

Ralph McKee to the Ann Arbor City Council (via email)

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I am writing to express my deep disappointment in the process you employed in the forced termination of Tom Crawford. While I recognize that what I set forth below is long and perhaps tedious, this is a serious matter and deserves detailed attention. The investigation conducted by attorney Jennifer Salvatore was incomplete, and her investigative report is incomplete, imprecise, internally inconsistent, and logically flawed. It leaves numerous ambiguities and other flaws that undermine its factual conclusions. Those of you who decided to terminate apparently failed to recognize those flaws, or, worse, decided to ignore them. You apparently rejected the possibility of further investigation or, at a minimum, asking Salvatore for clarification on key points. Next, you apparently rejected some of Salvatore's conclusions as to whether city policies were violated, and her recommendation of appropriate steps to rehabilitate and train Crawford. Then, you (or perhaps the city attorney and/or HRD Tom Guajardo) conjured up the deeply flawed rationale that the city's policies and past practice required termination. **They clearly do not.** Next, without breathing a word of this to the public, you 1) directed that Crawford be told that the votes were there to fire him, 2) put the resolution on the 7/20 agenda, and 3) asked Postema and Guajardo to prepare the agenda response memo outlining the flawed "policy and past practice rationale" to attempt to justify your decision. **This was a discretionary firing, period.**

As is described in depth below, this was an abysmal "process" resulting in a bad decision and which creates a very bad precedent. It unnecessarily trashed a long-time very valuable employee. At the outset, I want to make clear that I am not advocating failing to seriously address speech of employees that is insensitive or worse. And I have respect for witnesses who have the courage to come forward with troubling allegations. But a termination such as this requires a significantly better process than employed here.

The analysis below focuses, in turn, on 1) the investigation, 2) the report, 3) the city's policies, and 4) the "past practice" argument.

The Salvatore Investigation

I know Ms. Salvatore, am aware of her reputation, and have some respect for her skills. But this investigation was not done well. First, it was not thorough or precise. The report indicates that Salvatore considered 9 complaints, apparently brought by 5 employees. Although the imprecision of the report leaves some ambiguity, it appears that all the complaints involved a one-on-one conversation between the witness and Crawford, with one notable exception: there was apparently a meeting re policing. Although Crawford disputes that he made the statement alleged in that meeting, Salvatore apparently failed to even ask the witness who else was at the meeting, let alone Interview those employees.

She also apparently did not ask any of the complainants to gather any email or text messages relating to the incidents. These, of course, could show consistency or lack thereof with the statements made during the interviews, and could also show potential collusion among the complainants.

Next, Salvatore apparently accepted as true the statements from some witnesses that Crawford has a memory problem. However, even though Crawford disputed this, she failed to ask even one person within the organization who wasn't one of the complainants if they concurred. Similarly, though her report says that it was reported that Crawford "regularly" used the term "the blacks", she apparently did not ask even one non-complaining employee if they had ever heard Crawford use that term.

Finally, the report states that none of the complainants had a "discernable" motive to lie. But there is no indication that Salvatore asked any of them if, for example, they had been disciplined or criticized by Crawford, or whether they could potentially be promoted if he was terminated. Apparently Salvatore also did not review any personnel files that could shed some light on these possibilities. And she may not have even been aware of the bitter feud between the finance and human resources departments (described below), during which former CFO Crawford was a prime target.

Compare the above with the 2019 investigative report done by Sheldon Stark re the Wilkerson/Lazarus investigation (the "Stark report"). Stark interviewed 20+ witnesses, and reviewed thousands of emails and texts, including those provided by witnesses to corroborate or expand on their interviews. Salvatore's investigation pales in comparison. And while the flaws described above may seem small, taken together, and combined with the flaws in the report, they loom large.

The Salvatore Report

The report, unlike many of this type (such as the Stark report) unfortunately does not identify which witnesses made which complaints and/or other statements. (*I am not suggesting that the witnesses interviewed should be identified by name or position, only, as is typical, by number*). So it is impossible to tell, for example, whether one witness made, say, 5 of the complaints, and the other witnesses one each, or whether one of the witnesses made all of the complaints deemed most serious by Salvatore and/or the agenda response memo. And Salvatore does not exclude certain (admittedly speculative) possibilities in the report, such as whether any of the complainants were CMs (yes, you are technically employees), or those involved in handling the allegations, such as Steven Postema.

Next, Salvatore uses ambiguous terms like "multiple" and "several", instead of, say, "3" or, better, "witnesses, 1, 2 and 5". This results in some pretty confusing possibilities on key points. First, "several" typically means 3 or more. Salvatore notes that "several" witnesses (so, 3 or more) said that they didn't think they could work with Crawford after the complaints (interestingly, the context suggests that either Salvatore discussed other complaints with each of the complaining witnesses or they discussed them with each other), and "several" thought Crawford "meant well", suggesting that they could still work with him. Due to the imprecision of "several", it appears that at least one of the witnesses thought that Crawford "meant well", but still felt that he/she could not work with Crawford (at least 3 witnesses in each category, and only 5 total). Given that this point was used by the agenda response memo as part of the rationale for termination, this imprecision is regrettable.

Let's examine Salvatore's use of the term "corroboration", obviously a key point. *In many legal arenas, such as criminal investigations, "corroboration" typically means independent verification via another witness or documents, rather than something less.* For example, in that arena, simply reporting a crime does not constitute corroboration. Here, the only "corroboration" actually described in the report is 1) the mere fact that similar (but not the same) complaints were made by more than one person, 2) one email which Salvatore said "expressed the same sentiment" as one of the statements alleged; however, Salvatore did not quote the email, making it impossible to critique her interpretation, and 3) the fact that one of the complaints was contemporaneously made to someone in the legal department. Summing up, there is VERY LITTLE "corroboration" here. In fact, with the exception of the corroboration potentially provided by one email, there is NO "traditional" corroboration coherently described for ANY of the statements alleged. Yet Salvatore says, on p.6:

"Multiple individuals reported the same comments or same types of comments. With respect to many of the comments— Mr. Crawford acknowledged making them, yet gave a different explanation for their context or his intentions.

While Mr. Crawford denied outright several of the most troubling allegations (i.e., he denied the comment about hiring minorities; the comment about the African American employee; and the use of the term "the blacks"), I do not find Mr. Crawford's denials in this regard credible, particularly where multiple individuals either heard the comments or heard about the comments at the time."

These conclusory comments, particularly re the "most troubling" allegations, are not well supported by Salvatore's earlier imprecise descriptions of the actual interviews, and Crawford's denials are pretty strong as to those particular allegations. Let's take the comment about hiring minorities. Salvatore describes this as occurring in a "statement to another member of the City's leadership team" (which strongly implies a one-on-one conversation) and that it was contemporaneously described to a person in the legal department. Crawford says 1) he didn't say it, and, importantly, 2) the context of the conversation strongly supports his denial. In that situation, Crawford was trying to convince a minority applicant not to withdraw from a job search. So why would he have said something completely inconsistent with what he was advocating re that applicant? It makes no sense. And consider this possibility: perhaps Crawford said something along the lines of "other cities have used the rationale that you can't get rid of minority applicants once they're hired, but I don't agree; let's get this applicant to stay in the process." Conversations commonly get misinterpreted, and maybe this one happened on Zoom or on the phone, with bad audio. Salvatore's report unfortunately does not provide that level of detail.

Next, the report states at p. 6: "There was a comment alleged to have been made to a city employee about an African American employee who is married to a white woman." This also appears to be a one-on-one conversation. This comment would clearly require immediate reporting under the express language of several city employee policies; Salvatore gives us no information on whether it was. There is no corroboration whatsoever of this comment, and Crawford categorically denied it.

Salvatore's description of the third "most troubling" allegation is very vague: the report says only that "It was also reported that Mr. Crawford regularly uses the phrase: "the blacks" when talking about African Americans and/or uses "us/them" language when talking about racial groups." Since this description in the report follows Salvatore's description of the allegation re a comment about a particular employee, should we assume that the same person reported this too? The imprecision is unacceptable; this report is being used to attempt to justify a termination of a long-time very valuable employee. And, as noted above, Salvatore did not ask ANY non-complaining witnesses if they concurred (in contrast, Sheldon Stark did this on several points).

Now let's consider Salvatore's overall credibility determination. Despite Crawford's strong denials of the "most troubling" allegations, Salvatore apparently concluded that he made ALL of them (and all the others too), based on 1) there were "multiple individuals" (not specified which or how many) who EITHER reported the same comments OR SIMILAR comments, 2) there were "multiple individuals" (again not specified in any way) who EITHER heard the comments OR heard about them at the time, and 3) the fact that all the complainants said Crawford has a memory problem. This analysis is very imprecise, incomplete and, candidly, poor, particularly considering the lack of any attempts to corroborate some of the most basic items. As just one example, what if a couple of non-complaining witnesses said "Crawford's memory is super sharp, he remembers past discussions in detail"? This would throw doubt on the credibility of every one of the witnesses. Certainly Crawford has displayed a command of the details of the city's finances and other administrative items, and some who know him well would dispute that he has a memory problem. And doesn't it seem little odd that every one of the five "reported" Crawford's memory issues; that suggests the witnesses consulted in advance about what to say. Or did Salvatore perhaps prompt these comments by asking about his memory after one of them had mentioned it? There are many unanswered questions here, which Salvatore did not even make an attempt to answer.

It's also worth noting that it is apparent in the Stark report re the Wilkerson/Lazarus issues that Wilkerson and others in her department bore strong animosity toward the finance department, particularly Crawford. And as human resource folks, they would have been able to use ANY "dirt" against Crawford. Crawford and Wilkerson's tenures overlapped for many years. Yet there was never any complaint made (despite the HR folks' animosity and the policies requiring reporting) re Crawford's "regular" use of the phrase "the blacks".

Further, though Salvatore claims that Crawford admitted some of the comments and just tried to explain the context, that's not quite accurate. While he admits, with remorse, to having made insensitive comments, he does not admit making any of the precise comments alleged. To sum up, Salvatore's credibility determination is severely flawed.

However, the report does conclude with an "Observation/Recommendations" section which makes rather obvious that Salvatore expected that Crawford would be disciplined, monitored, and coached rather than terminated; there are references to various ways in which to do that.

City Policies

Now let's look at the written policies referred to in the report and in the agenda response memo. The report refers to the "Employee Standards of Conduct", Policy 2.1, which includes a

list of potential violations, from 5.1 through 5.28, and indicates that Salvatore considered the potential violations described there. The report briefly discusses sections 5.8 (“failure to act in a professional and respectful manner”) and 5.19 (“indecent or offensive conduct”) and concludes that Crawford’s conduct did not violate those sections. Notably, Salvatore did not refer to section 5.24, which states: “Engaging in any form of harassment in violation of HR Policy 2.2 Employee Discrimination, HR Policy 2.12 Employee Harassment and HR Policy 2.14 Workplace Bullying”. So apparently Salvatore did not consider Crawford’s conduct as violating HR Policy 2.12.

Salvatore analyzed HR Policy 2.2, Employee Non-Discrimination, in depth. That policy states in relevant part:

2.0 Purpose. To reflect the City’s zero-zero-tolerance for discrimination.

3.1 Prohibited Conduct

A. The City prohibits discrimination against any employee on the basis of a person's protected classification under state, federal or local law.

B. Discrimination includes bias or prejudice based on a person's protected class, which results in an adverse employment impact, including, but not limited to, discipline, demotion, failure to hire or failure to promote.

5.2. Corrective Action

B. Appropriate corrective action should include corrective counseling and/or other forms of discipline up to and including discharge. This determination will vary depending on: (i) the seriousness of the charge; (ii) the employee's disciplinary history, particularly with respect to related misconduct; and/or (iii) the likelihood that the proposed discipline will discourage future discrimination.

Salvatore concluded that Crawford’s conduct did not violate policy 2.2 because, essentially, he did not take any discriminatory action.

Salvatore did conclude that Crawford’s conduct violated the very broad 5.28, which states:

“Engaging in any behavior or action, on or off duty, that is detrimental to the reputation or image of the city or the operations of the workplace.”

The rationale for that conclusion focused solely on the “several” employees who said they had reservations about working with Crawford or the City given the comments alleged. Here, I would be curious whether those individuals’ concerns were based on their own allegation, or also on other allegations that were shared with them by other complaining witnesses or by Salvatore. The report does not say.

The agenda response memo says “the City has a Zero Tolerance Policy regarding discrimination and discriminatory language” and cites policies 2.2 and 2.12, the “anti-harassment” policy. Policy 2.12 states that Ann Arbor has a zero tolerance policy as to harassment. Also, section 3.1 (B)’s definition of “prohibited conduct” includes “making sexist or racist jokes”, and “making jokes or inappropriate comments about an individual's sexual orientation, gender

identity or expression”. Later, section 4.0 describes employees’ responsibility to report prohibited conduct, and in section 5.1, “Complaint and Reporting Procedures” states: “C. Upon receipt of a complaint, an investigation by Human Resources with the guidance of the City Attorney's office will be promptly conducted and corrective action will be taken, if appropriate, to ensure uniform enforcement of this policy.” There is no mention of automatic termination for any particular type of prohibited conduct.

It is worth emphasizing that, despite the “zero tolerance” statement at the beginning of the policies, so heavily relied on by the agenda response memo and the council majority, it is clear that disciplinary action can be taken short of termination. Simply put, the “zero tolerance” statements in these policies should clearly be read to mean “something must be done” ; the policies do not require automatic termination. Otherwise, the policies’ sections 5.1 and 5.2 which describe the range of actions that can be taken re prohibited conduct (which clearly includes comments such as those alleged here) would be effectively deleted.

And the agenda response memo does not contain any statement that any employee was complaining that Crawford’s statements were perceived as harassment, nor is there any statement to that effect in the investigative report, so it appears that any reliance on this policy as requiring termination is without merit.

The memo does not state in what way the memo’s authors (John Fournier, former Assistant and now Acting City Administrator, has stated that the report was drafted by City Attorney Steven Postema, staff attorney Margaret Radabaugh, and HRD Tom Guajardo) or the council majority apparently disagreed with Salvatore’s conclusion that Crawford had not violated HR Policy 2.2. Yet the statement in the memo attributed to Guajardo is that “substantiated discriminatory comments” required immediate termination, apparently due to the “harm to individuals”, and “damage to the City as an organization, for example, in the areas of staff retention and recruiting...” There is no explication as to which comments were considered “discriminatory”, which is interesting in light of Salvatore’s conclusion that Crawford did not violate HR Policy 2.2 re discrimination. Finally, both Mayor Taylor’s question and the response memo refer to “discrimination” or “discriminatory conduct”, subtly implying that conduct was at issue, when it clearly is not.

“Past Practice”

The agenda response memo states that “the City has a history of taking strong action against discriminatory language or conduct ... “ It then refers to the debacle re our former HRD, saying: “The most recent publicized matter involving discriminatory comments ... involved a former high-level employee’s inappropriate text messages ... The content of the messages, particularly given the employee’s position, warranted dismissal“. This is a very slender reed to base a broad statement about “past practice”; a sample size of 1. Next, unlike the current situation, Wilkerson’s comments were not disputed, they were verified as authentic written text messages from her. **Further, importantly, Crawford’s disputed insensitive comments are really not objectively similar to Wilkerson’s vile texts, and to imply that the racial component of those texts was a major factor in her forced resignation is misleading.** The Stark report, which discusses Wilkerson’s texts and attaches them as an appendix, describes them as “ ... *inter alia*, profane, crass, troubling, insubordinate, racially tinged, and explosive” and “...objectively unprofessional, disrespectful and detrimental to the reputation and image of the

city.” Stark report, pp. 1-2. Later in the report: “The text messages display a disdain and lack of respect for Council Members, other City employees, Ann Arbor residents, liberals, and protesters. They disparage. They contain immature and thoughtless name calling.”

Importantly, they were clearly insubordinate: “City Administrator Howard Lazarus was not exempt from Wilkerson's disparagement. She "bad mouthed" him, too, describing him as "incompetent", or having "no balls.” So, reading the Stark report objectively, racially insensitive texts were not a major factor in the decision made to quickly fire Wilkerson. There were just a couple of them (one about BLM protests), and several witnesses said that Wilkerson was politically conservative rather than racist. **To sum up, “past practice” does not support termination here. The ONE example is not comparable. To reiterate, this was a discretionary termination, period.**

Lack of Transparency re the Decision

It is clear that 1) the investigative report didn't recommend termination, 2) as reflected in his responses, Crawford was and is sincerely remorseful re any insensitive comments he had actually made, was willing to allow himself to be severely disciplined and to work hard to improve his behavior, and hoped and expected that he would be given a second chance, 3) there were two closed sessions on this matter which did not result in a decision (the second of which was just a few days before the 7/20 council meeting) and 4) Crawford was told, shortly before the council meeting, that he was going to be fired. Someone must have told him that the votes were there. What we don't know is how the decision among the 7 who clearly wanted him gone was made, and the extent of the influence staff such as Mr. Postema had. The agenda response memo is clearly an “after the fact” attempt to justify the decision to terminate, despite some CMs' statements to the contrary.

While various CM comments at the 7/20 meeting and afterward also attempt to justify the decision, they shed very little light on what particulars drove the decision. Which comments were deemed “discriminatory”? Which one(s) was/were deemed bad enough to justify firing? Were the comments involving sexual orientation considered, or was the Salvatore report's downplaying of those comments sufficient to eliminate consideration of those? Did you consider as relevant the allegation that Crawford had noted that women tend to bear a disproportionate burden of childcare (a fact reported by hundreds of journalists during the pandemic; query what else that complaining witness said)?

Before you reject consideration of the above questions as merely rhetorical or overly critical, consider the vagueness of the “precedent” this sets, discussed below.

Future Effect

Before you continue to laud yourself for being effective anti-racists, consider this: after this episode, employees will legitimately fear that they can be terminated for a single disputed insensitive comment, regardless of whether it directly affects any employee in a material way, and even if the outside investigator 1) fails to interview anyone other than the complaining witness(es), 2) concludes that the most relevant policies have not been violated, and 3) makes a recommendation of discipline and training short of termination. (I guess you think your purported commitment to restorative justice doesn't apply here.). And while I recognize the

value of encouraging employees to report racist comments via protecting them from retaliation, and by taking disciplinary action against policy violators, the Crawford episode, particularly given the complete lack of explanation as to which comments were deemed “fireable” and why, swings the faux “zero tolerance” pendulum too far. What’s to prevent a couple of disgruntled employees from saying something like, “hey, do you remember that time our jerk of a boss said something about Juneteenth? Maybe we should report it.” You might dismiss this. But someone I know who spent many years working in city hall that I discussed this with (and who knows Crawford well and does not believe that Crawford made these comments, having never heard similar comments) did not dismiss it. And dismissing this possibility also means you have already forgotten one of the main lessons from the Wilkerson affair; that city hall is not immune from old-school grudge matches.

Finally, if your view is to believe complaining witnesses, how do you explain CM Disch’s (and others) dismissing the former Vanguard employees’ detailed descriptions of how CM Eyer gaslit them as “unsubstantiated allegations”? Politics. Always politics.