

THE ACT REPORT

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JUDGE DENIES BECKLEY ATTACK ON STATE PREVAILING WAGE LAW

Kanawha County Circuit Judge Louis "Duke" Bloom tossed out a suit filed by the city of Beckley challenging the state Prevailing Wage law.

The city of Beckley had illegally tried to deny construction workers the payment of prevailing wages on a series of downtown projects but was caught by the ACT Foundation.

ACT asked the state Division of Labor to investigate the projects back in January of 2007 and provided ample evidence

that public money was at use.

Buildings owned by Raleigh County called the Covey and Thrifty buildings on Neville Street were at issue.

The city had received more than \$2 million from the U.S. Department of Housing and Urban Development from grants in 2004 and 2005.

Apparently this funding did not require the payment of Federal Davis-Bacon wages for construction. (Davis-Bacon is the term used for the federal prevailing wage law.)

However the federal funding was only one part of the project

financing with the rest coming from both county and city public funds.

After Wayne Rebich of the ACT Foundation contacted the DOL, Beckley Mayor Emmett Pugh also wrote them a letter asking for clarification. The city contended the projects were funded solely by federal funds so state law did not apply.

The response from Larry Walker, DOL Director of Wage and Hour, dated January 18 stated, "After considering the facts surrounding these projects [the] determination is as follows; prevailing wage as required by

the code ... will be required on these projects."

Beckley then sued the DOL to reverse their ruling.

In their lawsuit, Beckley sought a declaratory judgment against the DOL complaining that prevailing wage laws didn't apply to a project in downtown Beckley.

They argued the project was funded by a federal Housing and Urban Development grant, and not with state funds.

ACT requested, and was granted, status to intervene in the case.

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ACT FILES LAWSUIT AGAINST WVU

The ACT Foundation has filed suit against West Virginia University over construction of a new WVU Alumni Center.

In the latest action, in a series of legal moves, ACT has asked for a preliminary injunction to halt construction of the 48,000 square foot building until a judge has heard ACT's case about illegal bidding on the project.

The request for an injunction was filed on July 10 before Chief Judge Russell Clawges Jr., so that the project won't get started before the court hears arguments in the ACT lawsuit. A hearing is set for August 6 on the injunction request.

ACT's suit, filed in Monongalia County Circuit Court on April 19, claimed WVU entered into agreements to construct the new WVU Alumni Center that violate West Virginia laws on competitive bidding and on payment of prevailing wages.

A pre-trial conference is set

for September 4.

WVU and the WVU Alumni Association claim the project will be funded only with private donations and does not have to follow state bidding and wage laws.

ACT's filing details its belief that WVU has spent public funds to construct a \$12 million facility on property WVU currently owns, and that the University

failed to follow the required bidding process in selecting a contractor.

The legal moves should come as no surprise to the University since ACT filed a notice of its intent to sue back in December 2006.

Some early site preparation work on the project is almost completed, and was done with

public funds and sent out to public bid.

"Apparently the University maintains that the design, development, site preparation and even some foundation work, paid for by WVU, are not parts of this construction project," said Natalie Stone, Executive Secretary of the North Central

Continued on p. 2



WVU PAID FOR this site preparation and foundation work for the Alumni Center but now says the project is private and not subject to bidding or wage laws.

TABLE GAMES WINS IN "LANDSLIDE"

On June 30, Hancock County voters approved a local table games referendum by a "landslide" margin.

With a tally of 59 percent to 41 percent, voters comfortably passed a referendum allowing poker, blackjack and other table games at Mountaineer Race Track and Gaming Resort, already the County's biggest employer with over 1700 workers.

The Resort is near Newell along the Ohio River in West Virginia's northern panhandle.

Mountaineer's corporate parent, MTR Gaming Group Inc, reportedly is in the process of

selling its Binion's Gambling Hall & Hotel in Las Vegas for \$32 million. According to an MTR official, the transaction will allow the company to redeploy assets to Mountaineer.

A multi-million dollar investment in table games promises to create hundreds of quality jobs, which motivates area building trades organizations to be very vocal and active supporters of the table games expansion.

"We are excited and grateful over the outcome of the election," said Bill Dean, Business

Agent for Ironworkers 549 in Wheeling and President of the Upper Ohio Valley Building Trades.

"Excited because we worked hard to see it pass and grateful

expanded casino and hotel facilities. A new golf course, and additional shops and restaurants are also planned.

Dean said his group passed out informational flyers, did mailings, and helped get-out-the-vote. "We tried to cover all the bases," Dean explained. "It seems that we did."

AUGUST 11TH IS THE FINAL DAY FOR KANAWHA COUNTY TO VOTE ON TABLE GAMES. EARLY VOTING STARTS JULY 20TH.

for all the opportunity this represents for our members."

Early estimates of job creation see over 700 new gambling-associated jobs in addition to the scores of construction jobs needed to build \$200 million in

On June 9, Ohio County was the first West Virginia county to pass the measure allowing the expansion at Wheeling Island Racetrack and Gaming Center near Wheeling. On the same day, Jefferson County rejected

the measure for Charles Town Races & Slots in Charles Town.

West Virginia will have one more election when Kanawha County voters consider table games for Tri-State Racetrack & Gaming in Nitro on August 11.

Even after the elections are held, the future of table gaming in West Virginia will not go unchallenged. The West Virginia Family Foundation has announced plans to file a federal lawsuit seeking to overturn the state law allowing local elections.

"Obviously, we've got to continue to be watchful and advocate for our position," concluded Dean. "But for now, we're looking forward to the newly created jobs."

ACT SUES

CONTINUED FROM P. 1
WV Building Trades.

"The law does not allow for you to split up a project like that."

ACT contends the entire project – from design to completion – should be bid competitively, with prevailing wages, open records and other public protections included in the requirements.

In the lawsuit ACT states its belief that WVU, along with co-defendants, the WVU Alumni Association, Inc. and March-Westin, have entered into "an agreement or agreements" which are illegal under West Virginia law.

According to ACT attorney, Vince Trivelli, a discovery process will be completed during the court proceedings.

Discovery provides for parties to lawsuits to receive and review potential evidence in a lawsuit.

The suit asks the Court to grant a speedy hearing, to de-

clare the agreements are not in compliance with the law and that there is no rational basis for entering into such agreements.

A formal groundbreaking ceremony for the project was held on June 1.

Morgantown-based general contractor March-Westin Inc. has been selected to construct the building with a completion date of fall 2008.

This is not the first time that ACT has gone to court over bidding irregularities at WVU construction projects. In 2001, ACT asked the West Virginia Supreme Court to intervene during the construction of a University Services Center that was funded by money funneled through the WVU Foundation, Inc.

The Court did not stop construction of the building which had been completed, but stated in a 22-page opinion that future publicly funded projects should not be subject to financing schemes which seek to avoid competitive bidding, prevailing wage and other related laws.

ASBESTOS WORKERS LOCAL 80 SPONSORS CUB SCOUT CAMP



CUB SCOUT JOEL Jones, a member of Troop 21 chartered by Beverly Hills Presbyterian Church of Huntington, is shown working on his Metal Work Merit Badge at Camp Arrowhead located near Ona, WV. The class supplies and tools were sponsored by the Asbestos Worker Local 80 Joint Apprenticeship Committee. The instructor for the merit badge was Local 80 member, Rick Clifton of Gallipolis, Ohio.

13TH ANNUAL "DAD'S DAY" EVENT

TRI-STATE RAISES \$16,270 FOR DIABETES

Tri-State Building and Construction Trades Council held its 13th annual Dad's Day Golf Tournament to raise money for the national Building

Trades 'Dollars Against Diabetes' campaign.

The event, held in mid-June, was a big success raising \$16,270 to fund diabetes research.

There were 160 people who

attended representing labor, contractors, suppliers and owners with the Charleston Building Trades fielding the winning team.

"We had a good time supporting a worthy cause," said Steve Burton, Tri-State's Business Manager.

"I want to thank those who participated, and especially the many volunteers who made this event a success."

According to Burton the Tri-State Building Trades event has raised more than \$150,000 for diabetes research.

The national Building Trades

Department of the AFL-CIO started the Dad's Day event in 1987 to fund the Diabetes Research Institute.

Each year, around Fathers Day, Building Trades Councils across the country raise funds.

Almost \$20 million has been raised from the effort nationally.



AMONG THE MANY volunteers for Tri-State's Dad's Day event were (from left) Billy Martin and Chuck Parker, both members of Operating Engineers Local 132, as well as Parker family members Chuckie, Austin, and Michelle.

CHARLESTON BUILDING TRADES WINS AWARD

The Charleston Building Trades Council received national recognition for safety last month.

Walbridge-RB was the general contractor on the fuel gas desulphurization project for American Electric Power.

The award recognizes zero lost work days for 126,246 man-hours worked at the project.

Both AEP and Walbridge will also receive an award.

Steve Lindauer, CEO for the NMAPC explained the purpose of the award program in a June 11 letter to Charleston Building Trades Business Manager Mike Matthews.

"The Zero Injury Safety Awards program was designed to recognize world-class safety, as it is an integral component to the NMAPC's system of tripartite governance and cooperation between our signatory contractors, customers, and building trades craft workers who share equally in the responsibility for

workplace safety," wrote Lindauer.

"On behalf of all the crafts we are pleased to receive this award and the recognition it brings," said Matthews.

The NMAPC administers the National Maintenance Agreement, which is a collective bargaining agreement utilized by over 3,000 industrial contractors employing the members of fourteen participating building trades international unions everyday throughout the United States of America.

Judge Denies

CONTINUED FROM P. 1

In a hearing on June 21, Judge Bloom told Beckley City attorneys they failed to provide the state a required 30-day notice in their case against the DOL.

Bloom also denied the city a preliminary injunction to block the prevailing wage requirement while the merits of the case are reviewed, since it failed to show irreparable harm.

The claim that state funding is not involved seems to run counter to a significant volume of evidence compiled by the ACT Foundation representative Wayne Rebich who has been monitoring the case.

Rebich cites published quotes from project developers, written opinions from government agencies and other documents, some from as far back as 2003, that define the project in question as being publicly funded and involving multiple buildings along Neville Street.

Rebich offers as one example a quote attributed to a project developer and published in a Beckley-area daily newspaper refers to the Covey and Thrifty buildings as the "state part of the deal."

"The project clearly started with a \$300,000 state grant, but they then try to claim the money

was used for just a small part of the overall project," explained Rebich. "That doesn't fly for a number of reasons, in my opinion. It's clearly a public project requiring prevailing wages."

Rebich said he felt the attorney for the City made the case for ACT when asked by the Judge if public money was involved.

"When he said, 'Yes, your honor, there are both federal and state funds involved.' I felt we had won the case," recalled Rebich.

"It was clear to me the city's argument - that state, county and city money was being used but not for construction - was a real stretch."

Rebich attributes much of the problems with a group called Forward Southern West Virginia, which the city hired to be their agent and project developer.

Tom Acker, a Jesuit priest, who has tried to bend and break the rules on many occasions according to Rebich, runs the non-profit group.

"The City has partnered with Tom Acker who appears hell bent on destroying the wage standards construction workers have worked so hard to create," said Rebich.

The city has not announced whether or not they will refile the case.

CRAFTS PROTEST WALGREENS PROJECT

Local trades staged a three week protest of sub-standard wages and conditions at a construction site

near Beckley last month.

Walgreens, a national pharmacy chain store, hired Tennessee based M & M Development to build a new store in the Ra-

leigh County town of Beaver.

Building permit records show the store will be approximately 15,000 square feet.

M & M in turn hired contractors who pay low wages and

little or no benefits and imported many of their sub-contractors.

“Walgreens has been unfair to this community,” said Luke Begovich, organizer for the Mid-Atlantic Regional Council of Carpenters. “I think Walgreens should make sure the contractors on its job hire local workers who get health benefits and decent pay.”

Out of state contractors included Richard Turner Construction, Kustom Glass, and Morristown Mechanical from Tennessee and Commercial Roofing from North Carolina.

According to ACT Representative Wayne Rebich, Walgreens plans to build more stores in West Virginia at Princeton, Cross Lanes, and Elkins.



LETTING THE PUBLIC know about sub-standard conditions at Walgreens are Bill Taraczkozy (left) and Henry Neal (right) of the WV Laborers District Council and Robbie Church of Operating Engineers Local 132 (center).

PSC DENIES PERMIT FOR WIND TURBINE PROJECT

The West Virginia Public Service Commission (PSC) last month refused to issue a siting certificate to Liberty Gap Wind Force, LLC to construct a wind turbine electric generating facility in Pendleton County.

The decision, released on June 22, claimed numerous flaws in the application submitted by project developers.

The proposal by US Wind Force, LLC, a Pennsylvania company, would have employed

approximately 150 local union construction workers to build up to 50 wind turbines over a six-and-a-half mile stretch along Jack Mountain near Franklin. The wind farm's electric generating output could reach up to 125 megawatts.

In a media release, the PSC said Liberty Gap can't build a wind farm in Pendleton County because its application lacks information on several key issues, including the project's impact on cultural resources, viewsheds, noise, and populations of bats and birds.

“Without that information [the agency] can't balance the inter-

ests of the public, the developer and other parties in determining whether to approve the project,” the PSC release said.

It was the second setback for the wind industry in WV in less than a month. On June 8, the state Supreme Court agreed to hear arguments challenging a separate wind farm proposed for Greenbrier County.

The Greenbrier case will look at whether the PSC is doing an adequate job reviewing the wind power permit applications.

“Liberty Gap had their information in but perhaps the PSC got nervous because the Supreme Court is now looking

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over their shoulder,” said Steve White, ACT Director.

The PSC stated Liberty Gap did not comply with a siting rule that requires a map showing communities, public or private recreational areas, churches, archaeological sites, land use classification and other entities within a 5-mile radius of the wind farm

that potentially could be affected, the PSC said.

“The PSC ruling, while disappointing, does lay out a map for what Liberty Gap needs to do to get a permit,” said White. “We hope they apply again because these projects create good paying construction jobs for local union workers.”