



TO: Middletown Common Council

FROM: Margaret Penny Mason, Esq.
Daniel P. Elliott, Esq.

DATE: August 6, 2018

RE: Report to Common Council Following Investigation

This investigation began as an inquiry into complaints of discrimination raised by Michele DiMauro in connection with her salary review, and also raised in a letter from her union to the Common Council. The union letter also raised issues of ethics and campaign law violations in connection with the solicitation of City employees for donations to the Mayor's former campaign for governor.

In total, we have conducted interviews with twenty-nine (29) individuals. Included in that sum are Mayor Daniel Drew, General Counsel Brig Smith, Deputy General Counsel Kori Wisneski, then Director of Human Resources Thomas Tokarz, then Human Resources Generalist Justin Richardson, and Faith Jackson, Director of the Office of Equal Opportunity and Diversity Management. Of the remaining 23 interviewees, most of them affirmatively reached out to us and requested to be interviewed. Most of them requested anonymity, and a few requested to be interviewed in our office rather than in City Hall. The interviewees included City employees at numerous levels, including a number in high-level management positions. The duration of our investigation was longer than originally contemplated, due primarily to the significant and unexpected number of individuals who continued to reach out to us requesting to be interviewed. Some delay was occasioned by temporary unavailability of counsel for members of the administration, due to his being on trial.

As interviewees continued to come forward, the scope of our investigation expanded. Many of the interviewees wished to speak with us about what they perceived to be unfairness in the hiring processes for various City jobs. A number of interviewees expressed to us that they felt as though the outcome of various job postings had been pre-determined, with – in some instances – political supporters of the administration having been pre-selected for positions. Others complained that they or a family member had been targeted for adverse employment actions based on their political opposition to the administration. Yet others complained that they had been subject to discrimination on the basis of protected characteristics. A number of these

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complaints¹ were brought to the attention of the administration witnesses, who in turn denied the allegations and provided what they considered to be justifications for a number of hiring and workplace decisions.

We note that our charge was to serve as investigators and fact-gatherers. Consistent with our charge, our questioning of the interviewees (both administration and non-administration) was non-adversarial; the statements made by the interviewees were not subject to cross-examination in the way that they might have been in a more formal legal setting, such as testimony at trial or in a deposition.

Given that each interviewee had his or her own complaints that were oftentimes highly specific to the individual, we express no opinion on the merits of any given complaint, nor do we express an opinion as to the merits of any defenses or responses provided by the administration witnesses. Several interviewees reported that the Mayor made derogatory references to women and was disrespectful toward Councilwomen and certain female employees of the City and Board of Education, but there were also complaints by both male and female employees about not being treated fairly in the hiring and promotion process. With regard to the DiMauro claim specifically, several interviewees reported that the Mayor stated that she would not be getting and/or did not deserve a raise, and that he commented about her being related to certain Common Council members. These allegations were discussed with the Mayor, who denied them. We cannot conclude one way or the other that the Mayor actually influenced the process. We note that DiMauro and another employee have discrimination and retaliation claims pending with the Connecticut Commission on Human Rights and Opportunities. We therefore defer to that process to resolve those complaints.

We do wish, however, to comment on a number of themes and/or concerns that we found to be common throughout the interview process.² We also herein provide a number of recommendations for the Council's consideration going forward.

- Many interviewees expressed concern that the Human Resources Department reports directly to the General Counsel's office. We understand this reporting structure to be a relatively recent development for the City. Many interviewees expressed a perception that the General Counsel's office views itself as the

¹ Though not all of them, given that numerous interviewees had requested anonymity.

² We emphasize that we found these themes to be common among those who reached out to us and requested to be interviewed. We cannot say – and do not say – that these themes are representative of the entire City workforce. We do, however, note that these concerns were raised by almost two dozen City employees, thus meriting thoughtful consideration by the Council.

"Mayor's personal law firm." Accordingly, numerous interviewees who complained of adverse action based on political opposition to the administration expressed discomfort with HR reporting directly to the General Counsel's office. Numerous interviewees recommended that HR have a degree of separation from that office. We note that the administration witnesses did provide what they considered to be detailed justifications for placing HR under the supervision of the General Counsel. Specifically, administration witnesses expressed that this reporting structure is meant to encourage increased interaction between HR and legal counsel, in order to avoid legal actions and the incurring of inordinate fees to outside legal counsel. We express no opinion as to the merits of the complaints raised by the interviewees, but we do note that this reporting structure appears to create a problem in terms of perception, which can impact employee morale. We thus recommend removing the Human Resources Department from the supervision of the General Counsel's office. Human Resources personnel can still consult with the General Counsel's office as needed. This change can be accomplished by ordinance, just as the reorganization establishing this reporting structure was achieved by ordinance.

- In addition, the Council may wish to explore assigning a separate legal counsel, still in the Office of General Counsel, for the Office of the Mayor, so that there may be more clarity as to counsel's obligations.
- A number of interviewees expressed a belief that the neutral member on the five-person Labor Management Commission should be a true outside neutral. We believe this to be a good idea that would avoid potential arguments on a going-forward basis that any "neutral" has a bias one way or the other. This recommendation would require a change to the Labor Management process outlined in the collective bargaining agreements.
- A number of interviewees expressed discomfort that they had been solicited by the Mayor directly and/or by his campaign for governor for campaign contributions. Some did contribute because they feared for their jobs if they did not, and others believe that they may have been retaliated against for not making a donation. One person filed an ethics complaint with the City's Ethics Commission, resulting in a reprimand against the Mayor, which has been made public. The Council could consider referring the issue to State or Federal ethics and elections enforcement agencies.
- A number of interviewees expressed extreme discomfort with the identities of interviewers for City jobs. Several expressed that interviewers were biased against them, or were under inordinate influence from (or had been selected by) the administration. In order to avoid any perceived fairness issues in the application process, we recommend that the Council consider recommending

that the Human Resources department retain an outside agency or neutral vendor to select interviewers for certain positions, such as for director and deputy director. This would require a collective bargaining agreement amendment.

- A number of interviewees expressed frustration with “outside candidates” (with – the interviewees argued – little relevant experience) being “pre-selected” for positions based on political support for the administration or on a personal relationship. We express no view as to the merits of the arguments, but again, this is a problem of perception and morale. The Council may wish to consider changes to the relevant collective bargaining agreements that would offer jobs to department employees then union members before offering them to outside applicants.
- This same problem of preselection prior to the interview process apparently exists also with internal, union candidates. Human Resources should insure that preselection for any position does not occur.
- A number of interviewees expressed extreme frustration with the fact that Board of Education employees are hired, supervised, disciplined, and fired by the City, rather than BOE. We recommend that the City allow the Board of Education more autonomy over hiring employees that will work for BOE. This would require a Charter revision to Chapter X, Section 1, related to Classified Service.
- A number of interviewees recommended that the results of Maximus (or “Archer”) studies be made available to employees and their unions, in order to avoid confusion as to the results of salary review processes. Administration witnesses stated that the test is proprietary, and revealing results would be counterproductive, as applicants would tailor their applications to the criteria set forth on the test. On the other hand, transparency in the process would be welcome to applicants, and knowing the criteria is not necessarily different than knowing the requirements of a job description and tailoring one’s application accordingly. We thus ask the Council to consider this issue. This would be a collective bargaining matter.
- Many complaints regarding perceived unfairness of the hiring and promotion process could be addressed by a more formalized merit system. Consider adopting the Merit System for hiring and promotion as provided for in the CT General Statutes § 7-407. This would have to be voted on by electors.
- We heard from some Common Council members that they felt the Mayor should not run Common Council meetings. Removing that role would require a Charter amendment.

- Although we do not recommend disciplinary action against this Mayor based on the facts uncovered in our investigation, a number of interviewees expressed frustration that there is no formal procedure by which a mayor could be disciplined in the event of misconduct. Indeed, should the Common Council determine that there has been wrongdoing on the part of a mayor, there is no formal mechanism by which it can voice its disapproval. For example, Connecticut law prohibits impeachment of the mayor. Robert's Rules of Order, under which the Common Council operates, provides for censure of a member only. Given that the Charter provides for the Common Council's investigation of a mayor, it could be amended to provide for censure should such an investigation indicate that such formal reprimand would be appropriate.

We have provided a list of our recommendations as part of this report. We look forward to discussing these issues with you.

TO: Middletown Common Council

FROM: Margaret Penny Mason, Esq.
Daniel P. Elliott, Esq.

DATE: August 6, 2018

RE: Recommendations

Our investigation resulted in the following recommendations:

- Take Human Resources back out of the Office of General Counsel, creating a Human Resources Department, with a professional human resources director who reports to the Mayor. This would be accomplished by ordinance.
- Restructure by ordinance the Office of General Counsel so that one Deputy Counsel is designated to advise the Mayor, and another to advise the Common Council.
- Amend labor agreements to provide that the neutral member of the Labor Management Commission is from an outside agency.
- Amend labor agreements to require Human Resources to retain an outside agency or neutral vendor to select interviewers of qualified candidates for open positions for which interview panels are currently used.
- Amend labor agreements to require Human Resources to insure that preselection for employment positions does not occur.
- Amend labor agreements to provide that open positions are offered first to same department employees, then union employees, then outside candidates.
- Allow the Board of Education autonomy with regard to hiring, disciplining and firing of employees that work for the Education Department. This would require a Charter revision to Chapter X, Section 1, related to Classified Service.
- Consider amending the labor agreements such that the results of the Maximus (or "Archer") study used in the hiring process are made available to the subject employee.

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- Consistent with the separation of powers between the legislative and executive branches, revise the Charter to remove the Mayor as presiding officer of the Common Council with a tie-breaking vote.
- Consider changing the hiring and promotion process altogether by adopting the Merit System provided for in the CT General Statutes, § 7-407 et seq. This would require a vote by the electors to answer, "Shall a Merit System for selecting and promoting public employees be adopted?" The Charter would be amended to create a Civil Service Commission. Implementation of the merit system would be accomplished by ordinances. Collective bargaining agreements would need to be amended accordingly.
- Consider a Charter amendment to provide for censure of a mayor should the Common Council conclude such action is appropriate.