

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

MICHAEL L. SHAKMAN, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	
THE GOVERNOR OF THE STATE OF)	Case No. 69 C 2145
ILLINOIS, <i>et al.</i> ,)	
)	Magistrate Judge Schenkier
Defendants.)	

AGREED ORDER

The Court modifies its Order of November 18, 2014 (Dkt. 4020) appointing a Special Master so as to expand the responsibilities of the Special Master to include the following matters, all of which are within the scope of the 1972 Judgment:

A. The Special Master will work with the Parties to develop a list (“**Exempt List**”) of all positions under the jurisdiction of the Office of the Governor of Illinois (“**Governor**”) that are exempt from restrictions on hiring or affecting conditions of employment on the basis of political reasons or factors. As the Court stated in its Order of November 28, 2016 (Dkt. 4798): “Exempt Positions are those for which an employer may take into account political considerations when deciding whom to hire, promote, or transfer to fill positions. See *Branti v. Finkel*, 445 U.S. 507, 518 (1980), *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 office)” (“**Exempt Positions**”). To facilitate this process, it is hereby ordered:

(i) The Governor's Office will provide a list of all agencies, boards, commissions and other state bodies that fall under the jurisdiction of the Governor to the Special Master by May 19, 2017.

(ii) The Governor's Office will provide to the Special Master by May 31, 2017 a list of each position classified under the provisions of Sections 4(c)(6), 4(d)(1), 4(d)(2) and 4(d)(3) of the Illinois Personnel Code within each such agency, board, commission and other state body that the Governor contends should be an Exempt Position.

(iii) If the Governor's Office intends to designate any other positions as Rutan-exempt (by seeking Section 4(d)(3) status or other "at will" status), it shall include such positions on the lists and identify each position's current classification (*e.g.*, Section 4(d)(5), term appointment, technical, etc.). If the Governor's Office believes the position classification for such position may change (*e.g.* from term appointment to a Section 4(d)(3) classification), the Governor's Office shall also identify each such new proposed classification.

(iv) The Special Master's Office will review the above information and may request additional information from the Governor's Office regarding a subset of the identified positions, including position descriptions, organizational charts, and any other information that may assist the Special Master in determining the appropriateness of the Rutan-exempt designation. The Special Master may undertake this review on an agency-by-agency basis. The Governor's Office shall cooperate with the Special Master's office in providing all requested information. Information should be provided to the Special Master on a rolling basis.

(v) Prior to submitting such information to the Special Master's office, the Governor's Office will assure that each agency reviews each position description for accuracy, and where necessary, updates such position descriptions. The Governor's Office will confirm that the individuals holding such positions are performing duties that qualify the positions as Exempt Positions, or will advise the Special Master of any deviation in performance from the duties specified in such job descriptions that would disqualify the position as an Exempt Position. The Governor's Office will also designate an individual at each agency to address information requests and answer questions from the Special Master's office.

(vi) The Governor's Office will identify all positions currently designated Rutan-exempt that will no longer be included on the new Exempt List and will work with the Special Master's office to develop a plan for reclassifying such positions as Rutan-covered.

(vii) On or before July 31, 2017, the Special Master will file a preliminary status report on her progress.

B. After receiving the Special Master's recommendations pursuant to paragraph A, and upon appropriate notice, the Court will consider entry of an order establishing a single unitary Exempt List and stating the procedures under which positions may be added to or removed from such list.

C. The Court authorizes the continuing monitoring of the foregoing activities by the Special Master and Plaintiffs' counsel.

D. Should the Special Master determine that additional staff is necessary to assist her in carrying out the duties of her appointment, she shall consider utilizing the existing staff and

resources of the Office of Executive Inspector General (“**OEIG**”) and shall consult with the OEIG to determine whether, to what extent and on what terms (including specific staff commitments, communications arrangements and timing of work to be generated by the OEIG) to utilize such resources. Whether and for what purposes to use such personnel is a matter entrusted to the judgment of the Special Master.

E. To facilitate the foregoing assignment, on or before May 31, 2017, the Governor’s Office shall produce to the Special Master, with copies to plaintiffs’ counsel and the OEIG, a list of all filled and vacant positions now classified as *Rutan*-exempt in every agency, board, commission, or other instrumentality that fall under the jurisdiction of the Governor. Included in such list will be description of those positions that are either in a collective bargaining unit or under Jurisdiction B of the State Personnel Code (“**State Protected Positions**”).

F. In addition, after appropriate review and investigation, the Special Master shall make a recommendation for creating a process to treat individuals that were hired into any positions that were designated as *Rutan* Exempt where:

- (i) the position was a State Protected Position at the time of hire;
- (ii) the position was later designated as a State Protected Position;
- (iii) the individual never performed the duties of the *Rutan* Exempt position; or
- (iv) the individual was transferred to a *Rutan* covered position without going through a competitive process.

G. After considering such objections as may be filed to the Special Master’s recommendations, the Court will enter an appropriate order.

H. The Governor’s Office and the Illinois Department of Transportation (“IDOT”) will continue working with the Special Master on creating an “Exempt List” for IDOT and

addressing employment issues at IDOT, but this Order shall not apply to IDOT, which remains subject to a prior order in this case.

This Order may be amended at any time after notice to the parties and an opportunity to be heard.

Dated: May 1, 2017

Entered:


SIDNEY I. SCHENKIER
United States Magistrate Judge