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INDIANA AFL-CIO

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Union Workers at Indianapolis Water prepare for forced strike

Company won't allow workers to continue work under extended contract.

Some 200 union members of Local 131 of the National Conference of Firemen & Oilers are preparing for a forced strike spurred by Veolia Water, the French-owned company that has been contracted to oversee the city's water operations.

A federal mediator is currently working with union representatives and management to avoid a work stoppage on Friday. However, Veolia has built guard shacks and temporary orange fencing at the water company's downtown headquarters in preparation for a strike.

The contract between Local 131 members and Veolia expires at midnight Thursday and they remain at an impasse on health care and pensions issues, according to the union's leadership. Union members voted overwhelmingly last month, 164-12, to reject Veolia's contract offer and give their leadership permission to strike.

The contract dispute centers specifically on employee benefits and the company's attempts to phase out the defined-benefit pension plan. It wants to cut off offering the plan to new employees.

The company won't allow workers to continue under the existing contract, which already has been extended, said a company spokeswoman. She said employees could work without a contract or go on strike. Alternatively, the company may try to impose a contract based on the last and best offer.

Fencing and security posts have been erected at other company sites as well. The company has apparently prepared for a forced strike and began drawing up its plan last August.

Labor relations at the water company have been strained since the city bought the utility from NiSource two years ago for $522 million. The city then awarded a 20-year, $1.08 billion contract to USFilter Corp., a subsidiary of Veolia, to manage water operations.

Shortly after being awarded the contract, nonunion employees at the utility filed a federal lawsuit in August 2002, alleging officials broke a promise to maintain pension, health care and other fringe benefits for 225 employees when the city purchased the utility. The suit claims that USFilter has reduced benefits, costing workers an average of $10,000 a year.

Unionized employees have had their benefits protected under the contract for the past two years but now have to fight to keep them. Unfortunately, that fight may come in the form of a strike forced upon workers by the company.

home

Utility critics say buyouts drain talent
After 2 years, city's water deal still under fire

By Scott Olson
IBJ Reporter

Two years after the city purchased the former Indianapolis Water Co., its manager is no longer bound by an agreement to keep roughly 200 non-union employees on staff.

As a result, about 30 of them have accepted a buyout offer that includes six-months pay and are in the process of leaving, including nine members of the engineering department. There are no plans to offer another package, according to Tim Hewitt, president of the city-owned utility Veolia Water Indianapolis LLC.

But former water company executives wonder whether the utility has lost valuable experience.

Mayor Bart Peterson, who led the charge to acquire the company's assets, stands behind the utility's manager, California-based Veolia Water North America.

He said the two-year agreement was included in the contract to offer the employees some protection during the transition in ownership.

"It's not for [the city] to tell [Veolia] how many employees to have," Peterson said. "If we were going to do that, we shouldn't have contracted [operations] out in the first place."

The city closed the deal April 30, 2002, by paying $515 million to buy the utility from Merrillville-based NiSource Inc. Peterson cited a decades-old law allowing the city first rights to negotiate a "fair" value for the water company. The city awarded a 20-year, $1.1 billion management contract to Veolia, called USFilter Corp. at the time.

Former IWC President Joseph Broyles, who retired a year before the city completed its transaction, doesn't like the changes. He cited the pension plan no longer available to non-union employees as an example, noting the company used to promote union workers to non-union, supervisory roles. That way, they already knew the system and could be called upon in case of an emergency, he said.

"Who would be so foolish as to give up the protection of the union and take a pay cut, losing the pension and benefits in the current scheme, to become a supervisor?" Broyles asked. "It's a strange situation."

Non-union employees who lost their pension in the ownership change are suing the city and Veolia in an attempt to recover $50 million they claim they will lose in benefits over the next 25 years.

Meanwhile, union employees fighting to keep current benefits are embroiled in a 4-month-old contract dispute with management. A federal mediator will attempt to settle the squabble during negotiations scheduled for May 4-6.

Opponents complain Veolia has driven away water company veterans whose utility experience is irreplaceable. All of the 12 officers either left before the transaction was completed or are gone now. The company in June hired Hewitt, who had been president and CEO of the former Indiana Gas Co. He offered no apologies for the company's management style.

"Nearly all of these employees worked for a regulated utility," he said. "That era ended May 1, 2002. These employees of the old, regulated utility are working for a for-profit company. There has been a lot of change that has surfaced because of that."

Veolia waited until late last year to begin offering the buyout package so employees could have a chance to become acclimated to Hewitt's management style. Otherwise, he said, "100 or 200" employees might have accepted the package. The utility has 191 non-union employees.

Hewitt said the company will continue to search for ways to become more efficient. Service won't suffer, he said, because Veolia has to meet certain incentives to collect the entire amount of its contract with the city.

But critics cite the lawsuits, the union contract dispute and the buyout package to bolster their argument that employee morale is suffering under the current regime.

Alan Kimbell, a former vice president who retired from the water company in 1997, agreed with Broyles.

"I am really concerned about the capacity of who's left there," he said. "There's a bench-strength issue."

Kimbell served on the seven-member Indianapolis Board of Waterworks until June, when he resigned under pressure because he's a plaintiff in the non-union employees' class action against the city and Veolia.

The waterworks board oversees water company operations for the city. Beulah Coughenour, a former City-County councilor who supported the purchase and who now chairs the board, said the board would take action if its members didn't think Veolia was performing up to expectations.

"I absolutely still think this is one of the best things we did for Indianapolis ratepayers," she said. "If someone else bought it, you would have no say. You can't fire them if they buy it, but you can fire them if they run it."

At the time, the $1.1 billion contract was the largest of its kind and was cited as a model for future public-private partnerships. Indianapolis is one of only a few large municipalities that contracts the operation of its water utility to a private firm.

But problems surfaced quickly, first in the water company's billing unit. The president of the water company, chosen by Veolia, left amid the turmoil. The city is seeking $2 million from NiSource in a lawsuit to recoup its investment to fix the billing snafus it claims it inherited from the previous owner.

Another suit filed against the city on behalf of local taxpayers claims its acquisition of the water company violates the Unigov statute. The taxpayers argue management of the utility should have been placed under the same public charitable trust that operates Citizens Gas & Coke Utility. The city has moved to dismiss that suit and the one brought by the non-union employees.

Supporters of city ownership, however, cite a five-year rate freeze, investments to control taste and odor problems, and customer service improvements as positive developments a private owner could not guarantee.

"I continue to believe it was a good deal for the people of Indianapolis," Peterson said. "We got off to a little [bit] of a rocky start, but had [the city] not bought it, we would have seen massive rate increases."

home

Court date set for USFilter dispute

By Velda Hunter
The Facts

Published April 11, 2004

ANGLETON — The city of Angleton wants to go to court.

But the company that used to run its wastewater treatment plant and street maintenance doesn't want to see that happen.

A judge will have the final say when the two make a court appearance May 10 to see whether the dispute will go into litigation or arbitration. That's after a failed mediation attempt.

The city says USFilter, now called Veolia Water, breached its contract by not hiring enough employees to run the plants and maintain streets, by not submitting annual capital project reports and improperly charging expenses to the maintenance and repair budget.

USFilter denies those allegations, saying the decision to end the contract was driven by city politics not its performance. The company wants to go through arbitration to settle disputes, given that's the process outlined in the contract.

"We just feel like this situation is extremely unfortunate," said Christie Kaluza, a USFilter spokeswoman. "We feel we have maintained a stellar record in Angleton."

Angleton City Attorney Keith Vaughn disagrees.

Vaughn said the contract was terminated for lack of performance. The city wants USFilter to pay about $1 million for street maintenance, drainage and mowing services he said the company never provided.

"We think we should be in court instead of arbitration," Vaughn said. "When the people on the jury see what they've done to us, they will come back with a favorable response for the city."

Affidavits filed at the Brazoria County Courthouse by USFilter state the company's project manager told an employee to tell others to "take anything belonging to the city" when the city announced it was taking over the plant Jan. 5.

Employees took city property, including a mower and welding machine, according to one affidavit. However, the manager told an employee to tell others to return the property after learning the city didn't plan to take over that day, court records show.

Some items are still missing.

Kaluza called the claims made in the affidavits "completely false." When the city terminated the contract and took over operations, Kaluza said city officials locked the doors, taking possession of $50,000 worth of USFilter equipment, including vehicles.

But a relationship gone sour hasn't slowed workers from getting the job done, despite a brewing legal battle.

The city has been in charge of the plant and street maintenance since January when council members terminated the USFilter contract. The takeover brought few challenges, said David King, assistant public works director.

"It was just a matter of doubling the workforce, but it was a smooth transition," King said. 77

"We've gotten back up to what they had." USFilter had 16 workers, and most of the city's employees are former USFilter employees. More training wasn't necessary, he said.

City Administrator Michael Stoldt said operations since have been going well. But to say the city has received no complaints wouldn't be true, he said.

"You're always going to get some complaints from the community," said Robert Heinemeyer, public works director.

The complaints are typical of most cities — sewer back-up during heavy rainfalls. But overall, the community seems to be happy with the service, Heinemeyer said.

However, the city was fined $5,250 by the state last week after levels of ammonia, nitrogen, zinc and suspended solids exceeded what is allowed at the wastewater treatment plant in March 2003 and May 2003. The violations occurred while the plant was run by USFilter.

Both the city and USFilter said the violations had been corrected. Kaluza said the violations occurred during an aeration upgrade.

"We got fined for just the ammonia level, which was high due to the construction that was going on," Kaluza said. "We immediately called the state on both accounts and corrected the issue. ... The plant had 99 percent compliance in 2003."

Severn Trent, the city's contractor specializing in water and wastewater services, visits the site, monitors operations and helps correct problems, said Angleton Mayor Matt Sebesta. The company stepped in during the transition and helped correct an ammonia problem the plant had for a few years, he said.

Since the takeover, there have been some operational changes, such as aeration adjustments to keep bugs alive in the system, given the treatment process is biological, said Olga Flores, an operator.

"We're working to do the best we possibly can," Flores said.

DATE: August 31, 2005

TO : Rosemary Pye, Regional Director
Region 1

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Veolia Water
Case 1-CA-41838 240-3333-8750

This case was submitted for advice as to whether the Region should continue to process this charge, which it had deferred under Collyer. We conclude that the Region should dismiss the charge, absent withdrawal, because the Union forfeited its right to present the unfair labor practice issue to the Board by conceding before the arbitrator it had no contractual claim and withdrawing its grievance.

FACTS

AFSCME Council 93 represents employees at Veolia Water's wastewater treatment plant located in New Bedford, Massachusetts. In November 2003, during the term of a collective bargaining agreement, the Employer unilaterally reduced the level of benefits in the contractual dental plan without notifying the Union, offering to bargain with the Union, or obtaining the Union's consent. When confronted by the Union, the Employer maintained that the contract merely precluded it from changing the insurance carrier, which it did not do, but was silent on maintenance of the level of benefits.

On January 9, 2004,[1] the Union grieved the change. On June 8, the Region deferred the charge in accordance with the deferral policy under Collyer Insulated Wire.[2]

On October 14, the parties met in arbitration. The Employer asserted that the contract merely limited the Employer's right to change insurance carriers, an action it did not take. Accordingly, the Employer argued that it did not violate the contract and thus that the arbitrator had no jurisdiction over the Employer's conduct. The Union interpreted the Employer's position as a renunciation of its prior agreement to proceed with arbitration. Under that interpretation, the Union withdrew its grievance. Instead, the Union asked the arbitrator to resolve the merits of the instant Section 8 (a)(5) charge. The Employer, however, argued that the arbitrator should not rule on the merits of an unfair labor practice charge.

The arbitrator issued his decision the same day. He initially noted that "the Union acknowledges that its grievance does not raise an issue under the parties' collective bargaining agreement." Thus, he denied the grievance. As to the merits of the Board charge, he further noted that, "the Employer contends that the only issues properly before me is an alleged violation" of the contract. Accordingly, the arbitrator concluded that he had no authority to expand upon his contractual jurisdiction to resolve the unfair labor

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practice issue.

The Union subsequently requested that since the arbitrator did not reach the merits of the contractual or statutory issues, the Region should continue processing the charge.

ACTION

We conclude that the Region should dismiss the charge, absent withdrawal, because the Union forfeited its right to present the unfair labor practice issue to the Board by conceding at arbitration that it had no contractual claim and withdrawing its grievance.

In United Technologies,[3] the Board extended its arbitration deferral policy set forth in Collyer Insulated Wire to cases alleging violations of Section 8(a)(1) and (3) and 8(b)(1)(A) and (2). The Board in United Technologies noted that it was fundamental to the concept of collective bargaining that the parties to a collective-bargaining agreement are bound by the terms of their agreement. Where the parties have agreed to a voluntary dispute resolution machinery culminating in final and binding arbitration, "it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt by the parties to resolve their disputes through that machinery."[4] The Board concluded that the statutory purpose of encouraging the practice and procedure of collective bargaining would be ill served by permitting the parties to ignore their agreement and to seek from the Board relief in the first instance. Accordingly, it is well-settled Board policy not to pursue unfair labor practice charges where a charging party "fails either to promptly file or submit the grievance to the grievance/arbitration process, or declines to have the grievance arbitrated if it is not resolved."[5]

In this case, the Union withdrew its grievance at arbitration based on its peculiar interpretation of the Employer's defense. The Employer contended at arbitration that the Union had no contractual claim, and thus that the arbitrator had no jurisdiction, because it had not changed the identity of the insurance carrier. The Union interpreted the Employer's substantive response to the grievance as a renunciation of its agreement to accede to arbitration. Consequently, the Union simply withdrew its grievance rather than present its case in chief. In his decision, the arbitrator characterized this transaction. According to the arbitrator, the Union asserted that its grievance did not raise a contractual issue, even though the Employer acknowledged that the grievance was "properly before" him, but meritless nonetheless.

By withdrawing its grievance in response to the Employer's contractual defense, the Union failed to pursue arbitration. Rather than attacking the Employer's contract interpretation, the Union simply withdrew its contract claim and asked the arbitrator to resolve a statutory Section 8(a)(5) question instead. It would frustrate national labor policy as set forth in United Technologies and reiterated to the Charging Party in the Region's Collyer deferral letter to permit the Union to force the Board to reassert jurisdiction over this unfair labor practice charge, where the Union

[6]

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withdrew a colorable grievance at arbitration. The Board should not permit its Collyer-United Technologies deferral policies to be frustrated in this manner; a contrary result would reward the Union for its dubious judgment.

In these circumstances, the Region's reassertion of jurisdiction over the instant charge is not warranted. The Region should therefore dismiss this charge, absent withdrawal.

B.J.K.

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[1] All dates are in 2004 unless specified otherwise.

[2] 192 NLRB 837 (1971).

[3] 268 NLRB 557 (1984).

[4] 268 NLRB at 559.

[5] See NLRB Casehandling Manual Part One - Unfair Labor Practices at Section 10118.6 ("Pattern for *Collyer* Deferral Letter") (Government Printing Office September 2003). The Region sent the Charging Party a letter containing these instructions upon deferral of the charge. See also Spann Building Maintenance Co., 284 NLRB 470 (1987) (upon remand from court of appeals, Board modified order to provide that jurisdiction over deferred charge is retained in order to determine whether either employer or union resists or impedes prompt processing of charging party's grievance to arbitration).

[6] Of course, since arbitration is consensual, the Union could not compel the Employer to agree to arbitrate the alleged Section 8(a)(5) violation.

NEWS

Troubled Water

Six questions about the Indianapolis Water Company deal

Jack Miller

In April of last year, the City of Indianapolis paid $515 million to purchase the Indianapolis Water Co. (IWC) from utility holding company NiSource. Some observers, including members of the City-County Council and the Indianapolis Waterworks Board, along with employees of the Water Company, still question the deal.

They say the city?s actions taking charge of this crucial public resource were severely compromised by the way the purchase was handled and by the city?s decision to hire USFilter, a large multinational corporation, to manage the IWC. Some workers, consumer groups and lawmakers are even exploring ways, including a lawsuit, to take management of the IWC away from USFilter.

Others inside city government may be belatedly questioning the terms of the deal. Kobi Wright, special assistant corporation counsel for the City of Indianapolis, confirms that the city has already made a claim for damages against NiSource for violating promises regarding the billing system and other matters.

There is not yet any evidence that the quality of water Indianapolis residents consume has changed significantly since the sale, yet still people are talking about a bad deal and how to fix it. NUVO has identified six questions about the IWC deal and its aftermath:

? Did the city pay NiSource too much too quickly for the Water Company?
? Who profited from the deal to award the management contract to USFilter?
? What is the track record of USFilter?
? Are promises to IWC employees being kept?
? Is USFilter taking shortcuts to maximize profits?
? Is there a way to remove USFilter from managing the IWC?

Did the city pay NiSource too much
too quickly for the Water Company?

NiSource is a utility holding company based in Merrillville, Ind. As a condition of Securities and Exchange Commission approval of its 2001 merger with Columbia Energy, NiSource was compelled to sell IWC. Alan Kimbell, a retired IWC executive and one of seven members of the Indianapolis Waterworks Board, which oversees the Water Company?s management, is critical of the way the city handled the purchase. ?The city allowed NiSource to out-negotiate them from beginning to end and paid too much for this utility,? Kimbell says.

NiSource gave the city until April 2002 to close the deal or they would put the utility on the open market. But this deadline was essentially meaningless, Kimbell says. The city had the legal right to condemn the utility and take it over, so no private interests would have even considered a bid, he says.

The chronology of the purchase offers support for Kimbell?s claim that NiSource ?took us to the cleaners.?

? 1997: NiSource purchases IWC for $288 million from local investors.
? 2000-2002: NiSource recoups part of its investment by selling off IWC assets, at a profit of $118 million.
? April 2002: NiSource sells remaining IWC assets to Indianapolis for $515 million.

Since NiSource retained $80 million of long-term IWC debt and the city took on $132 million of the same, it appears that the city handed NiSource a net gain of over $250 million. To Kimbell, this represented ?the largest bond issue ever by the Bond Bank or city for any purpose whatsoever ? and it had one hearing at the [City-County] Council and they didn?t want to give it a full hearing at that.?

The city and the Indianapolis Bond Bank paid over $8 million to consultants, appraisers and lawyers, ostensibly in an effort to secure taxpayers the best possible deal. Kimbell speculates that the city?s advisors may have acted hastily to close the deal and collect their fees. ?Their consultants ? engineering and financial and bond underwriters and bond lawyers smelled a pot of gold ? so let?s do it fast,? Kimbell says. ?It was their interest ? not the public interest, and they used the cover of the NiSource threat.?

City officials say that they bought the utility for nearly $200 million less than the value attributed to it by its former owners.

JoLynn Garing, press secretary for Mayor Bart Peterson, said that she had never heard anyone claim that the city had paid too much for the utility.

?Had it gone out for bid to other companies it would have been sold at a much higher price,? Garing said. ?When utilities go on the market, rates go up,? Garing added. From the city?s perspective, the Peterson Administration was trying to protect consumers? pocketbooks.

Who benefited
from the deal?

After NiSource signed a letter of intent to sell IWC to the city, management proposals for the waterworks were due Feb. 8, 2002. Only 18 days later, after offering the second lowest bid, USFilter was recommended to the Waterworks Board by a review team made up of three staffers of Peterson, three appointees from the mayor and three appointees from then-Council President Beurt SerVaas.

Why was USFilter so successful? Critics point to a link between the Peterson-influenced selection process and the company?s impressive list of prominent Democrat advisors. Those advisors hired by USFilter included Marion County Democrat Party Chair Ed Treacy, former state Democrat Chair Kip Tew and Tom New, former chief of staff for Gov. Frank O?Bannon.

The USFilter proposal also listed former state Democrat Party Chair Robin Winston as leading their Community Oversight Committee. Pat Terrell, former political director of the state Democrats, and Winston?s business partner, was to assist Winston and USFilter in, according to the proposal, ?identifying? issues important to the community at large. Tew, New, Winston and Terrell gave a total of $5,300 to Peterson?s re-election campaign in 2002. Bose McKinney, the law firm which partners in government lobbying with Ed Treacy, deposited $11,250 in the mayor?s campaign war chest during the same year.

Even beyond the consultants? ties with the mayor, the IWC deal spawned a get-a-contract make-a-contribution pattern that gives at least an appearance of quid pro quo. Law firms who worked on the deal were paid over $3.5 million, and gave nearly $40,000 to the mayor?s campaign in 2002. The firms include:

? Sommer and Barnard was paid $2.95 million by the Indianapolis Bond Bank and $109,000 by the Department of Waterworks. Sommer and Barnard?s 2002 corporate and individual contributions to Peterson?s re-election campaign total $10,285.
? Ice Miller was paid $909,000 for bond counsel by the Bond Bank. Three associates gave Peterson?s campaign a total of $7,050 in 2002.
? Baker and Daniels was paid $308,000 by the Bond Bank. Firm members

gave a total of $36,000 to Peterson?s re-election campaign in 2002.
? Bose McKinney was paid $36,000 by the Bond Bank. Firm members gave a total of $11,250 to Peterson?s re-election campaign in 2002.

Engineering firm DLZ Corporation was paid $1.3 million by the Bond Bank for ?due diligence? and $29,000 from the city for ?capital project oversight? on the deal. DLZ?s principals contributed over $18,000 to the mayor?s campaign in 2002. Bowen Engineering of Fishers, Ind., is part of USFilter?s ?core team,? and is identified as a USFilter partner in the company?s December 2001 Letter of Qualification. Bowen associates gave Peterson?s campaign $13,750 in 2002.

Garing, Peterson?s spokesperson, denies that political connections or contributions had anything to do with USFilter getting the management contract. ?USFilter got the contract because they had the best overall package,? she said. ?We felt they were the best company.?

What is the
track record of USFilter?

USFilter, a subsidiary of Vivendi Environnement based in Paris, France, was awarded the 20-year $1.5 billion contract to manage the IWC. (The usual figure quoted is $1.08 billion, but USFilter will get at least an additional $400 million from capital improvements projects.) USFilter impressed the search team, in part, by portraying itself as a company with vast experience in managing large municipal waterworks. This seems to be an exaggeration.

The New York Times reported that when Vivendi bought them in 1999, USFilter lacked experience and had run very few municipal water systems. A week after the purchase, market consultant Frost and Sullivan wondered whether USFilter was a ?large house of cards waiting for a small breeze to make it tumble.?

It turns out that, by its own admission, Indianapolis is the biggest project of its kind USFilter has ever undertaken. The experiences of other cities that have hired USFilter to manage their water systems offer a series of cautionary tales:

? Plymouth, Mass.: A year-old, $50 million sewage treatment plant designed and operated by USFilter has been plagued with problems, including inappropriate discharge of treated sewage, inadequate staffing, ?algae, floatables and scum? in storage tanks, faulty testing, strong odors and pump failure. One city official told the Plymouth Patriot-Ledger, ?I haven?t been happy with anything USFilter has done since I?ve been on the board.?

? New Orleans, La.: After a treatment plant caught fire, USFilter allowed untreated sewage to flow into the Mississippi River for several hours. City officials charge that the company knew there were equipment problems, but did nothing to correct them.
? Moncton, New Brunswick: After accepting junkets to England, France and three U.S. cities paid for by USFilter, city officials awarded USFilter a no-bid contract.
Scott Edwards, vice president of marketing at USFilter, counters that other divisions of Vivendi Environnement are successfully managing large waterworks in Berlin, Paris, London and several U.S. cities. Edwards says that USFilter has addressed all the issues mentioned ? even sending in a corporate ?swat team? to clean up the problems in Plymouth, Mass.

If USFilter has an uncertain waterworks record, it has proven to be quite adept at managing the political process. Until recently, a 20-year privatization contract like the one Indianapolis offered USFilter was unheard of, and cities could lose their tax-exempt status if a contract exceeded five years. After intense lobbying by the industry-sponsored National Association of Water Companies and the U.S. Conference of Mayors, the IRS raised the contract limit in 1997. The impetus for privatization from the mayors? conference seems understandable given the corporations that sit on the conference?s Water Development Advisory Board: American Water Works, United Water (which runs Indianapolis? wastewater treatment plants) and USFilter. The conference?s Web site even has a ?Meet the Mayors? feature ?brought to you by USFilter.?

In the last two election cycles (1999-2002) the water industry tripled congressional campaign spending to $1.5 million. At the same time, the federal lawmakers have passed a tax law favorable to privatization and introduced legislation requiring that privatization be considered before any federal funds are dispensed to improve a public utility?s infrastructure. The money to be spent is substantial. According to industry observers such as the Water Infrastructure Network and the American Society of Civil Engineers, the country?s failing water infrastructure will cost between $150 billion and $1 trillion to repair or replace over the next 30 years. Since the federal government is only investing $3 billion annually, industry and free market advocates are citing that huge shortfall as a reason to privatize the ownership and operation of municipal water systems.

Are promises to
IWC employees
being kept?

In July 2002, shortly after the city closed the purchase deal with NiSource, Peterson sent a letter to IWC employees, in which he made a promise: ?Your benefits, such as vacation and sick time, paid holidays, medical benefits, life insurance and retirement programs, will not change.?

In its management proposal, USFilter also reassured the employees. David Ward, vice president of human resources for USF, vowed that the company would be ?sensitive to the needs and expectations [of employees] ? We tailor and specialize our transition programs to those needs.? Ward said, ?We?re a very family-oriented company from the employee perspective ? lots of outings and social gatherings.?

On May 1, 2002, the former IWC employees all became USFilter employees. Within days of USFilter getting the IWC contract, the employees learned that their most valuable asset, a ?defined benefit? pension, was being eliminated. A ?defined benefit? pension provides a set level of benefits to retirees for the rest of their lives. To cut costs, corporations began eliminating the ?defined benefit? 20 years ago, after lobbying Congress to create ?defined contribution? plans like the 401(k). Ward told employees that a 401(k) could be better than a defined plan, a claim the employees and many financial advisors dispute.

Soon, other employee benefit cuts were announced. USFilter reduced the 401(k) plan to which employees had been contributing, and replaced the popular Anthem health plan with an HMO, which employees say is far more expensive and limits employee choice of doctors. Despite the mayor?s promises to the contrary, life insurance was slashed, vacation days eliminated, personal and sick days and holidays were reduced. The popular scholarship program was eliminated entirely.

There is fear that many employees will be fired or transferred to USFilter?s Culligan division when the company?s contract allows it next year. ?Being fair does not mean having a job for life,? CEO Jim Keene told employees in a speech this February. A few days later, employees received a memo warning them against speaking to the media about USFilter.

Tom Plummer, a 25-year veteran of the waterworks, has filed a federal class action lawsuit against the city. After he criticized USFilter in a television interview, Plummer was summoned by CEO Keene. Plummer says he was told ?any future comments about USFilter operations or city operations and you will be fired.?
Plummer told Keene, ?I?m not going to lie for you.?

The Plummer lawsuit on behalf of employees estimates that USFilter has cut average benefits by over $9,000 annually per employee or $4.3 million a year. The suit also alleges:

? USFilter is converting ?the value of the employees? benefits which have been terminated or reduced, in that the current rate base includes full benefits.? Under Indiana law, conversion is a legal term for theft.
? The city and USFilter committed fraud and made ?fraudulent misrepresentations of the Defendants ?? by promising those benefits.
? The ?city?s bidding process for Waterworks Management Agreement was fatally flawed, illegal and should be set aside by this court.?
The employee plaintiffs are asking for triple the amount of diminished benefits plus attorney fees. If successful, the suit could amount to a substantial judgment against the city. The employees? attorney, John Price, has recently filed an updated lawsuit adding USFilter and three company executives as defendants. The city has refused to settle and now, in an April letter to Price, suggested the attorney and his clients may be held responsible for $200,000 in city legal expenses. Price charges the move is a ?litigation strategy to attempt to chill the free speech rights of my clients.?

In February of this year, the Waterworks Board released a study of employee benefits by Katz, Sapper and Miller, which purports to show the employees have comparable benefits under USFilter. Board member Alan Kimbell charges that the ?report wanders all over the place and doesn?t deal with the issue ? it?s a classic case of garbage in, garbage out.?

When asked about the cuts in employee benefits, USFilter?s Scott Edwards said, ?It?s easy to view us as ogres, but we very closely followed the procurement process the city set forth and went above and beyond.? Edwards said that thousands of dollars were paid to each employee to ?increase benefits and generate good will.? The mayor?s press secretary, JoLynn Garing, agrees. ?We feel [the employees?] benefits are equivalent or better than what they had before,? she said.

Several employees disagree. Many USFilter employees won?t talk on record because they fear reprisals, but Plummer echoes the sadness and rage many of his fellow employees share privately. ?So now I will not have a pension, no health care and when I retire I?ll have to wait until I?m 68 to receive Social Security,? Plummer says.

Bill Stevens, a 72-year-old retiree from IWC, has been hit hard by the changes that USFilter made in health coverage. His medical conditions include diabetes, congestive heart failure and kidney failure. Stevens is forced to file his own Medicare claims since USFilter?s HMO, CIGNA, doesn?t do that. This is especially difficult since he?s also legally blind. His bills at the drugstore have sky-rocketed. When he could no longer afford an expensive stroke medicine, his doctor told him ?aspirin is better than nothing.? Stevens blames Mayor Peterson for a lot of what?s happened. ?I know I?m not going to vote for him,? he says.

Stevens understands he is lucky that Medicare supplements the USFilter plan. One distraught woman, whose husband is a current USFilter employee, is faced with dealing with USFilter?s health plan on her own. The woman, who asked that her name not be disclosed, is outraged at the way USFilter saves money. ?I?ve had to change every single doctor ? I?m behind on medical tests I need to have for my diabetes because of coverage ? plus we?re paying $160 per month for this crappy insurance,? she says. ?When they say it?s better coverage, they?re lying.?

Jim Simons, a retired IWC employee and now a stroke victim, was forced to use duct tape and wooden sticks to repair his braces while waiting months to have new ones approved by CIGNA. Perhaps the most tragic example of the shortcomings of the employees? new insurance plan was revealed in testimony to the Waterworks Board and the Community Affairs Committee of the City-County Council. That testimony told of a woman cancer patient who became so discouraged at the added expense and hassle of changing all her doctors and labs that she quit her therapy and died. Her grief-stricken husband can?t even talk about it.

Is USFilter taking shortcuts to
maximize profits?

Critics say USFilter?s quest for profits doesn?t end with cutting employee benefits. Michael Warburton of the Public Trust Alliance charges that ?USFilter tends to come in, get rid of local expertise and substitute remote judgment; in many cases local capacity to supervise is lost and system failures with far higher costs are possible ? USFilter is known for taking shortcuts to maximize profits.?

That may be happening already in Indianapolis. International Brotherhood of Firemen & Oilers Union President Robert Reed notes that USFilter is already ?worried about getting money? and ?there?s not a whole lot of preventive maintenance or repair that I can see going on.? USFilter is also planning to install a computerized central control system called ?H2O Net.? At the USFilter presentation to the city search team in February 2002, the head technical advisor, John Machisko, said, ?The goal over the next two years is to get H2O Net up and operating ? with more automatically controlled flow of water ? as a way to save energy.?

Why is the project framed with a two-year goal? Coincidentally or not, at the end of those same two years the company is allowed to begin ?downsizing.? Employees suspect that the energy Machisko is referring to is human energy, and that the first layoffs at IWC in 130 years are likely to follow shortly after the automation project is completed.

The employees? union has responded vigorously to employees? complaints about changes implemented by USFilter. In previous years it was unusual for even a single labor dispute to be brought before the National Labor Relations Board. But in less than a single year of USFilter?s management, 14 charges have been brought against USFilter by the union. According to Chris Burton, business manager of the Fireman & Oilers Union, the labor board issued complaints to USFilter on all 14 issues.

One of the most contentious issues involves the office and clerical workers who have been working without a contract since joining the union. The union charges that the company has not negotiated fairly. Union President Bob Reed indicates that an ?informational picket? is being planned within 30 days, with a stronger response possible later in the year. There hasn?t been a full-scale strike at the waterworks in over 25 years, but a strike appears possible in the near future. After recent negotiations broke down, USFilter stated in an April 14, 2003, memo that negotiation ?will become more difficult? now because each side put together the ?best they could do.?

The employees are not alone in their concerns about USFilter?s management of IWC. Customer complaints have more than doubled since USFilter took over, including:

? 15,000 incorrect water bills sent out so far, a number confirmed by a city spokesperson.
? According to an Indianapolis Star report, dozens of fire hydrants froze last winter, after USF cut back on fire hydrant inspections and maintenance. Frozen hydrants prevented firefighters from extinguishing a fire that destroyed a church in Avon, a $70,000 house fire in Lawrence and a $150,000 blaze in Washington Township. The subsequent uproar caused USFilter to inspect 1,200 of the 35,000 hydrants. They reportedly found 400 frozen hydrants with some neighborhoods entirely frozen up. The Indianapolis Water Progress Report for February shows that almost 50 percent more hydrants were repaired during the winter before USFilter took over, despite the fact that the earlier was comparatively very mild.
? McCordsville cancelled its contract with USFilter?s billing arm UDC last December after a string of mistakes.
? In Zionsville, similar problems with billing resulted in calls from irate citizens that made town board members? ?lives hell,? according to The

Indianapolis Business Journal, and prompted Zionsville to consider dumping their contract for USFilter?s sewer billings.
? Environmentalists are disappointed that USFilter rejected a proposed public, scientific and business advisory group designed to give citizens a voice in how the waterworks is operated. Former Environmental Protection Agency official Glenn Pratt alleges that USFilter feels the public ?has no rights to know or ability to participate? in the operation of their water utility. Besides employee benefit cuts, automation and cutbacks in inspections and customer service, capital improvements are an additional opportunity for USFilter to maximize profits in Indianapolis. According to their contract, USFilter ?shall be solely responsible for all activities associated with a Capital Project, including ? planning, all engineering, design, construction inspection/administration, construction and close-out services.? In addition, the contract states, ?The department may be able to fund an amount over $20 million, up to $40 million annually? for the projects, nearly doubling the value of USFilter?s contract. Reed says he is concerned that USFilter will lay off his veteran construction people when they bring in their own Engineering and Construction Division to work on capital improvement projects.

In February, USFilter CEO Keene told employees, ?My view is that we should lay all of the pipe in all the public thoroughfares. We should take it right into the housing developments and right into the homes and we should have a Culligan [a subsidiary of USFilter] home unit right on back of the truck and take it right in all the way.?

That statement strikes Marion County Alliance of Neighborhood Associations board member Clarke Kahlo as an unsettling proposition, considering that USFilter is already supposed to be providing clean drinking water for the public. ?Why should they have to peddle Culligan home units if they are really cleaning the public?s water?? Kahlo asks.

The watchdog group Public Citizen worries about the long-term financial health of USFilter. ?USFilter could find itself cannibalized, squeezed and drained as the corporate parent tries to eke every last drop out of the ?cash cow,?? the group wrote in a recent report. In spite of reassurances from USFilter?s vice president of marketing, Scott Edwards, that Vivendi Environnement is ?one of the strongest companies in the world,? the French corporation reported over $12 billion in debt at the end of 2002. Last year, Vivendi began doing to USFilter what NiSource did to IWC ? selling off chunks of the company to offset debt.

Those sales have altered the company?s image presented in its proposal to manage IWC, where USFilter boasted of ?making a significant contribution to the Indianapolis community through the following business activities:

Culligan Bottled Water, USFilter Distribution Group and USFilter Water.? Seven months later the USFilter family shrank when Vivendi sold off the Distribution Group for $620 million, and its Plymouth Products business for an undisclosed amount. Earlier that year, USFilter?s filter and separation business was sold to the Pell Corporation for $360 million in cash.

The Financial Times reported late last year that USFilter had not turned out to be as profitable as the chairman of Vivendi had hoped, prompting Vivendi to depreciate the value of USFilter by $2.3 billion.

Is there a way to remove USFilter
from managing
the IWC?

A growing grass-roots effort is calling on the city to cancel its contract with USFilter and turn management over to Citizens Gas. According to its contract, the city can terminate the contract with USFilter for various reasons, including ?labor unrest,? ?company default? or ?uncontrollable circumstances.?

On April 24, yet another IWC-related lawsuit was filed, this one in Marion County Circuit Court, charging that state law was ?egregiously violated? by not allowing the public trust Citizens Gas to manage the waterworks. This action against the city was filed by former Water Company employees and asks that all ?control and operation of the Indianapolis Water Company be transferred to the Department of Public Utilities [Citizens Gas & Coke Utility].?

City-County Councilor Jim Bradford also wants the publicly-owned Citizens Gas utility to assume management. ?Having Citizens Gas run the waterworks takes the political shenanigans out of the equation and puts the operation in the hands of the citizens,? Bradford says.

Tom Plummer reports that all the employees he has talked with ?are absolutely thrilled? at the prospect of having Citizens Gas run the waterworks.

Mayoral spokesperson Garing contends, however, that ?the whole Citizens Gas thing is a moot point? because the Indiana Regulatory Commission (IURC) already ruled on and settled the issue two years ago. ?The IURC said there?s no need to have it formed like Citizens Gas and the Department of Waterworks is legal. I?m not sure why that keeps coming up,? Garing says.

But Mary Beth Fisher of the IURC counters that the Citizens Gas issue was never addressed in the settlement agreement ? only the sale of IWC to the city. Fisher said that on March 28, 2002 (one week after the USFilter contract was signed), the city told the IURC that it was hiring USFilter but didn?t ask for, or receive approval for, that move.

Public Citizen, working in coordination with the Indiana Alliance for Democracy, Citizens Action Coalition and Hoosier Environmental Council, is circulating a statement of support to area environmental, labor, faith and community groups to demonstrate to the decision-makers that a broad range of organizations want their water under local public control. The Marion County Alliance of Neighborhood Associations (MCANA) was one of the first grass-roots organizations to sign on.

With elections for mayor and City-County Council only a few months away, the fate of the Indianapolis Water Company ? and the answers to these six questions ? promises to become a major political issue.

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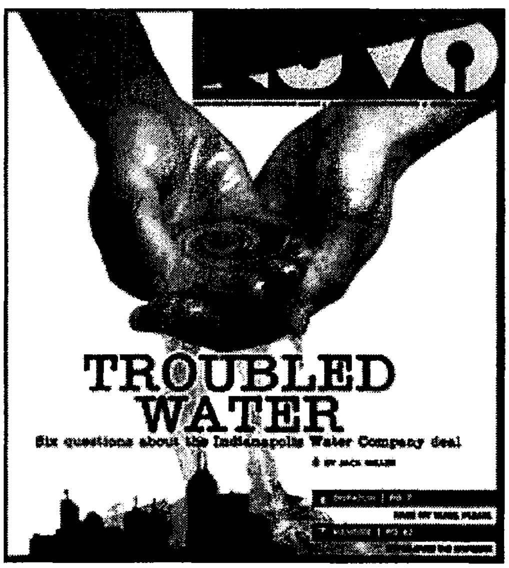
NEWS

More troubled water

Problems plague Indy's water company

Jack Miller

Nearly two troubled years have passed since Indianapolis purchased the waterworks and turned over management to a French-owned company, USFilter (USF). Those two years have seen cuts in employee benefits, two pending lawsuits, sell-offs of corporate divisions, labor unrest with the federal labor board (NLRB) issuing an extraordinary 16 complaints against the company, frozen hydrants, billing errors, customer dissatisfaction and declining employee morale. Most recently, a $6 million sludge facility designed and built by USF was shut down for safety reasons. Critics charge that the facility was poorly designed, has never worked properly and now represents an explosion hazard.



USF has addressed the problem of a deteriorating image in the old fashioned way — it changed its name. Thanks to high-priced consultants and focus groups, USF Indianapolis is now Veolia Water Indianapolis. According to the company, the change was made to "more closely identify with the parent company Veolia Environnement (VE)."

Former USF CEO Richard Heckman boasted in the Membrane & Separation Technology News in April 1999 that one day his company would be the "Wal-Mart of Water." That dream went down the drain when Vivendi bought USF in 1999 for $6.2 billion. Since then, Vivendi has been selling it off piece by piece to pay down its massive debt. Not long after the winning of the Indianapolis contract, three large divisions were sold. The Financial Times reported that USF had not been as profitable as expected and Vivendi was depreciating its value by $2.3 billion. The Culligan division is currently up for sale.

Non-union employees saw their benefits slashed as soon as USF took over in 2002. The accounting firm of Isenberg & Chivington estimates that cuts in retirement, health care and other benefits will cost employees $50 million over the 20-year term of the contract. The IRS has notified Veolia that it cannot approve the company's plan to terminate the valuable defined-benefit pension plan due to pending litigation. In spite of the IRS ruling, a defiant Veolia advised its employees in a March 5 memo, "... because we view the Indianapolis litigation to be merit less ... we will begin the process making distributions within 30 days."

Late last year over 150 veteran Indianapolis employees received separation/severance offers. The buyout offers include 26 weeks of pay, but warn employees, "If you ... sign the Agreement, you will waive and give up both your right to participate in [the pending federal] lawsuit and your right to recover any benefits or damages in the event the plaintiffs ... are successful." It should be noted that this is the same lawsuit the company told the IRS was "merit less."

According to Veolia spokesperson Carolyn Mosby-Williams, the company said the offers were made "in response to employee requests" and so far over 20 employees have taken the offer and have been given departure dates. To date that means that over 60 veteran employees including geologists, draftsmen, operations supervisors and directors have left or will leave soon. Only a few have been replaced and an internal memo orders managers to only fill vacancies that are "absolutely essential." The memo warns that even "essential" positions must be "overwhelmingly justified."

Former IWC President Joseph Broyles worries that the utility has already lost its ability to respond in a crisis. Managers with decades of experience at this utility have left. "We don't have the depth of backup to handle a crisis," Broyles states.

Mosby-Williams contends that "our business is well-staffed and well-managed ... when and if a decision needs to be made on filling open positions, qualified internal candidates will be considered first."

Employee benefits cut

Veolia is trying to get the union to agree to the same benefit cuts that non-union employees were forced to take. The offer decreases health care and eliminates the valuable defined benefit pension for new hires. On Feb. 24, the Firemen and Oilers Union voted 164 to 7 to reject the company's "last, best and final" contract offer. Union President Robert Reed said the company's offer represents a "wedge to slowly erode unity in the union." This means there are currently two distinct and unequal benefit plans at the company (for hourly and salaried employees).

Former President Broyles points out that since the union has superior benefits, there is no incentive for anyone to ever leave field operations and join management. This "guarantees that lower level management will not know the business from the inside," Broyles explains.

Broyles reflected on the near disaster years ago when a collapsed canal threatened the Indianapolis water supply. All the department heads were on the West Coast at a conference and crisis management fell to second tier personnel. Those competent people responded admirably and saved the day. That level of backup is lacking in the present structure, Broyles contends, and the situation is growing worse with each new departure.

An inside source who wants to remain anonymous states that people are being replaced with automation. This is consistent with what Michael Warburton of the Public Trust Alliance told NUVO a year ago. "USFilter tends to come in, get rid of local expertise and substitute remote judgment; in many cases local capacity to supervise is lost and system failures with far higher costs are possible ... USFilter is known for taking shortcuts to maximize profits."

So far all their shortcuts haven't resulted in any profit for the corporation. In its first year, the company lost $7.8 million with $6 million in red ink estimated last year. It is becoming clear that in its haste to land the biggest contract of its kind in the country, the inexperienced USF team underestimated the cost of running a large utility. The New York Times reported that when Vivendi bought it in 1999, USF lacked experience and had run very few municipal water systems.

This may explain why the company that partnered with USF in the bidding process here withdrew. Nick DeBenedictis, president of Philadelphia Suburban, told NUVO that his company realized they couldn't make any money with the bid USF was proposing. DeBenedictis said USF "bid low and hoped that if they achieved certain things [improved water quality, customer service, etc.] that's where their profit margin was."

When asked if eliminating employees was a way that USF planned to save money, he replied, "That's how they all do ... that should be no surprise to anyone ... this is the real world."

City officials are also struggling to make ends meet with their newly acquired waterworks. Out of estimated revenues this year of $109 million, over $34 million goes toward bonds used to purchase the waterworks in 2002. The USF management contract plus other operating expenses takes another $60 million, which leaves only $14 million for capital improvements, according to the April 2002 Umbaugh Report.

According to Broyles, only a few years ago the waterworks capital improvement budget was $50 million to $60 million annually. The current strategy seems to be to add new hook-ups into surrounding counties to sell more water and increase revenues. Unfortunately, that requires even more capital for pipes, mains and pumps.

So where will all that capital come from? Recently, the City-County Council approved a $50 million bond issue to extend service to outlying areas including the Precedent development at 96th Street, owned by Mayor Peterson's family. Some observers suggest a whopping rate increase may be just around the corner.

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