

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MILWAUKEE DISTRICT COUNCIL 48, :  
AMERICAN FEDERATION OF STATE, :  
COUNTY AND MUNICIPAL EMPLOYEES, :  
AFL-CIO and its affiliated :  
LOCAL 366, :  
Complainant, :  
vs. :  
MILWAUKEE METROPOLITAN SEWERAGE :  
DISTRICT, 1/ :  
Respondent. :  
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Case CXXXIII  
No. 24590 MP-984  
Decision No. 17051-B

Appearances:

Podell, Ugent & Cross, Attorneys at Law, by Ms. Nola J. Hitchcock Cross,  
207 East Michigan Avenue, Milwaukee, Wisconsin 53202, 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 Sewerage District.

ORDER AMENDING EXAMINER'S FINDINGS  
OF FACT, AND CONCLUSION OF LAW AND AFFIRMING EXAMINER'S ORDER

Examiner Amedeo Greco having, on January 12, 1981, issued his Findings of Fact, Conclusion of Law and Order in the above-entitled proceeding, wherein he concluded that the Respondent, Milwaukee Metropolitan Sewerage District had not violated any of the provisions of the Municipal Employment Relations Act (MERA) when it contracted out the operation of a sewerage treatment facility in the Village of Hales Corners and wherein he dismissed the complaint; and the Complainant, Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and its affiliated Local 366, having, on February 2, 1981, filed with the Commission a Petition to Review Findings of Fact, Conclusions of Law and Order and/or Reopen; and thereafter said Complainant having, on May 1, 1981, filed a brief in support of its petition; and said Respondent having elected not to file a brief in response thereto within the time provided; and the Commission having reviewed the record, including the Complainant's Petition to Review Findings of Fact, Conclusions of Law and Order and/or Reopen, as well as its brief filed in support thereof, and being satisfied that the Examiner's Findings of Fact and Conclusion of Law be amended, but that his Order be affirmed;

NOW, THEREFORE, it is

ORDERED

A. That the Examiner's Findings of Fact be, and the same hereby are, amended to read as follows:

1. That Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, and its affiliated Local 366, hereinafter referred to as the Union, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208 and is the exclusive collective bargaining representative of certain employees of the Milwaukee Metropolitan Sewerage District; and that Robert Klaus is a staff representative for the Union and Robert Vandehei is the president of Local 366.

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1/ The Commission has amended the caption to accurately reflect the Respondent's identity.

2. That the Milwaukee Metropolitan Sewerage District, hereinafter referred to as the Sewerage District, is a municipal employer having its principal office at 735 North Water Street, Milwaukee, Wisconsin 53202; and that Michael Corry is the Labor Relations Manager for the Sewerage District.

3. That the Sewerage District and the Union were parties to a collective bargaining agreement for the term beginning on January 1, 1977 and terminating on December 31, 1978; that said agreement contained, among its provisions, the following relating to contracting and subcontracting unit work, which read in relevant part as follows:

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. That the parties' 1977-1978 collective bargaining agreement terminated in accordance with its own terms on December 31, 1978; that the record herein fails to establish whether the Sewerage District and the Union agreed to extend the terms of their 1977-1978 collective bargaining agreement, or whether they otherwise had an agreement regarding subcontracting or providing for the arbitration of grievances after December 31, 1978 and prior to April 12, 1979; and that during said period certain events occurred and actions were taken with regard to a sewerage treatment plant located in the Village of Hales Corners, hereinafter referred to as the Village, which the Union claims constituted prohibited practices on the part of the Sewerage District.

5. That in 1960 the Sewerage District purchased said sewerage treatment plant from the Village; that the Village agreed to continue to operate the plant, utilizing its own employees; that, pursuant to said agreement, the Sewerage District paid the Village to operate said plant and the Village compensated the employees who actually operated the plant; that in November of 1978 the Village notified the Sewerage District that it no longer wished to operate the plant; that, by letter dated December 28, 1978, the Sewerage District agreed to assume the operation of the plant on April 1, 1979; and that after it agreed to do so, the Sewerage District proceeded with plans to contract for the construction of an "interceptor line", which would allow it to close the Hales Corners plant.

6. That Corry, Klaus and Vandehei were scheduled to meet on March 8, 1979 for the purpose of discussing certain outstanding grievances and to negotiate on certain positions; that, some time within the two weeks prior to said meeting, Corry called Klaus and advised Klaus that he would also like to discuss at said meeting the possibility of staffing the Hales Corners plant with Sewerage District employees; that at said meeting Corry discussed the possibility of staffing the plant with Sewerage District employees with Klaus and Vandehei for approximately 15

to 20 minutes; that Corry started the discussion by stating that the Sewerage District was considering using its "own operators", rather than continuing to contract out the operation of the Hales Corners plant until such time as a new interceptor line was connected in approximately two years; that Klaus and Vandehei correctly understood Corry to mean that said "operators" would be employees of the Sewerage District currently employed at its Jones Island and South Shore sewerage treatment facilities, and performing similar work; that, in this connection, Corry provided Klaus and Vandehei with a copy of a proposed job posting for two positions as "Operator I, Hales Corners Plant"; that the posting noted that the employees would work under the direction of the Assistant Plant Superintendent of the Sewerage District's South Shore Plant, and that the positions would terminate in approximately two years; that Corry explained that if the Sewerage District did fill said two positions they would be a "little different" in that employees would be required to work a portion of their hours at the South Shore plant, since the hours of operation at the Hales Corners plant would be more than 40 hours, but less than 80 hours per week; that some discussion followed, including a discussion of the potential problems with respect to layoffs and bumping rights, during which Corry stated there would be such problems, and Klaus or Vandehei stated words to the effect that "possibly something could be worked out on bringing somebody back"; that at some point during this discussion, probably near the end, Klaus and Vandehei requested an opportunity to caucus; that after said caucus Klaus and Vandehei both expressed the opinion that the proper classification for the positions was that of an "Operator III" and stated words to the effect that it "had to be an Operator III"; that Corry stated that there appeared to be no justification for classifying the positions as Operator III, which is a higher classification than that of Operator I, and emphasized that the Sewerage District had to take over the operation by "April 1"; that Klaus said he would "rather have (the Sewerage District) continue to subcontract the operation rather than destroying the internal harmony" of the agreement; that, in response, Corry stated words to the effect that "that was OK" and "maybe we will"; and that shortly thereafter the discussion terminated.

7. That, contrary to the testimony of Klaus, there was no discussion or agreement between Corry, Klaus and Vandehei to the effect that the Union would discuss the proposed job posting or make a counter proposal, nor was there any understanding or agreement that they would meet again to discuss the matter.

8. That at the conclusion of the above discussion between Corry, Klaus and Vandehei, Corry advised Steve Graef, Executive Manager of Treatment Services, of the results of his meeting with Klaus and Vandehei, and recommended to Graef that arrangements be made to contract out the work; that the Sewerage District's staff thereafter proceeded to make arrangements for the securing of bids from outside contractors for the purpose of operating the Hales Corners plant from April 1 through December 31, 1979, and to make arrangements with Layne-Western Company, Inc., one of the potential bidders, to operate the plant on a day-to-day basis after April 1, 1979, and until the bids had been reviewed by the Sewerage District.

9. That on March 29, 1979 a news article appeared in the Franklin-Hales Corners Hub, a newspaper, which indicated that the Sewerage District was "looking for outside private contractors" to operate the plant; that after said article appeared a Sewerage District employee, who resided in the Village, called Vandehei and advised Vandehei that he had read in the Hales Corners newspaper that the operation of the Hales Corners plant would be contracted out; that Vandehei asked the employee to bring him a copy of the article which he did within a few days; that after Vandehei obtained the copy of the article he gave it to Klaus, also within a few days; that Klaus saw the article on or before April 5, 1979, and sometime thereafter talked to an employee of the Village and obtained information concerning the operation of the plant; that Klaus was advised by said employee that the plant was then being operated by an outside contractor and that said contractor was employing a student to help operate the plant in a manner which was allegedly contrary to the rules of the Wisconsin Department of Natural Resources.

10. That shortly before 10:00 a.m. on April 6, 1979 Klaus had a conversation with Corry before an arbitration hearing held in Milwaukee, Wisconsin, where Klaus asked Corry about the above-noted newspaper article; that Corry advised Klaus that he had indicated, at the conclusion of the meeting on March 8, 1979, that the work would be contracted out; that Klaus disagreed with Corry's description of said

meeting; and that Corry advised Klaus during this discussion that the question of contracting out the work was to be presented to the Sewerage District at its next regular meeting.

11. That a meeting of the Sewerage District was scheduled for April 12, 1979 and the proposed agenda of said meeting included a recommendation of its staff that the Sewerage District authorize the contracting out of the work at the Hales Corners plant until December 31, 1979, and that it approve the bid of Layne-Western Company, Inc. for that purpose; that Klaus received an advance copy of the proposed agenda for said meeting, and attended the meeting for the purpose of objecting to the proposal on behalf of the Union; that although Klaus was scheduled to meet with Corry on April 12, 1979 to discuss grievances and related matters, and in fact spoke to Corry concerning said meeting on April 11, 1979, Klaus did not indicate to Corry during their April 11 conversation that he intended to attend the April 12 meeting of the Sewerage District instead of the April 12 meeting with Corry; that at the April 12 Sewerage District meeting Klaus represented that:

- (a) He had entered negotiations with Corry "a couple of weeks" earlier concerning a proposal to operate the plant with two Operator I's and that the purpose of said negotiations was, in essence, to seek agreement on their bidding and layoff rights;
- (b) After this initial meeting there was an agreement that Klaus would get back to Corry for the purpose of further negotiations;
- (c) "Two days later" he saw that the matter was coming upon the Sewerage District's agenda and talked to an employee who used to run the plant for the Village who advised him that the plant was already being operated improperly by a student working for the subcontractor;
- (d) He first learned of the proposal to contract out through agenda materials he received prior to the meeting;
- (e) That he had also received a copy of the newspaper article described in finding of fact number 9 above;
- (f) After he learned that the staff of the Commission intended to quit negotiating and to recommend that the work be contracted out he spoke with Corry who said that it was too late, the decision had been made, and there was nothing he could do; and
- (g) If the Sewerage District approved the contracting out the Union would file an unfair labor practice charge alleging bad faith bargaining.

12. That notwithstanding Klaus' appearance and the statements made by him, the Sewerage District on April 12, 1979 accepted the recommendation of its staff and approved the letting of a contract to Layne-Western Company, Inc. for the purpose of operating the Hales Corners plant until December 31, 1979; that at no time prior to April 12, 1979, including the discussion which occurred on April 6 and 11, 1979, did Klaus or any other representative of the Union request that Corry meet again to discuss the operation of the Hales Corners plant, nor was any objection raised by Klaus or anyone else on behalf of the Union to the proposal to contract out the work; and that the first objection raised by anyone on behalf of the Union to the proposal to contract out the work was that which was raised by Klaus at the meeting of the Sewerage District on April 12, 1979.

13. That, neither the intent nor the purpose of the actions of the agents of the Sewerage District set forth above was, intended to undermine the Union as the bargaining representative of its employees.

B. That the Examiner's Conclusion of Law be, and the same hereby is, amended to read as follows:

#### CONCLUSIONS OF LAW

1. That, by the actions of its agents in proposing to contract with, and in contracting with, Layne-Western Company, Inc. to operate the Hales Corners

Sewerage Treatment Plant on and after April 1, 1979, the Milwaukee Metropolitan Sewerage District has not refused to bargain collectively, within the meaning of Section 111.70(1)(d) of the Municipal Employment Relations Act with Milwaukee District Council 48, AFSCME, AFL-CIO and its affiliated Local 366, and in said regard has not committed, and is not committing, a prohibited practice within the meaning of Section 111.70(3)(a)(4) and (1) of the Municipal Employment Relations Act.

2. That, since the record fails to establish the existence of a collective bargaining agreement existing between the parties at any time relevant herein, Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 366, has failed to establish that the Milwaukee Metropolitan Sewerage District has violated the provisions of any collective bargaining agreement, and therefore the Milwaukee Metropolitan Sewerage District has not committed, and is not committing, a prohibited practice within the meaning of Section 111. 70(3)(a)5 of the Municipal Employment Relations Act.

C. That the Examiner's Order is hereby affirmed to read:

ORDER

It is ordered that the complaint filed herein be, and the same hereby is, dismissed in its entirety.

Given under our hands and seal at the City of  
Madison, Wisconsin this 19<sup>th</sup> day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli  
Gary L. Covelli, Chairman

Morris Slavney  
Morris Slavney, Commissioner

German Torosian  
German Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER AMENDING  
EXAMINER'S FINDINGS OF FACT, AND CONCLUSION  
OF LAW AND AFFIRMING EXAMINER'S ORDER

Background

In its complaint the Union alleged, in material part, that from on or about March 8, 1979 and continuing thereafter representatives of the Union and Sewerage District were engaged in collective bargaining negotiations covering staffing of the Hales Corners plant; that sometime thereafter the Sewerage District's Labor Relations Manager, Corry, commenced contracting with a third party for the operation of the plant but failed to notify the Union of his intent; that the Union became aware of the plan to contract with a third party on April 12, 1979, on which date Klaus appeared at a meeting of the Sewerage District; and that, despite Klaus' pleas concerning bad faith negotiations, the Sewerage District acted to contract with a third party for the operation of the plant. The Union alleges in its complaint, amended at the hearing, 2/ that the Sewerage District by this conduct committed two prohibited practices as follows:

- (1) It has undermined the Union as collective bargaining agent and failed and refused to bargain collectively; and
- (2) It has violated its collective bargaining agreement with the Union.

The Examiner noted in the memorandum accompanying his decision that "the Union's case rests on the theory that the (Sewerage) Commission has undermined the Union". He went on to conclude that the Union's theory must fail for the following reasons related to the credibility of the witnesses:

In support of that claim, the Union alleges that Corry on March 8, 1979, promised Klaus and Vanderhei (sic) 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 (sic) 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.

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2/ In its original complaint the Union alleged, in a general paragraph, that the Sewerage District had violated Section 111.70(3)(a)2 of MERA along with the other sections discussed herein. At the outset of the hearing the Union amended its complaint to drop that allegation.

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.

In its Petition to Review the Examiner's Findings of Fact, Conclusions of Law and Order and/or Reopen, the Union alleges that the Examiner's decision was affected by material errors of fact and law and requests the Commission to review the Examiner's Findings of Fact and Conclusion of Law and in addition, or in the alternative, to rehear the matter, and to reverse the Examiner's Findings of Fact, Conclusions of Law and Order. In its brief in support of its petition the Union agrees with the Examiner's statement to the effect that its case rests on the theory that the Sewerage District undermined the Union. The Union also agrees that its case turns on a credibility determination as between the testimony of Corry, and that of Klaus and Vandehei, but argues that the Examiner's credibility determination was "blatantly erroneous".

In support of its position the Union makes the following arguments:

- (1) Corry had only been employed in his position as Labor Relations Manager for "a couple of weeks" as of March 8, 1979, whereas Klaus had been acting as the staff representative for nearly a year and Vandehei had been employed for 17 years and held his position as president for more than two years.
- (2) At the meeting on March 8, 1979 the parties "raised, discussed and resolved" the issue of bumping and agreed that the Union would get back to the Sewerage District as to the wage rate.
- (3) Klaus and Vandehei testified that they did thereafter discuss the proposed wage rate as well as the issue of layoffs and bumping with the Executive Committee and that Klaus discussed the matter with the staff representative who represented the Union's members at Hales Corners.
- (4) Corry's testimony that he said, at the conclusion of the meeting, that the Sewerage District would contract out the work was utterly unbelievable in view of the fact that Klaus and Vandehei thereafter took the matter to the Union's Executive Committee.
- (5) There was no inconsistency in Klaus' testimony regarding when he learned of the Sewerage District's plan to contract out the work. The Examiner merely misunderstood. A review of Klaus' entire testimony shows that he merely meant that he did not officially hear of the contracting plan or have any indication of it from the Sewerage District until the April 12, 1979 Commission meeting. He did hear of a newspaper article that made reference to it.

#### Discussion

We have reviewed the record and arguments before the Examiner, as well as the Examiner's decision in its totality. Since the Union has taken exception to the Findings of Fact made by the Examiner we have amended the Findings of Fact, not because we disagree with the Examiner, but because we deem that the facts should have been set forth in more detail, and we have done so. Further, we have also amended the Conclusions of Law to specifically set forth the statutory provisions, of MERA, which the Union had alleged were violated, and which we, to the contrary, concluded were not violated by the Sewerage District. We note that, while the Union relies on the Sewerage District's alleged contractual commitment not to contract out, or subcontract work to undermine the Union, in support of its contentions that the Sewerage District violated both its duty to bargain and the collective bargaining agreement, the evidence does not establish that an agreement existed at the time of the occurrence of the relevant events. For this reason alone, we agree with the Examiner's conclusion that the Sewerage District did not violate any collective bargaining agreement, and therefore did not commit a prohibited practice within the meaning of Sec. 111.70(3)(a)5 of MERA.

The fact that the parties' collective bargaining agreement apparently had expired does not, however, permit the Sewerage District to ignore established working conditions. 3/ We assume, without deciding, that the provision of the expired agreement relating to the conditions under which the Sewerage District would contract out or subcontract unit work primarily related to wages, hours and conditions of employment. 4/ Under that assumption the Sewerage District was not free to contract out or subcontract unit work under circumstances that would constitute a unilateral change of established working conditions. To do so would be violative of its duty to bargain collectively with the Union concerning such matters.

Thus, when determining whether the Sewerage District violated its duty to bargain, it is appropriate to look to the provision of the expired agreement dealing with contracting and subcontracting. The contractual provision established a working condition to the effect that the Sewerage District was free to contract out unit work so long as such action was not taken "for the purpose or intention of undermining the Union", or for any other reasons set out in said provision.

The sole claim here is that the decision was taken for the purpose of "undermining the Union", and therefore was violative of the Sewerage District's duty to bargain in good faith. We agree with the Union that if the facts established that such was the purpose or intent of the action taken, the Sewerage District violated its duty to bargaining collectively.

Boiled down to its essence, the Union's theory is that when the Sewerage District's contract with the Village was about to expire, the Sewerage District initiated collective bargaining with the Union for the purpose of agreeing to the conditions under which the work would be performed by the employees it represents and then, when bargaining did not result in immediate agreement, it proceeded to contract with a third party, thereby undermining the Union's authority as the bargaining representative. This theory necessarily relies heavily on the testimony of Klaus 5/ which the Examiner did not credit.

We have reviewed the record and agree with the Examiner that the testimony of Corry should be credited over that of Klaus regarding the content of the critical meeting on March 8, 1979.

First of all it is important to keep in mind that the Sewerage District had been contracting out the work at Hales Corners since approximately 1960. In December, 1978 it learned that the Village no longer desired to continue to contract to do the work, and that the Sewerage District would then be faced with the prospect of arranging to have the work performed for approximately 21 months. the time it would take to complete the interceptor line. Given this background, we find Corry's claim that the purpose of the discussion was merely to discuss the possibility of using Sewerage District employees to perform the work and not to enter into collective bargaining particularly credible. Had the determination already been made by the Sewerage District to have its own employees do the work in question, it would cast an entirely different light on the discussion and the subsequent events.

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3/ See Menasha Jt. School District (16589-B) 9/4/81, and cases cited therein.

4/ Even if the provision in some respect related to a permissive subject of bargaining, all the relevant aspects of the provision related to working conditions.

5/ Vandehei testified to the effect that he was present when Klaus testified and that he agreed with Klaus' testimony regarding the content of the critical meeting on March 8, 1979.

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The fact that Corry had occupied his position for a shorter period of time than Klaus or Vandehei does not, in our opinion, have a significant bearing on their respective credibility. The Union's argument concerning what was allegedly "agreed to" at the meeting on March 8, 1979 is circular, since the content of that discussion is what is here in dispute. It is also contradicted by its other claim that Klaus and Vandehei discussed layoffs and bumping rights with the Union's Executive Committee and by the verbatim record of Klaus' statements at the April 12, 1981 meeting of the Sewerage District where he stated that the purpose of the discussion and delay was to seek agreement on such matters.

The unrebutted, but self-serving, testimony of Klaus and Vandehei to the effect that they subsequently discussed the "proposal" with the Union's Executive Board does lend some support to their testimony. However, the meeting in question occurred on March 8, 1979, and the alleged proposal was to have the Sewerage District's employees begin performing the work by April 1, 1979. Nevertheless, neither Klaus or Vandehei had any further contact with Corry on the subject until well after April 1, 1979. Klaus' testimony that he was unaware of the April 1, 1979 deadline and that it was not the parties' normal practice to establish deadlines for "getting back" during negotiations can hardly serve to explain this inaction. It is highly improbable that he was unaware of the deadline. It is much more probable that, if Klaus and Vandehei discussed the matter with the Union's Executive Board, they thereafter failed to get back to Corry because they understood that the work would be contracted out to another contractor based on the content of their discussion with Corry on March 8, 1979.

Finally, we cannot accept the Union's argument that the Examiner's concern about the apparent inconsistency in Klaus' testimony was based on a "misunderstanding" of what he said. A review of the record reveals that there are numerous problems with Klaus' testimony, generally related to the question of what he knew about the proposal to contract out and when he knew it. To begin with we noted that the complaint, which was verified by Klaus, states that "on April 12, 1979, Complainants became aware of Respondents plan to contract with a third party . . ." Further, in his direct testimony Klaus stated that he had reviewed the verbatim record of his statements at the meeting with the Sewerage District on April 12, 1979 and agreed that it was accurate with one minor exception and with the exception of the audible portions. In the audible portions of that record he stated that "two days" after he met with Corry he saw that the question of contracting out was coming up on the Sewerage District's agenda and that he had spoken to other employees and to Corry about the matter in advance of the meeting on April 12, 1979. He also stated that he had received a copy of the March 29, 1979 newspaper article which discussed contracting out.

In light of this background we find the following aspects of Klaus' testimony particularly troubling:

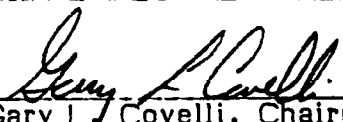
- (a) His testimony at page 15 that he did not learn of any action taken through discussions with Local 366 members and that his "first notice of any action in regard to this . . . was on April 12 -- the morning of April 12. That morning I received a packet of -- it was the agenda I received in the mail . . .".
- (b) His testimony at page 15 that no one from the Sewerage Commission had ever mentioned the possibility of contracting out to him prior to his receipt of the Sewerage Commission's agenda on April 12, 1979.
- (c) His testimony at page 19 that he was not given a copy of a newspaper article a day or two after March 29 and that he did not thereafter talk to Corry on April 6 about the statement in that article concerning subcontracting.
- (d) His testimony at pages 20-22 that he did see the article and call Corry and talk to him for 1/2 hour or 1 hour about the article but that they did not discuss subcontracting.
- (e) His testimony at page 20 to the effect that he needed to look at the article to refresh his recollection as to whether it mentioned that the Sewerage District was looking for outside private contractors.

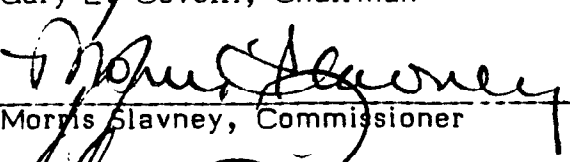
- (f) His testimony at pages 23-24 that he did not talk to an employee from Hales Corners who advised him that a subcontractor was present and already had an employee working in the plant even though the verbatim record of the meeting of the Sewerage District accurately reflected that he then stated that he had done so and that he thereafter called Corry and discussed the subcontracting question with him.


Based on our review of the record, we find that the conclusion is inescapable that, given the numerous flaws in Klaus' testimony, his testimony concerning the content and purpose of the discussion with Corry on March 8, 1979 should not be credited. The most reasonable inference that can be reached is that Corry accurately described the content and purpose of that discussion. Accordingly, we have concluded that the Sewerage District's decision to contract with Layne-Western Company, Inc., was not for the intent or purpose, of undermining the Union and, therefore its decision in said regard was not in violation of its duty to bargain collectively in good faith with the Union.

Dated at Madison, Wisconsin this 19<sup>th</sup> day of November, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner