

positions at IDOT (*See* Dkt. 6384);² (2) agreement on the list of truly “technical” positions to remain excluded from the Personnel Code under Section 4c(12); (3) work toward establishing minimum required qualifications (“MRQs”) for IDOT technical titles; (4) agreement on positions to be converted from technical positions to Personnel Code positions; and (5) establishing Personnel Code position descriptions for non-technical, Exempt List positions to submit to the Civil Service Commission (“CSC”) for 4d(3) determination.

Additionally, the Tenth Report included specific target dates for completion of a number of recommendations by the Special Master. (*See* Tenth Report at 13). Many of the recommendations were long outstanding. While the list of recommendations included in the Tenth Report was not an exhaustive list with respect to future substantial compliance, IDOT accomplished or took significant steps regarding those recommendations. This Eleventh IDOT Report of the Special Master (“Eleventh Report”) will focus on achievements and progress related to the Tenth Report recommendations and other ongoing work regarding IDOT.

I. ACCOMPLISHMENTS AND PROGRESS ON RECOMMENDATIONS

The following list reflects accomplishments and progress regarding the Special Master’s Tenth Report recommendations. The approximate dates of accomplishing each task are included in parentheses:

- (1) Finalizing and filing the Technical List (9/20/19, 12/18/19);
- (2) Presenting and finalizing MRQs for all technical classifications (7/2019-10/2019);
- (3) Creating a detailed plan with target dates for conversion of titles that will no longer be technical to the Personnel Code (12/23/19);
- (4) Presenting all proposed 4d(3) positions at IDOT to CSC for 4d(3) determination (all presented by 8/2019; CSC decisions completed by 1/2020);

² Positions on the Exempt List were determined to be appropriately *Shakman* Exempt after extensive review and discussion between the Special Master’s office, HEM and the parties. Only positions that are at-will and meet the *Branti* standard are included on the Exempt List. *See Branti v. Finkel*, 445 U.S. 507, 518 (1980) and *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 78 (1980) (holding that, to correctly classify a job as exempt, the hiring authority must be able to demonstrate that party affiliation is an appropriate requirement for the effective performance of the position).

- (5) Converting formerly *Rutan*-exempt positions not included on the *Shakman* Exempt List to non-exempt status³ (11/2019-ongoing);
- (6) Discussing whether there are processes specific to technical hiring that should be included as provisions in the Statewide Comprehensive Employment Plan (“CEP”) (11/2019); and
- (7) Creating and presenting a plan to ensure a wider applicant pool for seasonal internship positions (11/2019 – 1/2020).

A. The Technical Definition and List

Since the Special Master’s Initial Report to the Court, filed in March 2015, and in subsequent reports over the years, the Special Master has consistently recommended that IDOT address the over-designation of its positions as “technical” by implementing a narrow definition of the term and identifying positions that meet that definition. (*See e.g.*, Initial Report, Dkt. 4128, at 18-20, 26, 28). “Technical” positions are excluded from the State of Illinois Personnel Code under Section 4c(12)⁴, and as a result are not subject to Central Management Services (“CMS”) oversight. As discussed in previous reports, IDOT’s overuse of the “technical” designation historically created an environment in which IDOT’s employment practices were vulnerable to manipulation and resulted in *Shakman* violations.

After years of work and extensive collaboration between the Special Master’s office, IDOT, and the Office of Executive Inspector General Hiring & Employment Monitoring Division (“HEM”), in September 2019, the Special Master’s office filed the Technical Definition and List of Technical Titles. (*See* Dkt. 6501). This represented a significant accomplishment. After that

³ In this report, “formerly *Rutan*-exempt” refers to positions that were designated exempt from the prohibitions against considering political factors prior to the parties’ and Special Master’s comprehensive review and discussions regarding exempt or non-exempt status of IDOT positions. The “*Shakman* Exempt List,” or “Exempt List” refers to the current designation of positions that have been deemed properly exempt under the applicable standards.

⁴ *See* 20 ILCS 415/4c(12), excluding from the Personnel Code, “The technical and engineering staffs of the Department of Transportation, the Department of Nuclear Safety, the Pollution Control Board, and the Illinois Commerce Commission, and the technical and engineering staff providing architectural and engineering services in the Department of Central Management Services.” The Special Master has recommended that the other agencies with technical positions apply the Technical Definition to identify their truly technical position and convert any improperly designated positions to Personnel Code classifications.

filing, the parties continued discussions to resolve the status of any positions that were still under consideration for the Technical List.

On December 18, 2019, the State filed an amended Technical List, which removed the Line Technician classification (inadvertently included on the original list) and added several positions that the Special Master's office, IDOT, and HEM agreed are properly technical. The updated Technical List includes all current titles that are properly designated as technical at IDOT. As reported in the Tenth Report, more than 1,000 positions previously designated as technical will be converted to Personnel Code classifications. (Tenth Report at 8).

B. MRQs for Technical Classifications

As noted in prior reports of the Special Master, the lack of minimum required qualifications ("MRQs") for the Staff Assistant positions allowed IDOT to fill those positions with politically connected candidates regardless of whether the candidates were qualified to perform the duties stated in the position descriptions. As a result, the Special Master recommended that all positions have MRQs that align with the actual duties of the position to minimize the risk of future manipulation.

As previously reported, IDOT proposed MRQs for each working title within its technical position classifications in November 2018. A review of those proposed MRQs revealed issues regarding consistency between titles and across divisions, as well as concerns about whether the MRQs aligned with the duties of the positions. The Special Master's office, IDOT, and HEM worked together, first to agree upon an interim process while the MRQs were under review, and later to refine and finalize the proposed MRQs. (See Tenth Report at 5-6).

Since the Tenth Report was filed, IDOT finished presenting its proposed final MRQs. The Special Master's office and HEM engaged in significant discussions with IDOT to address lingering questions about the MRQs. After agreement between the Special Master's office, IDOT and HEM about the substance of the MRQs, HEM took a leading role in finalizing the specific language and format of the MRQs. In October 2019, the MRQs were finalized and codified in a document to be maintained by IDOT and utilized for all postings to fill vacancies of Technical List positions as hiring needs arise.

As discussed in Section I.E below, although MRQs have been established for technical classifications, recent hiring sequences reveal that additional work is needed on refining certain minimum qualifications and training IDOT personnel to apply these new requirements to specific

positions. The Special Master requests that her staff be involved in the necessary refinement and in the preparation and implementation of training for IDOT personnel.

C. Plan to Convert Formerly Technical Titles to Personnel Code Classifications

As discussed in prior reports, formerly technical positions that do not meet the definition of technical, and therefore are not on the Technical List, will convert to Personnel Code covered positions. The list of titles slated to convert from technical to Personnel Code classifications was filed concurrently with the updated Technical List on December 18, 2019. (Dkt. 6501).

In the Tenth Report, the Special Master recommended that IDOT create a detailed plan with target dates for conversion of titles that will no longer be technical by January 1, 2020. (*See* Tenth Report at 13). On December 23, 2019, IDOT submitted a draft plan to the Special Master. The plan includes a nine-step process to complete the conversion and requires engagement with the unions and Civil Service Commission. The Special Master provided preliminary feedback to IDOT on several conference calls and did not voice an objection to IDOT proceeding with the plan. IDOT and CMS both previously reported that they have been collaborating on steps 3 and 4 of the plan to identify or create appropriate code-covered classifications for the IDOT positions that will come under the jurisdiction of the Personnel Code. That process is described in the draft plan submitted to the Special Master. IDOT and CMS have reported that the process is continuing and provided a preliminary target date of April 2020 for completion of that part of the plan. To date, however, IDOT and CMS have not reported on the completion of steps 3 and 4. Despite the significant work and progress on this front, the process of converting these titles, which is complicated by collective bargaining issues, has proceeded slowly. Until the conversion of titles is completed, CMS lacks the oversight needed to ensure IDOT complies with existing requirements. We are hopeful that the remaining steps in the plan, which have target completion dates through October 2020, can be completed under the existing schedule.⁵

D. Proposed IDOT 4d(3) Positions Presented to CSC

Since early in the Special Master's appointment, the parties agreed that Exempt List positions must be at-will because job protection is inconsistent with *Shakman* Exempt status – if

⁵ The Special Master recognizes that the State of Illinois has shifted its focus, resources, and personnel to address the novel coronavirus outbreak. As such, these preliminary target dates may not be met.

an individual may be hired based on politics, they must also be able to be fired based on politics.⁶ Positions that are covered by the Personnel Code have certain job protections and are not truly at-will unless they are exempted from such protections under Sections 4d(3), 4d(1), 4c(12) or another section of the Personnel Code. Since the initial filing of the Exempt List in January 2019, the Exempt List as it relates to IDOT included two categories of IDOT positions: (1) Exempt List technical positions remaining technical under Personnel Code Section 4c(12); and (2) Exempt List positions deemed no longer technical and proposed for exclusion from the Personnel Code under Section 4d(3) or 4d(1).⁷ There were 53 positions in the second category: 50 recommended for 4d(3) status; and three established as 4d(1) confidential assistants or private secretaries to IDOT's Secretary.

The Tenth Report recommended a deadline of September 15, 2019 to submit to the CSC the 50 Exempt List positions that were identified to convert from technical to Personnel Code classifications and proposed as 4d(3).⁸ (See Tenth Report at 6-7). All 50 positions proposed for 4d(3) were submitted to the CSC by August 2019. To facilitate the process of CSC's review, IDOT and CMS met and discussed with CSC several positions about which CSC had questions. The CSC finished making determinations on IDOT's proposed 4d(3) positions in January 2020. The CSC granted 4d(3) status for all the positions submitted except for three for which it denied 4d(3) status.⁹

⁶ Non-bargaining unit technical positions and positions excluded from Personnel Code protection by other means are at-will and appropriate for *Shakman* Exempt status if they also meet the *Branti* standard.

⁷ The Personnel Code defines 4d(3) positions as: “[P]ositions which, in the judgment of the Commission, involve either principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out.” 20 ILCS 415/4d(3). Regarding 4d(1) positions, the Personnel Code provides that in each department with a location in Cook County and Sangamon County, “2 private secretaries for the director or chairman thereof, one located in the Cook County office and the other located in the Sangamon County office,” and for all other departments, “one private secretary for the director or chairman thereof...,” and for all departments, “one confidential assistant for the director or chairman thereof shall be exempt from jurisdiction B.” 20 ILCS 415/4d(1).

⁸ The Personnel Code provides that the CSC is the authority for determining 4d(3) status. 20 ILCS 415/4d(3).

⁹ Additionally, two positions initially separately presented to the CSC for 4d(3) determination were subsumed into one position. The combined position was granted 4d(3) status.

E. Converting Formerly *Rutan*-Exempt Positions to Non-Exempt

As previously reported, in January 2019, the parties filed the Employment Plan for Exempt Positions at Agencies under the Jurisdiction of the Governor (“Exempt Employment Plan”). (Dkt. 6158). The Exempt Employment Plan describes the process for converting formerly *Rutan*-exempt at-will positions that do not qualify for the Exempt List to non-exempt status. *Id.* Pursuant to that process, if the positions are currently occupied by incumbents, the incumbents are subject to a 90-day notice period. During the 90-day notice period, the formerly exempt to non-exempt positions are to be posted through the non-exempt competitive hiring process if the agency believes the positions are operationally necessary. Incumbents in those positions must apply, interview, and be the selected candidates in order to remain in their positions. If the incumbents choose not to apply or are not the selected candidates, at the end of 90 days, their employment will be terminated.

Because formerly *Rutan*-exempt at-will positions converting to non-exempt status will gain job protection, the process described above is necessary. The incumbents in those positions were originally hired into their current jobs as political (or otherwise non-merit based) appointees, outside of a competitive process for non-exempt positions. As a result, it is not appropriate to simply extend job protection to those individuals.¹⁰

While other agencies under the Governor’s jurisdiction issued notices to incumbents in these positions beginning in early 2019, IDOT did not. The Special Master acknowledges IDOT’s explanation that outstanding projects such as finalizing IDOT’s Exempt List positions and completing the technical position review contributed to the delay. In the Fall of 2019, the Special Master urged IDOT to comply with the Exempt Employment Plan with respect to issuing notice to incumbents in positions converting to non-exempt. As reported in the Tenth Report, after the process of evaluating which IDOT positions to include on the Exempt List, there were more than 90 formerly *Rutan*-exempt positions which needed to be converted to non-exempt. (*See* Tenth

¹⁰ There is an additional category of positions at IDOT that are converting from *Rutan*-exempt to non-exempt – formerly *Rutan*-exempt bargaining unit positions. Incumbents in those positions already have job protection as union employees and have been treated as non-exempt employees. Similar to the “Mass Code Change” described in the Special Master’s statewide reports to the court, the status of those positions is changed in IDOT’s personnel system. *See e.g.*, Dkt. 6306, Fourth Statewide Report, at n. 4; Dkt. 5992, Third Statewide Report at 7; Dkt. 5822, Second Statewide Report at 13) (discussing the mass code change of job protected formerly *Rutan*-exempt positions statewide). Formerly *Rutan*-exempt IDOT titles that are currently vacant were also recategorized as non-exempt in the personnel system.

Report at 3). IDOT proposed a conversion process for those positions on November 7, 2019, and after discussion, the Special Master agreed to IDOT's proposed process.

On November 22, 2019, IDOT provided 90-day notices to 20 incumbents in formerly *Rutan*-exempt at-will positions that are converting to non-exempt and will obtain job protection.¹¹ The 90-day notice for incumbents in the positions ended on February 20, 2020. Regarding a small number of positions, IDOT provided notice of a one-time extension up to an additional 90 days to complete the hiring process.¹² Beginning in December 2019, IDOT posted and conducted interviews to fill the converting positions that it believes are operationally necessary to maintain.

The Special Master's office was closely involved in monitoring these sequences.¹³ The Special Master's office reviewed the hiring paperwork for all but two of the positions converting from exempt to non-exempt where the incumbent or a different formerly exempt employee was the proposed selected candidate.¹⁴ The Special Master's staff monitored the interviews in person for the following eight titles: TM II Labor Relations Assistant, TM III Labor Relations Analyst, TM IV Labor Relations Specialist, TM VI Employee Services Section Manager, TM VI Bureau Chief of Administrative Services, TM VII Program Management Section Chief, TM VII Bureau Chief of Land Acquisition, and TM VII Bureau Chief of Freight Rail.

As a result, the Special Master issued seven memoranda to IDOT regarding concerns, recommendations, or information requests about multiple interview sequences.¹⁵ As further discussed below, examples of issues identified included: (1) questionable application of minimum

¹¹ The remaining formerly *Rutan*-exempt positions are either in the bargaining unit or vacant. *See n.* 8.

¹² The hiring process has not been completed for a limited number of positions with extended notice periods due to the coronavirus pandemic. The extended periods are currently set to expire on August 18, 2020.

¹³ With the exception of a small number of positions in mid-January for which IDOT did not provide adequate advanced notice, the Special Master's office was given notice and an opportunity to monitor these sequences.

¹⁴ The Special Master's office deferred to HEM's monitoring for two Communication Outreach Liaison positions, regarding which HEM monitored the interviews in person.

¹⁵ The Special Master's memoranda discussed issues related to the following positions: TM III Labor Relations Analyst, TM IV Labor Relations Specialist, TM VI Employee Services Section Manager, TM VII Program Management Section Chief, TM VII Bureau Chief of Land Acquisition, and TM VII Bureau Chief of Freight Rail.

requirements and eligibility criteria; (2) lack of clarity regarding policies or practices applied by interview panelists during candidate interviews and scoring and potentially inflated or deflated scores that favored the incumbent; (3) failure to document clearance of potential conflicts of interest; and (4) unofficial temporary assignments.

In sum, seven out of the twenty incumbents in exempt to non-exempt positions were hired into their current positions or a different position converting from exempt to non-exempt. There are a few remaining positions that have yet to be resolved due to the coronavirus pandemic or outstanding issues. For example, the Special Master is awaiting follow up information from IDOT regarding one of the sequences discussed herein. Another sequence is subject to the John Doe Process because the proposed selected candidate is a former Staff Assistant.¹⁶

(1) Questionable Application of Minimum Requirements and Eligibility Criteria

The Special Master's review of exempt to non-exempt interview sequences revealed questionable application of minimum requirements and eligibility criteria regarding two positions.

For example, the Special Master issued two memoranda regarding the TM IV Labor Relations Specialist position discussing concerns related to the application of minimum requirements and eligibility criteria to one of the formerly exempt employees who applied for the job. Specifically, IDOT determined that the candidate met the required eleven years of "progressively responsible administrative experience in a public or private organization," when it was not clear, based on the Special Master's review, that such credit was supported by the candidate's qualifications. The Special Master has previously raised concerns about the type of experience that is counted as "progressively responsible administrative experience," which is an undefined and vague term. In this case, IDOT credited the incumbent's experience as an owner/operator (mower) of a small lawn care business he started in high school. Without the lawn care experience, the candidate did not have the required experience for the Specialist position. Additionally, at his interview he was awarded the highest possible score (5) for Knowledge and Experience ("K&E) based on the same experience, although the interviewer notes did not reflect that he was asked any questions about the lawn care experience or how it qualified as "progressively responsible administrative experience." After a higher ranked candidate declined

¹⁶ See *infra*, Section II (discussing John Doe Process).

the position, IDOT intended to offer the job to the individual about which the Special Master had concerns.

The Special Master requested and reviewed the personnel file of the candidate. Review of the file revealed that the candidate did not include the lawn care experience at issue in the original application for his initial hire at IDOT, which raised additional questions. On February 25, 2020, the Special Master recommended that IDOT take several actions to address the outstanding questions related to this sequence. On May 12, 2020, IDOT reported that it no longer intends to offer the TM IV Labor Relations Specialist job to the candidate at issue and stated that a detailed response to the outstanding questions will be forthcoming.¹⁷

The Special Master's office also had concerns about how IDOT applied minimum requirements and eligibility criteria to the TM VI Highway Sign Shop Chief position. The Special Master's review of the paperwork for this position revealed the misapplication of minimum requirements as to the incumbent who applied to the job posting. Based on the plain meaning of the terms in the job posting, the incumbent did not meet the minimum requirement of twelve years' experience in "process management." However, IDOT looked outside the incumbent's written application materials by seeking input from the incumbent's supervisor who also drafted the criteria for the position. The supervisor was asked a specific question about whether a position the incumbent held at a previous employer should be credited. The supervisor said yes, and the incumbent was credited for that experience. As a result, IDOT deemed him eligible to interview and he was the proposed selected candidate after interviews.

Before the Special Master issued a memorandum identifying this issue as well as an issue related to a potential conflict of interest in the TM VI Highway Sign Shop Chief interview sequence, CMS's own review of the paperwork led to the decision to repost the position. Because

¹⁷ Additionally, the Special Master questioned the application of minimum requirements to the incumbent (who was the selected candidate) for the TM VII Bureau Chief of Freight Rail Management. The incumbent was credited for having a master's degree with a certain concentration as sufficient to meet the MRQ of completion of a bachelor's degree with a particular major. In several instances in past years, the Special Master's office observed that IDOT did not credit a master's degree when the MRQ called for a bachelor's degree. The Special Master recommended that IDOT apply a consistent policy regarding crediting master's degrees. When the question was raised again in this sequence, IDOT explained that it now has a policy of crediting master's degrees and crediting the incumbent's in this sequence is consistent with that policy.

of the decision to repost the job, the Special Master chose not to issue the memorandum to IDOT. IDOT proceeded to repost the position and has identified candidates to interview.

(2) Lack of Clarity Regarding Policies or Practices During Interviews and Scoring and Potentially Inflated or Deflated Scores

The Special Master's memoranda also discussed issues regarding a lack of clarity related to policies or practices applied during interviews and scoring, as well as potentially inflated or deflated scores. For example, as discussed above in section I.E. (1), interview scores did not always have an adequate justification or explanation in the interview notes. As noted above, interviewers for the TM IV Labor Relations Specialist gave the questionably qualified candidate perfect "5" scores for knowledge and experience without explaining what those scores were based upon. With respect to the TM VII Bureau Chief of Land Acquisition position, the Special Master identified potentially inflated or deflated scores awarded to the incumbent and other candidates respectively, based on their qualifications on paper. More standardized application of interview scores should, with appropriate training, improve over time.

Additionally, the Special Master raised a concern regarding the scoring process for the TM VII Bureau Chief of Land Acquisition sequence, where it appeared that one panelist provided misinformation about IDOT's scoring policy. One interviewer instructed the other interviewer that their scores must not vary more than .5. IDOT reviewed this issue with the interviewers, and they were instructed on the correct policy (which requires scores not vary more than 1 point). In this instance, the application of the incorrect policy did not change the outcome and Special Master did not object to hiring the selected candidate. In another interview sequence, interview panelists appeared not to know whether it was appropriate to end the interview at the conclusion of the allotted time or to allow the candidate to finish answering the questions beyond the allotted time. Again, these sequences reveal a level of confusion regarding some of IDOT's policies. Increased training should help to resolve these issues.

(3) Failure to Document Review and Clearance of Potential Conflicts of Interest

Over the years, the Special Master has made recommendations related to IDOT's conflicts of interest vetting process on several different occasions. (*See e.g.*, Dkt. 5059, Sixth Report at 5; Dkt. 6222, Ninth Report at 9). For example, in the Ninth Report the Special Master reported:

On October 18, 2018, the Special Master submitted a memorandum to IDOT identifying the opportunity for manipulation created by potential conflicts of interests between interviewers and interviewees. After reviewing several interview sequences where conflict

of interest paperwork was missing, incomplete, or inaccurate, the Special Master made recommendations to IDOT to improve its conflict of interest screening and reporting process, with the goal of greater transparency and avoiding potential complaints. IDOT has not implemented all of the recommendations, however, conversations about this topic have been positive. Further, IDOT has taken steps to ensure conflict of interest paperwork and any related follow up is documented and included in the interview files....

(Ninth Report at 9).

The Special Master's review of the exempt to non-exempt interview sequences revealed issues remain regarding IDOT's conflicts of interest vetting process. The Special Master's memoranda noted the failure to document the review and clearance of potential conflicts of interest in multiple exempt to non-exempt interview sequences.¹⁸

For example, with respect to the TM VII Program Management Section Chief, the Conflict of Interest Certification & Disclosure form for one of the interview panelists indicated that the panelist had no relationship with any applicants or interviewees for the position. In fact, the panelist supervised the incumbent who applied and was the proposed selected candidate after interviews. Further, after interviews were completed, the same interview panelist advocated for offering the incumbent a significant raise to accept her current position. While the Special Master does not view a supervisor-supervisee relationship as an automatic disqualification, it is a relationship that should be disclosed pursuant to existing state hiring policy. *See* CMS June 27, 2019 Guidance (Participants "in the hiring process must disclose ALL RELATIONSHIPS with applicants") (emphasis in original).

Regarding the TM VI Employee Services Section Manager position, both interview panelists marked conflicting information on their Conflict of Interest Certification & Disclosure forms. They each claimed to have no relationship with applicants/interviewees, but then in contradiction to that claim indicated that relationships with numerous applicants/interviewees may constitute conflicts of interests. Combined, the interview panelists identified that they may have conflicts of interest with six applicants/interviewees, including both identifying the incumbent who

¹⁸ Additionally, the Special Master observed the failure to document the review and clearance of a potential conflict regarding the TM VI Highway Sign Shop Chief position, about which she did not issue a memorandum to IDOT. That interview sequence also contained issues regarding the questionable application of minimum requirements. *See supra*, Section I.E.(1) (discussing questionable application of minimum requirements).

was the proposed selected candidate after the highest ranked candidate declined the job. There was no documentation in the hiring file that showed the potential conflicts were reviewed and cleared. Based on the Special Master's review, the relationships at issue appeared to be mostly routine work relationships that did not require reposting of the TM VI Employee Services Section Manager position.

The Special Master's memoranda discussed similar issues regarding interview panelists identifying potential conflicts of interests and the lack of documentation that IDOT investigated and cleared the potential conflicts in the hiring files for the TM III Labor Relations Analyst,¹⁹ TM IV Labor Relations Specialist, TM VII Bureau Chief of Freight Rail Management, and TM VII Bureau Chief of Land Acquisition.

The Special Master recommended as follows to IDOT regarding potential conflicts of interest: (a) reinforce the requirement to disclose all relationships to interview panelists; (b) conduct a meaningful review of all potential conflicts of interest prior to interviews; and (c) document clearance of potential conflicts in the hiring file. In response, IDOT added an additional signature line to the Conflict of Interest Certification & Disclosure form to include the signature of the Bureau of Personnel Management ("BPM") employee who reviewed and cleared the potential conflict. While that is a step in the right direction, the Special Master recommends that IDOT establish substantive written policies and practices and train employees to avoid these issues in the future.

(4) Unofficial Temporary Assignments

With respect to the candidate for the TM IV Labor Relations Specialist discussed in I.E. (1) above, his personnel file reflected that he had been unofficially temporarily assigned to higher TM (technical manager) titles, including the TM IV Labor Relations Specialist position for several years. Additionally, documentation in the TM VII Program Management Section Chief hiring file reflected that the incumbent, who was the selected candidate, had been unofficially temporarily assigned to her position prior to officially filling the job. Neither of these formally *Rutan*-exempt employees have ever appeared on the temporary assignment tracking reports provided to the

¹⁹ An email in the TM III Labor Relations Analyst hiring file reflects IDOT Chief Counsel cleared the potential conflicts of interest for one interview panelist. No documentation was included about clearing the other interview panelist and similar emails were not in any of the other exempt to non-exempt hiring files.

Special Master's office. As further discussed below in Section II.B., temporary assignments continue to be an issue at IDOT that requires additional safeguards to prevent potential manipulation in favor of politically connected individuals.

(5) Summary of the Conversion Process of Exempt to Non-Exempt

As noted above, the Special Master's office reviewed the hiring paperwork for all but two of the positions subject to this process (HEM monitored the other two) and conducted in-person monitoring for eight sequences. The issues identified in these sequences, and particularly in the application of minimum qualifications, demonstrate that further work is required in implementing IDOT's new hiring practices. Further defining minimum qualifications for positions and providing training as to how to apply those qualifications is necessary. These sequences were particularly complicated due to the fact that the incumbents were competing for their existing positions. However, the fact that two sequences resulted in a misapplication of the minimum qualifications, where the incumbent was chosen, despite not appearing to meet the minimum qualifications, raises concerns about the training and guidance provided to IDOT employees expected to carry out the new hiring practices. Notwithstanding these problems, the fact that IDOT has identified minimum qualifications for most of their positions is a massive step in the right direction. Now, the key is to refine where necessary, apply definitions to unclear terms, and train the individuals responsible for applying the policies. Again, and as noted above, the Special Master requests her staff be involved in refining minimum qualifications where needed and creating and implementing training for IDOT personnel.

F. The Comprehensive Employment Plan – Provisions for Technical Hiring

As part of the Special Master's duties, she has been assisting the parties to establish a Comprehensive Employment Plan ("CEP") in order to safeguard against vulnerabilities in IDOT's and the State's hiring process that historically allowed *Shakman* violations to proliferate. Initially, due to IDOT's largely technical workforce, the parties discussed establishing a separate Technical CEP for IDOT. As reported in the Tenth Report, the parties later agreed that IDOT should be subject to the same Statewide CEP as other agencies under the Governor's jurisdiction. (*See* Tenth Report at 12-13).

In the Tenth IDOT Report, the Special Master recommended that IDOT discuss whether provisions specific to technical hiring should be included in the Statewide CEP by December 1, 2019. After discussion, it was agreed that the general provisions of the CEP will be sufficiently

flexible to account for variations, if any, that may be appropriate for technical titles. One specific provision was added after discussion with IDOT but is applicable to all agencies. The provision allows agencies to hire from an existing pool of interviewed candidates within seven months of the original hiring sequence if the position becomes vacant during that time period.

In Fall 2019, the parties engaged in significant discussions about the Statewide CEP but did not ultimately come to agreement on all aspects of the current draft. The State filed the proposed CEP on November 25, 2019, despite the lack of agreement by the parties. (*See* Dkt. 6612). In the Special Master's view, there are several areas that still need to be addressed. (*See generally*, Dkt. 6710, Sixth Statewide Report). These outstanding issues include matters that bear on IDOT's employment practices, including practices that led to hiring abuses at IDOT in the past. For example, the Special Master is concerned that the CEP does not adequately address temporary assignments which, as discussed herein, have been problematic at IDOT. The Special Master has sought to engage with the State about these outstanding issues in the CEP. However, a fundamental disagreement between the parties with respect to the scope of the Special Master's responsibilities for agencies other than IDOT has hindered progress related to the CEP.²⁰ Regardless of the resolution of the jurisdictional issue, because IDOT will now be subject to the Statewide CEP, the remaining disputes regarding the CEP will ultimately need to be resolved.²¹

G. 2020 Seasonal Engineering Technician Hiring

The Tenth Report discussed IDOT's Summer of 2019 Engineering Technician ("ET") and Technical Trainee ("TT") hiring. (*See* Tenth Report at 9-12). The Special Master's review of the hiring outcomes for the 2019 ET and TT programs revealed that IDOT continued to struggle to (1) reach a wide enough applicant pool to ensure that the individuals hired were not disproportionately applicants with existing connections to IDOT (*i.e.*, applicants related to current IDOT employees or applicants with prior IDOT experience); and (2) fill the number of vacancies it intended to fill. *Id.*; *see also* Fourth Report at 7-8 (discussing similar issues regarding the Summer of 2016 TT and ET Programs).

²⁰ The Plaintiffs filed a motion seeking clarification on March 10, 2020. (Dkt. 6789). The Court entered a briefing schedule on May 4, 2020. (Dkt. 6864).

²¹ It was noted at the last in Court status that the State has conducted CEP training for some IDOT staff. We reiterate that the Special Master should be given notice and an opportunity to weigh in and participate in such training going forward.

As a result, the Special Master recommended that IDOT create and present a plan to ensure a wider applicant pool for seasonal internship positions. The Special Master recommended that IDOT: “(1) extend the posting period beyond two to three weeks (consider continuous posting from February to April, or longer); (2) post earlier in the year (IDOT posted the positions in April this year); and, (3) work with Career Placement Centers at local colleges and universities.” (Tenth Report at 12).

In November 2019, IDOT submitted a draft plan for the Summer of 2020 Seasonal ET Program and sample documents (*i.e.*, job posting, application requirements, scoring tool, and requests for number of interns by district/office) from the Summer of 2019 Program. The Special Master’s office requested that IDOT provide the 2020 plan and associated documents for 2020 together for review. On January 10, 2020, IDOT submitted a revised plan for 2020 and the additional paperwork for review. Subsequently, IDOT reported that there were additional changes to the program being made. After the Special Master’s staff met with IDOT’s Bureau of Personnel Management (“BPM”) to discuss the changes to the Seasonal ET Program, the Special Master approved IDOT’s proposal.

The following noteworthy changes are included in this year’s Seasonal ET Program: (1) creating a new class specification for the Seasonal Engineering Intern title; (2) making the position requirements more lenient in order to account for the elimination of the TT program, which historically had less stringent requirements than the ET program;²² (3) updating the scoring tool to reflect the change in requirements; (4) extending the posting period in attempt to reach more applicants;²³ and (5) contacting applicants that have incomplete or missing documents to avoid a large number of applicants being disqualified for minor errors/omissions in application materials.

²² IDOT decided to eliminate the TT classification during the technical position review process of determining which positions at IDOT are truly technical or must be converted to Personnel Code covered classifications. Going forward the seasonal internship program will be limited to ET positions.

²³ Initially, IDOT proposed to post from the beginning of February to the end of March. Due to a delay in finalizing the ET Program, the posting was postponed several weeks. Although the Special Master provided approval the first week of February, the positions were not posted until February 21, 2020, because additional information needed to be gathered from the districts. The hiring process for ETs is ongoing because IDOT sought approval to further extend the deadline after March to attract additional candidates. The Special Master’s staff is working with BPM to review hiring paperwork before candidates receive offers.

A future report will discuss the effectiveness of these changes and provide additional recommendations to improve the process where appropriate.

II. ONGOING WORK REGARDING VARIOUS OTHER IDOT MATTERS

A. The John Doe Process

As previously reported, on April 25, 2017, former Governor Rauner filed a Motion for Clarification, seeking an order to clarify how IDOT should treat the knowledge and experience individuals gained as Staff Assistants when they apply to job postings for *Rutan*-covered positions. On July 26, 2017, the Court granted the motion for clarification. On December 4, 2017, the Court entered an Order Creating a Review Process for Applications of Former Staff Assistant for Positions at IDOT (“John Doe Process”). (Dkt. 5644). Periodically, the Special Master has reported on the John Doe Process as former Staff Assistants have gone through the process. *See e.g.*, Tenth Report at 8-9 (discussing John Doe Process and outcomes regarding ten former Staff Assistants who have gone through the process).

Since the Tenth Report, another former Staff Assistant has gone through the process. After the Special Master issued a determination that sufficient evidence exists to support a *prima facie* case that the candidate was hired in violation of the 1972 Decree, the candidate requested an informal rebuttal hearing with IDOT. IDOT, the candidate, the Special Master’s office, and HEM participated in the informal rebuttal hearing telephonically. After the rebuttal hearing, IDOT and the candidate did not agree regarding whether the experience gained as a result of being hired as a Staff Assistant should be credited. IDOT filed a motion to have the Court determine the course of proceeding. (Dkt. 6825). The Court entered a briefing schedule. (Dkt. 6827). Subsequently, the candidate decided not to move forward to the next steps of the John Doe Process. As a result, it is not necessary to proceed with briefing.

After the Special Master’s office was notified that the former Staff Assistant would not proceed with the John Doe process, IDOT notified the Special Master, HEM and the Plaintiffs that the highest ranked candidate waived the position and that the next ranked candidate—the former Staff Assistant—would now be offered the position. The Special Master and HEM are conducting additional reviews of this sequence and will report any findings in later filings.

The John Doe Process is underway regarding one of the formerly exempt to non-exempt incumbents. *See* Section E.I. (discussing formerly exempt to non-exempt positions). On May 5, 2020, pursuant to the John Doe Process, the Special Master issued a memorandum analyzing

whether sufficient evidence exists to support a prima facie case that the former Staff Assistant under review for the exempt to non-exempt position was hired in violation of the 1972 Decree and concluded that sufficient evidence does exist. The Special Master will report on the outcome regarding that candidate in a future report.

B. Temporary Assignments

Since the Special Master's initial appointment in November of 2014, IDOT's use of temporary assignments ("TAs") has been an ongoing concern. *See e.g.*, Initial Report at 23. Temporary assignments amount to promotions outside of the competitive hiring process, completely at management's discretion. Individuals who are selected for official temporary assignments benefit from: (a) a three to four percent salary increase during the official temporary assignment; and (b) the advantage of significant experience performing the job when it is posted to fill permanently.²⁴ The Special Master's analysis of TA data from 2017 to 2018, showed that approximately 80% of individuals temporarily assigned were selected to permanently fill the jobs. (*See* Dkt. 5920, Special Master's Eighth Report at 8-9).

At the Special Master's recommendation, IDOT significantly decreased the number of official temporary assignments over the years and took steps to limit the duration of temporary assignments. IDOT adopted some, but not all, of the recommendations intended to address the matter of temporary assignments. Nonetheless, serious concerns about the misuse of temporary assignments at IDOT remain. As of the pay period ending April 15, 2020, a report provided by IDOT reflects eight employees officially temporarily assigned and two of those employees have had the temporary assignment extended beyond an initial term. Within the last month, the same two individuals were selected to fill the positions permanently through IDOT's posting and interview process. As previously stated, the vast majority of employees who are temporarily assigned into a position will be permanently hired into the role, having had the advantage over other candidates of already performing the job. These are essentially hand selected promotions. Additionally, some individuals are selected to be temporarily assigned multiple times through non-consecutive and long-term temporary assignments. For example, one employee who received ten

²⁴ This report makes a distinction between official temporary assignments and informal temporary assignments. Official temporary assignments include a salary increase and are tracked by IDOT's personnel system. Unofficial temporary assignments do not include a salary increase and are not tracked by IDOT's personnel system. Both official and unofficial temporary assignments afford employees the advantage of performing the duties of the position before they apply and compete to fill the position permanently.

extensions of a temporary assignment prior to it ending in December of 2018, is currently temporarily assigned again as of November 2019. Another employee was previously temporarily assigned from December 2018 to March 2019 and is currently temporarily assigned again as of November 2019.

Although the use of official temporary assignments has dramatically decreased, the Special Master's office has noticed a trend in the use of "unofficial" temporary assignments, which raises the same manipulation concerns as official temporary assignments. The following example illustrates how an informal temporary assignment provides the same advantage as an official temporary assignment in the selection process to fill the position permanently. IDOT sought approval to hire an individual who had been in a long-term official temporary assignment from 2017 to 2018 into a position for which she later applied and was the proposed selected candidate. The employee at issue had been officially temporarily assigned to the position for nearly a year and a half in 2017 and 2018. In the course of reviewing IDOT's request to hire the employee permanently into the job, the Special Master's office learned that the employee remained unofficially temporarily assigned to the position after her official temporary assignment ended in 2018. The employee listed her experience performing the duties of the unofficial temporary assignment on her application and she was given credit for that experience in the interview process to fill the permanent position. As a result, this employee had been performing the duties of the position for almost three years and had the benefit of that experience when interviewing to permanently fill this job.

In December 2019, the Special Master requested information from IDOT regarding its use of unofficial temporary assignments to determine whether this is a widespread issue at IDOT. To date, IDOT has not provided a substantive response. While the Special Master has inquired about unofficial temporary assignments in the past, the extent to which it may be a widespread issue remains unclear. If the decrease in the number of official temporary assignments is simply due to employees being transitioned to unofficial temporary assignments, it will be a significant problem that must be addressed due to the inherent advantage such employees have when competing to permanently fill the position.

The situations discussed herein highlight the need for a standardized temporary assignment process. The Special Master has repeatedly recommended that IDOT (and the State at large)

establish a uniform process regarding temporary assignments and include it in the CEP.²⁵ The Special Master renews this recommendation and emphasizes the need to limit the duration of temporary assignments, whether they be official or unofficial assignments. IDOT should identify the pool of eligible candidates and establish an objective basis for selection (*i.e.*, seniority, performance evaluations, etc.). If it is operationally necessary to temporarily assign an employee beyond an initial term, IDOT should rotate employees into the job.²⁶

Temporary assignments remain one of the Special Master's major concerns regarding the State's employment practices both at IDOT and other agencies under the Governor's jurisdiction. Temporary assignments are consistently the topic of complaints submitted to the Special Master. Complainants allege that politically connected or otherwise favored employees are unfairly selected for temporary assignments, while other employees are not afforded those opportunities, regardless of qualifications.

C. Bureau of Investigation & Compliance Investigative Reports

Implementing an effective and transparent process that promptly and thoroughly investigates employment related complaints is critical to achieving and maintaining substantial compliance with the Shakman Decree. Transparency in reporting is also essential. In recognition of these principles, Section XI of the State's proposed CEP addresses compliance functions such as investigation and transparent reporting. (CEP, Section XI). As set forth below, however, the Special Master has identified gaps in the existing processes.

As previously reported, the Bureau of Investigations and Compliance ("BIC") is the internal office at IDOT responsible for conducting compliance reviews and investigations. BIC investigates complaints it receives directly and complaints that are referred to IDOT. When OEIG receives a complaint, it has discretion to determine the appropriate action, including: opening an investigation; referring the complaint to the appropriate agency; making a referral to HEM for a compliance review; or declining for lack of jurisdiction. When OEIG refers a complaint to an

²⁵ IDOT has reported implementing certain aspects of the Special Master's recommendations as discussed in prior reports. However, it has refused to fully adopt the Special Master's recommendations. *See e.g.*, Ninth Report, Dkt. 6222, at 9-10. During CEP discussions in Fall 2019, the State declined to take the Special Master's recommendations about temporary assignments regarding all agencies under the jurisdiction of the Governor.

²⁶ IDOT considers the initial term of a temporary assignment for technical positions to be a period of 120 workdays. Teamsters Collective Bargaining Agreement also reflects that number. The Special Master recommends that temporary assignments should not exceed 90 days.

agency such as IDOT, the referral is made with or without a response required. If the referral is made with no response required, the agency is not required to submit a response to OEIG.

Under Section XI of the proposed CEP, OEIG, HEM and CMS have certain reporting obligations. However, there is no reporting requirement for complaints that are referred to any agency such as IDOT, other than to report the number of complaints referred. Accordingly, if OEIG refers a complaint to IDOT, the proposed CEP does not require any reporting on the nature of the complaint or the results of BIC's investigation even if the investigation concludes the complaint is founded. We view this as a gap in the proposed CEP.

In addition to this deficiency in the overall reporting process, we are continuing to monitor the effectiveness of IDOT's investigation process. The Special Master has previously recommended measures to strengthen BIC's investigation and compliance functions. *See* Dkt. 5920, Eighth Report at 8; Dkt. 6222, Ninth Report at 9. We are continuing to monitor BIC's investigation reports in conjunction with information we recently received from the OEIG's office, as detailed below.

On January 10, 2020, the Special Master's office served a renewed subpoena for records on OEIG requesting complaints relating to personnel matters or employment practices at IDOT and other related information and documents. The Special Master's office had last received such information from OEIG in 2018. On or around February 1, 2020, OEIG responded to the renewed subpoena with a supplemental production. Included in the production were approximately 92 complaints received by OEIG in 2018 and 2019 that were either: (1) referred to IDOT; (2) referred to HEM for review; or (3) declined. Also included in OEIG's production were responsive HEM review materials and materials for one OEIG investigation.

The Special Master's office is reviewing the complaints referred to IDOT from OEIG and the effectiveness of the actions taken by BIC and IDOT on those referred complaints. To date, we have noted instances where BIC did not investigate all the allegations contained in the OEIG complaint and/or did not interview all relevant witnesses identified in the complaint. We are continuing our review of the materials and will report our findings in a forthcoming report.

III. RECOMMENDATIONS

As discussed herein, IDOT accomplished major milestones regarding a number of the Special Master's Tenth Report recommendations and continues to make progress on tasks that have not been fully completed. The Special Master renews and updates the Tenth Report's recommendations as follows:

- (1) Convert currently designated *Rutan*-exempt positions not included on the Exempt List to *Rutan*-covered by August 31, 2020; and
- (2) Convert titles that will no longer be technical to the Personnel Code by October 31, 2020.

Additionally, the Special Master strongly urges IDOT to:

- (3) Adopt the Special Master's recommendations regarding temporary assignments;
- (4) Continue to improve its hiring processes to address the other issues addressed herein, particularly with respect to refining minimum qualifications and the uniform application of those qualifications;
- (5) Work with the Special Master's office to create and implement additional training for IDOT personnel.

The Special Master will continue to make recommendations on an ongoing basis and in future reports to the Court.

IV. CONCLUSION

Monitoring of IDOT's implementation of the Special Master's existing and future recommendations and compliance with the CEP is essential to remedy and prevent violations of the 1972 Decree. The Special Master acknowledges the real achievements and progress that IDOT has made since her initial appointment and looks forward to continuing to work collaboratively toward substantial compliance with the 1972 Decree.

Dated: June 3, 2020

Respectfully submitted,

/s/ Noelle C. Brennan

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