

# THE ACT REPORT

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TRADES FOUNDATION

The ACT Foundation is a division of The West Virginia State Building and Construction Trades Council, with offices in Charleston and Clarksburg. Steve Burton, President; Roy Smith, Secretary-Treasurer; Steve White, Director.

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## BUT WVU GETS OFF THE HOOK

# ACT Wins High Court Battle

**C**onstruction workers won an important victory at the Supreme Court on December 12<sup>th</sup>.

The ACT Foundation's ongoing battle with WVU over the construction of their administration building appears to be settled with a recent decision by the state Supreme Court.

"The court rejected all the arguments by WVU and the WVU Foundation that this was a private project," said Vince Trivelli, ACT lawyer.

"And they completely agreed with our position that state agencies can not skirt the prevailing wage and open bidding laws by

hiding behind lease agreements and third parties like the WVU Foundation."

Justice Albright wrote the 5-0

vailing wage.

WVU claimed the WVU Foundation, a private organization, was building the project,

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**'THE DECISION MAKES IT CLEAR  
THAT WHAT WVU DID IS NOW  
ILLEGAL'**

STEVE WHITE, ACT DIRECTOR

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opinion of the court with Justice Maynard concurring in part and dissenting in part.

The suit stemmed from the construction of a \$22 million WVU administration building in 1999 without using the competitive bid process or adhering to certain labor laws, including pre-

and therefore competitive bidding and prevailing wages were not required.

The justices suggested that lower courts look behind the paperwork to determine whether a project is private or public.

The opinion says, "The fact that a novel financing mechanism

is employed should not in itself defeat the reading of such a contract as being a contract for construction of a public building."

At issue was whether a public institution like WVU can use a private third party organization like the WVU Foundation to build structures for public use. Then use lease contracts to ultimately pay for the structure without adhering to laws pertaining to public construction projects.

"Public institutions do this to circumvent the law," said Steve White, ACT Director. "They award the bid to the developer of their choice who hires their favorite contractor," said Steve

*Continued on pg. 3*

# \$600 Million Project To Go Union

**A**fter months of discussions, Cogentrix Power has committed to use local union workers to build its proposed power plant in Marshall County.

Construction of the \$600 million, 1100 mega-watt plant will employ about 1,000 workers for 18 to 24 months.

"We've negotiated an NMA [National Maintenance Agreement] for the project," said Bill Dean, President of the Upper Ohio Valley Building Trades.

"This means any work done inside the gates of the site will be done by local union craftsmen."

Currently Cogentrix is looking to the huge multinational construction firm Kvaerner to build the plant. However, Kvaerner doesn't have the job yet.

On December 7 Cogentrix and ACT appeared before the West Virginia Public Service Commis-



Discussing the power plant project at PSC are (from left) Bill Felts of Cogentrix, Charles Dollison a Cogentrix attorney, Caryn Short PSC lawyer and Vince Trivelli, ACT lawyer.

sion to present the details of the agreement in support of Cogentrix's application.

"We had urged the Commissioners to examine the potential economic impact of this project,"

said Vince Trivelli, ACT's attorney. "We argued that without local construction workers the value to the community would be minimal.

"With this commitment to the

Building Trades we know the local economic benefits will be significant and can support the project whole heartedly."

A letter outlining the use of the  
*Continued on pg. 3*

# Trades Get Ready for Legislative Session In 2002

## With the start of the new legislative session quickly approaching, the WV State Building Trades and ACT are preparing a legislative agenda.

According to ACT's Legislative Representative "B.B." Smith, there are a number of legislative issues to promote, watch or try to defeat next year.

Promoting apprenticeship on public projects is a big priority. Recognizing state construction contracts set the standards for the industry, many states have

taken actions to make sure apprentices are used.

For example, Washington State requires that state projects use fifteen percent apprentices.

This could lower construction cost for the state and help apprentices get the real world experience they need," said Smith.

Economic development accountability will again be a topic for debate. New reports from the Wise administration confirm what ACT has claimed many times in the past. Huge sums of taxpayer dollars are being spent, or not collected, in the name of

economic development but no one knows where the money goes or what jobs are created.

Legislation will be reintroduced to require more data be collected and more focus be put on local jobs for all economic development initiatives.

Public campaign financing has been an issue on the national level and it will be one on the state level as well.

"The state needs to set up a system where you don't have to be a millionaire or a slave to corporate America to get elected," said Smith.

"Other states have systems in which a candidate can choose to run a clean, publicly financed campaign and it's been successful."

Infrastructure needs are always an important issue. A number of projects have been identified that would be good business for the state but don't have much of a chance given our current highway funding.

"We would like to see a review board set up solely for the purpose of reviewing these partnership possibilities," said Smith. "As long as these remain prevailing wage projects we can support this legislation."

As for issues ACT may fight against, tort reform and gambling issues top the list.

"We expect big business to be back with tort reform proposals like they have for many years.

"They have convinced doctors that taking away our rights to a fair trial will save them money. Tort reform proposals will help insurance companies and their clients to never have to pay out, even when they do terrible things."

The fight at the Cross Lanes Dog Track has many in the trades calling for an end to labors support for gambling initiatives.

"We support jobs, but when our jobs are stolen we have no reason to help out the gambling industry," said Smith.

Smith points out that Wheeling Downs and Mountaineer Race Track have lived up to their commitments to use local union workers.

Bill Thomas, ACT Representative, added, "If the gambling industry doesn't have organized labor's support, they will fail."

## Insurance Companies/Doctors Win, Workers Lose Court Access

### The West Virginia Legislature's attempt to release the stranglehold large insurance companies have over the state's health care delivery system hurts working West Virginians.

The bill passed in a special session by the legislature prohibits patients from suing their doctor's insurance company for deliberately dragging out claims. Commonly called third party or bad-faith lawsuits, this process affords patients' protection against bad doctors.

The ACT Foundation joined forces with the Consumer Attorneys of West Virginia in a public relations campaign urging legislators not to turn this situation into a 'tort reform' issue where West Virginians lose their right to seek damages from doctors' mistakes.

The insurance companies were successful in making tort reform an issue by convincing doctors

to buy into the smoke screen and spread several myths about malpractice lawsuits.

Among these myths, they claim insurance costs can be lowered if "frivolous" lawsuits are stopped.

"The studies show that tort reform has no impact on reducing insurance rates," said Vince Trivelli, ACT lawyer.

According to an article in the November 25th Charleston Gazette, a recent study by the International Risk Management Institute shows tort reform isn't an effective way to make malpractice insurance available or affordable.

The study said the real problem was a ten-year price war between the insurance companies that provided malpractice insurance to the state's physicians. The companies planned to sell policies at cheap rates hoping to increase their numbers of customers, then invest that profit.

They didn't make as much money with this scheme as they had hoped so they blamed their fi-

nancial mismanagement on patients, lawyers and the legislature.

"This is the second time the insurance companies have threatened to leave the state," said Roy Smith, secretary of the State Building Trades. "In 1986 legislators reacted to these threats by passing limits on the amount that can be collected in a malpractice suit.

"We expect in the years to come studies will show tort reform hurts patients and doctors alike. It's time for those who insure our doctors to show they care about them and their patients.

"The evidence is clear," said Smith, "The insurance companies have used the doctors again to attempt to stifle working families rights to compensation they deserve."

"This 'crisis' was created by the insurance companies to try to bully the legislature into passing some sort of tort reform," said Trivelli.

## Leaders Elected To AFL-CIO Board At Convention

### Four Building Trades members were recently elected to the West Virginia AFL-CIO Executive Board.

Dan Poling of Painters Local 1144 was elected to the Executive Board for the first time. "I'm honored to be chosen for this position," Poling said. "I look forward to serving with the other dedicated members of the Executive Board in promoting a unified labor movement in West Virginia."

Re-elected members were Ronnie Burdette, Business Manager of IUOE Local 132; Steve

Burton, Business Manager of the Tri-State Building Trades Council and member of Asbestos Workers Local 80; and Raymond "B.B." Smith ACT Representative and member of Boilermakers Local 667 who had been appointed to fill a vacancy in October.

Also re-elected to the positions of President and Secretary-Treasurer were Jim Bowen and Kenny Perdue.

ACT would like to congratulate these leaders for their victories and applaud their commitment to serving the state's working families.

# Ohio Trades Call For Political Action

## Is the State of Ohio sliding down that slippery slope to become a right-to-work state?

Without political participation from Ohio union members as well as support from members in West Virginia, it just might.

Ohio lawmakers have already taken prevailing wage from public school projects.

There is also a bill (Senate Bill 114) pending before the Insurance, Commerce and Labor Committee that would eliminate prevailing wage from all state-funded projects.

As if that weren't enough, the state wants to eliminate the pressure piping inspectors Office, leaving its duties to the Building Inspection office.

This is not a good idea be-

cause it would allow a person who is not necessarily qualified to inspect high pressure pipes to do those inspections as a general building inspector.

Construction history shows that removing prevailing wage costs more in the long run than paying decent wages for quality work.

"That's been proven recently in Ohio as the school boards

have had problems with bad contractors doing shoddy work," said Walter "Fuzz" LaRue, ACT Representative.

For example a company installed a gas well incorrectly and did an inferior welding job on the pipes inside a school, leaving children in danger of a deadly gas explosion. The school board now has to pay to have the well redone.

"All Ohio building trades members need to be aware of this problem and take action by calling and writing letters to their legislative representatives," said Dave Williams, President of the Ohio State Building Trades.

"Remind your legislators that Senate Bill 114 is bad for Ohio's working people and taxpayers. It compromises safety, costs taxpayers more money, and deprives qualified local workers of the work they desperately need."

## Uncertified Crane Operators Caught Red Handed On I-81

### Outlaw crane operators beware!

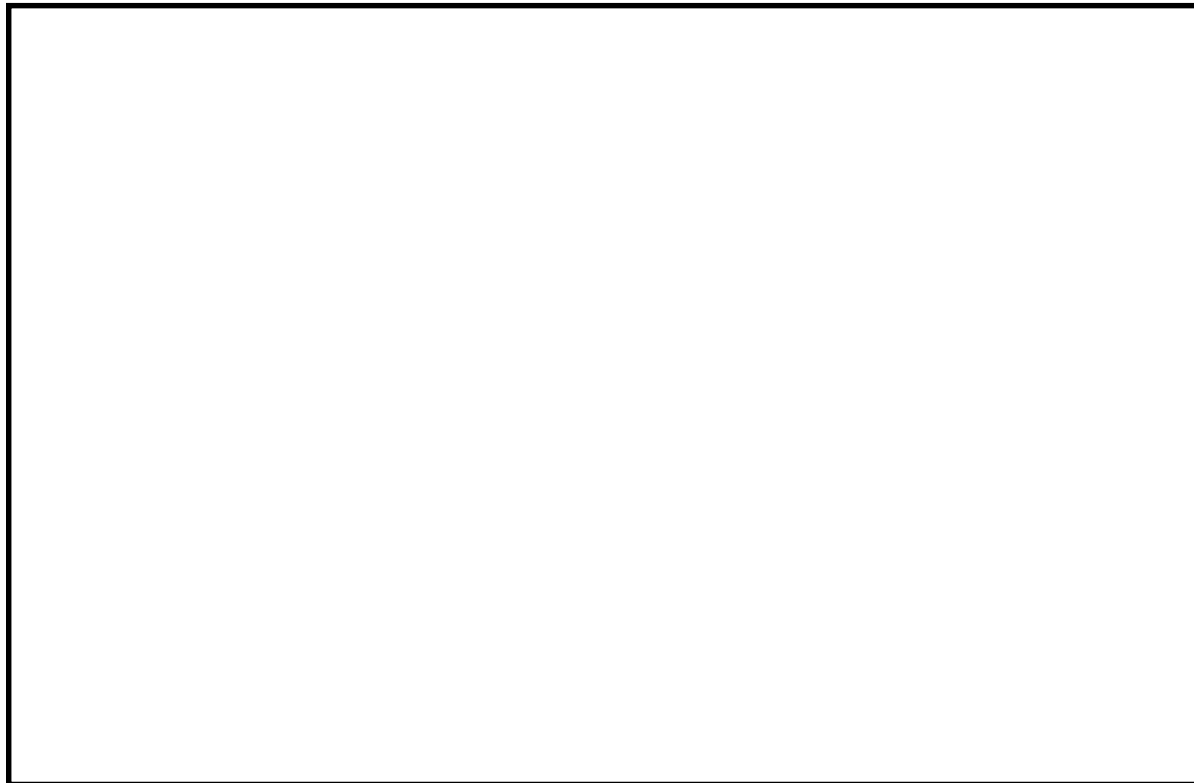
The state's Division of Labor (DOL) wastes no time in enforcing the new crane operator certification law.

operator and another who was not certified to run the type of crane he was operating.

The investigator immediately ordered the operators off the cranes and off the job.

"We're glad to see the DOL taking the new law seriously and enforcing the rules," said Larry Young, ACT Representative.

RDI was working for APAC Inc., a non-union general con-



This crane is the scene of the crime on I-81 near Martinsburg where the DOL issued a cease and desist order.

Rigging and Digging Inc. (RDI), an out-of-state subcontractor on a project near Martinsburg was caught using uncertified crane operators earlier this month.

A DOL investigator discovered one uncertified crane op-

In addition, the DOL Investigator found that RDI, of Hagerstown Maryland, did not have a valid West Virginia contractors license.

As a result RDI was issued a cease and desist order thus ending their work on the project.

tractor on the \$8 million project on I 81.

"It's the law now," said Ronnie Burdett, Business Manager for IUOE 132.

"The DOL has done a great job policing uncertified contrac-

## COURT

FROM P. 1

White, ACT Director.

"The building at WVU was constructed by Platinum Properties which is owned in part by Mike Puskar, a member of the WVU Foundation board. Furthermore, Platinum hired March-Westin as their contractor without going out for bids."

March-Westin uses union carpenters but not other crafts.

The Supreme Court suggested looking at several factors to determine whether or not a project is public or private.

According to the opinion, lower courts should take the following into consideration:

- Whether a public entity initiated the project
- The extent of control retained by the public entity
- The extent to which the project will be used for a public purpose
- Whether public funds are used either directly or indirectly by means of a lease arrangement
- Whether a lease contract is written solely to evade the prevailing wage act
- Any other relevant factors not listed above that may be relevant as to whether the project is private or public.

This is a bitter-sweet victory because the court let WVU off the hook.

"The University got away with a crime," said White.

"The decision makes it clear that what WVU did is now illegal.

"This opinion slams the door shut on state agencies and companies who want to destroy our bidding and prevailing wage laws. It is a major victory for construction workers and taxpayers."

## COGENTRIX

FROM P. 1

NMA agreement between Kvaerner and the Building Trades was presented as part of the official record. The letter also stated that if Kvaerner does not get the job, Cogentrix will still require any contractor to use the NMA agreement.

"This agreement is the result of many local union members, county commissioners and state senators getting involved and spending a lot of time and energy ensuring this project had the right result," said ACT's Walter "Fuzz" LaRue.

"The key to our success was early intervention in the permit process by ACT and the local effort to work towards an agreement."

**STEEL WORKERS TAKE TRADES JOBS**

# Dog Track Officials Lied Again

**Not once. But twice, the manager of Tri-State Greyhound Park lied to the Charleston Building and Construction Trades Council.**

When nonunion contractors were hired to build the project union building trades workers took to the streets. Track owners wanted the pickets down and the ads stopped.

After reaching an agreement with the Council to build the \$12 million expansion and do future repair and maintenance, Tri-State Greyhound Park awarded the construction of the metal outer shell to Orders Construction which is signed with the Steel Workers.

"Dan Adkins (manager of the dog track) told me to have a couple of my contractors to bid on the job after the agreement was

reached," said Bubby Casto, Business Manager of Ironworkers 301.

"The next thing we know Orders Construction was bidding on the project."

"The people at the track lied to us," said Mike Matthews, Business Manager of the Charleston Building and Construction Trades.

"In a good faith effort we took down our pickets twice and trusted their promise that our members would get the work."

The track employees had been supportive of the building trades efforts to secure work. However, after the track agreed to use building trades contractors, in an apparent double cross of the trades, the Steel Workers leadership insisted their contractor get the work.

"The other issue here is with the Steel Workers construction division," said Matthews.

"Where were they when we were standing

on the picket lines?"

Charges have been filed through the Building Trades Department of the AFL-CIO for violating the Harmony Agreement, which is an agreement between the Building Trades and the Steelworkers stating that a company can't bid on a project that is outside of its area of expertise or using wages lower than the standards for the area.

"The complaint over wages was filed because we believe Orders is paying their employees much less than prevailing wage," said Matthews.

"Every union worker should wonder what might happen if they go on strike, will these same Steel Workers take their jobs?"

The remaining contracts on the project have not been let for bid.

Track officials earlier had stated they promised 90 percent of the work would go to building trades contractors. "With about a third of the project already gone we still do not have one member on the job or one contractor who has a future portion of the job,"

said Casto.

"It is clear to us the track can not be trusted."

A number of actions are being planned by the Charleston Building Trades and the ACT Foundation to fight both the Track and the construction Steel Workers.

"We respect the plant Steel Workers and don't want a fight with them but having the construction Steel Workers take our jobs and ask us to approve because they are 'union' just is not right," said Bill Thomas, ACT Representative.

"In the past, ACT has supported the gaming issues before the legislature because we believed expansion of gambling meant expansion of union building and construction trades jobs.

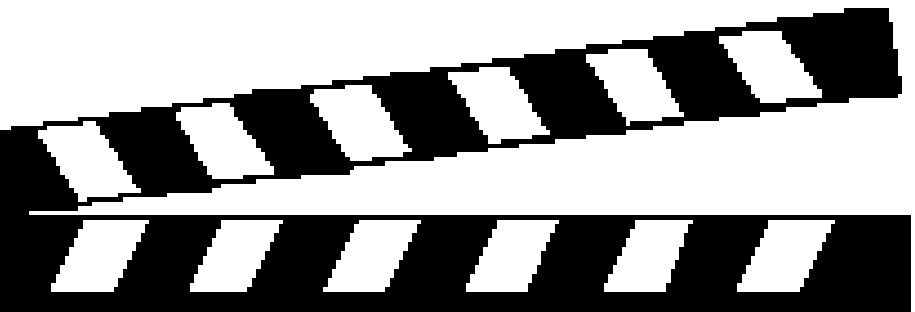
"This issue may effect the entire gaming industry in West Virginia," said Thomas.

"We are prepared to use what ever resources it takes for as long as it takes to rectify this injustice."

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***The WV State Building Trades invites  
all members to the  
2002 Legislative Conference  
on Jan. 16 at the Building Trades office.  
For more info call your  
business agent.***

**CABLE CHANNEL 9**

Steubenville, Follansbee & Wellsburg  
Saturdays @ noon

**CABLE CHANNEL 10**

Wheeling, St. Clairsville & Moundsville  
Saturdays @ noon

## WEST VIRGINIA WORKS SHOWTIMES

**WOAY 4--New!**  
Oak Hill  
Sundays @ 11:00am

**FOX 11** Charleston,  
Huntington, Parkersburg,  
Beckley, Bluefield  
Sundays @ 11:30am

**WDTV 5**  
Clarksburg & Morgantown  
Saturdays @ noon