

# Raleigh Court denies prevailing wage appeal

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Father Thomas Acker of Forward Southern West Virginia says he appreciates Raleigh County Circuit Judge H.L. Kirkpatrick's timely ruling on an appeal he filed regarding the state's prevailing wage law, but he doesn't agree with the judge's ruling.

Kirkpatrick said in his ruling Monday that "... the court has concluded that there is no basis for reversing the commissioner's final order."

Acker took the matter before the state Division of Labor, which ruled its method for calculating the state's prevailing wage was correct.

Acker, however, feels the method used is unprofessional, discretionary and an abuse of power.

"I think Judge Kirkpatrick ruled exclusively on the Hardy case," Acker said. "He didn't address the abuse of discretion, which is the heart of the case."

Acker and the Division of Labor appear to agree on one thing — the state's prevailing wage law is a good piece of legislation.

"I don't have anything against the prevailing wage law," Acker said. "I just disagree with the manner in which they investigate and then fix the fair minimum wage for public projects in West Virginia."

Acker says the current prevailing wage method impacts many workers across the state.

"Some don't have jobs because a few get high pay," he said. "I strongly support a just wage for all workers in the state."

Acker says the case is clear in that West Virginia's prevailing wage is 50 to 60 percent higher than law suggests, which is to represent the majority of workers.

"The West Virginia Code says very clearly that the fair minimum rate of wages shall be the rate of wage paid in the locality in this state to the majority of workmen in the same trade or occupation in the construction industry, and 15 percent is hardly a majority," Acker said.

"Illogically, the Division of Labor sets this fair minimum rate of wages for the majority as the maximum rate of wages for the minority," he said.

Acker said the Division of Labor gets basically no statistics from non-union workers and should use data available in the Department of Commerce.

"It's the most valid data of anything they have, according to testimony, but they don't want to use it," he said.

Acker says it appears the Division of Labor is not interested in having a minimum response rate to its data collection process.

“The contrast of receiving almost 100 percent from organized labor and less than one percent from non-organized labor should have sent up some red flags,” he added. “They pit the data of organized labor against the data from independent contractors on a winner-take-all basis.”

Acker said the Division of Labor has created an unfair playing field.

“This is clearly wrong and an abuse of discretion and leads to discrimination,” he said.

Kirkpatrick, however, said in his ruling that evidentiary findings at an administrative hearing should not be reversed unless they are clearly wrong.

“Here, this court cannot say the subject findings adopted by the commission are clearly wrong; therefore, the commissioner’s final order must be affirmed,” the judge said in his ruling.

Acker says his next step is to evaluate the situation and then, most likely, file an appeal with the state Supreme Court.

“I think they may be very interested in reviewing the Hardy case after 14 years,” he said.

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