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October 28, 2014

Mr. John Schomberg, General Counsel
Office of the Governor
James R. Thompson Center
100 W. Randolph Street, Suite 16-100
Chicago, Illinois 60601

Ms. Simone McNeil, Acting Director
Department of Central Management Services
James R. Thompson Center
100 W. Randolph Street, Suite 4-500
Chicago, Illinois 60601

Ms. Erica J. Borggren, Acting Secretary
Department of Transportation
2300 S. Dirksen Parkway
Springfield, Illinois 62764

Re: Illinois Department of Transportation (IDOT) Technical Employees

Dear Mr. Schomberg, Director McNeil and Secretary Borggren:

Since this past May, the Civil Service Commission has been monitoring the proceedings initiated against the Illinois Department of Transportation IDOT by the plaintiffs in the *Shakman* litigation that seeks to have a hiring monitor appointed for IDOT. Since the allegations made by the plaintiffs involved violations of the related *Rutan* litigation and the Civil Service Commission does not play a role in the determination of a position's *Rutan* status, there was no need for any Commission involvement. The Commission instead directed its Staff to continue to monitor these proceedings.

On August 22, 2014 the Office of the Executive Inspector General (OEIG) released its Final Report into alleged hiring improprieties at IDOT related to alleged *Rutan* violations. As you are aware, the Final Report focused mainly on the allegedly improper classification of many IDOT "Staff Assistant" positions as *Rutan*-exempt and the ramifications of the improper classifications. However, there was a side issue that is of interest to the Civil Service Commission involving the initial determination that these "Staff Assistant" positions were "technical" employees.

The State's system of personnel management starts with the premise that ALL State positions are under the Personnel Code and, subsequently, under the Commission's jurisdiction. Section 4 states:

All offices and positions of employment in the service of the State of Illinois shall be subject to the provisions of this Act unless exempted in this or any other Act.

Section 4c provides for general exemptions from the Personnel Code, meaning positions that are exempt from all three jurisdictions. Subsection 12 provides a general exemption as follows:

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 services and engineering services in the Department of Central Management Services.

It is by virtue of this subsection that IDOT employees classified as “technical” are exempted from the Personnel Code and, subsequently, the Commission’s jurisdiction. This is the issue that interests the Civil Service Commission in its historical role enforcing the provisions of the Personnel Code.

From information gleaned from the Final Report, it appears likely that many of these “Staff Assistant” positions had been improperly classified as technical and therefore exempt from the Personnel Code. To its credit, the Governor’s Office appears to have recognized the fallibility of the present “technical” classification procedures and proposed the following reforms:

1. Reforming the Department’s Technical Code – The Department shall, in consultation with and with the approval of CMS’s Bureau of Personnel: (i) create a narrowly tailored definition of “technical,” for the purposes of classifying positions that are exempt from the Personnel Code under Section 4(c)(12) and thus fall under the Department’s Technical Code, (ii) create and implement personnel policies and procedures for the Department’s Technical Code, including, but not limited to, a merit-based classification and salary administration plan, (iii) work with an outside consultant to review all current Technical Code positions against that “technical” definition to determine whether they are appropriately classified, and (iv) if they are not appropriately classified, take the necessary steps to move those positions to fall under the State’s Personnel Code.
2. Creating a Technical Code Merit Board – In addition to the above and to the independent Office of the Executive Inspector General’s *Rutan* jurisdiction and investigatory powers, signed into law by the Governor in 2009 and detailed below, the Administration will seek to create a separate and independent statutory Technical Code Merit Board, to oversee and ensure the integrity of the Technical Code process.

The contents of the OEIG Final Report and published responses thereto as well as other related materials were the subject of discussion by the Civil Service Commission at both its September 19 and October 17, 2014 meetings. As Executive Director, I was charged with formulating a written response to the State entities involved in actions that would affect the administration of the Personnel Code. That is the purpose of this correspondence.

Section 10 of the Personnel Code sets forth the duties and powers of the Commission. Subsection 9 states as follows:

If any violation of this Act is found, the Commission shall direct compliance in writing.

It is by virtue of this subsection that the Commission investigates and determines allegations of any Personnel Code and/or Personnel Rule violations. In addition, the Commission's Annual Report has historically set forth the following as one of the Duties of the Commission:

Upon identification of instances of noncompliance, the Commission is responsible for ensuring the enforcement of the Personnel Code and Rules through the issuance of directives for compliance.

The Commission's usual method of performing this function has been by the investigation and determination of Rule Violation appeals. While it is clear that a misclassification of an IDOT employee's position as "technical" would fall under the Commission's jurisdiction, it is noteworthy that there is no evidence that any employee ever filed such an appeal.

The efforts of the Governor's Office, IDOT and the Department of Central Management Services to correct what appears to be a historical misapplication of the Personnel Code are laudable. Given the historical role of the Civil Service Commission in the administration of the Personnel Code, the Commissioners look forward to the cooperative involvement of the Commission with your entities in crafting an improved process to ensure IDOT employees are properly classified thereunder. The Civil Service Commission is requesting to be included in any working groups that have or are being established for that purpose. I have been charged with representing the Commission and am available as needed.

Please advise of the next steps in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Stralka", with a long horizontal flourish extending to the right.

Daniel Stralka
Executive Director

cc: Chairman Garrett P. FitzGerald