FOIA Used In Effort To Get Comp Info

Unions Rally For Workers Comp

A Workers Compensation rally sponsored by the West Virginia AFL-CIO saw an estimated 2,000 people demonstrating their outrage at the consequences of the Legislature’s Compensation “reform” last session.

Several hundred ACT members waved signs that read “Give It Back!” and they sported lapel stickers urging the firing of Andy Richardson: “Fix Comp! Fire Andy!”

Joe Powell, president of the state AFL-CIO revved up the crowd and got them yelling their outrage over the cuts. Also addressing the assembly were Roy Smith, secretary treasurer of the West Virginia State Building & Construction Trades Council.

ACT, along with the West Virginia AFL-CIO, continues to fight for a revision in the law which will protect workers’ rights.

“We want everyone to know that the new Workers’ Compensation law shifts hundreds of millions of dollars in compensation and benefits for injured workers to taxpayers and away from employers, who are responsible for the injuries,” said Joe Powell.

Braxton Food Bank Fights Prevailing Wage

Prevailing wage laws were enacted to stop government projects from driving down wages in communities. Now some 65 years later these protections are under attack.

David Grubb, D-Kanawha; Don Macnaughtan, D-Wetzel; Rebecca White, D-Harrison; Bill Wooton, D-Raleigh; Bill Sharpe, D-Lewis; Ed Bowman, D-Hancock; Billy Wayne Baily, Jr. D-Wyoming; and Randy Schoonover, D-Clay; Truman Chaffin, D-Mingo, Keith Keating and others are fighting to keep these protections in place.

The site is a new Mountaineer Food Bank in Braxton County. “It’s unbelievable but true,” commented ACT’s Steve Montoney.

“A food bank is being built to help folks, but at the same time this project is driving down living standards in our area.”

The project is one of many funded by special purpose federal grants appropriated in 1992.

“They totalled $13.25 million and are administered through the Department of Housing and Urban Development (HUD),” Montoney said.

The most recent grant to emerge is for the Mountaineer Food Bank in Gassaway.

“There is no Davis-Bacon requirement attached to this grant but if its funds are joined with any state or local dollars, and it is in this case, then the state prevailing wage requirement kicks in,” Montoney said.

He said the Regional Development Authority continues to tell him if there’s only federal funds, then there is no wage rate.

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"We’re On The Right Track!"

West Virginians Jobs Act Progressing

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Wagner, D-McDowell; Joe Manchin, D-Marion; and Leonard Anderson, D-Summers.

Those in the House of Delegates are: Larry Linch, D-Harrison; Gary Tiltis, D-Putnam; Scott Varner, D-Marshall; Larry Williams, D-Preston; and David "O.B." Collins, D-Tucker.

There is still time for more legislators to come on board in support of the bill, according to Raymond "B.B." Smith, ACT legislative representative, but already there is a significant increase in the amount of supporters over last year.

"Last year we had only three Senate sponsors and a few House sponsors on the bill," he said. "Now with all these sponsors, we are pretty well represented in the various committees," Smith said. Smith said getting the bill to committee and approved is next on its path to becoming a law.

On the House side, the bill has been sent to the government organization committee chaired by Del. Joe Martin, D-Randolph. In the Senate the bill was sent to the labor committee Chaired by Sen. Don Macnaughton, D-Wetzel, and the Judiciary committee, chaired by Sen. Bill Wooton. Both Senate committee chairs from the local workforce.

That includes workers living within West Virginia and all bordering counties of neighboring states.

Smith said some of the bill's detractors, like the Contractors Association of West Virginia, the Manufacturers Association and the Chamber of Commerce, are opposing this bill as unconstitutional.

But Smith pointed to a recent deal between Indiana and Toyota. As part of its $29.8 million offer to the company, Indiana pledged up to $15 million in state tax credits which are only given if the company hires Indiana residents.

"Other states are using in-state hiring as an incentive to attract business, and we're giving our jobs away," Smith said. "We don't think it is right to bring in people from Texas or Alabama to build the projects funded by our tax dollars. Not when we have West Virginians ready, willing and able to do the work."

-B.B. Smith, ACT legislative representative

Licensing Is Protection For Flood Victims

The recent floods in northern West Virginia were a tragedy for many residents in more ways than one.

According to ACT northern representative Steve Montoney some unlicensed contractors are illegally bidding on flood relief projects, such as shoring up the stream banks and road repair.

Montoney said he attended pre-bid meetings at Petersburg and Onego for flood repair projects.

"The meeting at Petersburg brought out at least 60 contractors from all over the country including Georgia, Florida, and Tennessee," Montoney said. "Most of them are unlicensed. Are they trying to profit from our misfortune?"

Many of the contracts are government contracts through the National Resource Conservation Service.

"I brought up at both of the meetings that I thought these contractors were supposed to be licensed under West Virginia law," he said. "In order to stop the profiteering or even to follow laws under the West Virginia Contracting Act, these contractors should have a license before they even bid."

The law itself says no person after 1991 shall engage in this state in any act as a contractor as defined in this article unless such person holds a license, Montoney said, which includes bidding.

"Bidding without a license is a violation of that law," Montoney said. "I keep raising that issue wherever I go."

Montoney said he contacted Bill Doer, the director of the National Resource Conservation Service office in Morgantown, who said that contractors were encouraged to have a license but it isn't required on some of these projects because they're federally funded.

"So I checked with the West Virginia Division of Labor, and found that any projects funded through the General Services Administration, like these flood repair jobs, must follow the Federal Acquisition Regulations code of laws that the federal government follows."

"That means every contractor shall comply with any federal, state, or municipal laws or requirements."

"Which means they must have a contractors license before they bid," Montoney said. "It is ACT's position," Montoney said, "that it is not fair to West Virginia contractors or other contractors who obey West Virginia laws, to compete with those that do not follow the law."
Labor Unions Are Represented In This Legislative Session

Ask Delegate Gary Tillis what the major change he'd like to see in the West Virginia Legislature this year is and he doesn't mince words. "We need more working people in the Legislature," Tillis, a Democrat from Putnam County, said during a break in this year's legislative session.

"It's like sitting in these committee rooms with lawyers and Chamber of Commerce members who have no idea what the average West Virginian who works for a living is going through."

Tillis is also ACT's Fair Contracting Representative and a member of Laborer's Local 1353. He knows first-hand about the struggles union workers face everyday.

During the session, Tillis is often part of a small group of legislators speaking up for working people - often to no avail. "We just don't have the numbers to make a difference on legislation like Workers' Compensation," Tillis observed. "We can make some noise but we simply need more votes to be successful."

Delegate Larry Linch, a Democrat from Harrison County and Carpenter's Representative, frequently works along with Tillis and a few other sympathetic Delegates to fight for workers protection but they are often just a few voices in the wilderness. "It's important we elect some of the other building trades' candidates this year," Tillis said. "Without greater representation we'll just see more of the same." Several other building trades' members, including two ACT staff members, are seeking election to the House of Delegates.

Stephen W. Montoney, ACT's Northern Representative, is challenging Delegates Joe Martin and William Proudfoot in Pocahontas and Randolph Counties in the Democratic Primary. Bill Thomas, ACT's Industrial Representative, is seeking the Democratic nomination in Kanawha County's 32nd district.

That district is currently home of the "Four Horsemen" as the Republican incumbents are known. The pitting up of at least one Democratic seat in the 32nd district is seen as a strong possibility this year.

Two others are David Walker, an Operating Engineer from Local 132, who is seeking a House of Delegates seat in Clay County's 33rd district. The seat is currently held by Clinton Nichols, and Kenny Livingston, a member of Boilermakers 667, is seeking the Democratic nomination to oppose incumbent Republican James Willson in the 6th district covering Doddridge, Tyler and parts of Wetzel Counties.

"We need to get behind these guys," Tillis said, noting, "We need the help here."

Food Bank Fight

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"That's where we're coming into fights," Montoney said. "Bob Coit, Region Seven's director, told me he knows how to devise ways to keep state and local funds from being kicked in and how to circumvent the state prevailing wage rate."

Suzanne Morgan, an apprentice with the Sheet Metal Workers Local 33 Youth to Youth program was checking into prevailing wage on the food bank project.

She received a response to her Freedom of Information Act request, which she turned over to Montoney. "It just so happened it showed that state and local monies are involved in that project," she said. "When I asked him about it, Coit said he knew how to play the game to keep prevailing wage out and to keep in mind that it was for a good cause."

Montoney said he wonders if it's such a good cause why don't those contractors donate their work. "They will still make a tidy profit from this job," he said. "By not paying prevailing wage it just gives the contractor leeway to set the wage scale anywhere they want."

"This drives up profits rather than lower the cost of a project. Without prevailing wages, wage competition drives down the standard of living in the area," Montoney said. "Why don't they give us a decent job and then maybe we wouldn't have to visit that food bank."

Montoney is looking for ways to pursue the case through legal channels.

Workers Comp Rally At Capitol

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Smith about why the rally was held. "SB 250 is still a bad deal for injured workers AND taxpayers."

Legislative investigations have been thwarted by the administration's denial of information and records to legislators. In order to get accurate information regarding the status of the Commonwealth's financial situation, worker-friendly legislators have been forced to use the Freedom of Information Act (FOIA). Delegate Barbara Fleischauer, D-Monongalia, along with 13 other legislators received a FOIA letter in early February after six previous attempts went unanswered.

Other charges against the new Workers' Compensation system include a long list of items most legislators were unaware of last year. The amount of unpaid premiums discovered continues to soar due to newspaper investigative efforts. The amount of debt due to self insured companies is estimated at $400 million.

And new changes in the premium structure lack guidelines and makes it easier to "play politics" and reward favorites, rather than rewarding safe companies and penalizing unsafe ones.

ACT Convention, Reception Boasts Largest Turn-Out Yet

ACT's annual Constitutional Convention and Legislative Reception was held at the Charleston House Holiday Inn downtown Charleston on January 31. The convention saw ACT members and officials preparing for the upcoming year and reviewing 1995's progress.

The reception that same evening allowed those same members to discuss current legislation with more than 50 legislators as well as members of the Supreme Court.

The event, held in the Hotel's rooftop restaurant - Windows on the River, boasted ACT's largest turn-out of legislators and government officials yet. "This reception gives members the opportunity to rub shoulders with state legislators and to discuss issues important to construction workers," said Steve White, ACT director.
Cooperation Crucial To Heavy & Highway Success
State Site Of Labor/Management First For Nation

Union Heavy and Highway construction contractors are afforded a unique opportunity when building in West Virginia - they can join the Constructors’ Labor Council of West Virginia (CLC) and work under one union agreement rather than separate agreements with seven different unions.

The CLC is the leader in collective bargaining negotiations on a statewide basis with several unions for the Heavy and Highway contractors in West Virginia.

Until 1990, those contractors negotiated independently with Operating Engineers, Carpenters, Laborers, Cement Masons, and Teamsters.

According to the CLC, these requirements served to ultimately erode the union contractor’s ability to compete effectively with the non-union counterpart. Consequently, work for the contractor and unions declined.

Opportunities have improved significantly since then. “In the last couple of years, seven out of 10 heavy and highway projects have been awarded to union contractors in West Virginia,” said Jonathan Deutsch, CLC’s executive secretary.

When the organization was formed, little did the union contractors realize they had taken a unique step in cooperative labor relations.

The CLC was one of the first organizations in the United States to form a multi-union bargaining agreement for Heavy and Highway contractors, and it has been used as a model for other collective bargaining groups. It has also commanded national recognition for stabilizing the Heavy and Highway construction industry in West Virginia.

“Our goal is to connect union contractors to union construction in West Virginia,” Deutsch said.

-Jonathan Deutsch, Constructors Labor Council of W. Va. executive secretary

The Council represents 210 contractors and claims to successfully resolve more than 98 percent of the disputes that arise between the contractors it represents and union representatives.

All contractors are signatory with Building and Construction Trades affiliates only.

The West Virginia Division of Labor and the U.S. Department of Labor recognizes the pay rates negotiated under the three-year CLC agreements as the prevailing wage rate as well. The current contract expired in December of 1996.

“Our goal is to connect union contractors to union construction in West Virginia,” Deutsch said.

“What we want is to ensure that union contractors can compete fairly and that our clients have quality workmanship and safe work environments,” Deutsch said.

“In having better trained labor, we benefit by being better able to complete our projects.”

The council provides information regarding prevailing wage rates, schedules, pre-bids, or anything else a contractor may need to know about working in West Virginia. Call 342-6107 for more information.

State DOL Needs More Enforcement Power

Resolution Urges Expanded Prevailing Wage

Provisions of Chapter 21 of the West Virginia Code, commonly known as the Prevailing Wage Rate Law, have been frustrated by appeals and obstruction. Since that statute’s last revision in 1961, there have been numerous practical experiences which demonstrate the legal deficiencies in that law.

The statute began as a laudable effort to protect wage scales within the construction industry by establishing minimum wage rates which would be paid on the construction of all public improvements in West Virginia. This legislation also protected West Virginia contractors from out-of-state competitors who would slash wages to obtain an edge in bidding for public agency contracts. For many years, in most areas of the state, these worthy goals were accomplished.

Since 1978, however, attacks launched against this system have been increasing. It became painfully apparent that the law was vulnerable to circumvention. A series of protests and appeals, many without basis, have voided wage rates in some areas of the state and have hampered the enforcement efforts of the West Virginia Department of Labor. The wage rates are determined and applied on an annual basis.

The problem is caused by a statutory appeal process which is protracted and assures that the challenged rates will never go into effect during the year for which the rates were determined. Few of the prevailing wage system threaten to again tie up the rates in a series of appeals.

It is clear that the legislature never intended that the rate process be bottlenecked in a fashion which guarantees that rates will not go into effect. Exploitation of this law, unknown by the experience of recent years, is an affront to the Legislature and the citizens of West Virginia.

Traditionally, the law has been interpreted as affecting the awarding of contracts involving public monies; i.e., tax revenues. However, within recent years, the financing of various construction projects through the use of industrial bonds has been increasing, particularly on the county and local level. The law should be expanded to include such projects. Therefore, be it RESOLVED, That this 20th Constitutional Convention of the West Virginia AFL-CIO urges that immediate legislative action be taken to streamline the appeal process and enhance the enforcement powers of the West Virginia Department of Labor with regard to the prevailing wage rate law; and, be it further RESOLVED, That other monies derived or obtained by means other than taxation, such as industrial bonds, be considered as being subjected to the provisions of the Prevailing Wage Rate Law as such construction projects are undertaken under the authority of a public agency.

The ACT Report

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