

# HVZ REPORT

## Conclusions and Recommendations



Hon. V.L. Bailey-Rihn (retired)

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# EXECUTIVE SUMMARY

## I. Scope of Responsibilities

On June 2, 2022, the Dane County Board passed 2022 RES-016 (“the Resolution”). The Resolution authorized this independent investigation into the Henry Vilas Zoo (“the Zoo”) under these guidelines:

BE IT FURTHER RESOLVED that the scope of the independent investigation shall include all issues raised in the Wisconsin State Journal’s report, including but not limited to:

- 1) Allegations of racism by zoo management
- 2) Allegations of retaliation for union activity
- 3) Allegations of retaliation for whistleblowing
- 4) Allegations that employees have been unequally disciplined
- 5) Allegations that animals at the zoo have been neglected or mistreated
- 6) Allegations that zoo employees have left their jobs due to a hostile work environment

BE IT FURTHER RESOLVED that the independent investigation examines issues to determine whether policies, including those in Dane County Ordinance Chapter 18 and the Employee Benefits Handbook, are being carried out and provide recommendations to better implement policies.

In addition to the above specific directives, this report will provide recommendations on other identified areas of concern, some of which might be attributed in part to the significant "growing pains" experienced by the Zoo in recent years.

Between 2018 and 2022, the staffing of the zoo doubled from 21 positions in 2018 to 30 positions in 2020 and, finally, to 39.5 positions in 2022. During this same time, there was an almost complete turnover in the management team (other than the Director). Adding to these challenges was that most of this growth occurred in the COVID-19 era, which created complexities and stresses not previously faced by the Zoo.

We hope the recommendations in this report will address not only the issues outlined above, but also help to resolve the additional issues raised by employees and management of the Zoo as a part of this investigation.

## II. Short Answers

To answer the County's questions, I began by collecting evidence from three general areas: (1) I interviewed every Zoo manager and nearly every other Zoo employee either in-person or telephonically, including recently departed employees and volunteers, (2) I administered a confidential survey to further seek input and thoughts from Zoo staff as well as any examples of unfair treatment, and (3) I reviewed numerous other files, emails, and other records maintained by the Zoo.<sup>1</sup>

I conclude as follows:

Resolution Sections 1, 2, 3, and 4<sup>2</sup> ask about allegations of unfair employment practices. While I find some evidence of these *allegations*, the recognition of an allegation is unhelpful by itself unless these allegations arise to the legal level of discrimination. I

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<sup>1</sup> I did not ask for or receive personnel files on individuals. Individuals were free to share comments with me, but I did not feel it was appropriate to invade the privacy of their confidential personnel files.

<sup>2</sup> Resolution 4 asks about allegations of unfair discipline, which I take to mean that a person was discriminated against because of a prohibited reason, race, sex, age, union activity, etc.

therefore understand the Resolution to instead concern itself with evidence of *discrimination* based on racism, union activity, whistleblowing, or any other unfair basis, all of which are contrary to county, state, and federal law. In general, “discrimination” means: “To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment ...”

I did not find any such discrimination at the Zoo. The simplest explanation of this conclusion is that “to discriminate” is a verb—discrimination requires action—and there simply is no evidence of any action taken by the Zoo because of any of the listed reasons.

I momentarily skip ahead, then, to Resolution Section 6, which asks whether any of those above-described allegations might describe a hostile work environment. I again find no evidence to support these claims. Under Wisconsin law, a hostile work environment requires either “pervasive conduct” based on a person’s gender or other protected category which “interferes with work performance,” or “an intimidating, hostile or offensive work environment.”<sup>3</sup> Under this standard, there is no evidence of a hostile work environment. The work performance of Zoo employees is collectively and objectively excellent. There is no evidence of any changed conditions based on the employees’ individual complaints, and all available evidence suggests a level of hostility far below any hostile work environment recognized by the state and federal courts that have addressed the question. However, this does not mean that the work environment cannot be

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<sup>3</sup> Wis. Stat. § 111.36(1)(b).

improved. I address below why certain Zoo employees consider their work environment “toxic.”

Returning to Resolution Section 5, I do find some past evidence of animal neglect or mistreatment. I adopt the findings of external evaluations by two agencies with knowledge in this area. On June 3, 2022, the United States Department of Agriculture (“USDA”) cited the Zoo for its treatment of capybaras, although the USDA also acknowledges that corrective treatment has since been taken. Zoo management also acknowledged making mistakes in connection with the capybara incident and with the trapping of raccoons while the Zoo was closed by COVID-19.<sup>4</sup> These mistakes have been corrected.

On May 31, 2022, the leading organization on zoo accreditation, the Association of Zoos and Aquariums (“AZA”) requested information on several animal deaths. The Zoo has compiled those reports and now awaits AZA’s formal response. As to the allegations concerning animal deaths, the AZA’s on-site team informed me that the incidents as reported in the newspaper were not substantiated and the articles were misleading. For now, the AZA’s only concern regarding animal welfare is to repeat its 2019 “major concern” that: “Many animals spend an inordinate amount of time in small indoor enclosures ...”

The Resolution further requests recommendations to better implement policies at the Zoo, specifically the policies set forth by Dane County Ordinance Ch. 18 and the Dane

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<sup>4</sup> While the Zoo was closed by COVID-19, raccoons became much more active and brazen without guests around to scare them off. As a result, raccoons killed an elderly penguin and wounded a capybara, resulting in the need for the treatment that ultimately led to the capybara’s death. Other zoos around the country have experienced problems with raccoons, coyotes, and other scavengers during COVID-19.

County Employee Benefits Handbook. Neither of these documents creates any rights beyond state and federal statutes already discussed. However, to the extent that they give rights to employees to be treated fairly by management, there is a real or perceived problem with favoritism at the Zoo.

While many employees shared common workplace concerns (some individuals have easier assignments, get more help when they ask for it from others, and do not work as hard as others), others were deeply concerned with the perception of inequitable discipline for mistakes.<sup>5</sup> It is hard to assess these issues without reviewing confidential employee records, which is outside the scope of my review. Management is also hampered by the inability to respond to these allegations because they also cannot disclose confidential records. However, because of this issue, I am making several recommendations as outlined below.

Finally, although the Resolution does not seek this kind of information, any investigation of the Zoo would not be complete without also recognizing its positive qualities. Unfortunately, both management and employees continue to suffer from the events that occurred from 2018 to 2021. At this point, the publicity and scrutiny of the Zoo is counterproductive to a healthy environment and overshadows the positive efforts of the hard-working individuals at the Zoo.<sup>6</sup>

The individuals that work at the Zoo are passionate about animal welfare and what they do daily. They love working with the animals, seek to enrich the animals' lives, and

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<sup>5</sup> While I did not review individual personnel files to analyze these claims, the term “discipline” is not consistently used by Zoo employees interviewed. Coaching notes and oral warnings would not normally be considered formal discipline but may feel like discipline to an individual.

<sup>6</sup> In addition, many of the newer departments, such as operations and education, seem to be functioning very well, and the employees express satisfaction with their supervisors and work.

give them the best care possible. There are a lot of very old animals at the Zoo, a testimonial to the care given to them by staff. In addition, after COVID-19 forced the closure of the Zoo for three months, the education department set up two classrooms for Bayview and other children so that they could attend Zoom classes at the Zoo. This led to the creation of an after-school program for children. There are many other programs and events scheduled at the Zoo, such as the Zoo run, events at Halloween, "Zoo Lights," and other opportunities for the community to enjoy and support the Zoo. All of these are positive efforts made by Zoo staff.

Notably, five hundred volunteers volunteered last summer. The recently hired horticulturist has dedicated volunteers to help with the grounds and the volunteers have provided money and plants, as well as their time. The volunteers are everywhere: one day, I came across a group of Marquette athletes volunteering, on another day, I spoke with a first-time volunteer eager to continue. On a third day, several volunteers labored to create a bark path in the pollinator garden. A casual walk around the grounds demonstrates zookeepers and others answering questions, directing visitors to where they would like to go, and interacting in a positive way with guests.

In speaking with the contracted concession operator, I learned that it has partnered with Briarpatch to hire employees and has a dedicated diversity plan and is also committed to providing over a million dollars in improvements to its facilities and programs in the next few years. Fairly or unfairly, all these positive events have been overshadowed by the negative events that have occurred. Hopefully, that can change since the Zoo is truly an amazing community asset that is unique in its status as a free zoo.



# INTRODUCTION

On August 16, 2022, the County hired me to investigate the allegations concerning the treatment of animals and personnel at the Henry Vilas Zoo (“the Zoo”). A few months ago, I retired as Presiding Judge for the Dane County Circuit Court. Before that, I worked in private practice as an attorney.

My investigation into the Zoo followed a familiar pattern consistent with other investigations I have conducted as a lawyer or overseen as a judge. I began by interviewing those with firsthand knowledge about the Zoo. In total, I interviewed more than thirty-five people by phone, Zoom and, most frequently, in-person in the Anna Vilas Building in the Zoo. I thank the Zoo Director, Ronda Schwetz for her cooperation in providing that space and for arranging for her management team to meet me and my investigating team. Director Schwetz responded promptly to each of my requests and even encouraged investigators from the Association of Zoos and Aquariums (the “AZA”) to meet with me in private to discuss the animal welfare concerns.

In all, I was physically present at the Zoo for about ten days. In addition to interviews, I walked the grounds and observed all parts of the Zoo’s operations, including the concessions and gift shop. Several Zoo employees took time out of their day to find me and speak to me without previously making an appointment. Several more emailed me to set up appointments when I was on the Zoo grounds. I heard from everyone who wanted to speak to me or my team. All the individuals that met with me were open, honest, and frank.

If there is a single consistent quality of a Henry Vilas Zoo employee, it is care for the animals' welfare. Each person I interviewed impressed me with a genuine dedication to the Zoo's mission. Perhaps because they are so passionate about their work, many shared strong feelings ranging from concerns about management, the Employee Group representative, or other zookeepers, to hopes and plans for the Zoo's future. Others expressed worry and grief that negative reports in the newspaper overshadowed the positive progress the Zoo has made. I address the specific details of these interviews in my conclusions at the end of this report.

I also interviewed several people not directly affiliated with the Zoo. These include current and retired veterinarians serving the Zoo, the AZA's investigative staff, volunteers who gave their free time and money running the Zoo's train and carousel, plus the Regional Director for the company now contracted to perform those duties together with the gift and food concessions.

I further reviewed reams of records and other documents about the Zoo's operation. This included records provided by the USDA and AZA's outside investigations. I was on-site for each of the three days the AZA performed its inspection, during which the AZA noted no new major concerns. The USDA did provide an official warning for the capybara incident, but it should be noted that this was the Zoo's first such warning, despite several previous inspections.

In addition to my physical presence, a forty-question digital questionnaire surveyed Zoo employees on the allegations of racism, retaliation for union activity, retaliation for whistleblowing, allegations that employees had been unequally disciplined, animal

welfare and hostile work environment. This survey (“the Survey”) included questions recommended by the AZA regarding Zoo culture, in addition to questions about overall Zoo safety and security. The Survey consisted of both multiple-choice questions and other questions that invited a narrative answer. This voluntary and anonymous survey was completed by 46 individuals, with the 47th answering part of the questions. A copy of the Survey questionnaire is attached as Appendix 1.

Finally, I compiled and reviewed hundreds of pages of documentary materials, ranging from emails, past AZA reports, workplace plans, and other administrative materials. A complete list is attached as Appendix 2. We also attended the meeting with the public to announce the new Giraffe Barn/space and a meeting with all Zoo staff to discuss the AZA inspection and conclusions. Joseph Balles, a senior investigator helping with this project, also attended a meeting with the UW Veterinarian and staff to discuss animal welfare issues. After the interviews were completed, I and Joseph Balles attended a meeting with upper management to ask final questions that had developed during the interviews.

## TIMELINE

Before turning to the information gathered by this investigation, I first provide some brief context in which to understand the recent allegations at the Zoo. The timeline below will help to order events and demonstrate the relatively long spans of time separating objectionable conduct:

DATE	EVENT	
1904-1911	Origins of the Zoo	Henry Vilas dies. His parents, William and Anna, donate land to be used as a free park. The Zoo opened on part of this land in 1911.
2018	AZA tabled the Zoo	AZA “tabled” the Zoo, giving it a year to resolve issues including ultimate decision making by the Zoo. Tabled means that the accreditation stands but would lapse in a year if no changes were made.
April 1, 2019	Zoo and Society split	The Zoo and Dane County declined to extend its contract with the Henry Vilas Zoological Society, terminating a relationship existing since 1914 in which the society raised funds and operated amenities within the Zoo, for example, the carousel and concessions. <sup>7</sup>
2019	Cat incident	A zookeeper is removed from big cats because of an interaction between a lion and a tiger.
Jan. 7, 2020	The Society is cleared of any crimes	Following the split, the Society is accused of misreporting donations. The Dane County Sheriff clears the Society of any crimes in a forty-two-page report. <sup>8</sup>
2020	Giraffe Incident	A guest takes a picture of a zookeeper in the giraffe pen with a giraffe.
Feb. 2020	“Chinese food incident.”	A manager refers to Chinese food using a racial slur.

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<sup>7</sup> March 31 was the Society’s final day in this role. Thereafter, Dane County Resolution 2018 RES-629 authorized a new entity to replace the Society. That resolution is available online: <https://dane.legistar.com/View.ashx?M=F&ID=7114908&GUID=AB680D3C-2257-4139-8486-6AC3F3FED060>.

For more background, see <https://isthmus.com/news/news/a-bitter-divorce/>.

<sup>8</sup> A copy of the Sheriff’s report is available online: <https://bloximages.chicago2.vip.townnews.com/madison.com/content/tncms/assets/v3/editorial/9/79/9797966a-472e-5b15-a119-bbcbe0d2f919/5e151402864ae.pdf.pdf>

2020-2021

Reports of  
animal death

A Wisconsin State Journal article published in spring 2022 discusses several animal deaths. Some reflect failures, at least at a certain level, by the Zoo. Others reflect only that animals die.<sup>9</sup>

Sometime in spring 2020, during the COVID-19 closure, a wild raccoon damaged its front claws trying to escape a trap. The following morning, it was promptly euthanized (as is permitted by authorities). Fourteen other raccoons were trapped that spring without injuries.

On July 10, 2020, Shrek the capybara was sedated as part of a routine procedure. The Zoo had drained a nearby pool to prevent Shrek from drowning in the deep water while the sedation drugs took effect. However, five to seven minutes after administering the sedation drugs, Shrek jumped over nearby zookeepers into the now-shallow pool and broke one of his front legs. Including surgery to repair the break, Shrek was anesthetized for approximately 9.5 hours. He woke up from surgery and exhibited normal behavior but died sometime that night. Veterinary necropsy was inconclusive.

From January 26-31, 2021, four penguins died. The Zoo ruled out defective food, medicine, or housing. Veterinary necropsy would show that three had died from a “hemolytic crisis” (destruction of red blood cells) while a fourth had aspirated fluid into its lungs. Relying on data from other penguin deaths at other zoos, UW Veterinarian Dr. Mary Thurber suspected two possibilities: (1) an unknown toxic element of the antifungal drugs given the penguins to prevent a common fungus, *Aspergillus*, or (2) an unknown virus.

On October 24, 2021, Karama the female hornbill was found partially eaten in a combined exhibit with her mate, Mosi, and three meerkats. Veterinary

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<sup>9</sup> The AZA specifically recommends use of a median life expectancy table for “[p]reparing to talk with the media about a death of an animal, to put that animals’ [sic] death in context of what is typical for the species.” [www.aza.org/species-survival-statistics](http://www.aza.org/species-survival-statistics), last visited Sep. 25, 2022.

necropsy was inconclusive. Karama had been part of the shared exhibit for eleven months. Mosi remains in the shared exhibit.

March-June, 2021	Goat Hooves	Management and zookeeper dispute over status of goat hooves and responsibility for trimming them.
Jan. 13, 2022	MM quits	MM writes an exit interview complaining about conditions at the Zoo.
Feb. 17, 2022	TW quits	TW writes an exit interview complaining about conditions at the Zoo.
April 16-24, 2022	Wisconsin State Journal articles	The Wisconsin State Journal publishes two articles about the Zoo. The first, <sup>10</sup> published online April 16, is described by the Resolution as “an in-depth investigation of the zoo...” The second, published April 24, is an editorial calling for an independent investigation.

The article is perhaps not the “in-depth investigation” that it appears to be at first glance. For example, the article frequently cites TW's exit interview (using TW's full name) as a source, but TW declined to be interviewed. The article appears to rely on no other sources except for MM.<sup>11</sup>

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<sup>10</sup> The article is available online here:

[https://madison.com/news/local/investigations/racism-dead-penguins-and-retaliation-why-the-vilas-zoo-lost-its-only-black-zookeepers/article\\_592c16e0-ace4-57b5-872e-d3d223063385.htmlom](https://madison.com/news/local/investigations/racism-dead-penguins-and-retaliation-why-the-vilas-zoo-lost-its-only-black-zookeepers/article_592c16e0-ace4-57b5-872e-d3d223063385.htmlom)

<sup>11</sup> The article says that it relies on “written exit interviews, other interviews, documents and emails ...”, however, it is perhaps more helpful to use the process of elimination to explain what information the article did not rely on:

TW, on whose written exit interview much of the article is based, declined to be interviewed. So too, did Director Schwetz and other senior Zoo managers, except for Curator Jess Thompson, who provided only limited information about the animal deaths discussed in this summary timeline. The Employee Group Representative, meanwhile, “declined to speak about conditions at the zoo on the record ...”

May 4, 2022	Mukasa / Braxton Report	Kabura Mukasa, Dane County Human Resources Manager, and Carrie Braxton, Dane County Manager of Equal Employment Opportunity, issue a "Summary of Henry Vilas Zoo Workplace Investigation April 14-26, 2022." Mukasa and Braxton interview employees and develop sixteen "themes and suggested improvements."
June 2022	Dane County Resolution	Dane County passes 2022 Resolution 016 authorizing this Independent Investigation.
August 2022	Investigation begins	The County signs a contract with Bailey Legal Services, LLC. The investigation which is the subject of this report begins immediately.
Aug. 16 - Sep. 23, 2022.	Personal interviews	Zoo employees, former employees, and former volunteers are interviewed in-person, by Zoom, or by telephone.
Sep. 12, 2022	Survey	Zoo employees are emailed the anonymous HVZ Staff Climate Survey. Deadline for responses is Sep. 23, 2022.
Sep. 12-16, 2022	Week with AZA inspectors	AZA Investigators visit the Zoo for an inspection resulting from the newspaper articles. Judge Bailey-Rihn is at the Zoo.
Sep. 19-26 2022	Final Interviews	Judge Bailey-Rihn and Joseph Balles conduct interviews, attend Zoo events and final meetings.

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Thus, the only actual source for the article appears to be MM and one anonymous zookeeper identified only by his race.

# BACKGROUND INFORMATION GATHERED

## I. Personal Interviews

The primary information relied on in the creation of this report comes from the words of those closest to the Zoo. Almost immediately from the time the County hired me, up through September 23, 2022, I interviewed dozens of Zoo employees, former employees, former volunteers, and professionals from related fields, for example, the AZA investigators who visited the Zoo during the week of September 12-16, 2022.

The contents of those interviews were not recorded. Instead, these interviews proceeded as informally as possible, guided by necessary questions, but otherwise allowing each person interviewed to share their knowledge. I then reduced the interview to written notes. Those notes will not be part of this public report.

However, the information gathered in my interviews is consistent with the survey results. No one indicated that they had personally been subject to or observed overt racism at the Zoo other than the one “Chinese food incident.” Many qualified that statement by indicating they were not in a protected category, and therefore, could not speak to someone else's experiences. Several felt that people were being discriminated against based on employee group participation or by participating in the grievance process. However, others felt just the opposite. Many employees feel that the Employee Group has not only failed to serve the best interest of the employees, but that its leader has been a hostile and toxic individual.

The two former zookeepers of color also told me that they were not subject to overt racism but felt that there may have been some microaggressions and implicit bias. The



first, MM, acknowledged that he had made mistakes, and that his disciplinary probation had been extended, but felt that he did not receive the help that he could have received to be successful. He also believed that he had made mistakes because he was a relief keeper for all areas of the Zoo with the increased likelihood of making mistakes. He said that it was harder for individuals to relate to a person of color than to someone who looked like them. He said that when he made the mistake with the lion and tiger, he was disciplined more than the other zookeeper who also made the mistake.

The second zookeeper, TW, was well-liked at the Zoo and had very good reviews. She had concerns about animal welfare and recounted a few incidents she believed would also constitute microaggressions, as discussed below.

Many more individuals that talked to me were concerned about the perceived favoritism that exists at the Zoo. For example, some zookeepers worked difficult assignments while others had lighter assignments. Other employees discussed favoritism in terms of the amount of discipline, such as coaching notes or oral reprimands, which were given to some individuals, but not others, for the same behavior. Other perceived issues related to removing individuals from their preferred working environments for mistakes that were made, and unequal treatment given out for mistakes.<sup>12</sup>

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<sup>12</sup> As alluded to earlier, employees refer to “discipline” inconsistently. Zoo management appears to have involved both human resources and the corporation counsel’s office for all issues that rise to a level of “discipline” under the handbook.

## II. Survey of Zoo Staff

The second source of information on which this report relies is a confidential survey. On September 12, 2022, seventy-two staff connected with the Zoo were emailed a link to an online survey (“the Survey”). Forty-seven completed at least part of the Survey. The result is a tremendous amount of both quantitative data and qualitative responses by up to forty-six of the respondents, who, as a group, comprise all levels of Zoo employees.<sup>13</sup> Appendix 3 contains an in-depth analysis of the Survey results.

The first question of the Survey asked employees to rate how concerned they were about each of the six issues identified in the Resolution. The results show that the Zoo employees, for the most part, share the County’s concerns. However, as observed by one of the two-dozen Zoo employees who wrote in with additional comments on this initial question, “I find all of the allegations themselves extremely concerning, however my answers reflect how concerned I am about their accuracy.”

To best respond to the issues presented by the Resolution, therefore, I do not focus on the allegations themselves. Instead, I begin by turning to those parts of the Survey and interviews which demonstrate evidence, or the lack of evidence, supporting unfair employment practices under the law. However, as I will repeat several times in this report, just because a practice is *lawful* does not mean that practice is *useful*. In other

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<sup>13</sup> The forty-six respondents included:

- 7 Managers,
- 18 Zookeepers / Animal Caretakers (out of 19 total),
- 16 Education and Operations,
- 4 Concessions Operations Staff,
- 1 “Other” (this respondent then specified by writing in “N/A”)

An additional three respondents participated in the Survey but declined to answer.

words, no law requires an employer to make its employees feel welcome, nor does any law foster important objectives like meaningful career progression, respect, or mentoring, but of course, these practices should be encouraged. For deeper examination of the Survey's specific results, readers should turn to Appendix 3.

### III. Inspection by the AZA

The final source of information on which this report relies is my discussions with the AZA inspectors who visited the Zoo from September 12-15, 2022, plus the documentary record associated with their report. I must rely entirely on the AZA, or the USDA's limited report on capybaras, because I have no ability to independently determine how best to treat animals. Insofar as I report on, and recommend practices for, animal welfare, I rely on the AZA and USDA.

## CONCLUSIONS

Having set forth the purpose of this report and the way I gathered evidence, I now turn to the questions posed by the Resolution. I proceed in four broad sections addressing whether my investigation has found any (I) unlawful employment practices, (II) including a hostile work environment, (III) violations of the Employee Benefits Handbook, or (IV) animal mistreatment.

## I. Discrimination

This first section addresses four of the Resolution's issues: allegations concerning racial discrimination, unequal discipline based on a protected category, and retaliation for union activity and whistleblowing. These are unlawful. There is no evidence the Zoo has done any.

I stress at the outset that while I construe the Resolution to seek answers about these issues according to Wisconsin's legal framework for employment laws, the purpose of this report is not to evaluate the merits of potential legal claims for discrimination. Accordingly, the proceeding section consists of two parts: First, I set forth the legal standard for what an employee alleging discrimination must prove to be entitled to relief under the law. Any rational search for evidence of discrimination should begin in the same places a discriminated employee would search. Second, I explain what, if any, evidence meets that standard. Put another way, this section of the report answers two very specific questions: (1) what evidence must a discriminated employee provide? and (2) does it exist at the Zoo?

### A. Legal Standard.

State, county, and federal law all prohibit employment discrimination. The Wisconsin Supreme Court has held that the "message is clear: in Wisconsin, discriminatory employment practices against properly qualified individuals are forbidden.

The legislature has declared this to be a right of all the people.”<sup>14</sup> Similarly, the United States Supreme Court has recognized a “federal policy of prohibiting wrongful discrimination in the Nation's workplaces and in all sectors of economic endeavor.”<sup>15</sup> Dane County Ordinances echo these protections.<sup>16</sup>

In support of these policies, Wisconsin prohibits employers from “any act of employment discrimination ... against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, military service, [etc.]”<sup>17</sup> “Discrimination” is specifically defined under several of those categories,<sup>18</sup> but in general, “discrimination” means: “To refuse to hire, employ, admit or license any individual, to bar or terminate from employment or labor organization

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<sup>14</sup> *Watkins v. LIRC*, 117 Wis. 2d 753, 763 (1984) (discussing the Wisconsin Fair Employment Act, Wis. Stat. §§ 111.31 et seq.).

<sup>15</sup> *University of Texas Sw. Med. Center v. Nassar*, 570 U.S. 338, 342 (2013) (discussing the federal Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.). Under federal statute, an employer may not “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(1).

<sup>16</sup> Several Dane County Ordinances could apply to this report. For example, § 18.20 prohibits discrimination, while § 18.18(6) prohibits retaliation. Nothing in these ordinances appears to provide any rights broader than those already guaranteed by state and federal law.

There are differences between state and federal employment law. *McMullen v. LIRC*, 148 Wis. 2d 270, 275-76 (Ct. App. 1998). However, this report need not become an academic treatise on real or imagined differences between these overlapping protections. See *Lindas v. Cady*, 150 Wis. 2d 421, 428 (1989) (noting our “similar state-created employment discrimination laws.”). For brevity, I generally avoid citing duplicative provisions.

<sup>17</sup> Wis. Stat. § 111.321.

<sup>18</sup> See e.g. Wis. Stat. §§ 111.33 (specifically defining age discrimination); 111.34 (disability); 111.35 (use or nonuse of lawful products); 111.36 (sex and sexual orientation).

any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment ...”<sup>19</sup>

An employee alleging discrimination has the option of proving his or her case by two “distinct evidentiary paths.”<sup>20</sup> The first evidentiary path is “the presentation of direct or circumstantial evidence of disparate treatment ...”<sup>21</sup> The second path does not require direct evidence, instead, it proceeds according to a three-step process. In the first step, the employee must demonstrate: “[1] that he or she engaged in protected activity, [2] was subject to adverse employment decisions, and [3] that there was a causal connection between the two facts.”<sup>22</sup> Then, in the second step, “the employer may rebut the claim of retaliation by articulating a legitimate, nondiscriminatory reason for its action.”<sup>23</sup> Finally, in the third step, “if the employer meets that burden, the employee may prevail by

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<sup>19</sup> Wis. Stat. § 111.322.

<sup>20</sup> *Kormoczy v. Dep’t of Hous. & Urban Dev.*, 53 F.3d 821, 823-24 (7<sup>th</sup> Cir. 1995).

There are other, related claims for discrimination referred to as “disparate impact” and “pattern or practice” claims. *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015) (citing *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003) and *Teamsters v. United States*, 431 U.S. 324 (1977).).

This report generally does not discuss these sorts of claims because there is no evidence they might apply. That is, there is no evidence of any “neutral policies, which although applied evenly, impact more heavily on a protected group.” *Racine Unified Sch. Dist. v. LIRC*, 164 Wis. 2d 567, 594-595 (Ct. App. 1991). Even if there was such evidence, the purpose of this report is to recommend new policies, not to advise potential litigants of a potential cause of action arising under old policies.

<sup>21</sup> *Jones v. Baecker*, 2017 WI App 3, ¶30, 373 Wis. 2d 235.

<sup>22</sup> *Kannenberg v. LIRC*, 213 Wis. 2d 373, 571 N.W.2d 165 (Ct. App. 1997) (citing *Acharya v. Carroll*, 152 Wis.2d 330, 340, 448 N.W.2d 275 (Ct. App. 1989).). These cases address claims under Wisconsin’s employment law but claims under federal employment law are handled the same way. See e.g. *Klein v. Trustees of Indiana University*, 766 F.2d 275 (7<sup>th</sup> Cir. 1985).

<sup>23</sup> *Id.*

presenting evidence that the proffered reason was a pretext.”<sup>24</sup> An employee who proves discrimination is entitled to be made whole, including prejudgment interest on any back pay<sup>25</sup> as well as reasonable attorney fees.<sup>26</sup>

## B. Evidence of Discrimination.

I next apply the evidence gathered during this investigation to the legal standards for discrimination. This is a two-step process, repeated for each category of discrimination, in which I first answer whether there is direct or circumstantial evidence of discrimination. In brief, I find none of this kind of evidence. Second, I apply the *McDonnell-Douglas* framework to answer whether there is any disparate treatment and whether that disparity has a legitimate basis.

### 1. I find no evidence of discrimination based on race.

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<sup>24</sup> *Id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). In the cited case, the United States Supreme Court created what has since become known as the “McDonnell Douglas test.” That case involved racial discrimination, although the same framework applies to other discrimination cases. See e.g. *Young*, 575 U.S. at 228 (pregnancy discrimination); *Kormoczy*, 53 F.3d at 823 (familial status discrimination); etc.

Briefly put, the *McDonnell Douglas* burden-shifting test follows these steps:

(1) the employee “must carry the initial burden under the statute of establishing a prima facie case of ... discrimination.” *McDonnell Douglas*, 411 U.S. at 802.

(2) “[t]he burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee’s rejection.” *Id.*

(3) the employee: “must be afforded a fair opportunity to show that [the employer’s] stated reason for [employee’s] rejection was in fact pretext.” *Id.* at 803.

<sup>25</sup> *Anderson v. LIRC*, 111 Wis. 2d 245, 260 (1983).

<sup>26</sup> *Watkins*, 117 Wis. 2d at 488 (“it is evident that the authority to award reasonable attorney’s fees to a prevailing complainant is necessary in order to fully enforce and give meaning to the rights created by the Act. The legislature could not have intended the Act to be a meaningless, empty gesture.”).

I find no evidence of any disparate treatment based on race, nor indeed evidence of disparate treatment which would trigger the requirement that the Zoo provide some legitimate explanation. No employee has pointed to any such disparate treatment in either the anonymous Survey nor in any in-person interview. In the Survey, 17 (36%) employees responded that they had ever “personally experienced harassment, bullying, or discrimination” of *any* kind. Of those, only a single respondent classified their experience as “race/ethnicity based.” When expanded beyond “personally experienced” to “witnessed,” a total of four respondents observed race-related incidents. The “Chinese food incident” that occurred in February 2020 was the only incident raised in the interviews, other than the incidents discussed below by the two zookeepers that left.<sup>27</sup>

That only four Survey respondents out of forty-seven reported observing racially motivated harassment, bullying, or discrimination is not the same as saying that there is no racism at the Zoo. It’s still four respondents too many, and regardless of the degree of its existence at the Zoo, many employees are concerned about racism. Furthermore, in early 2022, two employees quit—each performed an exit interview in which they listed “racism” as one of many reasons for quitting.

In the first employee’s exit interview, “TW”<sup>28</sup> checked a box titled “discrimination” as one of several reasons for leaving and also wrote in “racism” as another reason. However, in the long form written responses which followed, TW referred only to *other*

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<sup>27</sup> The “Chinese food incident” was an isolated incident in which a nearby restaurant’s fare was referred to as “ching chang food.” This was addressed at the time it was made known to the Zoo Director. The Equal Employment Opportunity and the Human Resources Offices have worked with the Director to implement several training and other initiatives to resolve these types of issues.

<sup>28</sup> TW’s Exit Interview will not become part of the public report.



*non-racially motivated reasons* for discrimination. Those allegedly discriminatory reasons were, according to TW:

- Based on rank in the Zoo organization,<sup>29</sup>
- Based on friendliness with management,<sup>30</sup>
- Based on ability.<sup>31</sup>

In a follow-up interview as part of this investigation, I asked TW to explain examples of racism. TW provided these four examples:

- In 2020, a manager referred to Asian-style cuisine as “ching chang food.”
- During a Martin Luther King, Jr., Day celebration, the Zoo held a potluck at which employees were instructed to bring dishes beginning with the letters M, L, or K (e.g. “Lasagna”). After TW refused to attend, a manager asked how she would celebrate.
- TW used a sick day for a previously scheduled medical appointment. After the medical appointment, TW had her hair done. The following workday, TW overheard a conversation between three other Zoo employees in which TW was referred to as one of several employees using a sick day for possible improper purposes. TW confronted the other employees, one of whom refused to apologize and instead criticized TW for listening in on a private conversation.

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<sup>29</sup> “There is a double standard that exists at HVZ where if a manager makes a mistake, it’s a “learning experience.” If a keeper makes a similar mistake, they are punished in some way.” TW Exit Interview Cmt. 3.

<sup>30</sup> “[D]iscipline’ is arbitrary and only used on keepers that are not in [management’s] good graces.” TW Exit Interview Cmt. 6.

<sup>31</sup> “[K]eepers that manage their time better are given more work.” TW Exit Interview Cmt. 7.

- One manager asked zookeepers to participate in a social media exhibit that would portray the keepers like they were themselves a zoo exhibit. TW refused to participate, responding that the Bronx Zoo had infamously exhibited an African in an orangutan exhibit.<sup>32</sup> The manager found other zookeepers that were not at the table when this was discussed to agree to participate.

The second employee, “MM”, similarly lists “racism” as a reason for quitting the Zoo.<sup>33</sup> However, the written portion of MM’s exit interview again details no actual disparate treatment based on race.<sup>34</sup> When I interviewed MM, he said that discrimination was not overt, but he felt that there was implicit bias. When asked for specifics he indicated that he did not receive the extra help he needed to succeed and to reduce his mistakes. He also said that at one point, he was described as intimidating, which for him meant he was “scary and intimidating” as a Black male. He also indicated that management would discipline employees that were not in favor. He was the first to mention the “just cause” method of resolving mistakes and believes that it would have helped him in his personal situation. MM also stated that he observed a manager speaking about TW in the third person, and when pointed out she was sitting right there, said he didn’t see her because she was wearing a brown hoodie.

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<sup>32</sup> For several weeks in September 1906, Congolese immigrant/abductee Ota Benga was exhibited in the Bronx Zoo.

See e.g. <https://www.npr.org/templates/story/story.php?storyId=6225825>

<sup>33</sup> MM’s exit interview will not become part of the public report.

<sup>34</sup> MM wrote: “Treatment of employees is extremely unequal. Anyone who speaks their mind can expect harsher discipline [etc.] ...” MM Exit Interview Cmt. 12.

None of these are evidence of discrimination because none of these involve any “discharge,” “promotion,” or an employer’s changes to “compensation” and “terms, conditions or privileges of employment.”<sup>35</sup> One of these zookeepers admittedly had several issues prior to having been removed from big cats in 2019.<sup>36</sup> The second zookeeper involved in the cat incident was orally reprimanded because it was his first mistake. The other zookeeper to leave in 2022 was respected and was considered a “star” employee.

According to TW, across the United States, approximately only 4% of zookeepers are persons of color. That the Zoo was unable to keep two diverse zookeepers is concerning. The Zoo has already taken steps to address these issues. The Henry Vilas Zoo 2022 Workplace Plan, attached as Appendix 4, has detailed sections dedicated to diversity, discrimination, access, and inclusiveness. This plan, developed by the Zoo Director along with the Manager of Equal Employment Opportunity and the Human Resource Manager, lists steps that have been taken and continue to be taken to attempt to welcome inclusiveness and diversity and prevent inappropriate comments. I refer the reader to Appendix 4 for the specific steps being taken to address these issues.

2. I find no evidence of discrimination based on labor group affiliation.

I find no evidence of any disparate treatment based on labor group affiliation. Even if there was evidence of disparate treatment which would trigger the requirement that the Zoo provide some legitimate explanation, it would be met here.

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<sup>35</sup> TW clarified that she did not know whether these were examples of discrimination or merely “microaggressions” or she was simply being too sensitive.

<sup>36</sup> This keeper indicated that he would have left in 2019 but there were no job opportunities before COVID-19 swept the country, so he did not find a new job until 2022.

The most vocal employee alleging Employee Group discrimination is the representative for the Employee Group. I interviewed him twice—once with my investigator, once alone—and asked him to provide me with any documentation that could demonstrate unequal treatment. This information has been reviewed by both my investigator and me to determine if it evidences discrimination. I have also reviewed emails and documentation of issues concerning the individual by others.

I also interviewed other individuals who believed that the Employee Group representative was being targeted for his activities. When asked for specifics, these individuals pointed to how the representative had committed infractions but was treated differently. They believed that they were treated differently, too, and had been removed from their preferred areas because they align with the Employee Group. They admit that they have made mistakes that resulted in their removal but felt that the punishment was excessive. Although it is difficult to separate the two concepts, this appears to be favoritism based on each individual (e.g., “works well with others”) and not discrimination based on any group (e.g., “member of Employee Group”).

For example, the Employee Group representative claimed that the currently unfair treatment stems from his election to representative in 2018. There have been several issues raised with this individual after 2018 that have occurred, including issues regarding clothing that others have not experienced. However, a co-worker accused the Employee Group representative of harassment arising from a dispute in 2016, which he vigorously denies. This issue arose prior to his election. Management was involved with this individual for other pre-election issues dating as far back as 2012.

In addition, numerous employees report harassment *from* the Zoo's Employee Group.<sup>37</sup> Others indicated that they have left the Employee Group as a result of the current Employee Group representative. They felt that the representative was not supporting all of the employees and was fomenting a hostile work environment. They were also afraid of retaliation by him if they spoke up.

In sum, while competing inferences might be drawn from this evidence, I find the allegations of disparate treatment based on union activity at the Zoo to be implausible and further rebutted by evidence showing treatment based on pre- and post-Employee Group participation.<sup>38</sup> This does not mean that there is no perceived favoritism at the Zoo, only that there is no evidence that Employee Group participation, or any other group identity, is at the heart of the matter.

3. I find no evidence of discrimination for any other reasons.

I find no evidence of any disparate treatment based on sex, whistleblowing, disability, pregnancy, age, or any other category recognized by county, state, or federal law. For similar reasons already discussed, there simply is no direct or circumstantial evidence of "discrimination" based on any identifiable factor.

To illustrate with a single example, a pregnant zookeeper was placed on lifting restrictions by her doctor. She told Zoo management, who re-assigned her away from her ordinary work into work with guest services. She alleged that other similarly situated employees had the option of continuing to work as keepers, and in fact, states that

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<sup>37</sup> The Survey Q15 asked for "other comments about ... discrimination?" Several employees specifically referenced the Employee Group.

<sup>38</sup> Only an actual audit of all disciplinary records would be able to shed any additional light on this issue-although, again, County HR and others have been involved in all actual disciplinary proceedings.

another recently pregnant zookeeper had continued working in her assigned area. The allegation is serious in the sense that a valuable employee was sufficiently displeased with the Zoo's system for accommodating her medical restrictions that she felt compelled to complain, or perhaps because it represents misallocation of a highly trained and motivated employee. However, as an allegation of unlawful employment practices, it is self-defeating: the pregnant zookeeper herself identifies the Zoo does not treat pregnant women differently from other non-pregnant women. In other words, all those similarly situated (lifting restrictions) appear to be treated consistently. Regardless, input by the zookeeper and a flexible attitude could help resolve these types of issues.

## II. Hostile Work Environment

### A. Legal Standard.

Both state and federal law also prohibit a “hostile work environment,” which occurs when “a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.”<sup>39</sup> To establish a hostile work environment, an employee must show harassing behavior targeted against a protected class “sufficiently severe or pervasive to alter the conditions of [their] employment.”<sup>40</sup> In other words, a hostile work environment

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<sup>39</sup> Wis. Stat. § 111.36(1)(b).

<sup>40</sup> *Pennsylvania State Police v. Suders*, 542 U.S. 129, 133 (2004).

“is composed of a series of separate acts that collectively constitute one unlawful employment practice.”<sup>41</sup>

## B. Evidence of Hostile Work Environment.

I find no evidence of a hostile work environment because I find no evidence of conditions sufficiently severe to “interfere substantially” with work performance nor any evidence of the sort of hostile work environment prohibited under the law.<sup>42</sup>

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<sup>41</sup> *Bowen v. LIRC*, 2007 WI App 45, ¶12, 299 Wis. 2d 800 (internal citations and quotations omitted, citing *Nat'l Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002) and 52 U.S.C. § 2000e-5(e)(1)).

<sup>42</sup> The standard for a hostile work environment is typically much higher than “microaggressions.”

For example, in *Suders*, a supervisor (1) “would bring up the subject of people having sex with animals each time [the female employee] entered his office,” (2) said that “young girls should be given instruction in how to gratify men with oral sex,” (3) “would sit down near [the female employee], wearing spandex shorts, and spread his legs apart,” and (4) “repeatedly made an obscene gesture in [the female employee’s] presence by grabbing his genitals and shouting out a vulgar comment inviting oral sex.” *Suders*, 542 U.S. at 135.

As another example, in *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 19 (1993), a supervisor (1) “often insulted [the female employee] because of her gender and often made her the target of unwanted sexual innuendos,” and (2) “told [the female employee] on several occasions, in the presence of other employees, ‘You’re a woman, what do you know’ and ‘We need a man as the rental manager’; at least once, he told her she was ‘a dumb ass woman,’” and (3) “threw objects on the ground in front of [the female employee] and other women, and asked them to pick the objects up.”

As examples from Wisconsin, in *Bowen v. LIRC*, 2007 WI App 45, 299 Wis. 2d 800, an employee complained of “5 months of daily sexual harassment,” including (1) “a bumper sticker placed on [his] tool box ‘Honk If Your [sic] Gay,” (2) “a newspaper article about Liberace” placed on his locker, as well as (3) graffiti of “queer” on his locker.

In *Kannenberg v. LIRC*, 213 Wis. 2d 373 (Ct. App. 1997), an employee complained (1) “pictures of nude and scantily clad women had been commonly displayed around the workplace,” (2) obscene drawings and cartoons, including drawings of a penis, were left in her work area, (3) and “on at least one occasion, she was directly addressed as ‘bitch.’”

That there is no evidence of a hostile work environment does not mean that the work environment at the Zoo is perfect. The problems with the Zoo's work environment are simply of a different nature. Unsurprisingly, these are the same sort of problems any organization will face over a sufficiently long period. For example, there is evidence that on one occasion, an employee shared a website supposedly about amphibian conservation with another employee. The site was pornographic.<sup>43</sup> Another example of distasteful remarks is that a manager allegedly referred to a zookeeper's experience growing up on a farm as "just milking cows" and demonstrated milking cows with his hands. Another was asked if she was breast feeding by a male peer. All these comments are inappropriate but isolated.

While certainly distasteful, there is no evidence this conduct interfered with any employee's actual work or was part of a series of acts sufficiently pervasive to alter conditions of their employment. Again, it appears that the Henry Vilas Zoo 2022 Workplace Plan (Appendix 4) is addressing these types of incidents through training and other initiatives.

### III. Violations of Employee Handbook

#### A. Legal Standard.

In addition to the employment laws discussed above, the Resolution asks me to "determine whether policies, including those in ... the Employee Benefits Handbook, are

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<sup>43</sup> Confidential survey Q11 cmt. 2.



being carried out ...”<sup>44</sup> The Employee Benefits Handbook (“the Handbook”) is a 104-page guidance document intended to “(1) provide management with the information necessary to fulfill its responsibilities to its employees; and (2) to provide for fairness and equity in the treatment of employees.” Handbook, p. 1. To these ends, the Handbook is divided into approximately sixty page-long sections each addressing a narrow topic ranging from one-sentence explanations (how to handle employees asking to take time off to vote on election days? “they shall be granted reasonable time off...” Handbook p. 100) to step-by-step, detailed explanations for complying with the County grievance process. Handbook pp. 26-29.

Only two Handbook sections bear any particular relevance to this report. The first is titled “Open Communication.” Handbook p. 56. The Open Communication policy reads, in relevant part:

At Dane County, we believe that communication is at the heart of good employee relations. Employees should share their concerns, seek information, provide input, and resolve work-related issues by discussing them with their supervisors until they are fully resolved. It may not be possible to achieve the results an employee wants, but the supervisor needs to attempt to explain in each case why a certain course of action is preferred.

*Id.* The second relevant Handbook section is titled “Discipline, Suspension, and Discharge.” Handbook p. 16. This section provides that: “Employees shall not be disciplined, suspended or discharged without just cause.” *Id.*

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<sup>44</sup> Each Employee Group has its own handbook. A complete copy of the handbook for Employee Group 65 is available online:

<https://admin.countyofdane.com/documents/emprel/pdf/DC-EBH--2020-final--65-1-11-21.pdf>

## B. Evidence

There is no evidence that employees have been disciplined, suspended or discharged without just cause. Management has involved the County's Human Resources Director and Corporation Counsel for all discipline issues. Although some individuals believe that discipline is unequal (but may not have access to all information), no one has alleged that issues have been trumped up or invented.

However, again there is a perception of favoritism that does not improve relationships at the Zoo. Much of the alleged unfair discipline seems to relate to allegations that people are treated differently in how they are talked to by a supervisor or manager with respect to a mistake. One person could be provided with a written "coaching note" as corrective action by a supervisor or manager, and another person for the same or similar behavior might simply be verbally told "don't do it again." Without an in-depth assessment of each event, it is hard to determine whether the supervisor's or manager's response to the conduct is appropriate for the event. What some employees perceive as "discipline" is perceived by others as supervisors or managers doing their jobs and administering corrective actions. Nonetheless, Zoo leadership should monitor corrective actions to better ensure they are consistent, fair, and equitable across all workgroups.

While a person may believe or perceive they are unfairly treated because of their work assignment, lack of help when needed, or level of acceptable work performed, these issues are not a "legal" or "handbook" issue but more a management issue. The recommendations below regarding communication and the "just cause" method of resolving mistakes may help with this management issue going forward.

## IV. Animal Mistreatment

I do find some limited evidence of past animal neglect or mistreatment. I adopt the findings of external evaluations by two agencies with knowledge in this area. On June 3, 2022, the USDA cited the Zoo for its treatment of capybaras, although the USDA also acknowledges that corrective treatment has since been taken. On May 31, 2022, the AZA requested information on several animal deaths and has indicated that the reports were misleading and/or false. The Zoo has compiled those reports and awaits a formal response. For now, the AZA's only concern regarding animal welfare is to repeat its 2019 "major concern" that: "Many animals spend an inordinate amount of time in small indoor enclosures ...."

However, the AZA and the USDA are not the only experts on animal treatment. I repeat that the Zoo's keepers are almost uniformly recognized as knowledgeable and effective stewards of the Zoo's animal population. When asked about any concerns about animal welfare currently, there were limited examples. A concern was expressed about the seals' eyesight. When I asked the AZA inspectors about this issue, they indicated that seals have eye issues that are hard to address. According to them, it is not clearly understood why seals have eye issues. It could be the pool color, more shade may be necessary, or other issues such as saltwater versus freshwater—there is just not a clear answer. Although the seal pool color may contribute to the problem, repainting the pool will be very expensive. Management is aware of the issue and is attempting to budget in the cost, and to provide permanent shade, which will also help. These changes perhaps have not come quickly enough for some.

A second complaint was that primates are stored in the basement of the primate building and never on display. When asked, Management indicated that the primates are bush babies, which are nocturnal. The Zoo houses the animals as a favor for another institute but does not display them because the Zoo is not generally open to visitors during nighttime. A simple discussion of this issue should help clear up the confusion.

In sum, while I must acknowledge the external reports of animal mistreatment, I decline to offer any further recommendations in this area for two reasons. First, as I have acknowledged, the purpose of this report is not to offer an objective viewpoint on animal welfare as an expert on the topic. For this purpose, the AZA and USDA are authoritative.

The second reason I decline to offer any further recommendations on animal treatment is because based both on interviews and survey data, the Zoo employees are not only relatively confident in their ability to care for animals, but most concerns in this area appear to be themselves the effect, real or perceived, of administrative problems. For example, several keepers complain about the system in which they are assigned to certain animal groups. The result is an inefficient allocation of sometimes inexperienced keepers. In addition, a better flow of communication could eliminate individual concerns in a timely manner. In other words, it appears that the best way to resolve animal welfare problems at the Zoo, to the extent any exist, is by resolving human resource problems in how Zookeeper assignments are made.

## RECOMMENDATIONS

Below are some recommendations that I believe may be of use for the Zoo. These recommendations are compiled from the interviews, survey, discussions, and documents

made available to me. I want to emphasize the passion, energy and thoughtfulness of the Zoo employees that took time out of their hectic days to talk to me. They care deeply about the Zoo and want to see it succeed. These suggestions may improve morale and overall wellbeing of the Zoo employees and management, but they are not legal issues. The major concerns are communication, cross training, and equal treatment for discipline and work assignments. Other concerns were inclusiveness, security, veterinarian services and integration of all the employees. Some of the comments made to me are more in the form of a “wish list,” but I have included them because they are worthwhile to consider.

## 1. Restructure the Zoo’s Organizational Chart

My first recommendation is to restructure the Zoo’s chain of command to reflect its massive growth in the last few years. In 2018, the AZA “tabled” the Zoo’s accreditation. The Zoo had been accredited for over thirty years, so this was a concern. In essence, having the accreditation “tabled” meant that the Zoo needed to correct certain things within a one-year-period to maintain their AZA accreditation.

As a result of the AZA’s concerns about the relationship between the Henry Vilas Zoological Society (“the Society”) and the Zoo itself, the Zoo “divorced” itself from the Society. The official split occurred in April of 2019 after the Zoo and Dane County declined to renew their contract. As a result of the split and the AZA’s recommendations, the Zoo hired several additional zookeepers and had to take over all of the staffing the Society had previously provided. The staffing of the Zoo approximately doubled between 2018 (21 positions) through 2020 (30 positions) and into 2022 (39.5 positions).

During this period, most of the management team turned over except for the Director. In addition, new management was added, including two zoo managers and another lead zookeeper. Employees that previously worked for the Society were hired by the Zoo and a new operations director was hired. This rapid growth caused both growing pains and concerns about the ability of the promoted individuals to handle their new responsibilities. In addition, most of the growth occurred in the COVID-19 era, which created additional challenges not previously faced by any organization.

Currently, the Zoo's animal care staff consists of fifteen zookeepers, two vet. techs, and two lead keepers. These staff are supervised by two zoo managers, a curator, a deputy director, and the director. Under this structure, five people supervise nineteen professionals and yet a common concern by the frontline individuals is a lack of communication from management and a lack of training. To streamline this organization, the lead keepers (perhaps add one or two more) should be responsible for their duties but also act as a mentor to new employees, or to those employees that are new to or have not recently worked in an area. This could help with the cross-training concerns. The lead keepers or zoo managers, to the extent they have not already received it, should be trained on how to train individuals in a consistent manner.

The zoo managers' decision-making authority regarding personnel or animal welfare issues should be more clearly defined, reserving to the Director authority for any decisions not within their ability to decide.<sup>45</sup> Many employees have a good relationship with the Director, and this would improve morale immediately.<sup>46</sup> This does not mean that

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<sup>45</sup> A current Henry Vilas Zoo flowchart and a proposed flowchart is attached as Appendix 5.

<sup>46</sup> Similarly, the operations manager should report to the Director since he is overseeing a department.

the Curator and the Deputy Director would lose input into these decisions, but it would eliminate the perceived delay in obtaining a decision and reduce perceived favoritism. Many employees believe that the Deputy Director and the Curator exhibit favoritism and poor management skills. Many individuals also express concern that once a request is made, it goes into a “black hole,” and if they get a response, it is “no” with no explanation. As such, having decisions clearly defined and the decision-making clearly defined may help with these issues. It is also my understanding that the Zoo is planning on sending management to training classes to bolster their skills.

Other suggestions were to have managers shadow or perform some zookeeping functions so that they have a good understanding of the ground-level issues faced by the zookeepers. This may also be a role for the lead keepers who can act as a conduit between zookeepers and the managers, if necessary.

As to the Curator and Deputy Director, they have strengths better utilized in areas other than personnel discipline decisions, at least at this time. The Curator is responsible for the Standard Operating Guidelines<sup>47</sup> that should be available to all zookeepers to perform their duties. She is involved in the collection planning and other responsibilities. She is also looking into the “Just Cause” method of discipline and could oversee creating that process at the Zoo. This method, with management development, could help reestablish zookeepers’ trust.<sup>48</sup>

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<sup>47</sup> To the extent a Zoo Policy and Procedure containing all Standard Operating Guidelines does not exist, a version should be developed.

<sup>48</sup> As one employee put it, “managers come from zookeepers, who like working with animals-that’s why they are zookeepers in the first place. As a result, they don’t have management skills and need to develop them.”

The Deputy Director has done a tremendous job of obtaining funds for the veterinary hospital on the premises and is a good fundraiser, so his strengths would be well utilized in those areas as well as in budgeting. He could also assist in restarting the I.R.S. sec. 501(c)(3) organization that would assist in obtaining necessary funding for the zoo.

## 2. Gather Input by Zookeepers and Others on Key Decisions

My second recommendation is to improve communication between Zoo employees, especially by allowing more input on key decisions. Many employees feel that management does not listen to them, let alone allow meaningful input into decisions that affect the entire Zoo. The zookeepers and vet. techs are the most knowledgeable about the animals in their care. In this unique environment, a team approach that properly values this knowledge is absolutely necessary. To the extent possible, their input should be solicited and respected, even if ultimately rejected. The reasons for the decisions made should also be communicated to all that have provided input. This is crucial to the development of trust and a team-oriented work climate.

One great way for the Zoo to start this process is already being implemented: all who are interested—zookeeping staff, vet. techs, horticulturists, operations personnel and others—are involved in the giraffe building project. This will ensure the best outcome for the animals. Other projects, such as collection planning, should also involve those who will be working in that area, including the horticulturist and vet staff.

Wednesday lunch meetings with veterinarians, vet. techs, and managers should also be open to the zookeepers since these meetings discuss longer term issues. The



zookeepers should feel comfortable discussing animal care with the veterinarian and vet. techs directly, as well as discussing it with the Zoo's managers.

All individuals should feel comfortable asking questions and receiving answers on a timely basis. Because employees are busy and do not have access to email all day long or may look at an email and then be immediately diverted elsewhere, the zoo manager meetings that occur daily could be used to ask for suggestions/questions. If an answer cannot be given immediately, it should be followed up on.

Similarly, at the all-staff meetings, it would be helpful to have key areas (operations, education, volunteers, zookeepers, horticulture, etc.) occasionally provide a short update as to what is going on in their respective areas. This may help the flow of communications. Also at these meetings, questions can be solicited and if not able to provide an answer immediately, follow-up to the question should be given in a timely manner. The Zoo Director is walking the grounds to address issues and meet with employees in their areas to learn, observe and discuss issues with employees. This appears to be a positive step in opening communication flow.

The Operations Director should have meetings with all employee reports together so that they can discuss concerns and ask for help if needed among the various tasks being performed. With operations staff increasing significantly in recent years, various roles are still being defined and worked out. Regular meetings (once a week) may help with workflow and processes.

Bigger items, such as possible changes to schedules, work assignments, and budget issues should have input solicited by a survey (which seems to work effectively at

the Zoo), to gain input from employees.<sup>49</sup> After the survey results are compiled, this would be a good starting point for a discussion at an all-Zoo meeting. This would avoid having proposals “sprung” on individuals at the annual meet and confer meeting.

Another idea would be solicit employee input regarding capital improvements/changes they would like to see in their areas (a yearly “wish list”). Discussion of the suggestions would allow all areas of the Zoo to see what issues affect other areas. This would also give individuals an understanding of the budget and limitations in resources the Zoo faces and the requirement to prioritize projects. This type of communication would also help eliminate the perception that changes are only done because AZA requires the change.

The other committees currently in place at the Zoo should have clear processes as to how a person is chosen to be on the committee, clear term limits, and responsibilities. A diverse community member should be recruited for the DEAI committee. A diverse community member on the Zoo Commission should also be seriously considered.<sup>50</sup>

The animal welfare committee should have clearly defined roles and a process for how issues are reported to them. A second suggestion, which management is looking into, is a third-party reporting agency to which people can report concerns anonymously. This will eliminate concerns about retaliation for reporting legitimate animal welfare concerns.

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<sup>49</sup> Alternatively, some sort of committee to discuss future projects and workforce issues could be developed to allow input from all areas of the Zoo.

<sup>50</sup> This report does not make detailed suggestions regarding DEAI matters because the Workforce Plan covers these issues in depth and the two County departments that are working with the Zoo are obviously more experienced in this area than I am.

### 3. Eliminate Claims of Favoritism with “Just Cause”

My third recommendation is to revisit work assignments and to implement the “just cause” method for resolving issues. As discussed above, a common theme is that favoritism exists at the Zoo. Specifically, employees perceive that management prefers certain employees, who then receive easier assignments and less corrective action. Some indicated that there was a double standard: if a management-level person made a mistake they were not held accountable but a similar mistake by an employee would result in corrective action. A possible resolution of this issue would be to investigate and implement a “just cause” system for corrective action, which seeks to determine why a mistake was made and how to avoid it in the future instead of punishing the person immediately. The Denver Zoo indicated that since it implemented this process, self-reporting has gone up and infractions down. In essence, it is a way to increase communication and correct mistakes without the fear of “punishment” (e.g., corrective action by supervisors or management) for innocent mistakes.<sup>51</sup>

The perception that “if something is wrong, someone will get blamed,” must end. Obviously, the Zoo is an extraordinary place to work where an ordinary mistake such as a lock not being on a cage can have an enormous consequence. But the answer to a mistake should be “how do we prevent it in the future,” not “who is at fault so that we can blame them,” even if no “corrective action” is given out. As such, I encourage implementing a system that allows for self-reporting without making it seem like an investigation to assess blame. Hopefully, this system will eliminate people’s fear that they

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<sup>51</sup> This is not to say individuals do not receive discipline in appropriate circumstances, but for the most part, the focus is on corrective measures, not punishing individuals for making a mistake.

will be punished for a mistake and instead provide a team approach to prevent problems from occurring in the future.

In addition, the “just cause” system could eliminate the perceived or real favoritism complaints regarding “corrective action” since the process will be explained to everyone and followed by everyone equally. This may also allow individuals a chance to remain working in an area they enjoy even if they make a mistake. The important point is that it may provide consistency in responding to mistakes and provide for a better functioning operation.

Similarly, many zookeepers complained about their work assignments. A survey was developed to reassign work assignments, with mixed results. It appears that it is not being followed because of the sick calls, which are a significant concern of both management and employees. In addition, some employees believe that work assignments could be better organized to aid those who have greater responsibilities. Again, some of the employees feel that their input was not taken into account and a frank discussion at the zookeepers meetings may clear the air in this regard, and a review of the work assignment plan may be warranted if necessary.

#### 4. Dealing with Limited Resources

My fourth recommendation is to remedy problems caused by outdated buildings and the Zoo’s overall limited resources. The Zoo’s geographical boundaries are relatively small and fixed. Some of its buildings are relatively old. Attempts to provide suitable upgraded habitat for the animals is an ongoing challenge. For example, the African penguins are leaving for another zoo that can house a penguin population greater than

what is within the Zoo's capacity. Another reason for the removal is that the building they are housed in cannot be cleaned of a virus that appears to harm the penguins. Loss of a valued species to another zoo is not uncommon: in recent history, both the elephants and chimpanzees were transferred to a different facility. All of these decisions were made because of concerns about animal welfare, even though they may have been difficult decisions to make.

The buildings may have been suitable when they were built; however, the current set up for the animals in the winter months is not ideal. Currently, the rhino, giraffe, capybara, and perhaps the otters and other animals have substandard winter homes. In addition, the seal pond was painted an incorrect color and better permanent shade is needed to help the seals. All of this is known to management staff, who are attempting to prioritize the capital requests. However, if not addressed, these concerns may become an issue when the next scheduled AZA inspection occurs in 2023.

These resource issues will need to be addressed or difficult decisions will need to be made about the welfare of the animals. Either a non-profit arm of the Zoo should be set up to raise funds or the County should prepare to increase the Zoo's budget significantly. This non-profit initiative was placed on hold because of the investigation, and it is my hope that this report will resolve those issues so that this project can go forward.

I also note that the Limited Term Employees ("LTE") play a key role in covering for individuals out sick, on vacation and on medical leaves. They also are not limited to

working every other weekend.<sup>52</sup> Interns are used much the same way. This practice is designed to provide LTEs and interns with experience and Zoo managers with scheduling flexibility, but LTEs often exceed their hour limitations. Additional LTEs may be necessary to help with staffing coverage and workflow.<sup>53</sup>

## 5. UW Veterinary Care and Reporting Animal Welfare

My fifth recommendation is to update and, if possible, expand the Zoo's contract with the University of Wisconsin School of Veterinary Medicine ("the UW") and implement a system for reporting animal welfare concerns. The contract between the Zoo and the UW will expire in 2024. The relationship has been a successful one but there has been a concern that the UW veterinarians should take the lead in recommending treatment options for animals. There is a perception that management makes treatment decisions instead of the more knowledgeable veterinarian. A clear demarcation of the veterinarian's responsibility would be helpful.

Another issue raised was continuity of care by the same veterinarian(s) so that they better understand the individual animals in their care. Finally, there is some concern that more veterinary care hours are needed. None of these issues detract from the fact that the current care is excellent; however, a fresh look at the contract may be warranted now instead of waiting until the contract is about to expire. Allowing some members of

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<sup>52</sup> Several employees mentioned the pay, benefits, and every other weekend off as a positive aspect of working at the Zoo. The weekend off schedule does make scheduling difficult and others indicated having two consecutive weekdays off would be nice.

<sup>53</sup> The workforce plan attached as Appendix 4 has suggestions on attempting to recruit interns and LTEs of color. Another suggestion was to seek LTEs from AZA instead of from word-of-mouth referrals.

the Zoo to visit the Lincoln Park Zoo and the Milwaukee Zoo to observe their veterinarian program would be helpful to expand the knowledge base as well.

## 6. Standardize Processes

My sixth recommendation is to standardize the Zoo's processes to the greatest extent possible. A Zoo Policy and Procedure Manual with a clear Vision and Mission statement should be developed. Some employees feel uncertain as to what they should do in certain situations when management is not on the grounds (weekends, nights, etc.). Guidance in those situations, such as responding to a critical incident or questions regarding the health of an animal, is essential.<sup>54</sup> Similarly, having updated Standard Operating Guidelines for the animals in the Zoo Policy and Procedure Manual is important so that a new keeper, or one that has not been in the area for a while, could turn to it for guidance. Other thoughts expressed were to limit zookeepers to areas of specialty (3 or 4 areas only), even for relief keepers, so that they can feel comfortable with their assignments; but on the other hand, others liked the variety and experience of working in many areas at a small zoo.

Cross-training was also mentioned frequently. This is an area that should be addressed by management to ensure that Zookeepers receive the training they need to succeed. LTEs and interns also need training. For individuals that are training the LTEs and interns, they should receive credit for their efforts. Finally, a desire was also

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<sup>54</sup> Someone should be designated as a communications point person, if possible, for critical incidents and other high-profile issues.

expressed for standard diets for the animals by way of a program that either designs zoo diets for the animals or provides an onsite nutritional expert.

## 7. Security Concerns

My seventh recommendation is to further research and, where possible, improve overall Zoo security. Several employees listed security as a concern on the Survey, both during the day and at night. Fully half of the Survey Respondents responded “No” when asked if the Zoo had “enough security”:

ANSWER CHOICES	RESPONSES	
Yes	19.57%	9
No	50.00%	23
Unsure	30.43%	14
TOTAL		46

Survey Q36 fig. 2.

Having a dedicated security person on staff during the day was suggested because of occasional guest issues (and they could better handle time-consuming lost child issues that managers currently handle), and better lighting in the parking lots at night. Installing cameras was also a suggestion to improve security at the Zoo. Several felt that additional security at night was needed, and that one security guard was insufficient. Security is an area that could be discussed at an all-employee meeting so that it can be prioritized with the other projects that need to be undertaken.



## 8. Improve Communication About Maintenance

My eighth recommendation is to improve communication with the Zoo's operations department regarding frequent maintenance issues. Maintenance has a lot of responsibilities. While I was at the Zoo, some of the soffit on the carousel building fell off unexpectedly. These types of events can disrupt a workday plan but there have been complaints about repairs falling through the cracks. A computerized system that allows for prioritizing tasks may be helpful to prioritize and communicate maintenance issues. If there is an urgent need for maintenance, a system to communicate that to maintenance should be put into practice.

## 9. Zoo-Wide Training and Support for Employees

My ninth recommendation is to provide more Zoo-wide training on inclusion, civility in the workplace and team building. The comments expressed by individuals show a real concern about bullying and hostility by peers and others. However, it is not simply management that is making inappropriate remarks, it is also employees. These comments and lack of respect between managers, staff and co-worker to co-worker simply needs to stop. Some are spreading rumors with information that is not true or taken out of context. When pressed and investigated it becomes clear that information is presented in the form of half-truths. Thus, the training proposed for all staff by the HVZ Workplace Plan is necessary and appropriate.

In addition, the stress the Zoo has been under, and the stress caused by COVID-19, is real. This is leading to behaviors that are not appropriate for managers or employees. The hallmarks of a good manager are transparency, calm under stress and

a genuine desire to listen and respond to input from employees. Some of these attributes may have been lost in the sheer attempt to survive the intense scrutiny by the public, and the pressure COVID-19 put on all organizations. Coping techniques to aid individuals in being a better manager and employee are sessions that I would recommend, if available. In addition, emphasis on the resources available to employees dealing with difficult issues, including the death of animals in their care, is also important. A session on what is available may be a helpful reminder to those that are struggling.

## 10. Opportunities for Advancement and Growth

My tenth recommendation is to restart employees' access to opportunities for advancement and growth.<sup>55</sup> Now that travel restrictions are easing, employees should be encouraged to participate in seminars and other opportunities to increase their knowledge base and bring back fresh ideas to the Zoo. They should be encouraged to present a short summary of what they have learned in the all-staff meetings to foster communication and collaboration.

Processes in place for zookeepers to attend educational conferences and similar events should be provided to staff on a regular basis so that they understand that they all have opportunities to advance in their profession. Advancement and professional success can be defined in ways other than simply being promoted. Recognition that zookeepers are valuable employees and contribute their expertise by becoming stud book keepers, and experts in their area of knowledge is important, since advancement to management positions at a small zoo is limited. Recognition for the informal mentoring and helping

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<sup>55</sup> During COVID-19, these opportunities were naturally diminished.

others that is occurring is also important. A person's years of experience should be utilized as a tool for LTEs and interns and recognized as such.

Equally, the other employees of the Zoo should have opportunities to attend conferences and similar events to learn best practices in their areas. As mentioned, advancement and growth should not be limited to promotions, it can take many other forms. Allowing employees to develop expertise in specific areas is also a way to develop talent.

## FINAL THOUGHTS

I hope that this report has been useful. I do want to emphasize that the issues experienced by the Zoo over the last four-plus years have been challenging. Regardless, the staff has continued to function and provide excellent care to the animals entrusted to them. They have been placed under a microscope and portrayed negatively in the public eye, often without merit. The employees feel that there has been no response from the County rebutting these allegations, and that someone needs to do so. Both management and employees have made mistakes, all organizations do, but continue to show up for work and represent the Zoo in a positive way. I am impressed by the knowledge, care, and professionalism of the individuals at the Zoo. Hopefully, these suggestions will aid the County and the Zoo in continuing to be a gem of the County and will allow individuals to focus on the path ahead.

Sincerely,

/s/ V.L. Bailey-Rihn

Honorable V.L. Bailey-Rihn (ret.)