

# THE ACT REPORT

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

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## OPERATING ENGINEER WINS \$47,000 GRIEVANCE OVER FIRING

Thanks to a union contract and good representation Operating Engineer Dave Walker received a \$47,333 check for back wages and benefits on December 21.

The payment was the result of a grievance Walker filed after being fired almost two years ago from his employer of 17 years Maxim Crane Works.

Two arbitrations later Walker is a happy man.

"I feel great, and it wouldn't have been possible without a union contract, Local 132 Business Manager Ronnie Burdette and our lawyer Larry Lowry," said Walker.

In February of 2008 Walker was on a job as a crane operator for Maxim when a lift he was making went bad.

The problem had nothing to do with Walker's performance but with the nonunion workers who did the rigging improperly. The result was \$17,500 damage to an Excavator.

Walker was then fired for not reporting the accident even though there was no damage to Maxim's equipment.

That Walker had been an effective union steward for 17 years perhaps was the real reason behind the firing.

The issue went through the grievance process to arbitra-

tion which resulted in a back pay and benefits award last January.

However, the company decided they would deduct the damages caused by others from Walkers check.

Maxim had volunteered to pay their customer \$17,500 for damage they had no responsibility to pay.

So the matter went to arbitration a second time.

Now at issue was not only the money for Walker but a larger issue of holding equipment operators personally and financially responsible for the actions of others and damage to property other than their employers.

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DAVE WALKER (left) receives his back pay award check from union attorney Larry Lowry (center) and Local 132's Ronnie Burdette just a few days before Christmas.

## OBAMA ADMINISTRATION TO PAY HALF OF COST

# AEP TO BUILD CARBON CAPTURE PROJECT WORTH \$670+ MILLION

The U.S. Department of Energy announced a \$334 million grant in early December to help American Electric Power build a major project in Mason County.

The funds are part of the Clean Coal Power Initiative and will pay part of the cost to install the nation's first

commercial-scale carbon dioxide capture and storage system at AEP's Mountaineer power plant in New Haven.

The goal is to capture at least 90 percent of the carbon dioxide emissions from 235 megawatts of the plants 1,300 megawatt capacity.

The captured CO2 will be stored deep underground after being treated and compressed.

The announcement comes only a few months after the successful completion of a pilot project at the Mountaineer facility.

In October AEP officially commissioned their carbon-capture pilot project which was built with 100% union building trades workers and took emissions from a 20 megawatt stream of flue gas.

This next phase will cap-

ture more than 10 times the emission output.

Success of the carbon capture technology means a lot more than the valuable jobs created during construction.

With increase focus on emissions from coal burning power plants the future of the coal industry, and the region, may depend on the success of this project.

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WRONG AIR PERMIT, NO LOCAL HIRING COMMITMENT

# \$3 BILLION MINGO COUNTY COAL-TO-LIQUID PROJECT HAS SERIOUS PROBLEMS

Developers for a proposed \$3 billion coal-to-liquids plant in Mingo County have applied for an air permit but face serious questions raised by the Affiliated Construction Trades.

"When we looked at this project we quickly ran into all sorts of problems," said Steve White, ACT Director.

New York based Trans-Gas Development Systems LLC is proposing to build the facility on a mountain-top re-

moval site.

Developers claim once the facility is in operation in 2013 they will use three million tons of coal per year to make methanol and then 6.5 million gallons of gasoline.

According to news reports construction would take 42 months and the company has said 3000 construction workers will be needed.

ACT hired Carpenter Environmental Associates to review the permit.

One of the first things ACT's consultant noticed

was the proposed facility was very complex, but the permit request claimed it was simple.

"The proposed facility is a major source of air pollution as revealed by this assessment," wrote Carpenter.

"This determination is based on potential emissions of particulate matter, carbon monoxide, volatile organic compounds, and perhaps hazardous air pollutants."

Comments filed on behalf of ACT show the project should be considered a major source of pollution because

of its size and complexity.

However the company filed for a much less rigorous 'minor-source' permit means less review and few details are made available.

In addition the company has refused to commit to hiring local workers.

White noted that some discussions have taken place about local hiring with the Tri-State Building and Construction Trades Council, but an agreement was never reached.

Instead the developers said they may bring in workers from New York.

"If they won't use local workers we usually find they are cutting corners elsewhere," said White.

The State Department of Environmental Protection has given preliminary approval to the company's air permit and is now reviewing the public comments.

"We would love to see this project move forward using the right permits and local workers," said White.

However some speculate the project will never materialize and may be simply an attempt to get tax breaks from other states.

According to news reports Trans-Gas has plans to build a similar facility in New York but has not yet applied for permits.

In addition Trans-Gas has said they will finance the project by selling stock on the London stock exchange's Alternative Investment Market.

Financing a project through a stock offering is considered a very difficult method even with a stronger economy and a type of project that has been built before.

In 2006 a California-based company called Rentech Energy Solutions Inc., announced plans for a similar project in Mingo County that would convert coal to diesel fuel but the project never got off the ground.

Lack of financing hurt the project according to a Mingo County Economic Development spokesperson.

## OHIO BUILDING TRADES TO START NEW PROGRAM

The Ohio State Building Trades is looking to start a program that will undertake activities similar to the Affiliated Construction Trades.

The Ohio SBT Executive Board voted to support the initiative last November and is now going out to member locals for approval for funding.

According to Dennis Duffy, Secretary-Treasurer of the Ohio SBT, member locals are being asked to support a five cent per hour contribution to be phased in starting July 1 of this year.

"We need to do more, and it takes money to fund things like ACT has been doing," said Duffy. "We are looking to the ACT model to get our program off the ground."

Duffy and members of his Executive Board met with Agents in the Tri-State Building Trades area January 6 to discuss the effort.

The meeting was held at the Portsmouth, Ohio Pipefitters Hall and was attended by around 20 people.

Many were already familiar with the ACT program and offered support.

"I've got members in West Virginia, Kentucky and Ohio and I wish we had a group like ACT in each state," said Brent Grey, Business Manager of Electricians Local 317.

Steve Burton, Business Manager of the Tri-State Building Trades is one of the Ohio SBT Executive Board members and helped organize the meeting.

He is also President of the WV State Building Trades

and ACT.

Burton talked about how ACT got started and the help it continues to be for construction workers and working families.

ACT Director Steve White was also on hand to talk about how ACT is set up and where funds are spent.

"We need to do more for our members and the Ohio State Building Trades can't do it on our current budget," said Duffy.

Advertising, research, legislative work and having the ability to go to court if needed were all areas Duffy wanted to work on.

Ohio has approximately 75,000 building trades members, almost four times the 20,000 members of the WV State Building Trades and ACT.

### AEP

CONTINUED FROM P. 1

"We look forward to working once again with AEP on this important project, not only for our area but for the country," said Steve Burton, Business Manager for the Tri-State Building Trades.

"Our craft workers want to be part of this new technology that will be so important to the economic success of our region. We are up to the

challenge."

Burton also notes the carbon capture technology itself uses quite a bit of electricity to operate.

The success of the project will mean an increase in electricity demand and hopefully new power plant construction will result.

Deep wells are planned for later this year, site-prep expected to start mid-year 2011 and the project is to be complete by 2015.

# ROOFING CONTRACTOR DENIED SCHOOL BID

Frye Roofing may have been the lowest bidder, but they were not considered the best bidder for a recent Kanawha County School project.

Frye, based in Bluefield, WV, was rejected as the lowest 'responsible' bidder by the Kanawha County Board of Education at their December 7 meeting.

Tri-State Roofing, a union contractor that hires local workers was awarded the \$414,176 roof replacement which was funded by the State School Building Authority (SBA).

Frye had bid \$1,376 less but did not meet many of the standards of review required by SBA funding.

The SBA requires a review of 18 performance areas including a bidders history of

on-time completion and cost over runs, regulatory compliance, participation in health and pension benefits, apprenticeship training, and alcohol and drug testing programs.

With data supplied in part by ACT Representative Wayne Rebich and Roofers Local 185 Agent Dale Rose, Kanawha County School officials came to realize the lowest price was not the best price in this case.

Two major issues came to light during the review, timely completion and payroll compliance.

Frye was awarded two roofing projects in Raleigh County in August of 2008 that were to be completed in 90 days. However records show final payment was not

requested until June of 2009, about ten months after the award.

Certified payroll documents from previous jobs show no deductions for State and Federal taxes, with the Gross wage being the same as the Net wage. That could also mean no payments to Social Security and Unemployment.

Likewise no deductions for health or retirement contributions were found.

Nor does Frye participate in any apprenticeship training program.

In addition almost all of Frye's workforce listed a North Carolina address for their place of residence.

"The Kanawha County School Board did the right thing," said Rebich. "They

will end up with a quality job at a fair price from a contractor that complies with every single requirement."

Using data collected by Rebich, ACT Director Steve White wrote to the SBA Executive Director Dr. Mark Manchin in early December regarding Frye. White urged Manchin to determine whether Frye should be blocked from bidding future SBA funded projects if they do not meet the SBA Criteria for Selection of Lowest Qualified Bidder.

"If your investigation reveals Frye fails to meet the qualifications of the SBA we believe Frye should not be allowed the privilege of bidding or performing work on SBA projects," White wrote.

## ACT RE-FILES KING COAL HIGHWAY SUIT

After suffering from a four year delay in Federal Court before Judge John Copenhaver ACT has finally been allowed to re-file their bidding and wage case on the King Coal Highway in State Court.

The case is now scheduled for a November trial date with a schedule for discovery, expert witness testimony and mediation throughout the year.

Kanawha Circuit Court Judge James C. Stucky will hear the case.

The case stems from a 2004 contract between the U.S. Department of Transportation, the WV Division of Highways and Nicewonder Construction.

The contract gives Nicewonder approximately \$100 million of taxpayer funds to subsidize their mountaintop removal coal mine project. In return the coal company will leave an unfinished road bed

for the King Coal Highway.

ACT objected to the no-bid contract and elimination of prevailing wage rates.

In addition the road was built to entirely new specifications unlike any other highway road project which allowed the coal company to move the roadway and interchanges to suit their needs and to use different standards of compaction and slope.

Also there were no mining permits required of the coal company.

ACT had filed the case in state court in December of 2004 but the case was moved to Federal Court.

Judge Copenhaver ruled in September of 2007 that the project did not have to be bid because it was unique, but also said prevailing wage rates must be paid.

Then, after waiting two years he changed his mind and said ACT did not have the right to bring the case in the first place because ACT members were not on the job.

## HOUSE OF DELEGATES MEMBERS ALSO UNDERSTAND TRADES



HOUSE OF DELEGATES Members Orphy Klempa, (D-Ohio) (left) and Dan Poling, (D-Wood) look over proposed legislation during the first days of the 2010 legislative session. Klempa is Service Representative of the Carpenters Union and Poling is in charge of Governmental Affairs for the Painters. Two members of Operating Engineers Local 132 are also in the legislature, Dave Walker (D-Clay) and Greg Butcher (D-Logan).

# FEDERAL HEALTH INSURANCE BILL EXEMPTS MANY CONSTRUCTION FIRMS

The U.S. Senate version of health reform legislation passed on Christmas Eve requires employers to provide health benefits for employees.

However, small businesses are exempt, which in the construction industry means companies with less than five employees and \$250,000 in payroll.

For all other employers the definition of small is fewer than 50 employees.

Some argue the definition is too tough for the industry and others say it is not tough enough.

And if an employer does not comply, regardless of the sector they are in, the fine is only \$750.

Even with the small penalty and five employee exemption national construction employer groups like the Home Builders are crying foul and mounting a campaign to eliminate the construction provision.

However with a 50 employee limit many believe the requirement will be almost

meaningless in the construction industry.

In addition for those in construction the Senate bill, starting in 2013, taxes the portion of health benefits worth more than \$26,000 for families or \$9,850 for individuals.

In other industry sectors

Instead they support the House version that taxes the super-rich.

Although a bill has passed in both the House and Senate the legislative process is not over.

Differences in the bills must be addresses so there is only one version accepted by both bodies.

According to news reports here are some general items included in both the Senate and House Bills.

□ People who earn up

□ Insurers can no longer deny a person coverage because they have a pre-existing condition or charge women more than men.

□ Insurance companies must spend 80 to 85 percent of the dollars they take in on health care, as opposed to ad-

vertising, executive salaries, etc.

□ Community health centers and other non-profit centers that provide sliding-scale health care will get billions.

□ Small businesses can get 50% temporary tax credits for offering insurance.

### *The Health Care problem as described by the Building and Construction Trades Department;*

“Access to affordable, quality health care is a basic human right. Our health care system is in shambles. Despite spending more than twice as much as the rest of the industrialized world (\$7,129 per capita), the United States has a shorter life expectancy and higher infant mortality rates. Health care costs are rapidly increasing, and as more and more people are losing their jobs and health insurance and joining the ranks of the uninsured, the problems are multiplying.”

the tax starts at a lower level.

Some believe this tax will slowly creep into working families pockets as health care costs rise over time.

While the benefits tax is being billed as one only on “Cadillac” health plans it will definitely hit many single construction workers with basic plans in its present version.

A single person who pays more than \$4.75 an hours into a health fund and works all year will be required to pay tax on the contribution amount over \$4.75.

The AFL-CIO is opposing the health benefit tax.

to \$43,400 as an individual or \$88,200 for a family of four would get substantial sliding scale subsidies to help pay premiums.

□ Medicaid would cover 15 million more people, including 85,000 to 100,000 West Virginians and, for the first time, adults who do not have children.

□ Sons and daughters could stay on their parents’ insurance until they are 26 in the Senate version and 27 in the House version.

□ Insurers would not be allowed to drop people’s insurance for any reason other than fraud.

erty damage to equipment or property of a customer of the Employer.”

Again the arbitrator agreed with the Union and granted Walker full back pay and benefits, writing “Based upon the

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evidence and the Collective Bargaining Agreement there is no basis to uphold Maxim’s request to assign its voluntary goodwill payment to ...Grievant David Walker.”

Walker is currently a member of the WV House of Delegates representing Calhoun, Clay and a portion of Gilmer Counties.

“I told them they were wrong to fire me - and thanks to the union I had a chance to have my case heard,” said Walker.

Maxim Crane Works, formerly called Anthony Crane Rental, has 35 locations in the U.S. and bills themselves as the number one crane rental company in the nation.

## GRIEVANCE

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According to testimony given by Ronnie Burdette, “During the 20 year period of time that I have been a

Business Agent or Business manager I am unaware of any employer ever assessing or attempting to assess any monetary damages from an employee for damage to company equipment or prop-