

THE ACT REPORT

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THE AFFILIATED
CONSTRUCTION
TRADES

ACT is a division of The West Virginia State Building and Construction Trades Council, AFL-CIO. Steve Burton, President; Dave Efaw, Secretary-Treasurer; Steve White, Director.

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Inside

Insulators #80	Pg. 2
Iron Workers	Pg. 2
Legislative	Pg. 3
King Coal Case	Pg. 4
Union Trades	Pg. 4

TIME AND MATERIALS CONTRACT TOPS \$6 MILLION

TRADES QUESTION HANDLING OF STATE CONSTRUCTION CONTRACT

The Affiliated Construction Trades has asked the WV Department of Administration to investigate a construction service contract that expired in November.

After reviewing thousands of pages of invoices ACT questioned inconsistencies between bills paid and agreed on contract amounts. ACT believes hundreds if not thousands of hours paid at \$75 should have been paid at \$50 according to the contract.

ACT also questioned further use of the contract language for future work.

The contract, awarded to Charleston-based Casto Technical Services in November of 2006 on a time and materials basis, has been used for more than \$6 million of payments.

ACT Director Steve White

reviewed the contract along with thousands of pages of invoices and found numerous issues about overtime, premium time, material mark-ups

and invoice oversight.

“At this point we have more questions than answers,” said White.

According to White there

was agreement the contract itself was very poorly written. ACT urged the Department of Administration to

Continued on p. 4



CASTO TECHNICAL TRUCKS have become almost a permanent feature at the State Capitol Complex for the last four years. The company has been handed millions of dollars in projects based on a simple service agreement signed in November of 2006. ACT has questioned the contract and billing that has resulted.

SUPREME COURT RULING ALLOWS RT 35 PROJECT TO MOVE FORWARD

A \$187 million union construction project can move forward thanks to a WV Supreme Court Ruling on December 7.

At issue was a 14.6 mile section of Route 35 in Putnam and Mason Counties.

Completion of Route 35 to a four-lane highway has been a long awaited project.

However the lack of federal and state funding has been a problem.

The WV Legislature recently passed a law allowing the state to use toll-road fund-

ing to supplement state and federal funds.

In the bill each county affected by the toll was given the right to approve the project before it could move forward.

Approval was given by both Putnam and Mason County Commissions before the project went to bid.

Kokosing Construction, a union contractor, was announced the lowest bidder on October 26.

However the project came to a standstill when Mason County Commissioner Miles

Epling changed his mind and the Commission voted to revoke its prior approval.

The Supreme Court was asked if the county had the authority to revoke their approval – the court ruled they did not.

While each County had the authority to approve the project once that was done they did not have the ability to change.

ACT filed a brief in the case urging the Court to move the project forward.

“This will mean hundreds of jobs for our members and

other crafts,” said Tommy Plymale, Business Manager for Operating Engineers Local 132.

“Our folks need the work, this project comes at the right time.”

Public hearings must still be held in both counties.

Then bonds must be sold that pledge the toll revenue as payment.

When approved it will be the largest project ever awarded by the WV Department of Highways. The Blennerhassett Bridge at \$120 million had been the largest.

SUPPORTING THE MARINES PROGRAM FOR MORE THAN FIVE YEARS

INSULATORS SUPPLY TOYS FOR TOTS

Christmas will be a little merrier for underprivileged children across the region thanks, in part, to the 364 members of Insulators Local 80, who collectively donated a truckload of gifts to the United States Marine Corps Toys for Tots Foundation.

holidays brighter for those less fortunate.”

Local 80, representing insulation industry workers across Southern West Virginia, and parts of Kentucky, Ohio and Virginia, has actively supported the Toys for Tots program for more than five years.

Gifts were collected during the organization’s recent meeting in Winfield.

For more information, contact Staff Sgt. Don Snyder at 304-776-4806, ext. 302, or visit the Toys for Tots web site at <http://charleston-wv.toysfortots.org>.

“EVERYONE DESERVES A GOOD CHRISTMAS, PARTICULARLY CHILDREN” STEVE KELLER, BUSINESS MANAGER, INSULATORS LOCAL 80

“Everyone deserves a good Christmas, particularly children” Insulators Local 80 Business Manager, Steve Keller, said.

“Even in this tough economy, when business has been tight, we want to reach out in a positive way to make the

“It’s a great program,” commented Keller, who organized this year’s gift-giving campaign. “Our membership truly gets behind this initiative each year, and we are once again overwhelmed by the level of support they’ve shown.”



INSULATORS LOCAL 80 members Mark Thomas (left) and Shawn Fauber stand in front of a pile of toys gathered from union members and their families that will go to the Marines “Toys for Tots” effort. The Local has worked with the Marines for more than five years to help underprivileged children from the region have a brighter Christmas.

PARKERSBURG IRONWORKERS #787 TAKE APPRENTICE APPLICATIONS YEAR ROUND

Iron Workers Local 787 Joint Apprenticeship Committee (JAC) now accepts applications every Wednesday for their apprenticeship program.

Those interested must fill out the application at 303 Erickson Boulevard, Parkersburg in person, during regular Wednesday business hours: 8:00 am – noon and 1:00 pm – 4:30 pm.

Applicants must be at least 18 years old, capable

of performing work of the Iron Worker trade, be a high school graduate or have a GED, and pass an aptitude test given by the Parkersburg Workforce office.

In addition an applicant must live within Local 787’s area for at least one year prior to applying. The area covered by Local 787 in Ohio includes the Counties of Athens, Meigs, Morgan, Noble, and Washington; in West Virginia: Calhoun, Doddridge, Gilmer, Jackson, Lewis, Mason, Pleasants, Ritchie,

Roane, Upshur, Wirt and Wood Counties.

If selected a candidate must pass a substance abuse test.

The Iron Workers Joint Apprenticeship Training Program teaches in the classroom as well as on the job.

Classes are held evenings and Saturdays, allowing on-the-job learning while getting paid.

The goal is to educate new workers how to safely, efficiently, and effectively perform all aspects of the trade.

Class consists of a variety of applications including structural, ornamental, and reinforcing, as well as mathematics, welding, and rigging.

The apprenticeship is a four year program starting out at 50% of Journeyman scale with full benefits. Increases are given every six months until training is complete.

Applications will be kept on file for a year.

No applicant will be rejected because of race, color, religion, national origin or sex. Iron Workers Local 787 JAC

will take affirmative action to provide equal opportunities in apprenticeship.

For more information contact Dan Slavin, Apprenticeship Coordinator, at 304-485-6231.

ACT Report Address Corrections Wanted

Call: 1-800-930-9675
Email: stevewhite@actwv.org
or mail to:
ACT
600 Leon Sullivan Way
Charleston, WV 25301

ISSUES INCLUDE MARCELLUS SHALE, OSHA 10 HOUR TRAINING AND UNEMPLOYMENT

NEW LEADERSHIP & LEGISLATIVE SESSION

The 2011 Legislative Session is scheduled to start January 12 and will see new leadership in both the positions of Governor and Senate President.

With former Governor Joe Manchin now in the U.S. Senate, the President of the WV Senate, Earl Ray Tomblin (D-Logan) becomes acting Governor.

The WV Supreme Court has been asked to clarify whether or not Tomblin can serve until Manchin's term would have expired, 2012, or if a special election must be held next year.

But the uncertainty about the Governor is not the only area of concern.

In the Senate there is a question of who will take on the duties of the Senate President.

The President appoints the committee chairs, makes committee assignments and

determines what bill will be brought before the Senate.

Tomblin has been President of the Senate for 16 years.

While the state constitution makes the Senate President the acting Governor it also calls for a separation of powers between the Governor and the Legislature.

This has led some in the Senate to call for a new position of acting Senate President to be elected if the Senate President must replace a Governor.

It won't be until the session starts in January that a formal decision is made, but discussions are already underway to address the issue.

With all the changes many predict the Legislative Session will not see any action on controversial issues.

Nevertheless there is al-

ready much debate around the Marcellus Shale gas discovery.

Issues about water usage, local hiring, landowner's rights, road and traffic concerns, tax revenues and others

to see if changes are needed.

ACT is also working on new legislation aimed at improving safety on public construction projects.

The proposal will call for contractors to show their workforce has completed the OSHA 10 Construction Safety training program.

A number of other states have such a requirement in place and most industrial owners already have the same requirement.

Funding of infrastructure projects will also be at issue given predictions of tough state budgets in the future.

However West Virginia has been much better off than most other states with budget surpluses rather than deficits.

The same can be seen in the state's unemployment fund.

Every surrounding state's unemployment fund has gone broke and is now borrowing funds from the Federal Government.

West Virginia has avoided the problem in part because of legislation passed in 2009 that raised the contributions employers make to the fund.

However the tough economy has drained the fund to critical levels and the legislature may have to take action this session to deal with it.

ACT IS LOOKING TO PROMOTE THE HIRING OF LOCAL WORKERS ON ALL MARCELLUS RELATED PROJECTS.

have all been under consideration during monthly interim meetings.

ACT is looking to promote the hiring of local workers on all Marcellus related projects.

In addition ACT has hired a consultant to review current environmental laws and rules

RAHALL WINS CONGRESS WITH TRADES SUPPORT



HELPING CONGRESSMAN Nick Rahall win in his tough race for U.S. Congress in the Third District were a number of building trades members and others. Pictured here at an event in Huntington are (from left) Teresa and Cecil Ferguson, Painters District Council 53; Dave 'Bones' McComas, WV State Building Trades; Eddie Mullins, Plumbers and Fitters Local 521, Huntington; Congressman Nick Rahall; and Steve Keller, Insulators Local 80, Winfield.



MERRY CHRISTMAS
&
HAPPY NEW YEAR from
ACT & THE WV STATE
BUILDING TRADES

WV SUPREME COURT AGREES TO HEAR ACT APPEAL OF KING COAL HIGHWAY CASE

The WV Supreme Court has agreed to hear ACT's appeal on the King Coal Highway case.

The case was first filed in December of 2004 and challenged state and federal highway officials on the award of a major highway project to a coal mining company.

The Red Jacket portion of the King Coal highway was awarded without federal or state bidding to Nicewonder Construction in 2004.

Highway officials argued the project need not be bid due to the promise of close to \$200 million in purported savings in cost.

The agreement between Nicewonder and the state also attempts to "exempt" the project from the federal and

state prevailing wage protection for workers, and permits new, cheaper standards for road construction.

ACT argued the project should have been competitively bid, built to existing road standards and workers receive prevailing wages.

The project involved changing the planned road location to accommodate mountaintop mining nearby.

Nicewonder has since been sold and is now owned by Alpha Natural Resources.

ACT first filed the case in state court but was forced to go into federal court.

After undertaking discovery and motions from both sides but never a hearing federal Judge John Copenhaver ruled in September of 2007 that the project did not have

to be bid under federal law because it was unique – but that federal prevailing wages must be paid.

In addition ACT was then to be allowed to go into state court over the state bidding and prevailing wage issues.

However it took two more years for Judge Copenhaver to take final action and when he did he reversed his prior ruling on a technicality.

On September 30, 2009 Copenhaver decided, some five years after the case was filed, that ACT did not have standing to even get into federal court.

His logic came from attorneys for the coal operators who argued since ACT did not bid the project, and had no members working on the project they had no legal right

to complain in federal court.

ACT then returned to state court to pursue the violations of state bidding and prevailing wage laws.

However Kanawha County Circuit Court Judge James Stucky ruled ACT could not move forward in state court

since the federal judge had ruled they were not able to do so in federal court.

The WV Supreme Court will review Stucky's actions likely in the spring of 2011 and decide if ACT has the ability to pursue this case in the courts of West Virginia.

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TRADES

CONTINUED FROM P. 1

completely re-write it. "And we also pointed to numerous areas where the billing did not appear to agree with the contract terms. We asked them to look into it and were told they would."

The contract allowed the General Services Division to use Casto Technical Services on an on-call basis for the last four years for HVAC service calls as well as numerous construction projects, and it resulted in more than \$6 million in approved charges.

"The first thing we noticed was the way the bid was won," said White.

The state asked for a per-hour price for a company to provide a mechanic during

regular business hours and another price for weekends, holidays and after hours.

Casto bid \$75 per hour for regular work hours but only \$50 per hour for weekends, holidays and after hours.

"That sent up red flags," said White.

In reviewing years of invoices White discovered almost all the hours billed to the state, even those worked on weekends and holidays, the \$75 rate was used.

Head of the General Services Division, David Olivario, responded saying the hours were paid properly because the lower paid weekend and holiday rates in the contract only applied to "emergencies" and there were no emergencies. However the contract also referred to the

hours as an overtime rate.

The second place bidder, A & A Mechanical Services, Inc., bid \$61 per hour during regular work hours, 20 percent less than Casto, but did not get the job because of the weight given to Casto's \$50 hours.

Approximately half of the payments were for labor costs and the rest for materials.

Casto's mark-up of non-vendor material was 35 percent, more than double what A & A asked for at 15 percent.

White along with ACT lawyer Vince Trivelli and WV State Pipe Trades Representative Tim "Squirrel" Jividen met with Secretary of Administration Ferguson on December 8 and were assured a full review of the contract and invoices were underway.

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