Donald L. Ware
DLW-16
DW 04-048 - 20 Pages

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED

AUG 1 2 2004

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INDIANAPOLIS, INDIANA

LOCAL NO. 131, NATIONAL CONFERENCE OF FIREMEN AND OILERS, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO-CLC,	)	
Plaintiff,	)	
v.	)	**CASE NO.:**
INDIANAPOLIS WATER COMPANY; NISOURCE INC.; US FILTER INDIANAPOLIS WATER, LLC; AND VEOLIA WATER INDIANAPOLIS, LLC,	)	1:04-cv-1323-SEB-VSS
Defendants.	)	

COMPLAINT WITH JURY DEMAND

Plaintiff, by counsel, for its complaint against defendants states:

Nature of Complaint

1. Plaintiff Local No. 131, National Conference of Firemen and Oilers, Service Employees International Union, AFL-CIO-CLC ("Union") brings this action to compel the arbitration of grievances arising under a collective bargaining agreement with defendants Indianapolis Water Company, Nisource Inc., US Filter Indianapolis Water, LLC and Veolia Water Indianapolis, LLC. Jurisdiction is conferred on this Court by Section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185.

Parties

2. Prior to 05/01/02, the Indianapolis Water Company ("IWC") operated the water system in Indianapolis, Indiana, within the territorial jurisdiction of this Court. IWC is an employer within the meaning of 29 U.S.C. §152 (2).

3. IWC is a wholly-owned subsidiary of NiSource Inc. ("NiSource"). NiSource is a successor to the assets and liabilities of IWC. NiSource is an employer within the meaning of 29 U.S.C. §152 (2).

4. Subsequent to 05/01/02, Indianapolis Water, LLC ("US Filter") operated the water system in Indianapolis, Indiana. US Filter is an employer within the meaning of 29 U.S.C. §152 (2).

5. Veolia Water, Indianapolis, LLC ("Veolia") currently operates the water system in Indianapolis, Indiana. Veolia is a successor to the assets and liabilities of US Filter. Veolia is an employer within the meaning of 29 U.S.C. §152(2).

6. At all times relevant to this complaint, the Union has represented the production and maintenance unit employees of defendants at their facilities in Indianapolis, Indiana. The Union is a labor organization within the meaning of 29 U.S.C. §152(5).

Factual Background

7. Prior to 05/01/02, IWC and the Union were parties to successive collective bargaining agreements covering the terms and conditions of employment of the bargaining unit employees of IWC.

8. The last collective bargaining agreement between IWC and the Union was scheduled to be effective between 01/01/99 and 12/31/03. ("CBA") (Exhibit 1).

9. Section 5 of the CBA contained a grievance procedure leading to binding arbitration.

10. Prior to 05/01/02, the Union filed the following grievances:

	Grievant	Grievance No.	Filing Date	Nature of Complaint
a.	Jeff Watson	00-22	06/07/00	Job Bid
b.	Kevin Bruce	00-37	11/17/00	Job Bid
c.	Local 131 (Palm pilots)	00-41	11/16/01	Unilateral change
d.	Larry Kersey	01-12	03/23/01	Job Demotion
e.	Vernon Collins	01-27	08/28/01	Removal from Job
f.	Becky Irvin	02-07	03/20/02	Subbing up
g.	Local 131 (LTD)	02-11	04/30/02	LTD Plan

11. On 12/03/03, the Union filed the following grievance (collectively "Grievances") for liability incurred prior to 05/01/02.

h.	Robert Reed	03-41	12/10/03	Worker's Compensation Pay

12. On 05/01/02, the assets of IWC were sold to the City of Indianapolis, which entered into an operating agreement with US Filter.

13. Effective 05/01/02, US Filter assumed the CBA between IWC and the Union .

14. Prior to 05/01/02, the Union bargained with representatives of IWC over the Grievances. Subsequent to 05/01/02, the Union bargained with representatives of US Filter and then Veolia over the Grievances until or on about 03/22/04.

15. On or about 03/22/04, Veolia informed the Union that it would not arbitrate the Grievances.

16. On or about 04/12/04, after learning for the first time that Veolia was disclaiming responsibility for resolution of the Grievances, the Union demanded that IWC and NiSource agree to arbitrate the Grievances. IWC and NiSource have refused to arbitrate the Grievances.

Legal Claim

17. Defendants' refusal to arbitrate the Grievances is a breach of the collective bargaining agreement between defendants and the Union.

Request For Relief

WHEREFORE, plaintiff requests the following relief:

A. an order requiring defendants to arbitrate the Grievances;

B. the costs of maintaining this action; and

C. such further relief as may be appropriate.

Respectfully submitted,
MACEY SWANSON AND ALLMAN

Richard J. Swanson, Atty No. 1605-49
Attorney for Plaintiff

KEN ZELLER
President

"A STRONG VOICE FOR INDIANA'S WORKING FAMILIES"

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.

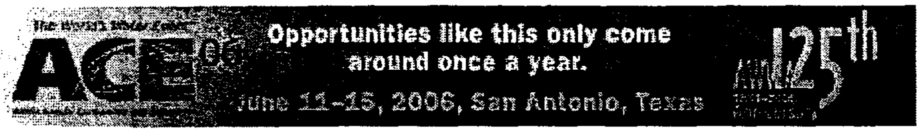
The company won't allow workers to continue under the existing contract, which already has been extended, said a company spokeswoman. She said employees could work without a contract or go on strike. Alternatively, the company may try to impose a contract based on the last and best offer.

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.



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Tentative Agreement Reached in Indianapolis Water Company Negotiations
May 7, 2004

A tentative agreement has been reached to avoid a strike by water company workers in Indianapolis.

A federal official mediated talks in an effort to head off a midnight strike by by Veolia Water employees.

Snow fencing was put up in case workers took to the picket lines at the headquarters of Veolia Water, which manages the Indianapolis operations. Veolia said water would continue to flow if there was a strike by more than 200 members of the National Conference of Firemen and Oilers.

There are more than one million Veolia customers in and around Indianapolis. The union and company are negotiating pension and health benefits.

Meanwhile, 4,000 Indiana SBC workers could go on strike as early as Saturday. Phone company union members are concerned about their health benefits and job security.

Source: *wishtv.com* May 7, 2004

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INDIANAPOLIS BUSINESS JOURNAL WWW.IBJ.COM

This week

VOL. 25 NO. 8, MAY 3-9, 2004

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."

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Gary Wolff, Eric Hallstein

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The Butler County Department of Environment Services (BCDES, http://www.des.butlercountyohio.org), a public utility in southwestern Ohio serving over 100,000 residents with water and sewer services, used selective outsourcing to control costs and improve its cash flow. In 1995, BCDES had some financial difficulties compounded by disputes with various regulatory agencies and customer and environmental groups. By 2004, BCDES had a sound financial plan, a capital improvement plan with a 10-year horizon, a diverse and well-trained staff, and a communications plan that kept employees and customers well-informed. BCDES outsourced payment processing to banks through a lockbox contract that resulted in faster and more efficient receipt of customer payments. BCDES also outsourced collections from delinquent accounts, which increased collection by nearly 60 percent (Parrott and Young, 2005).

Contracts to operate and maintain public assets, even large ones such as in Indianapolis and Milwaukee, can be thought of as selective outsourcing if only a few of the numerous functions within water systems are covered by the contract. Contracts for outsourced services should specify not just the services in detail, but also the skills or credentials company personnel must have (e.g., certified treatment plant operator grade IV) and in some cases the specific people involved. For example, the contract between the Milwaukee Metropolitan Sewerage District (MMSD) and United Water specifically names the project manager for United Water. The company cannot reassign that person without written approval of MMSD (as actually occurred on November 13, 2000). This condition apparently does not exist in the Indianapolis Water contract with Veolia, and Veolia has been criticized for changes in its management team.

Contracts for outsourced services should specify not just the services in detail, but also the skills or credentials company personnel must have ...

Communicate Clearly With Workers and Unions

The effectiveness of workers depends at least in part on their attitude toward their employer. A critical factor in shaping worker morale is the perception that the employer is (or is not) a straight-talker who will tell you what is going on and will not change stories later. This is important at the time of a restructuring, as well as on an ongoing basis.

Clear communication with workers and unions was part of the Butler County and Akron successes described above. The MMSD was also very clear during its contractual process for wastewater operations, including distribution of a proposed labor contract to be used by the successful contractor. After review and discussion, the unions involved were satisfied their members' interests would be protected.

In the contract for wastewater and collection services in Indianapolis, the local union was similarly and also successfully involved. Steve Quick (personal communication, 2005), president of the American Federation of State, County, and Municipal Employees Local 725, described the relationship between United Water, the city, and the union in the following way:

> Initially the union was up in arms about the idea of privatizing wastewater. Eventually, the union decided to put in a bid with the private player, United Water. When United Water won the contract, the transition was seamless — only the location of the admin-

> istrative offices was different. The union was involved from the beginning. We could obtain any information needed from the city and the city paid for a consultant to work with us. We also had a joint union management team. The mayor did this right and started working with the union from the very outset. He had the vision for how to work together, talented people on the staff to get the job done, and he invested in building relationships with us.

By contrast, communications between the City of Indianapolis, Veolia, and employees in the water contract (both union and non-union) have been unclear and contentious from the beginning. When the city purchased the private water utility (Ni-Source), the mayor stated in writing (see http://www.watercompanysuit.com) that employee benefits would be unchanged. When the city solicited proposals for private operation of the purchased assets, it required that the value of employee benefits be maintained, which is a different standard. It is possible that the proposals from operating companies were not all based on one or the other standard, but were mixed, creating an "apples-to-oranges" comparison of the costs of the proposals. We have been told conflicting stories in interviews.

According to Robert Reed of the National Conference of Firemen and Oilers Local 131 in Indianapolis (personal communication, September 2005), workers find it hard to trust any of the communications they receive from Veolia management or the city because of the problem described above, subsequent dramatic reductions in force (more than 50% loss of Local 131 jobs) and in the value of benefits, numerous changes in management personnel within Veolia since 2002, and the decision of city staff to avoid involvement in labor complaints raised by union members.[23] According to Reed, benefits in a soon-to-be finalized union contract are "in no way equal" to previous benefits, and non-union employees have lost even more. (Another source indicated that the value of benefits is equal to that which prevailed before the restructuring. But there is apparently no agreed-upon method for calculating the value of benefits before and after.) According to Reed, morale is very low, and the skilled people who have made the operation work on a day-to-day basis for up to 30 years are leaving the operation rapidly.

It is extremely important to recognize that the water system restructuring in Indianapolis was *not* from public to private hands. Instead, operations went from private to private hands, and assets went from private to public ownership. Privatization per se was not the cause of the labor problem here; instead, poor communications and an unwillingness of the city to "fight the fires" when they first broke out have caused the situation to become increasingly heated, creating reputational damage for the private contractor and the city and real financial and psychological hardships for the workers.

State or Federally Supported Technical Assistance and Grants and Subsidies

Another alternative is to pursue technical assistance through state and federally supported programs, most of which are available only to smaller communities. The Rural Community Assistance Partnership (RCAP) is an excellent entry point to these programs. RCAP's work in the upper

23 The union asked the city to help resolve a series of complaints but was told the city would not "serve as a mediator" between workers and their employer (Veolia). The union had no alternative but to file 17 complaints with the National Labor Relations Board. They prevailed in 14 of those complaints (Robert Reed, personal communication, September 2005). Federal mediation has been required over the last year to bring the current labor contract negotiation to its present status.

[Indy's weekly alternative newspaper highlighting **arts, entertainment and social**

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NEWS

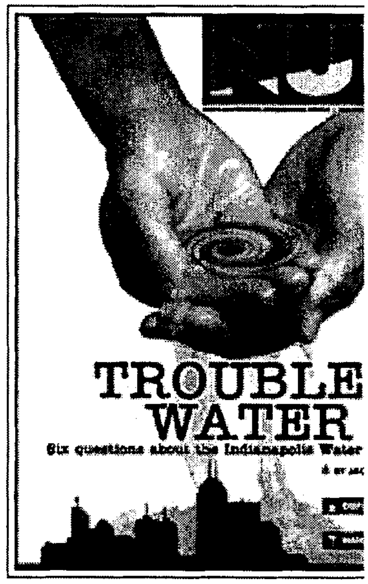
More troubled water

Problems plague Indy's water company

Jack Miller

Nearly two troubled years have passed since Indianapolis purchased the waterworks and turned over manag French-owned company, USFilter (USF). Those two years have seen cuts in employee benefits, two pending l sell-offs of corporate divisions, labor unrest with the federal labor board (NLRB) issuing an extraordinary 16 c against the company, frozen hydrants, billing errors, customer dissatisfaction and declining employee morale recently, a $6 million sludge facility designed and built by USF was shut down for safety reasons. Critics char 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 M memo, "... because we view the Indianapolis litigation to be merit less ... we will begin the process making dis within 30 days."

Late last year over 150 veteran Indianapolis employees received separation/severance offers. The buyout off 26 weeks of pay, but warn employees, "If you ... sign the Agreement, you will waive and give up both your ri participate in [the pending federal] lawsuit and your right to recover any benefits or damages in the event th 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 respor employee requests" and so far over 20 employees have taken the offer and have been given departure dates that means that over 60 veteran employees including geologists, draftsmen, operations supervisors and direc left or will leave soon. Only a few have been replaced and an internal memo orders managers to only fill vaca are "absolutely essential." The memo warns that even "essential" positions must be "overwhelmingly justifiec

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

Mosby-Williams contends that "our business is well-staffed and well-managed ... when and if a decision needs 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 t offer decreases health care and eliminates the valuable defined benefit pension for new hires. On Feb. 24, th and Oilers Union voted 164 to 7 to reject the company's "last, best and final" contract offer. Union President said the company's offer represents a "wedge to slowly erode unity in the union." This means there are curre 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 anyo leave field operations and join management. This "guarantees that lower level management will not know th from the inside," Broyles explains.

Broyles reflected on the near disaster years ago when a collapsed canal threatened the Indianapolis water su department heads were on the West Coast at a conference and crisis management fell to second tier personn competent people responded admirably and saved the day. That level of backup is lacking in the present stru 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. Thi consistent with what Michael Warburton of the Public Trust Alliance told NUVO a year ago. "USFilter tends to rid of local expertise and substitute remote judgment; in many cases local capacity to supervise is lost and s 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 with $6 million in red ink estimated last year. It is becoming clear that in its haste to land the biggest contra in the country, the inexperienced USF team underestimated the cost of running a large utility. The New York reported that when Vivendi bought it in 1999, USF lacked experience and had run very few municipal water s

This may explain why the company that partnered with USF in the bidding process here withdrew. Nick DeBe president of Philadelphia Suburban, told NUVO that his company realized they couldn't make any money with was proposing. DeBenedictis said USF "bid low and hoped that if they achieved certain things [improved wat 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 th 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 r 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 millio 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 $6 annually. The current strategy seems to be to add new hook-ups into surrounding counties to sell more wate 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 issu service to outlying areas including the Precedent development at 96th Street, owned by Mayor Peterson's fan observers suggest a whopping rate increase may be just around the corner.

Jack Miller is a free-lance writer and co-author of To Market, To Market: Reinventing Indianapolis. He is also

volunteer board president of Hoosier Environmental Council, one of the organizations supporting local public
the Indianapolis Water Company.