

Justices rule against workers in wage case

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The state Supreme Court ruled, 3-2, on Friday that government and public agencies can legally avoid paying prevailing wages to workers hired to do construction work on a temporary basis.

Justice Robin Davis wrote the majority opinion, backed by Justices Elliott "Spike" Maynard and Brent Benjamin. Justices Joseph Albright and Larry Starcher dissented.

The Davis opinion overturns the results of an investigation by the state Department of Labor that concluded the Tucker County Solid Waste Authority should have paid temporary landfill construction workers a total of \$199,760 in wages and damages. Instead, they paid them \$99,880 in wages.

The West Virginia Prevailing Wage Act, Davis ruled, does not apply to temporary workers hired by a government agency, only to workers hired by private contractors.

Albright's dissenting opinion argued it is legally incorrect to use the concept of "temporary" labor to allow lower wages to be paid in up to 80 percent of all public agency construction projects in the state.

The Tucker County case involved 10 temporary workers hired between May 2003 and August 2003. They "performed the excavation work and transported the excavated dirt to existing areas of the landfill," Davis wrote.

The Tucker County Solid Waste Authority simply hired the temporary workers and did not bid the work out under a contract, she added.

Davis also cited a 2001 decision in which the Supreme Court held the West Virginia University Foundation did not have to pay prevailing wage rates to workers it hired for a construction project. "The Foundation was exempt from the requirement of the [Prevailing Wage] Act," she wrote.

Davis also quoted a portion of West Virginia law that states, "Workers who a public authority employs are hired on a regular or temporary basis are not considered to be 'employees.'"

Albright wrote the majority opinion was incorrect "to conclude that the Legislature didn't mean that people employed by public authorities should ever be paid the prevailing wage rate unless a completely new construction project is undertaken. ..."

"Following the majority opinion, a public body can argue that any work done on an existing facility by people it hires as temporary workers is outside of the scope of the prevailing wage rate."