

THE ACT REPORT

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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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ABC Attack on Prevailing Wage Stopped

The anti-worker contractors association, Associated Builders and Contractors (ABC), has lost their appeal challenging the 2003 prevailing wage rates.

West Virginia Division of Labor (DOL) Commissioner Jim Lewis has denied the objection and appeal of the 2003

wage rates by Tom Hardiman and ABC, as recommended by Hearings Examiner James W. McNeely.

McNeely carefully examined the ABC's allegations and found the Division's investigation to be "entirely consistent with applicable statutes and the direction given by the West Virginia Supreme Court of Appeals" and therefore denied

the ABC's challenge. However, the delay caused by the ABC challenge has cost local construction workers thousands if not millions of dollars in lost wage increases.

The ABC's basic claim was that because most contractors failed to return wage surveys, the wage rates were not correct.

Hardiman claimed the pre-

ailing wage rate calculation was inaccurate because DOL didn't obtain an adequate number of wage surveys from West Virginia licensed contractors. They failed to mention that almost 5,000 contractors were mailed survey forms and most chose not to answer.

The ABC also alleged the DOL relied almost exclusively

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Workers Memorial Day Service Honors 34 Who Died on the Job During 2002



A crowd gathered at the Moundsville Court House for the April 28 Workers Memorial Day Service. This Annual event is sponsored by the WV AFL-CIO.

Recognized were the 34 people who died on the job in 2002 in West Virginia.

A number of elected officials were on hand, (from right) Marshall County Delegate Ken Tucker; Marion County Del. Mike Caputo; Supreme Court Justice Warren McGraw; Secretary of State Joe Manchin; Marion County Commissioner Jim Sago and Marion County Del. A. James Manchin.

ACT SERVICES AND DUES CONSIDERED

State Building Trades To Hold Special Convention

The West Virginia State Building Trades is set for a special constitutional convention May 20.

The organization intends to bring representatives from all building trades crafts together to discuss a possible change in the services of ACT, and a decrease in membership dues.

Currently, ACT spends a considerable amount of it revenue on assisting locals with organizing efforts. Recently many of the international building trades have pushed for each local to beef up its own spending on organizing and they have done so.

That is just the position the United Association locals cur-

rently find themselves in. Demands for these locals to fund organizers have taken increased dues contributions from members. They are only willing to stay in ACT at the fifteen-cent level.

Therefore, building trades leaders are entertaining suggestions that the organization focus less on organizing and

more on professional services, such as providing legal council, lobbying, public relations, and research.

With the change in services comes a decrease in the membership fees, from 25 cents per man-hour to 15 cents per man-hour.

"Overall, we think these

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Carpenters Win Rare NLRB Bargaining Order

The Mid-Atlantic Regional Council of Carpenters (MARCC) has won a big victory in its fight to organize High Point Construction Group, Buckhannon.

Administrative Law Judge, Benjamin Schlesinger has taken the highly unusual step of issuing a 'Gissle' bargaining order to remedy the many unfair labor practice charges leveled on the company.

This type of order is issued only if there is overwhelming evidence that a company's unfair labor practices were so severe that it would be impossible to hold a fair union election.

The owners of High Point threatened employee's wages, jobs, and physical safety. There

is nothing more to threaten, according to the order.

"...There is no likelihood of a fair election here," wrote Schlesinger. "...There is ample evidence that the unfair labor practices tended to ... destroy any chance of the holding of a fair rerun or election."

The 'Gissle' order forces

High Point into recognizing MARCC as the employee's bargaining agent.

In addition, High Point must post notices informing its employees that the company will not interfere with their right to collectively bargain.

"I am very proud of the employees of this company for

coming to us and hanging in there through this long fight," said John Znoy, Organizer for MARCC, West Virginia District. "They endured threats of job loss, pay cuts, and even

'THIS IS A GREAT VICTORY FOR WORKING PEOPLE AND THE CARPENTERS WERE PROUD TO BE IN THE TRENCHES WITH THEM.'
LEROY STANLEY, ORGANIZING DIR, MARCC, WV

physical harm to see this process through to its almost unprecedented end."

The fight began in June 2002 when High Point employees discovered they had no health insurance coverage even though amounts were being deducted from their checks for premiums.

On June 13, 2002 High Point employees John Snyder and Joe Morgan met with MARCC director of Organizing, Leroy Stanley signing union authorization cards and taking blank ones to solicit other employees.

By June 26 the union secured 11 signed cards, a majority of the 17 employees.

The next day Stanley faxed and mailed a request for recognition to High Point's office.

By June 28 one of the owners, Chris Critchfield, declined the request for recognition in a phone conversation with Stanley.

In the months that followed

company owners, Chris Critchfield, Tim Critchfield and Tom Shaw racked up several unfair labor practice charges.

One of the most damning charges came when Shaw showed up at a June 27 union meeting being held at employee Randall Burke's home. Shaw was accompanied by four large men who were drinking beer.

Shaw asked why he wasn't invited to the meeting. Then Burke's wife demanded that the uninvited guests put away their beer, Shaw became irate screaming obscenities and threats at the employees. He and his cohorts then left.

The police who were called because Shaw was known to carry a gun, found that the men were parked at an intersection about a mile from Burke's house.

In addition, Shaw told workers at two job sites on two separate occasions that if they voted union their salaries would go down by \$2 dollars per hour, according to the residential contract obtained from Stanley. This, of course, is not the case.

He also told the workers that if they went union there would be less work for them.

In yet another incident Shaw unlawfully interrogated Randall Burke about his support for the union telling him that he would file bankruptcy before he would work under any union contract.

This incident led to charges of coercion, threats, illegal surveillance, and interrupting a union meeting being filed with the National Labor Relations Board.

"This is a great victory for working people and the Car-

Trades Protest Ripley Municipal Building Award



Scott Brewer of MARCC (standing before Ripley City Council) urges Council members not to award Trimat Construction a \$2 million contract.

The city was handed a pile of documents concerning past business dealings involving bribery, lawsuits, liens and judgements against Trimat and related companies.

Three City Council members chose to ignore the unions efforts and awarded the contract to Trimat.

ACT is investigating whether the contract was awarded properly and whether Trimat is registered with the state workers compensation fund.

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Bricklayers Turn Job Around

Pickets, research, legal protests, and law enforcement add up to jobs for WV Bricklayers District Council members.

The effort was aimed at a \$2 million office building in Morgantown that started off non-union.

The general contractor on the project, Pittsburgh based Maracon Inc., recently

awarded the remainder of the brick work to Harris Masonry, a union contractor also from Pittsburgh.

The project is being built by GlenMark Holdings, but will be leased to the federal Mine Safety and Health Administration.

Since the start of the project last fall the question has been raised – why are prevailing wages not being paid on a project built for the federal

government?

The ACT Foundation uncovered details of the deal through a Freedom of Information Request to the General Services Administration, the federal agency that made the lease deal with GlenMark.

‘THIS IS A PRIME EXAMPLE OF HOW PREVAILING WAGE LAWS KEEP QUALITY AND FAIRNESS IN TAX FUNDED PROJECTS.’

LEROY HUNTER, BUS. MANAGER, BRICKLAYERS DC

That lease information has been turned over to the Federal Department of Labor to determine if Davis Bacon wage rates should have been a requirement of the project.

While the DOL investigation has been taking place a further review of the project showed the bricklaying subcontractor on the job, Nick’s Masonry, did not have a WV contractors license.

An attempt to put Nick’s

Masonry employees on Maracon’s payroll was also uncovered.

After an initial DOL determination that Davis Bacon wages should be paid the Bricklayers picketed the job.

(At press time the DOL has not issued a final ruling.)

Quality and production concerns were also a question.

The job was then shut down for two weeks

before the general contractor brought in Harris to clean up the mess and finish the project.

“This is a prime example of how prevailing wage laws keep quality and fairness in tax funded projects,” said Leroy Hunter, Business Manager for the West Virginia Bricklayers District Council.

“It also shows that hiring the low-ball contractor can cost the developer more money in the long run.”

Prevailing Wage

CONTINUED FROM P. 1

on collective bargaining agreements to determine the new wage rate, when union labor supposedly only represents 19 percent of the construction market.

ACT showed that union contracts are a reliable source of data because of the many workers and contractors who perform work under the terms of the agreements.

State law and previous state Supreme Court decisions soundly refuted all of Hardiman’s claims, according

tractors don’t return the wage surveys.

The DOL did send out requests for wage information for the 2003 wage determination and followed them up with public service announcements on “all West Virginia Media.”

However, the 4,700 licensed West Virginia Contractors that received it returned only 289 surveys. Further, only 146 of the 289 surveys returned had usable wage information.

“Basically, the hearings examiner found what we knew all along,” said Vince Trivelli,

‘THIS DECISION HAS WEAKENED THE ABC’S ARGUMENT FOR LOWERING PREVAILING WAGES DURING THE NEXT LEGISLATIVE SESSION.’

VINCE TRIVELLI, ACT/ WV BUILDING TRADES LAWYER

to the recommendation.

In a nutshell, state law leaves the manner of investigation and determination of prevailing wage to the discretion of the DOL Commissioner.

The law also specifically states that collective bargaining agreements may be used as a source of wage information, according to the recommendation.

A 1994 State Supreme Court decision upheld the use of collective bargaining agreements as permitted by law. The Division also surveys contractors – both union and nonunion – in order to determine the wages paid around the State.

The court determined that the DOL made sufficient attempts to collect wage survey from a cross-section of contractors in the state, saying it isn’t the DOL’s fault if con-

ACT/State Building Trades Lawyer. “West Virginia law mandates that the DOL Commissioner determine a prevailing wage for projects where public funds are used.

It provides board discretion to the Division to determine how the wage should be investigated or determined.”

In addition, the law says that the interpretation of the prevailing wage law should not be disturbed unless the commissioner is clearly erroneous.

In the recommendation McNeely writes, “The interpretation of the subject statutes by the commissioner is clearly not erroneous.”

“This is a great victory for working folks,” said Trivelli. “This decision has weakened the ABC’s argument for lowering prevailing wages during the next legislative session.”

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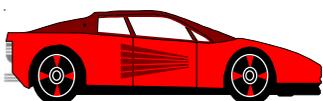
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B&L Utility Files Chapter Seven Bankruptcy

B&L Utility Contractors Inc. of Ashland Kentucky, a nonunion company which has a long history of underbidding union contractors, has filed for bankruptcy.

The company recently changed its bankruptcy status from chapter 11, which is meant for reorganization, to chapter 7 which means B&L will likely go out of business.

The bankruptcy was the fi-

nal straw in long list of problems for B&L.

The company routinely put its workers in danger, according to OSHA inspection records.

B&L failed nine OSHA inspections between August 1993 and November 2002 racking up 48 violations and paying thousands of dollars in fines.

In addition, B&L allegedly had run-ins with the Division of Labor.

The company was also ac-

cused of several federal labor law violations including taking unauthorized deductions from payroll checks of voluntary union organizers and bouncing payroll checks during a recent organizing drive.

In addition, organizers for the Operating Engineers and the Carpenters Council (MARCC) have also accused the company's owner, Janet Griffiths, of several counts of threatening employees in order to stifle a three-month organizing campaign.

"It's no wonder these workers wanted union representation," said Donnie Huff, Head Organizer for IUOE 132. "This company has a long track record of treating employees unfairly."

Griffiths went so far as to place a skeleton in the lobby of the main office with a sign around its neck reading "Starvation...and you want to work union?", according to Huff.

In addition, charges have been filed for conspiring with the local police to break up a

lawful picket.

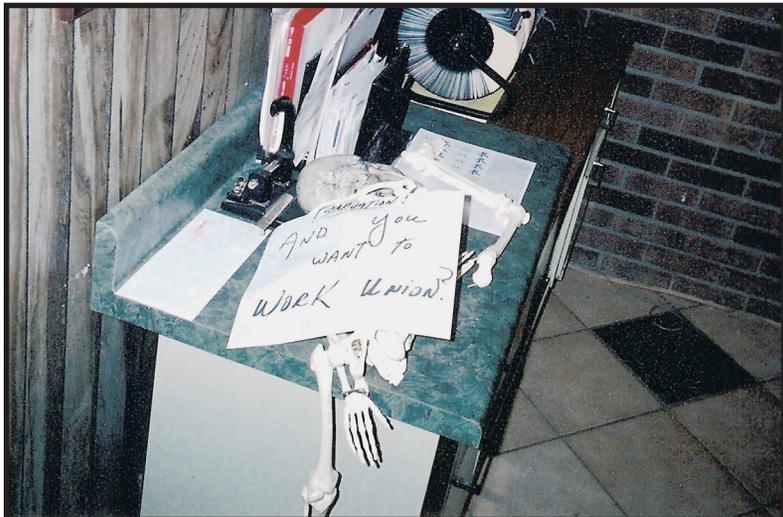
"As if that's not enough, employees who identified themselves as voluntary union organizers were threatened with firing and withholding pay checks," said Huff.

B&L abandoned several jobs in West Virginia including two in Logan County as well as a High School Auditorium

project in Pocahontas County.

"I think the company was caught trying to misclassify workers on a prevailing wage school project in Pocahontas County," said Joseph Harmon, Organizer for MARCC.

"Hopefully union contractors will be able to capture some of the market share that B&L abandoned."



The skeleton pictured above was placed in B&L Utilities Ashland office to intimidate workers who wanted union representation.

Convention

CONTINUED FROM P. 1

changes will be positive for the states construction unions," said Roy Smith Secretary Treasurer for the State Building Trades. "And the drop in dues will allow locals with jurisdiction in West Virginia that are not currently members to join in a unified fight for justice on the job."

The ACT Foundation's original intent was to get more work for union workers through the use of nontradi-

tional methods.

"Our number one priority has not changed," said Steve White, ACT Director. "We will now focus all of our attention on those nontraditional methods, letting the locals handle organizing."

The increase in membership may offset the decrease in dues, according to White.

"We would rather see a unified front paying a reduced rate than a fragmented one paying the current dues," said White.

"That was another of the reasons ACT was created, to unify the locals into a formidable opponent for any adversary."

Whether or not ACT can function effectively on the lower dues structure will be just another challenge to face.

"I think it's a shame ACT's resources will be diminished, but if that's what it takes to unify the trades state wide, this move will be a good one," said Ronnie Burdette, Business Manager, IUOE Local 132.

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Rare Order

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carpenters were proud to be in the trenches with them," said Stanley.

"Now that High Point has been ordered to bargain with us we look forward to working with them."

MARCC District Manager, Dick Ullum points out another victory.

"This council has a record of four wins and zero losses in cases where the anti-union attorney Fred Holroyd's firm has been involved."

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