

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48	:	
AMERICAN FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES, AFL-CIO	:	
and its affiliated LOCAL 366,	:	Case CXXXIII
	:	No. 24590 MP-984
Complainant,	:	Decision No. 17051-A
	:	
vs.	:	
	:	
SEWERAGE COMMISSION OF THE CITY	:	
OF MILWAUKEE,	:	
	:	
Respondent.	:	
	:	

Appearances:

Podell, Ugent & Cross, Attorneys at Law, by Ms. Nola J. Hitchcock Cross, 735 West Wisconsin Avenue, Milwaukee, Wisconsin 53233, on behalf of the Union.

Mr. John Kitzke, Assistant City Attorney, 200 City Hall, 800 East Wells Street, Milwaukee, Wisconsin 53202, on behalf of the Commission.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

AMEDEO GRECO, Hearing Examiner: Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and its affiliated Local 366, herein Union, filed the instant complaint on May 18, 1979, with the Wisconsin Employment Relations Commission wherein it alleged that the Sewerage Commission of the City of Milwaukee, herein Commission, had committed certain prohibited practices under the Municipal Employment Relations Act, herein MERA. On May 31, 1979, the undersigned was appointed by the Wisconsin Employment Relations Commission to make and issue Findings of Fact, Conclusion of Law and Order, as provided for in Section 111.07(5) of the Wisconsin Statutes. Hearing on said matter was held in Milwaukee, Wisconsin, on September 26, 1979. Neither party filed a brief.

Having considered the arguments and the evidence, the Examiner makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Union, a labor organization, is the exclusive collective bargaining representative of certain employees employed by the Commission. The Union has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin, 53208. Robert Klaus is a staff representative for the Union and Robert Vandelhei, is the president of Local 366.
2. The Commission, which operates a sewerage facility in Milwaukee, Wisconsin, is a municipal employer and has its principal office at 735 North Water Street, Milwaukee, Wisconsin 53202. Michael Corry serves as the Labor Relations Manager for the Commission.
3. The parties were privy to a 1977-1978 collective bargaining agreement which contained a provision for binding arbitration. Said

contract also provided a Part II, Section C(3), entitled "Contracting and Subcontracting" that:

3. Contracting and Subcontracting. The Union recognizes that the Commission has statutory rights and obligations in contracting for matters relating to municipal operations. The right of contracting or subcontracting is vested in the Commission. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union nor to discriminate against any of its members. The Commission further agrees that it will not layoff any employees who have completed their probationary periods because of the exercise of its contracting or subcontracting rights, except in the event of an emergency, strike or work stoppage, or essential public need where it is uneconomical for Commission employees to perform said work; provided, however, that the economics will not be based upon the wage rates of the employees of the contract or subcontractor, and provided it shall not be considered a layoff if the employee is transferred or given other duties at the same pay.

Contracting and Subcontracting shall be modified to provide, "There shall be no subcontracting of bargaining unit work while employees are on layoff provided the employees are qualified to perform the work. Subcontracting personnel shall be laid off prior to any layoff of bargaining unit employees provided the employees are qualified to perform the work and provided this provision would not violate any existing contract."

4. The Commission in 1960 purchased a plant in Hales Corners from the Village of Hales Corners. Hales Corners agreed to continue to operate the plant with its own employees. Subsequent thereto, Hales Corners in November of 1978 notified the Commission that it wanted the plant to be operated entirely by the Commission, and not by Hales Corners employees. On December 28, 1978 the Commission advised Hales Corners it would take over operation of the plant on April 1, 1979. The Commission thereafter hired a contractor on a temporary basis to operate the plant until the matter could be brought before the full Commission for discussion. That matter came before the Commission on April 12, 1979, at which time the Commission decided to hire a contractor to operate the Hales Corner Plant from April 16, 1979, through December 30, 1979.

5. On March 8, 1979, Corry met with Klaus and Vandelhei and discussed the proposed subcontracting of the Hales Corner plant. At the end of that discussion, Corry stated that the Commission would subcontract out such work. Corry then never advised that the Commission was willing to bargain with the Union over that matter.

Upon the basis of the above Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

The Commission did not violate any provision of MERA when it subcontracted out the operation of the Hales Corner facility.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER

It is ordered that the complaint be and it hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 12th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Amedeo Greco
Amedeo Greco, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACTS,
CONCLUSION OF LAW AND ORDER

The Union's complaint alleges that the Commission violated Section 111.70(3)(a)1, 2, 4 and 5 of MERA when it subcontracted out the operation of the Hales Corner facility.

In evaluating these allegations, it must first be noted that Part II, Section C(3) contains a broad subcontracting clause, one which clearly gives the Commission the right to subcontract subject to certain named exceptions, i.e. those pertaining to layoffs, discrimination, and acts intended to undermine the Union. Since the first two exceptions are not here present, the Union's cases rests on the theory that the Commission has undermined the Union.

In support of that claim, the Union alleges that Corry on March 8, 1979, promised Klaus and Vanderhei that the Commission would staff the Hales Corner facility with bargaining unit personnel and that the Commission would wait until the Union had a chance to respond to that proposal.

Corry denied making such a promise and, instead, testified that he then told the Union that the Commission would go ahead with its subcontracting plans.

Corry's testimony is credited in its entirety. This credibility finding is partly based on the fact that Klaus testified that he had no advance knowledge before April 12, 1979 that the Commission intended to subcontract out the work at the Hales Corner facility. In fact, when exposed to cross-examination, it is clear that Klaus did have such knowledge. Since Klaus failed to recount the truth on that key issue, it is reasonable to infer, and I so find, that his testimony regarding the March 8, 1979 meeting is also suspect. As a result, I discredit his testimony of that meeting, along with Vanderhei's testimony. Moreover, I find it inherently implausible to believe that Corry, who clearly knew that the work might be subcontracted, would fail to relate that fact to Klaus on March 8, 1979.

Absent then any promise by the Commission on March 8, 1979 that it would negotiate over this matter, there is no basis for finding the Commission acted unlawfully. The complaint is therefore dismissed in its entirety.

Dated at Madison, Wisconsin this 12th day of January, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner