



Review of Public Complaint

County of Monroe Industrial Development Agency

April 20, 2012

PC-2012-01

Introduction

The Authorities Budget Office (ABO) received a letter, dated February 23, 2012, requesting that we investigate the actions of the County of Monroe Industrial Development Agency (COMIDA) in relation to its involvement in the transfer of jobs by Science Kit, LLC (a subsidiary company of VWR Education LLC) from its facility in the City of Tonawanda (Erie County) to a facility owned by Ward's Natural Science Establishment, LLC (a subsidiary of VWR Education LLC) in the Town of Henrietta (Monroe County). This letter was signed by a coalition of labor groups, advocacy organizations, and members of the New York State and Erie County legislatures. A copy of the letter is attached to this report as Appendix I.

Pursuant to sections (6)(2)(c) and (6)(2)(d) of Title 2 of Public Authorities Law, the ABO has the authority to receive and act on complaints from the public regarding any state or local authority covered by Title 2 and to initiate an investigation in response to any complaint of non-compliance with the law by such an authority.

As part of our inquiry, we interviewed staff of the Erie County and County of Monroe industrial development agencies and reviewed each IDA's relevant project files and tax exemption policies.

Nature of the Complaint

The complainants allege that COMIDA acted in violation of Section 862 of General Municipal Law. Section 862 reads:

“No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.”

Specifically, the complainants argue that financial assistance provided by COMIDA led directly to the transfer of forty (40) positions from a VWR Education LLC-owned facility in Erie County to a VWR Education LLC-owned facility in Monroe County, and resulted in the removal or abandonment of the existing plant in the City of Tonawanda.

This transfer of jobs was alleged to have occurred as of January 2012, upon expiration of the property tax exemptions approved by Erie County IDA on the Tonawanda facility.

Powers of Industrial Development Agencies

Industrial development agencies (IDAs) are authorized by Article 18 of General Municipal Law. The purpose of an IDA is to promote industrial, manufacturing and commercial development, and to encourage job creation and job retention. As a public benefit corporation, an IDA is exempt from taxes or assessments on any property it acquires or that is under its jurisdiction or control. An IDA can also grant mortgage recording and sales tax exemptions, or issue tax exempt debt in support of an approved project. An IDA approved project may qualify for any of these four forms of financial assistance.

IDAs are also required to establish a uniform tax exemption policy, under which a project may be required to make a payment in lieu of taxes (PILOT) otherwise owed on the property were it not exempt. To qualify for property tax abatements a project will transfer title to the property to the IDA or enter into a lease or leaseback arrangement with the IDA holding title interest in the property.

In the matter which is the subject of the complaint under review, the Erie County IDA and the County of Monroe IDA provided property tax, sales tax and mortgage recording tax exemptions and the projects receiving the financial assistance made PILOT payments to the affected taxing jurisdictions.

Background

History of Involved Companies

Science Kit was founded in 1957 in Tonawanda as a supplier of science education materials to schools. Its headquarters, distribution and warehouse operations were all located at its Tonawanda facility.

Ward's Natural Science was a similar company started in Henrietta in 1862. It continues to operate its main facility, including distribution and warehouse operations, out of Henrietta.

In 2005, Science Kit was merged into Ward's Natural Science to form Ward's Natural Science Establishment LLC.

In 2009, Ward's Natural Science Establishment LLC merged with and into a sister company, Science Kit LLC, and Science Kit LLC changed its name to VWR Education LLC.

Both Ward's Natural Science Establishment LLC and Science Kit LLC operate as separate businesses, but as divisions within VWR Education LLC. Since 2007, both companies have been owned by the venture capital firm Madison Dearborn.

Employment and Financial Commitments Associated with Erie County IDA and COMIDA Approved Projects

Erie County IDA (ECIDA) closed its first project with Science Kit in 1971. This project called for the construction of a warehouse. As part of the financial assistance agreement, Science Kit committed to increasing employment from 28 to 44 jobs over three years. The project qualified for property, sales and mortgage tax exemptions and Science Kit agreed to make PILOT payments over 15 years.

In 1976, ECIDA approved a second project to expand the warehouse and increase employment within three years from the then current 64 positions to 95 jobs.

A third project, approved in 1994, consisted of the construction of a 50,000 square foot office and warehouse facility, additional renovations to the existing facility and the purchase of new equipment. This project was intended to increase employment to 220 jobs, up from 174 full-time and 64 seasonal workers. A portion of the property was exempt from property taxes for 10 years. This exemption expired in 2008. The remaining portion of the facility had a 15 year property tax exemption, which was to expire at the end of 2011.

ECIDA officials indicate that title to the 1994 project was conveyed from the ECIDA to the company in 2011, and that Science Kit now owns the entire facility, although it no longer operates a warehouse. These officials indicate that Science Kit continues to employ approximately 70 office personnel onsite and the company is paying full taxes on its property.

Since the company did not intend to make new investments in the facility, the ECIDA had no legal authority to offer extended financial assistance to Science Kit upon termination of its 1996 PILOT agreement.

Based on employment figures provided by Science Kit, LLC to the Erie County IDA, Science Kit, LLC has averaged over 162 employees at its Tonawanda facility since 2001, and reported 114 employees at the close of 2011. From 2007 through 2011, ECIDA reports that Science Kit received nearly \$270,000 in tax exemptions on this project, and made almost \$160,000 in PILOT payments. As a result, Science Kit, LLC realized over \$110,000 in net benefits.

The County of Monroe Industrial Development Agency (COMIDA) has had three projects with Ward's Natural Science Establishment, LLC since 1982. The first resulted in the construction of the company's main facility in Henrietta. By 2001, 41 employees worked at this facility.

In 2001, COMIDA approved a 162,000 square foot addition to the Henrietta facility. This expansion was to accommodate a distribution center operated by a related company based in Chicago, which was to relocate to Henrietta over the following two years. This move was to add 104 full-time equivalent positions within three

years at the Henrietta facility. In 2005, Ward's Natural Science Establishment invested over \$500,000 in this facility to make additional improvements and expand capacity.

Ward's Natural Science Establishment applied to COMIDA in March 2008 for additional financial assistance under COMIDA's Jobs Plus program to support a 52,800 square foot expansion to its facility. As part of this application, Ward's Natural Science Establishment agreed to maintain its current workforce of 208 full-time equivalent employees, and add 24 full time jobs over the following three years. Ward's Natural Science Establishment also disclosed that it had a related facility located in Tonawanda, NY but that the related facility would not close or be subject to reduced activity.

Under the Jobs Plus program, projects are to use only local labor for construction jobs and provide a 10 percent increase in full time equivalent employment, measured on the existing impacted employment base, in addition to other requirements. The impacted employment base was identified as the 208 existing employees at the Henrietta facility. The board reviewed and approved this application, since the 24 jobs to be created exceed the 10 percent minimum number of new positions necessary to qualify for Jobs Plus program incentives (21 new positions).

In December 2008 COMIDA approved a project PILOT agreement with Ward's Natural Science Establishment that revised downward to seven positions the number of jobs to be created. COMIDA officials explained to us that this reduction still enabled the project to qualify for the Jobs Plus program, since the impacted employment base was redefined to be only the distribution unit, which had 39 full-time equivalent employees at the time. They further pointed out that Wards Natural Science Establishment has exceeded its job creation expectations, although they do not require Wards Natural Science Establishment to report how many of the new jobs were actually created in the distribution unit.

Ward's Natural Science Establishment, LLC continues to locate its headquarters and operate a warehouse and distribution center at its Henrietta site. Since 2001, the company has reported an average annual staffing level of 207, and ended 2011 with 257 employees in Henrietta (218 full-time and 78 part-time/39 FTE staff). From 2007 through 2011, COMIDA reports that Ward's Natural Science Establishment received over \$1.4 million in tax exemptions on these two projects, and made over \$1.1 million in PILOT payments. As a result, Ward's Natural Science Establishment, LLC realized over \$360,000 in net benefits.

Findings and Conclusions

Finding Regarding Complaint

To find the complaint it received to be a violation of Section 862 of Public Authorities Law, the ABO believes it is necessary to demonstrate the following:

1. COMIDA provided tax exemptions to Ward's Natural Science Establishment LLC, beginning in 2008, as part of a long term strategy to cause the relocation of existing warehouse and/or distribution jobs from the Science Kit, LLC facility in Tonawanda to Henrietta;
2. Any loss of jobs at the Tonawanda facility were attributable to the tax incentives offered by COMIDA for this purpose; and
3. The re-location of warehouse and/or distribution jobs from Tonawanda resulted in the closure of the Science Kit, LLC facility and its operations.

Our review did not find any indication that, in 2008, COMIDA conditioned its approval of this project on the promise that jobs would be relocated from Tonawanda. Neither the 2008 financial assistance application submitted by Wards Natural Science Establishment nor the PILOT agreement support the conclusion that the increase in jobs in Henrietta beginning in 2012 and the loss of jobs in Tonawanda at the end of 2011 were coordinated business decisions dating back to 2008. Instead, it appears that one subsidiary company created jobs, consistent with recent employment patterns, while another subsidiary company continued to reduce its workforce. The record also shows that the facility in Tonawanda maintained operations after the 2008 project in Henrietta was approved. Following that approval, the staffing levels at the Tonawanda facility increased slightly, from 148 positions in 2008 to 151 positions in 2009, before declining to 114 positions in 2011. Even so, this decline was consistent with the historical employment patterns at this facility, and was less than the employment fluctuations at the facility from 2003-2004 (a decline of 60 positions) and 2005-2007 (a decline of 56 positions.)

Relevant court decisions on this topic suggest that industrial development agencies have been found to be in violation of Section 862 when project approval and financial assistance resulted in an entire business leaving an area for other than competitive reasons. That is, a business abandoned its facilities, removed its facilities from the area, or broke an existing lease and relocated in exchange for financial incentives. It does not appear that the circumstances presented in this complaint meet the threshold tests established by the courts, since Science Kit, LLC continues to employ staff and operate its facility in Tonawanda. Moreover, the Erie County IDA did not argue that the loss of jobs at the Science Kit, LLC facility resulted from financial assistance provided by COMIDA in Henrietta in 2008. The complainant also did not offer evidence that this direct connection existed.

Based on our examination of the record, interviews with officials from both industrial development agencies, and our understanding of these judicial rulings, we have concluded that COMIDA did not violate key elements of Section 862 of General Municipal Law.

COMIDA Tax Incentive Policies and Practices

As part of our review, we identified some practices followed by COMIDA that should be improved to enable it to better monitor its economic development projects and to improve accountability and transparency. Specifically, COMIDA should ensure that the same terminology is used consistently throughout each project, that it receives information adequate to monitor project goals, and that it accurately reports required information in its annual reports.

For example, on its March 2008 application, Wards Natural Science Establishment indicated that it currently had 208 full time employees and would create an additional 24 full time jobs. However, the PILOT agreement only indicates that 7 jobs were to be created, without making a distinction between full time and part time jobs. Wards Natural Science Establishment reported annual jobs data to COMIDA as follows:

Year	Full Time Jobs	Part Time Jobs	FTE Jobs
2008	225	25	238
2009	205	74	242
2010	209	77	248
2011	218	78	257

Although the number of full time jobs reported for 2009 was below the 208 full time jobs that existed at the time of the application, Wards Natural Science Establishment’s goals of creating 7 jobs appear to have been met during this period as a result of a significant increase in part time jobs.

In addition, in the March 2008 application, Wards Natural Science Establishment stated that it would create 24 full time jobs (not specifically identified with any work unit within the facility). The COMIDA board approved the project for financial assistance based on this number. This job creation figure was revised to 7 new jobs in the PILOT agreement. COMIDA officials explained that these 7 jobs applied to the distribution unit only (the impacted employment base). However, COMIDA did not require Wards Natural Science Establishment to report separately the number of jobs in the distribution unit as part of the annual job survey to determine if this revised target and the terms of the financial assistance agreement were met. Instead, COMIDA obtained only the total number of jobs at the facility in the aggregate.

Lastly, as part of its annual report COMIDA is required to report the estimated amount of tax exemptions authorized for each project. This information was

reported for the total facility in Henrietta for each year through 2009. However, for 2010 and 2011 COMIDA only reported the exemptions on the additions to the original facility rather than the exemptions on the total facility. As a result, the amount of tax exemptions authorized was significantly under reported for these two years. It is unclear what prompted COMIDA officials to change how these exemptions are reported.



February 23, 2012

David Kidera
State of New York Authorities Budget Office
PO Box 2076
Albany, NY 12220-0076
info@abo.state.ny.us

Dear Mr. Kidera:

The below signatories request that the ABO conduct an investigation into the job shifting activity of the Monroe County IDA (COMIDA) and VWR Education LLC (VWR, also known as Ward's Natural Science Inc and Science Kit LLC). VWR is an international distributor of scientific and laboratory equipment and is owned by Chicago-based private equity firm Madison Dearborn.

The job shifting stems from VWR's announcement in October 2011 that it would close its warehouse operations in Tonawanda (Erie County) in January 2012 and consolidate its operations in Henrietta (Monroe County). At the same time that VWR made this announcement, the tax subsidies for its Tonawanda warehouse from the Erie County IDA ended, while tax subsidies from COMIDA for its Henrietta warehouse continued and will remain in place until 2019.

COMIDA minutes from its December 20, 2011 board meeting reflect that it was made aware of the Tonawanda consolidation. Given that neither VWR nor COMIDA provided justification for this job shifting, one can conclude that COMIDA, knowingly or unknowingly, aided VWR in the removal of the warehouse in Tonawanda. This action is illegal under New York General Municipal Law and we request a further investigation by the ABO into this matter.

Timeline of Relevant Events:

- 1994: The Erie County IDA grants tax subsidies to VWR on May 11, 1994 for the purpose of expanding a warehouse facility and office building in Tonawanda.¹
- 2001 and 2008: COMIDA approves tax subsidies to VWR on August 21, 2001 and April 22, 2008 for the purpose of expanding its Henrietta facility.²

¹ Projects both approved May 11, 1994; Titles transferred to Monroe County IDA January 1, 1996 and May 30, 1996. Project location: 60 Pearce & 777 E. Park Dr., Tonawanda, NY. NYS Office of the Comptroller, 2008 IDA Project Data, at http://www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm

² Projects approved August 21, 2001 and April 22, 2008; Title transferred to COMIDA February 15, 2002 and December 1, 2008. Project location: 5100 West Henrietta Road, Henrietta, NY. NYS Office of the Comptroller, 2009 IDA Project Data, at

- 2011: The Erie County tax subsidies, granted in 1994, expire in 2011.
- 2011: VWR announces the closure of its Tonawanda facility in Erie County in October, 2011.³ News reports state that VWR intends to consolidate its warehouse operations in its expanded Henrietta facility.⁴ Between 2008 and 2009, VWR receives nearly \$200,000 in local and state tax subsidies from the Monroe County IDA, where VWR intends to consolidate its warehouse operations.⁵
- 2012: VWR terminates the jobs of its warehouse workers in Tonawanda in January 2012, shifting the work to Henrietta.

Job shifting by IDAs is a violation of the New York State General Municipal Law Article 18A, Section 862, Restrictions on Funds of the Agency:

“No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.”

After reviewing the contents of the FOIL response received from COMIDA (attached), in which several documents were included (the Project description, the Application for Real Property Tax Exemptions, the Payment in Lieu of Tax Agreement, the Lease Agreement, and the Leaseback Agreement), as well as reviewing the minutes from relevant COMIDA hearings, there is no justification given for shifting jobs from Erie County to Monroe County that meet the standards of New York Law regarding restrictions on funds of an IDA. Accordingly, we request that the ABO investigate this subsidy to determine whether COMIDA and VWR violated New York State law by shifting jobs through taxpayer-funded support. We also request that the ABO investigate the expired Erie County IDA subsidies and the role they played in VWR’s decision to shift its jobs elsewhere.

Based on our analysis of the documents received through the COMIDA FOIL request and given that neither VWR nor COMIDA proved that the project was “reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state” or that it was “reasonably necessary to preserve the competitive position of the project occupant in its respective industry,” we request that the ABO conduct a further investigation into this chain of

http://www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm; Lease agreements, COMIDA and VWR obtained through FOIL request.

³ NY State Department of Labor, WARN Details, at <http://www.labor.ny.gov/app/warn/details.asp?id=3378>

⁴ Business Transfers Jobs to Rochester, WIBV.com, by Emily Lenihan, at http://www.wivb.com/dpp/money/4_your_job/DOL-says-company-filed-Warn-Order; Science Kit Shifting Warehouse, Cutting Buffalo Jobs, Buffalo Business First, by Elizabeth Carey, at <http://www.bizjournals.com/buffalo/news/2011/10/24/science-kit-shifting-warehouse.html>

⁵ It is unclear from the documents obtained through a COMIDA FOIL request the total value of the tax subsidies granted to VWR by COMIDA over the life of the agreement. 2009 is the most recent year for which IDA data is available. NYS Office of the Comptroller, 2009 and 2008 IDA Project Data, at

http://www.osc.state.ny.us/localgov/datanstat/findata/index_choice.htm

events. We also request that the ABO explore potential remedies for this violation, which include: 1) censuring COMIDA; 2) terminating the COMIDA tax exemptions to VWR; and 3) recapturing foregone revenue from VWR authorized by both the Erie County IDA and COMIDA agreements to return to local governmental units.

Thank you for your time and attention to this matter.

Signed,

Teamsters Joint Council 46 (Buffalo and Rochester, NY)
Coalition for Economic Justice, CEJ (Buffalo, NY)
ALIGN: The Alliance for a Greater New York (New York, NY)
WNY Area Labor Federation (Buffalo, NY)
Rochester and Genesee Valley Area Labor Federation (Rochester, NY)
Citizen Action of Western New York (Buffalo, NY)
Metro Justice (Rochester, NY)
Partnership for the Public Good (Buffalo, NY)
Senator Mark Grisanti, 60th District
Senator George Maziarz, 62nd District
Senator Catherine Young, 57th District
Senator Timothy Kennedy, 58th District
Assemblyman Sean Ryan, 144th District
Erie County Legislator Betty Jean Grant
Erie County Legislator Thomas Loughran