussed in the Third Report, IDOT entered into an agreement ("Stipulation") on September 14, 2015, to settle *Teamsters Local 916 v. Pat Quinn et al.*, No. 2014-CH-352, the case which challenged IDOT's proposed lay-off in September 2014 of the remaining Staff Assistants. See Third Report at 5. At the time of entering into the Stipulation, there were 34 remaining Staff Assistants at IDOT. Under the Stipulation, the Staff Assistants were allowed to continue their employment for a limited period of time, during which they could apply and interview for jobs. At the end of the Stipulation period, all remaining Staff Assistants—who did not secure a different job at IDOT through the *Rutan*-covered process—would be laid off. Due to attrition, the number of Staff Assistants was reduced to 32. To date, only one of the 32 Staff Assistants has secured a different position at IDOT through the *Rutan*-covered process.<sup>13</sup>

The Stipulation initially required IDOT to post and fill at least 60 *Rutan*-covered Teamsters positions (Technical Manager IV or lower, and equivalent Management Technician or Engineering Technician titles). By agreement, all Stipulation postings were external. However, because the external postings led to significantly larger applicant pools (often between 50-100 applicants for one position), IDOT implemented a screening process based on the ideal candidate's desired criteria. This process screened many Staff Assistants out of interviews. Additionally, even when Staff Assistants interviewed, they were not the highest scoring or selected candidate. After posting all 60 of the initial Stipulation-covered positions, none of the selected candidates were Staff Assistants and the Teamsters filed a Motion for Rule to Show Cause, asserting IDOT's non-compliance with the agreed Stipulation.

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<sup>13</sup> This position was not covered by the Stipulation and was a lower ranked position than the candidate's existing Staff Assistant title.



The *Teamsters*' parties amended the terms of the Stipulation to avoid continued litigation. IDOT provided advance notice and opportunity to comment to both the Plaintiffs and the Special Master. Under the Amended Stipulation, IDOT agreed to: (1) post an additional ten positions; (2) allow Staff Assistants previously screened out of an interview the opportunity to interview on prospective sequences; and, (3) ensure that when a screening tool is applied, the five highest scoring Staff Assistants receive interviews. No finalized sequences were altered or reopened based on this accommodation. The notice provisions did not change, and the Special Master's office intends to monitor sequences with Staff Assistant candidates, whenever possible.

## **V. IDOT'S PROGRESS REGARDING THE SPECIAL MASTER'S ONGOING RECOMMENDATIONS**

According to IDOT, it has repeatedly requested specific recommendations on how it can achieve substantial compliance with the 1972 Decree as soon as practicable. The Special Master has repeatedly recommended specific steps that IDOT and/or the Governor's Office should take. *See* Initial Report at 26-29; Second Report at 12-13. IDOT has implemented some of those recommendations. Other recommendations, however, have not been implemented.

### **A. Identifying Discrete Set of *Rutan*-Exempt Positions**

According to a report IDOT produced to the Special Master's office in June 2016, more than 350 *Rutan*-exempt positions exist at IDOT. The Special Master initially recommended that IDOT identify a finite list of properly *Rutan*-exempt positions in the Initial Report, which was filed in March 2015. *See* Initial Report at 27. She again requested IDOT submit a proposed list of titles/positions that IDOT contends are properly designated as *Rutan*-exempt within 45 days from the filing of the Second Report, which was filed on August 20, 2015. *See* Second Report at 11. In January 2016, by the filing of the Third Report, IDOT had designated 46 positions.<sup>14</sup> *See* Third Report at 2. To date, IDOT has provided a total of 88 *Rutan*-exempt positions<sup>15</sup> and their respective position descriptions, and has not completed its review of the remaining *Rutan*-exempt positions.

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<sup>14</sup> After several discussions regarding IDOT's inability to produce a complete list of *Rutan*-exempt positions it contends are properly designated, IDOT requested permission to provide the list on a rolling basis, and the Special Master's office agreed. *See* Third Report at 2. However, the Special Master has continued to advise IDOT that the piecemeal identification of *Rutan*-exempt positions is problematic, particularly given the slow pace at which designations are being made.

<sup>15</sup> As mentioned above, on July 15, 2016, IDOT produced an additional 26 titles that it believes are *Rutan*-exempt for review. That review has not yet started, but will commence shortly.

IDOT certified to the Special Master that it has a good faith belief that the 88 positions produced are appropriately designated and that their position descriptions have been verified as accurate. The Special Master acknowledges IDOT's efforts; however, given the time that has elapsed since the Initial Report and the Special Master's repeated requests, the incomplete list is insufficient.

The Special Master has, in numerous correspondences, raised concerns over considering the individual positions and *Rutan* designations on a piecemeal basis and without context to IDOT's overall workforce. The Special Master renews her request for a finite list and maintains that designating *Rutan*-exempt positions on a piecemeal basis is inefficient and problematic because it does not consider the positions in the context of the overall departmental structure.

**B. Notice of Proposed *Rutan*-exempt Appointments**

IDOT continues to provide the Special Master with advance notice of its intent to fill specific *Rutan*-exempt positions. When applicable, the Special Master and her staff respond with questions, concerns, or objections. Concerns regarding certain positions and any related issues have been addressed and resolved or set aside for further consideration.

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

With the exception of the issue described above regarding the TT and ET summer positions, IDOT provided this office with regular reports of job postings, interviews, hires, transfers, and promotions. Proper notice of these personnel transactions is a valuable tool in fulfilling the Special Master's duties.

**D. Limiting Temporary Assignments**

As discussed above, IDOT has taken a step to limit the renewal of TAs by requiring an attached IPR. However, they must also require the posting of the positions and subsequent interviews to significantly reduce the number of TAs. Additionally, the Special Master renews her recommendation that IDOT develop a process that outlines how TAs are selected and which employees are eligible. Further, she renews her recommendation that IDOT limit the overall number of TAs used.

**E. Recommendations Not Implemented**

Since her appointment, the Special Master has made several recommendations that IDOT and/or the Governor's Office have yet to implement. *See e.g.*, Initial Report at 26-29; Second Report at 12-13. For example, they have not yet:

- Eliminated CMS’s position-by-position *Rutan* review process;
- Identified and frozen all *Rutan*-exempt code-covered positions Statewide;
- Established a narrow definition of “technical” or created clear standards for classifying positions as Personnel Code covered versus Technical (Non-Code) to address the overuse of Technical classification. *See* Initial Report at 1, 18, 19-20, 26, 28; Second Report at 11<sup>16</sup>;
- Reclassified improperly classified existing Technical positions that do not fit the narrow “technical” definition. *See* Initial Report at 28;
- Resolved the issue of *Rutan*-exempt union covered positions, which inherently conflict with *Rutan* principles. *See* Initial Report at 2; 28-29;
- Completed a comprehensive internal audit of all existing (both *Rutan*-exempt and covered) position descriptions;
- Eliminated generic and inaccurate position descriptions; establish required criteria (as opposed to merely desired criteria) for positions, based on specific essential job duties, and apply those requirements to the hiring process. *See* Initial Report at 24; Second Report at 10;
- Revised position descriptions to properly differentiate levels of responsibility and complexity of duties that justify assignment of different position levels.<sup>17</sup> *See* Initial Report at 19, 26; Second Report at 10;
- Ensured consistent hiring processes are employed for seasonal positions. *See* Initial Report at 22 (discussing Snowbird process issues); or,
- Collaborated with the Special Master to prepare updated *Rutan* guidelines to be disseminated to senior IDOT personnel. *See* Initial Report at 28; Second Report at 11.

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<sup>16</sup> As of August 20, 2015, IDOT stated that it was drafting a new definition of “technical” to be used to determine which jobs are properly classified as technical positions and it would share it with the Special Master’s Office when complete. *See* Second Report at 11. To date, IDOT has not provided that definition.

<sup>17</sup> A “position level” in this context refers to the position’s classification as a Technical Manager II versus a Technical Manager III, etc. The position’s level of responsibility and complexity of duties should determine its position level. However, in some instances, IDOT used nearly identical language across position descriptions at different levels without justification. *See e.g.*, Initial Report at 18, 24. While IDOT has updated some of its *Rutan*-exempt position descriptions, it has not specifically ensured that position levels (and corresponding pay) align with the duties and responsibilities of the positions.

The Special Master recommended and continues to recommend that IDOT “implement comprehensive reforms that address serious systemic personnel problems which are necessary to prevent future manipulation.” *See* Initial Report at 1 (emphasis original); *see also*, Second Report at 10 (“IDOT needs to adopt comprehensive policies and procedures to ensure a transparent and fair employment system, a compliance/monitoring system that can detect and then promptly remedy violations, and a process for public reporting about future *Rutan* violations.”).

## VI. CONCLUSION

The Special Master appreciates the progress made by IDOT and the Governor’s Office to date. However, as detailed above, significant work lies ahead to ensure IDOT has strong personnel policies and procedures in place that are consistently followed and all positions have proper *Rutan* designations. Given the pattern of past abuses, a change in administration will not necessarily prevent potential future manipulation. Strong personnel and compliance policies and procedures that are consistently followed will help ensure future compliance from one administration to the next. The Special Master and her staff look forward to working cooperatively with IDOT and the Governor’s Office toward the goal of achieving IDOT’s substantial compliance with the 1972 Decree.

Respectfully submitted,

/s/ Noelle C. Brennan

Dated: July 20, 2016

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