

THE ACT REPORT

VOLUME 16 NUMBER 9
SEPTEMBER 2007



A PUBLICATION OF
THE AFFILIATED
CONSTRUCTION
TRADES FOUNDATION

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.

Charleston - (304) 345-7570
Toll Free - (800) 930-9675
www.actwv.org



INSIDE

Don't Delay	Pg. 2
No. Cent. Tailgate	Pg. 2
Tri-State Tailgate	Pg. 3
Tax Credit 2002	Pg. 3
Apprenticeship	Pg. 4
Huntington Adopt	Pg. 4

JUDGE RULES FEDS BROKE LAW ON KING COAL HIGHWAY

Federal Judge John Copenhaver has ruled that Federal and State Highways officials violated federal law by awarding a contract to build the King Coal Highway and not requiring Davis-Bacon wage rates be paid.

In his 42 page 'Memorandum Opinion and Order' issued on September 5 Copenhaver granted the ACT Foundation's request for summary judgment on the federal Davis-Bacon claim stating "the court concludes that the agreement's exemption of Nicewonder from payment of the Davis-Bacon wages, which was endorsed by the FHWA [Federal Highway Administra-

tion], was in violation of an unambiguous federal statute."

Nicewonder refers to Virginia based Nicewonder Contracting

out to Alpha Natural Resources, and Alpha has said they hope to get more subsidized mining and road bed work.

Nicewonder.

Federal and State Highway agencies argued negotiated contracts are allowed when unique circumstances are found and when substantial savings can be made.

Copenhaver allowed the negotiated contract to stand holding the record was adequate on the issue of cost.

He also said because the project is the "only example" of a negotiated contract it may be "rare and unusual" despite the fact the project is intended to be a model for more projects.

Copenhaver did leave the door wide open for ACT to go back to state court and see if state law was violated by the no-bid contract when he wrote "the court will decline to exercise

Continued on p. 4

"THIS HAS TO BE THE LARGEST NO-BID CONTRACT EVER LET BY THE STATE." RONNIE BURDETTE, BUSINESS MANAGER, OPERATING ENGINEERS LOCAL 132

Inc., a coal operator who Federal and State Highways officials agreed to pay around \$90 million to subsidize mountain top mining operations.

In return, Nicewonder pledged to build the road bed for a twelve mile section of the King Coal Highway in Mingo County called the Red Jacket Project.

Nicewonder has since sold

The ruling also allows ACT to go back to state court on claims the no-bid contract was illegal.

ACT had first brought the case to state court but was forced into federal court by the U.S. DOT.

Copenhaver rejected ACT's claim that the project was illegally awarded under federal competitive bidding law to

'BEATEN NOT BROKEN'

ORGANIZERS ATTACKED ON PICKET LINE AT DOCTORS OFFICE

Waiting till only two people were left on the picket line a group of five nonunion workers attacked two lone picketers at a doctor's office site in Charleston.

The attack took place at the end of the day on Wednesday, September 5 when Carpenter Organizers Joe Elliot and Randall May were just about to leave.

The five attackers snuck behind the two carpenters and struck them from behind without warning.

A fight followed with police eventually coming to the site and the two union members going to

Continued on p. 3



LOCAL BUILDING TRADES members rally to support workers attacked on the picket line. The Eye & Ear Clinic of Charleston is owned by four doctors who are building a \$3 million expansion.

DON'T DELAY, REPORT RIGHT AWAY**TIMELY REPORTING OF ON-THE-JOB INJURIES AND INCIDENTS IMPORTANT**

That's the advice offered to workers who believe they may have suffered an injury on-the-job.

And they're getting that advice from their unions, their employers and the agencies that provide their workers' compensation insurance.

But for a number of reasons, too many workers fail to report their injuries.

According to Affiliated Construction Trades researcher Lesly Messina, the reasons workers don't always make timely reports vary, but one mentioned often is uncertainty.

"Sometimes workers aren't sure if what they experienced is really worth reporting, but it's very important to get the incident on the record," said Messina.

"If the incident turns out to be an actual injury, everyone benefits by having the necessary documentation available."

There's a difference between a job-related injury which is considered an incident and needs only to be analyzed and documented, and an injury (or occupational disease) for which a claim must be filed.

Even if workers do not anticipate medical treatment will be needed, they should make sure their incident is reported to a supervisor so the worker has met the requirement for promptly notifying his employer an accident occurred, according to Messina.

Messina has also worked as a paralegal analyzing and processing claims for injured workers. In her six years experience,

she learned some workers – especially construction workers – have a work ethic that makes them reluctant to miss work for any reason.

"When someone is subject to layoff, they really value the hours of work available to them," explained Messina.

"They worry that if they report an incident, it could lead to loss of work.

Unfortunately, that Friday afternoon strain can turn into a major Monday morning disability if not treated in time."

In 2000, a Hartford Insurance study determined that a week's delay reporting a lower back injury leads to a 35% increase in claim costs.

Strains and sprains reported after the first week were 13% more expensive.

The costs cited do not include the pain and suffering of the injured worker.

No one benefits when workers don't report on-the-job injuries.

Under West Virginia law when an on-the-job injury occurs, workers should notify their employer within three business days, however they have up till six months to file a claim. By law, the employer must then file a claim within five business days of the employer's receipt that an injury occurred.

Now that West Virginia is moving from a state run workers compensation system to an open market system more attention is being paid to the process.

Starting July 1, 2008 employers will be able to buy their workers compensation coverage from a variety of insurance compa-

nies, including BrickStreet Insurance, the company created from the old state system.

A group of labor, management and insurance representatives have formed the West Virginia Workers Compensation Consortium to find cooperative ways to make the new system work the way it is supposed to.

"Avoiding injuries is the first place to start, and if an on-the-job injury does occur getting the best treatment fast is the right way to go for all involved," said Messina.

"Most important is good com-

munication on the part of all parties, the employee, employer and the insurance company."

The group has undertaken a goal of no more than 24 hours to report an injury.

The reward will be better medical treatment, less claim cost, less litigation and a lower insurance rate.

Early notification is just the start.

Processing injury-related paperwork is equally important and for whatever reason sometimes employers don't follow through.

If you do have a claim you

should be getting a letter from the insurer and possibly a phone call.

"Always follow up," emphasized Messina.

"Follow up even if you've filed your paperwork on time.

You should never assume the employer or doctor knows it is in everyone's interests to be timely.

When the ball gets dropped, it's the worker who has the most to lose."

If you have a question about workers compensation Messina can be reached at 1-800-930-9675.

NORTH CENTRAL WV BUILDING TRADES HOLDS LABOR DAY TAILGATE EVENT IN MORGANTOWN



MEMBERS OF THE North Central WV Building Trades Council enjoy a tailgate event at the WVU vs. Western Michigan game in Morgantown. "We had a great turnout," said Natalie Stone, North Central's Executive Director. "It was a great way to celebrate Labor Day this year." WVU won the game 62 to 24, which was held on September 1.

\$93 MILLION IN TAX CREDITS REPORTED

A new report from the WV Tax Department shows more than \$93 million in state tax credits were awarded in 2002.

The report, which is required by law, lists who received tax credits under twelve different programs.

The bulk of the credits went to two programs, the Industrial Expansion and Revitalization credit and the Business Investment and Job Expansion credit - also known as the "Super Tax Credit."

Exact amounts are not disclosed.

Instead companies and individuals are listed in ranges, such

as those getting "\$1 - \$50,000" in credits or the "More Than \$1,000,000" category.

Coal companies were the largest tax credits beneficiaries according to a review by ACT Director Steve White.

For example, eight credits of "More Than \$1,000,000" for the Business Investment and Expansion credit were awarded, five going to coal related companies.

"Looking at the largest credits about one third go to coal companies, said White. "Power companies come next followed by manufacturing, chemical, and wood products."

White bases his estimates on the ranges provided in the report but concedes the numbers may

not be very accurate.

"That's the problem with this data. We just don't get enough detail to understand where these tax breaks are going."

In addition White points out the data is five years old, from 2002.

"We the tax payers don't know what we are getting for our investment," said White. "That's bad business."

"And legislators have no idea what programs are working and which ones are not."

Credits increased slightly from the 2001 amount of \$92 million.

According to White, many tax credits have been put in place to help attract and retain manufacturing jobs. While the state has

seen significant manufacturing job losses only a small portion of the tax credits are used by manufacturing companies.

Instead natural resource companies are the main recipients of the credits.

"When we see Toyota on the

list we see the benefits and support these credits," said White. "But when we see coal companies you have to wonder why our taxes are subsidizing them."

To see a full list of the credits for 2002 go to ACT's website www.actwv.org.

Plumber-Fitter Apprenticeship in Huntington and Martinsburg

Two programs of the United Association of Plumbers and Pipefitters will be taking new apprentice applications in October.

Plumbers and Pipefitters Local 521, based in Huntington, will be taking applications for apprentices during the week of October 8.

Interested persons should go to the training center located at 2584-86 Guyan Avenue in Huntington between the hours of 8:00 am and 4:30 pm., Monday through Friday.

To be accepted in the program you must live within the area covered by Local 521 which includes the counties of Cabell, Lincoln, Logan, Mason, McDowell, Mingo, Wayne and Wyoming. For more information contact Director of Training Tim Rucker for Local 521 at 304/523-6085.

In Martinsburg, UA Local 486 Plumbers & Steamfitters Joint Apprenticeship Training Committee will be accepting applications for their apprenticeship. Applications will be accepted through October 5,

2007.

The program teaches plumbing, welding, HVAC and CAD skills. Starting pay is \$16.09 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 1-866-760-4860 and press "0" for the operator.

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.

Both programs have five year training segments that require 8,000 on-the-job hours of instruction and 1,000 hours of classroom training.

Applicants must be at least 18 years old, have a high school diploma or GED, and a valid drivers license.

All applications are received without regard to race, color, religion, national origin, or sex.

TRI-STATE BUILDING TRADES SPONSORS WVU-MARSHALL TAILGATE IN HUNTINGTON



HAVING A GOOD time at Tri-State Building Trades' Tailgate for the WVU-Marshall game are (from left) Mary Prim and Kelly Young of the Constructors' Labor Council; Ronnie Burdette, Operating Engineers Local 132; First Lady Gayle Manchin, Governor Joe Manchin; and Tri-State Building Trades Business Manager Steve Burton. "We had great volunteers who made this a super event for our members, friends and families," said Burton.

CITY OF HUNTINGTON ADOPTS RESPONSIBLE CONTRACTOR LANGUAGE

The City of Huntington has passed an ordinance that defines what a responsible construction contractor is.

State law requires public contracts be awarded to the "lowest responsible bidder." We all understand what lowest means,

but the term "responsible" is usually left undefined.

The result is contractors who have performed poor quality work, or have a history of law violations are often awarded contracts because they have the lowest bid.

The new "Article 107 Purchasing" lays out 15 points to determine if a contractor is responsible.

The points include important information about a contractor's track record, use of local workers, participation in apprenticeship, drug screening and safety programs, as well as health and pension programs.

"We based this on the State School Building Authority's long standing policy of responsible contracting," said Tim Millne,

representative of the Laborers District Council and a resident of Huntington.

Millne worked with the City Finance Committee to develop the policy before it was voted on by the City Council on August 27.

"Low bid is not always the

best bid," said Millne. "This policy will make sure we get quality bidders for our city projects and force the cheaters to look elsewhere."

Many counties have adopted the responsible bidding policy over the years but Huntington may be the first city to do so.

PROMOTING APPRENTICESHIP AND TRAINING PROGRAMS



TOM PLYMALE, OPERATING Engineers Local 132, helps hang a banner promoting apprenticeship at a 100% union project in Charleston. The West Virginia Joint Labor Union and Management Apprenticeship and Training Advisory Council is using the banners on different jobs around the state to help get the word out about apprenticeship programs. The group is trying to let the public know the positive contribution union members and their contractors play in training a highly skilled and productive workforce.

JUDGE

CONTINUED FROM P. 1

judgment over the remaining state law claims."

State law only allows no-bid contracts in emergency situations.

In briefs filed by the WV Department of Transportation a controversial overweight coal truck law was cited as legal basis for entering the contact with Nicewonder.

"It's a real stretch to say a law allowing for repairs from over-

weight trucks lets you skip the bidding process all together," said Ronnie Burdette, Business Manager for Operating Engineers Local 132.

"And we never really got to show how the DOH estimates of great savings were wrong be-

PICKET LINE

CONTINUED FROM P. 1

the hospital.

Elliot sustained cuts and bruises but May has neck and back injuries that are potentially serious.

The Carpenters Union has been picketing the site for weeks.

The Eye & Ear Clinic of Charleston is building a new office building and has hired Wolfe Construction to build it.

The Carpenters claim Wolfe pays wages much less than area

standards, and has a small benefits package that does not include a pension.

Responding to the attack about 30 local union workers came to the site the next day to protest. Wolfe ended up shutting the job down.

"We're fighting for decent pay and benefits," said Scott Brewer, Service Representative for Carpenters Local 1207. "To have a doctors group not even consider fair contractors, and to have our members attacked is a real insult to working families."

cause they didn't hold Nicewonder to spec's on things like slope and compaction or alignment."

"This has to be the largest no-bid contract ever let by the state."

Copenhaver has asked

ACT's attorney Vince Trivelli to draft a memorandum by September 25 suggesting how to proceed on the Davis-Bacon issue and "determine the appropriate declaratory relief."

Highways and Nicewonder have until October 12 to respond.

ACT Foundation
600 Leon Sullivan Way
Charleston, WV 25301
(304) 345-7570

Non-Profit Org.
U.S. Postage
PAID
Permit # 1374
Charleston, WV 25301