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The ACT Foundation is a division of The West Virginia State Building and Construction Trades Council. Steve Burton, President; Roy Smith, Secretary-Treasurer; Steve White, Director.

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TUCKER COUNTY CASE ABOUT TEMPORARY HIRES

WV SUPREME COURT ASSAULTS STATE PREVAILING WAGE LAW

**By a 3 - 2 vote the
West Virginia
Supreme Court of
Appeals permitted a
local government to
avoid both the
State's prevailing
wage and competitive
bidding laws.**

Reversing years of legal precedent, the court chose to ignore



**Justice
Robin Davis**

a r g u -
m e n t s
m a d e
by the
W V
S t a t e
Building
Trades
and the
Division
of La-
bor which pointed out how a mandatory bidding law would prevent public authorities from undertaking construction projects worth more than \$25,000 unless performed with their regular employees.

In March 2005 the WV Division of Labor informed the Tucker County Commission they

owed ten individuals back wages for work done on a county landfill.

The county had ignored state bidding law by hiring workers directly for the project and telling them the job would end when the project ended.

The DOL investigation called for back pay and penalties of approximately \$200,000.

The DOL has worked under a long standing policy that public agencies can use their own forces to build a project, but can not hire temporary workers to do so without paying the prevailing wage rate.

The use of temporary employees has been specifically prohibited since 1986 when then Attorney General Charlie Brown wrote an opinion on the practice.

The county challenged the DOL claiming the workers, as public employees, were not en-

title to prevailing wages, and the matter went before a Hearing Examiner.

The County then filed a 'Writ of Prohibition' asking the Su-

**"THE MOST VIGOROUS ASSAULT ON
THE STATE'S DAVIS-BACON ACT IN
NEARLY HALF A CENTURY." JUSTICE
JOE ALBRIGHT, WEST VIRGINIA
SUPREME COURT OF APPEALS**

preme Court to step in and stop the DOL.

That's when the WV State Building Trades heard about the case and was allowed to intervene.

Key to the Building Trades argument was the fact that state bidding law had been violated, creating a situation where temporary public employees were illegally building a project valued at more than \$25,000.

The Court heard the arguments on February 28, 2008 and issued their decision in support of Tucker County on June 26.

Justice Robin Davis wrote the

opinion and was joined by Brent Benjamin and Elliot 'Spike' Maynard.

Deciding not to look at the issue of state bidding law, Davis instead went right to the language in state law that exempts public employees from the prevailing wage law.

The Court took this action despite the fact that it also held that when two statutes address the same subject matter - the competitive bidding and prevailing wage laws - the statutes should "be read and applied together so that the Legislature's intention can be gathered from whole of the enactments."

"Justice Robin Davis has turned a blind eye to the law, and cast the deciding vote against construction workers with this decision," said Steve White, ACT Director.

"We believe that it is not pos-
Continued on p. 3

PSC APPROVAL OF \$300 MILLION WIND POWER PROJECT UPHELD

**The West Virginia
Supreme Court
upheld the state
Public Service
Commission's ap-
proval of a wind
farm project in
Greenbrier County
in a ruling issued
Monday, June 23.**

The Court heard arguments over the PSC decision on the \$300 million Beech Ridge En-

ergy project in January 2008.

Chicago-based Invenergy proposed building 124 wind turbines along a 23-mile stretch of ridgeline near Rupert.

In August, 2006 the PSC approved the permit after lengthy hearings.

The ACT Foundation had intervened in support of the case and brought in an economist to testify about the positive economic impact local construction

hiring would create.

The permit was then challenged by a group of local residents.

Although the PSC ruling attached 25 conditions, including limiting noise and lighting and construction hours at the site and conducting studies on the impact on bats and birds, challengers maintained the PSC's application permit didn't include opponents' input on issues such as the

cultural and historical importance of the area.

The Supreme Court decision effectively negates the challengers' argument in this case, and by virtue of the legal precedent, in future similar challenges to the PSC review process.

The justices wrote they "believe that the commission properly estimated the impact of the project on places of historic,
Continued on p. 2

COUNTY COMMISSIONS ADOPT SAME POLICY**ALCOHOL AND DRUG FREE BILL IN EFFECT****As of July 1 the WV Alcohol and Drug Free Act Is In Effect.**

This means in West Virginia, on state funded projects, contractors must have an alcohol and drug free program in place that meets certain standards.

Programs must include pre-employment and random testing as well as policies for post-accident testing. Nine panel drug tests must be used and training for employees and supervisors must take place.

The law was passed earlier

this year and the effective date was made July 1 to give companies without a policy time to get one in place.

But creating a program that meets the tough standards is not easy.

"We've been at this since 1991," said Jim Cerra with the Kanawha Valley Builders Association.

"So I know it will be hard for those who are just starting, but if they are not testing then they are not serious about safety."

Cerra also explains the new requirements are a lot like those

in neighboring Ohio.

"They require much the same things as we now do," said Cerra.

"So if you've met the Ohio requirements, or been involved with one of the drug testing programs in the state, then you are already complying with the law."

County and city projects are not covered by the law.

However a number of county commissions have passed resolutions supporting the measure and adopting it for their own projects.

The first to do so was the

Raleigh County Commission which unanimously passed a resolution on June 17 at the request of ACT Representative Wayne Rebich.

"The Commissioners had a few questions about implementation and costs but once they fully understood the issue they were completely supportive," said Rebich.

The Summers County Commission passed the same resolution on July 7 followed by the

Greenbrier County Commission on July 8.

One fact Rebich brought to the Commissioners attention was that illegal drug use is a nationwide epidemic, especially on construction job sites.

A federal government study in 2007 found 15 percent of workers in the construction industry admitting to illegal drug usage, the second highest of all industries, only food service had a higher rate.

PSC

CONTINUED FROM P. 1

scenic, religious, or cultural significance before granting a certificate to Beech Ridge."

Ronnie Burdette, Business Manager Operating Engineers Local 132, said the Court ruling is very positive for construction workers and for society in general.

"The Supreme Court said the PSC process was fair and legal, which will make the approval of future projects go more smoothly and mean more work for members," observed Burdette. "But wind power in general is just plain good public policy with the high price of energy these days."

The 186-megawatt facility would be located 9 miles northeast of Rupert on land owned by the timber company MeadWestvaco.

Approximately 250 union construction workers will be needed to build the project, while permanent employment will total 15 to 20 and generate \$200,000 in annual tax revenue to the state, while generating enough clean, renewable energy to power 50,000 homes.

The Beech Ridge facility if completed will be West

Virginia's third commercial wind farm project.

The first was along Backbone Mountain with 40 wind turbines in Tucker County and four in Preston County built in 2003.

The second electricity-generating wind farm to come on line is NedPower Mount Storm LLC's 264-megawatt facility which is providing approximately 300 union construction jobs.

Developers started to work on the project in 2002 and project construction started in October of 2006 with completion scheduled in December of this year.

Built in two phases the project is located on a 14-mile-long site just east of Mount Storm Lake in Grant County. The wind farm will eventually include up to 200 wind turbines. Each is to be mounted on a 210-to 450-foot-high tower, with three 115-foot-long blades.

The 100 percent union project has a number of contractors including Mortenson Construction, Merit Construction, All Construction and WR Casteel.

As in the Beech Ridge case, wind farm opponents opposed both projects citing concerns about views and for bats, birds and other wildlife.

CARPENTERS PROTEST CONTRACTOR AT WVU PROJECT

CARPENTERS PROTEST AT the grand opening of a new WVU Fire Service Training Center in Lewis County in late June. According to the Carpenters, general contractor Steeb-Crawford from Pennsylvania violated their contract by sub-contracting to nonunion firms. Steeb-Crawford also owes wages and fringe benefits to workers who had been on the job.

DISCLOSURE LAW REVISED IN SPECIAL LEGISLATIVE SESSION**POLITICAL AD FUNDERS MUST DISCLOSE**

Election law reform, supported by the ACT Foundation, passed in the recent special session of the West Virginia Legislature will require disclosure of the source of funding for political ads.

Following a heated debate that extended the special session by two days, lawmakers passed the bill by a 19-9 vote in the Senate and a 68-21 margin in the House of Delegates.

The Senate vote followed party lines, while one Democrat and six Republicans in the House of Delegates crossed the aisle for the vote. The effect will most likely be felt by third party advocacy groups.

The new legislation is a revision of a 2005 law requiring public disclosure of spending for ads that run within 30 days of a primary and 60 days of a general election, in cases of what is termed "a clearly identified candidate."

When passed in 2005, the bill won nearly unanimous passage in both chambers.

But early this year a Virginia based group, Center for Individual Freedom, sued in Federal Court to block the law.

The Center placed newspaper advertisements in support of Elliot "Spike" Maynard's bid for re-election to the state Supreme Court of Appeals and did not want to disclose where their funds came from.

The Center calls itself nonpartisan but some believe big business interest fund their efforts.

In April 2008, U.S. District Judge David Faber issued an injunction blocking some of the provisions of the original bill concerning non-broadcast advertisements. The judge ruled the law's language was vague concerning media like newspapers, mailings, phone calls, leaflets and e-mails.

According to legislative observers, the 2005 law was a response to the 2004 election, when Massey Coal CEO Don Blankenship created an election

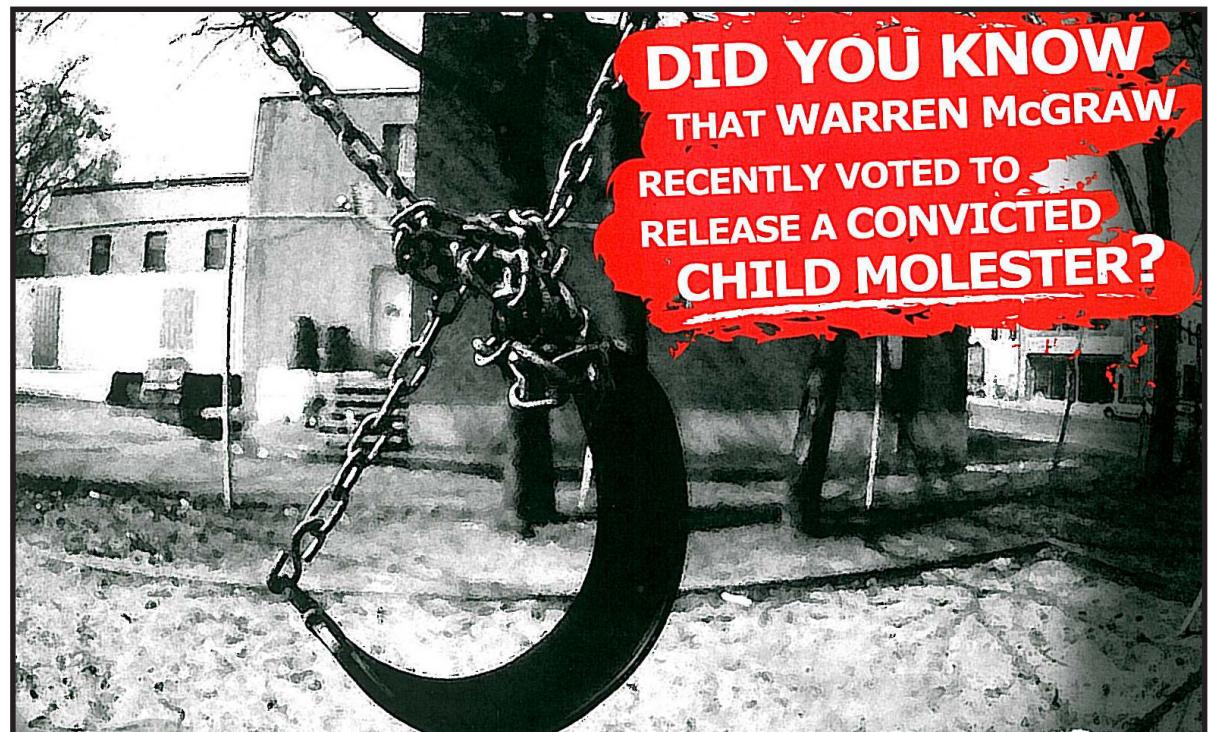
advocacy organization, "And For the Sake of the Kids," and spent millions on an advertising campaign targeting then-Supreme Court Justice Warren McGraw for defeat.

The Center for Individual Freedom has vowed to sue again following passage of the current bill.

"Big business doesn't want you to know when they fund their

attack ads," commented Roy Smith, Secretary-Treasurer of the WV State Building Trades.

"At times we also fund ads, but we always let the voters know who pays."



DISTORTING THE FACTS this ad was used by a group calling itself 'And For The Sake of The Kids' but was really financed by Massey Coal CEO Don Blankenship. The multi-million dollar attack against labor supported Supreme Court Candidate Warren McGraw prompted state legislators to pass a law forcing public disclosure of those who finances independent political campaigns. The law came under fire during the primary election so legislators passed a new version in a recent special session.

WAGE LAW

CONTINUED FROM P. 1

sible to consider the actions of Tucker County or any public entity without looking to both the prevailing wage and the competitive bidding law."

Justice Joe Albright wrote a scathing dissent and was joined by Larry Starcher calling the decision "the most vigorous assault on the state's Davis-Bacon Act [prevailing wage law] in nearly half a century."

The prevailing wage law is a state law that requires contractors on public construction projects to use the wages com-

mon to an area.

Each year the DOL surveys contractors and unions and decides which wage rates are most common for a list of construction occupations.

Often the wage rate is close to the negotiated rate union contractors pay and this becomes the minimum wage any company doing public work must pay.

For federal projects there is a similar law called the Davis Bacon Act.

A motion for reconsideration can be filed within 30 days of the decision. Any appeal would have to go to the U.S. Supreme Court.

**Trades Invited to Tailgate Party
WVU Mountaineers vs. Villanova Wildcats**

**Saturday, August 30
Starting at 10:00 am, Lunch at Noon.**

The North Central WV Building Trades Council invites all trades members and their families to a Tailgate Party on Saturday, August 30 at Mountainer Field - Milan Puskar Stadium in Tent City-lower level.

For more information contact Natalie Stone 304-626-3882.

FED'S ENCOURAGE ILLEGAL WORKERS?

The use of illegal workers in Monongalia County is growing out of control, and federal authorities charged with enforcing laws are instead part of the problem.

That's the sentiments of one group of workers who have been trying to monitor large construction projects in the Morgantown area.

Members of the Carpenters union have monitored a large construction site in Monongalia County and believe they have found serious problems with the use of unauthorized workers. They took their complaints to state agencies who in turn called upon federal agencies to help in the investigation.

According to Mike Jenkins, Senior Organizer for the Mid-Atlantic Regional Council of Carpenters, the source of the frustration is obvious.

"The federal agency charged with enforcing our immigration

laws, Immigration and Customs Enforcement, operates like a big joke," said Jenkins. "The local and state agencies here in West Virginia do their jobs, but when it comes to action by the feds, there isn't any."

Jenkins cites a recent series of events as an example of what has him riled. The union leader and several associates had been monitoring a housing project in the Morgantown area where they observed large gangs of men arrive daily in vans and trucks with out-of-state license plates.

The men worked at the construction site every day, but seemed to have little attachment to the community. In some cases, the imported workers were staying overnight in their vehicles parked on the construction site. The situation seemed to be very similar to other situations where there turned out to be a large contingent of illegal workers present.

Requests for investigation went to the WV Division of Labor and police authorities.

On Thursday, June 19, a West Virginia State Police K-9 unit with two officers was seen by the Jenkins' team arriving on the construction site. Immediately after, a truck bearing a Washington, D.C. license plate hastily departed the site with five of the unknown workers inside.

Jenkins followed them as they drove directly towards Interstate 68 East, but Jenkins eventually returned to the construction site to see what action was taken by State Police.

Upon return to their observation post, they noted that several additional police vehicles and officers had arrived.

Seven men were seen being taken into custody and transported to the local West Virginia State Police detachment on Monongahela Boulevard.

When Jenkins contacted police later on to ask what happened to the men who were picked up at the construction site, he was informed that instead of holding the suspected illegal workers for federal au-

thorities, they had been released.

The reason offered by the police was that Immigration and Customs Enforcement instructed them to do so.

"The officer told me the incident was entered into the day book at the detachment office, so we believe there is documentation that this happened," said Jenkins. "He also told me the reason they released the men

was because I.C.E. – the federal agency - feared there had been 'profiling' of the workers."

"It's hard to live with," observed Jenkins. "The union did what it's supposed to do. The DOL documented who was working on site like they are supposed to do. The State Police did what they are supposed to do, but in the end, the feds let us all down."

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UA Local 486 Taking Applications for WV Apprenticeship Program

UA Local 486 Plumbers & Steamfitters Joint Apprenticeship Training Committee will be accepting applications for their Martinsburg, WV apprenticeship. Applications will be accepted through July 31, 2008.

The five year program teaches pipefitting, plumbing, welding, HVAC and CAD skills. Starting pay is \$17.09 plus benefits.

Applications can be submitted at 5521 Tabler Station Road, Inwood, WV 25428, Monday through Friday from 8:00 to 3:00.

If you would like an application mailed or have any questions, please call toll-free 1-866-760-4860 and press "0" for the operator. Their website is www.486school.com.

Applicants must have a high school diploma or GED and a valid driver's license. Applicants should live in Allegany, Washington, or Frederick Counties in MD or Berkeley, Jefferson or Morgan Counties in WV.

A math test, as well as a physical and drug screening will be required.

No applicant shall be rejected because of race, creed, color, sex or national origin.



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