



ACT REPORT

VOLUME 4, NUMBER 12

A PUBLICATION OF THE AFFILIATED CONSTRUCTION TRADES FOUNDATION



DECEMBER, 1995

Richardson Twice Fails To Answer \$110 Million Question

State Ignores Comp Tax Shifting

ACT CONTINUES to battle with West Virginia Workers' Compensation Commissioner Andy Richardson over the effects of the state's new Workers Compensation law.

ACT attorney Stuart Calwell said Richardson's report to the Legislature's Joint Workers

Compensation Subcommittee in mid-December "completely failed to address our key finding that the new Workers' Compensation law shifts hundreds of millions of dollars in compensation costs for injured workers to taxpayers and away from employers responsible for the inju-

ries."

In October, ACT presented

and we are right today -- SB

250 is a bad deal for injured

'It is astounding that after two months all the commissioner can do is rehash his original numbers -- we were right in October and we are right today...'

ACT Attorney Stuart Calwell

U.S. Supreme Court Rules 'Salting' Legal

THE U. S. SUPREME Court has unanimously ruled "salting" of non-union employers by union members is legal even if they are paid union organizers.

The case of National Labor Relations Board (NLRB) vs. Town & Country Electric, Inc., of Appleton, Wis., the Court posed and answered this question:

"Can a worker be a company's 'employee,' within the terms of the National Labor Relations Act... if, at the same time, a union pays that worker to help organize the company?"

The Court said the answer was "yes."

The NLRB determined Town & Country Electric committed

'The decision sends a clear signal that salting is our right.'

ACT Director Steve White

an unfair labor practice when it advertised job openings for electricians, but refused to interview 10 of 11 union applicants because of their union status.

The NLRB ruled it did not matter the workers were only applicants, and intended to organize the company while being paid by the union. They still were entitled to protection for "self-organization, to form, join or assist labor organizations, to bargain collectively... and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

"The decision sends a clear signal that salting is our right. The Supreme Court has now put a 'seal of approval' on what

Continued on page 4

testimony to this same Subcommittee estimating that under the Workers' Compensation law passed in February, each year \$110 million of lifetime benefits to injured workers that would have been paid by employers will be shifted to the Social Security system and the taxpayers who fund it.

"It is astounding that after two months, all the Commissioner can do is rehash his original numbers -- we were right in October

workers and taxpayers."

Other charges against the new system of workers' compensation come from Delegate Larry A. Linch, D-Harrison.

Linch said the new law makes it easier for fund officials to play politics and reward favorites, particularly with coal companies, and makes it easier to adjust compensation premiums.

John Kozak, the Workers' Compensation Fund's general

Continued to page 4

Pulp Mill Pollution Disclosed

AIR POLLUTION from the proposed Mason County pulp and paper mill could reach 13 million pounds of chemicals under Division of Environmental Protection (DEP) guidelines released to the public in early December.

The draft air pollution permits were issued for public comment.

"Our experts are carefully studying the permits before we make any comment," White said.

"But past experience suggests we can't really trust DEP to protect the health of West Virginians."

ACT protested when mill and state officials disclosed the method which determined how much deadly dioxin could be released into state waterways.

Inside The ACT Report

- Randolph Airport Pg. 2
- Payrolls Pg. 2
- Jobs Act Pg. 2
- Black & Decker Pg. 2
- Contractors Council Pg. 3
- AFL-CIO Pg. 3
- Union Countries Pg. 3
- Powerline Pg. 4



HERALDING THE COMPLETION OF THEIR NEW LIBRARY is Steve Burton, business manager for the Tri-State Building and Construction Council at Geneva Kent Elementary in Huntington. The new library was built with the volunteer labor of twelve Local Unions in the Tri-State Council, most of which are ACT members as well. The project was completed as a joint effort of local unions, union contractors, suppliers, and the Huntington Herald-Dispatch. *(Photo courtesy Huntington Herald-Dispatch)*

To Assure Construction Workers Aren't Cheated

Elkins Airport Wage Certification Won

AFTER A NUMBER of skirmishes, ACT's Steve Montoney has convinced Elkins Airport officials to make contractors keep certified payroll records to assure workers are paid fair prevailing wages.

A review of recent bids for a communications center at Elkins-Randolph County Airport indicated a spread of \$150,000 on the \$400,000 project.

"This indicates a possible 'low-ball' on a project," Montoney explained. "The difference will need to be made-up by the contractor."

He later discovered the president of the Airport Authority had announced at the pre-bid meeting that certified payrolls would not be collected.

"This gives an unfair contractor the license to steal," Montoney said.

Montoney started an investigation to determine how the project was funded. "FAA funds were to be used," he said. "and my search ended with the Federal Highways Administration in Washington, D.C., from which

the FAA is funded."

An attorney there informed him that contrary to a newspaper story, the FAA was going to purchase the building after it was constructed in order to "side

proves how badly we need ACT," said Montoney.

"This isn't the only federal agency who has found legal ways to 'kill' Davis Bacon without actually passing an amendment

to make sure they're paying the proper wage rate -- to both union and non-union workers."

Montoney said because this is a county airport (even though the funding went through a local

Montoney went to the Randolph County Commission in order to make a formal complaint about not collecting wage and hour information, which is required on projects funded with federal funds.

He cited the fact that airport authority must certify to the FAA that wages have been paid in compliance to the law.

"How can this be done if no certified payrolls are collected? The commission is responsible for the airport. That means they're responsible for collecting the payrolls, too."

Montoney was told to meet with Jim Wallace, President of the Airport Authority, who decided the architect would collect the payrolls and make them available to the ACT office.

"We have to fight these small battles every day or else we will have no prevailing wage left to defend," Montoney said. "Quite often it takes four to five attempts to get copies of public documents such as certified payrolls. We'll see what happens next on this case," he said.

CERTIFIED PAYROLLS THE CLARKSBURG ACT OFFICE RECEIVED NOVEMBER 1 THROUGH DECEMBER 15

- College Classroom Renovation, Eisland Hall - Monongalia County
- Pumping Stations Upgrade - Monongalia County
- Special Abandoned Mine Reclamation, Rockville Mining - Monongalia County
- Upper Buffalo Channel Project - Marion County
- Chestnut Ridge Water System Improvements - Barbour County
- Water Treatment Plant and Storage Facilities - Grant County
- Romney Highway Restoration - Hampshire County
- Wilsonburg Elementary School - Harrison County
- Abandoned Mine Reclamation Albert Highway - Tucker County
- Road Rehabilitation, Hannahsville - Tucker County
- Tucker Valley Elementary - Tucker County
- Tucker County Landfill Geosynthetic System - Tucker County
- Sanitary Sewer and Water Line Extension - Upshur County
- Sanitary Landfill Wetlands - Webster County
- Watson Bridge - Marion County

step" the high costs of the Davis Bacon Act.

"Statements like that really

to repeal the law.

"ACT is the only local group that actually monitors projects

bank) state prevailing wages were incorporated in the bid documents.

Local Hire Resolutions Near 50 Percent

COUNTY commissions supporting legislation on local hiring is nearing the 50 percent mark.

Roane County became the 25th to vote in support of the resolution which requires projects funded with state tax money to hire at least 90 percent

of its workforce locally.

Twenty-eight counties will make the 50 percent goal

Raymond "B.B." Smith, ACT's legislative representative, has been speaking at county commission meetings all across West Virginia in order to promote the resolutions.

Smith said the support from county commissions can only help when it comes to getting passage of a law in the legislature.

"If you can tell a senator or delegate to look at the commission in their own county, that they have endorsed this resolu-

tion, then that will be a definite plus," Smith said.

Voting in support of this resolution tells the people back home that you are for hiring local people first."

He said the visits to the county commissions amount to a grass roots effort to help lobby for

jobs for West Virginians.

The next step, Smith says, is to take the message to the legislative session which begins Jan. 10 and work on passage of the the West Virginia Jobs Act.

"We want to work with legislators to support what the county commissions are saying," he said.

Construction Unions Boycott Ends, Too

Black & Decker Ends Non-Union Aid

BLACK & DECKER'S program to contribute money to an anti-union training program of the Associated Builders and Contractors, has been cancelled after a concerted effort by construction unions.

In a letter to Robert Georgine,

President of the Building & Construction Trades Department, AFL-CIO, the Marketing Manager for Black & Decker, Robert J. Keimig said the non-union program did not meet the criteria the company established for the support of safety and appli-

cation training for students and craft workers using power tools.

Keimig continued, "Black & Decker recognizes and values the long standing support that union members have shown to our products as well as the out-

Continued on page 4

Happy Holidays

From The
Affiliated
Construction
Trades Foundation



West Virginia Construction Council Is Only All Union Contractors Group

(Contractors, like union members, have their own organizations in West Virginia. This first part in a series, will look at the various contractor groups across the state, both union, nonunion, and mixed.)

THERE ARE a number of contractor organizations in West Virginia but only one '100 percent' union group.

The West Virginia Construction Council, based in Charleston, is the "umbrella" council that oversees five contractor associations spread state-wide.

The Construction Council's president, Jim Cerra, is also executive secretary of the Kanawha Valley Builders Association and the Tri-State Contractors Association, which cover the Kanawha Valley and Huntington/Ashland/Portsmouth ar-

reas respectively.

Cerra has been head of the Construction Council since its inception in 1982.

Other organizations included in the Council are the Ohio Valley Construction Employers Council in Wheeling, the North Central Employers Association in Fairmont, and the Parkersburg/Marietta Contractors Association.

The councils represent contractors who employ union workers.

"Our main goal is promoting the organized segment of the construction industry," Cerra said.

"We do that by promoting labor/management relations and cooperation in order to achieve more jobs for building trades unions and also to make our

state more competitive in the construction industry."

Cerra said when you take all the councils across the state into consideration, they represent nearly 1,000 union contractors.

'Our main goal is promoting the organized segment of the construction industry.'

W.Va. Construction Council President Jim Cerra

"We also represent sub-contractors and suppliers, anyone who is union, and only union," he said.

The Construction Council also administers the Charleston Labor Education And Development (LEAD) program, which has a parallel program in Ashland, Ky., which is directed by the Tri-State Building & Con-

struction Trades Council.

The LEAD program promotes voluntary drug testing and safety and issues "Drug Free" cards, a photo i.d. certifying that the carrier was tested and is drug free.

lar ultimate goals -- more work for union building trades contractors and union members; a lot of whom are ACT members," he said.

One issue that both organizations agree on is the West Virginia Jobs Act.

"We're already on record as being in support of the Jobs Act," he said.

"We hire lobbyists every year to advocate any issue that promotes union contractors, management or labor."

Cerra said that every sub-council in the West Virginia Construction Council has different programs and strengths.

Over the next several issues of the ACT Report we will be examining the different councils more closely with a profile of each.

State AFL-CIO Wants OSHA Reformed

(The following resolution was adopted at the 1995 West Virginia AFL-CIO Convention in October.)

IT HAS BEEN more than two decades since Congress acted decisively to curtail the

carnage occurring in the American work place by the passage of a law known as the Occupational Safety and Health Act of 1970 (OSHA). The fact is that before OSHA, tens of thousands of American workers were be-

ing killed on the job each year, hundreds of thousands more seriously hurt and millions exposed to known, and then-unknown poisons, chemicals and toxins. The precedent has been established: American working men

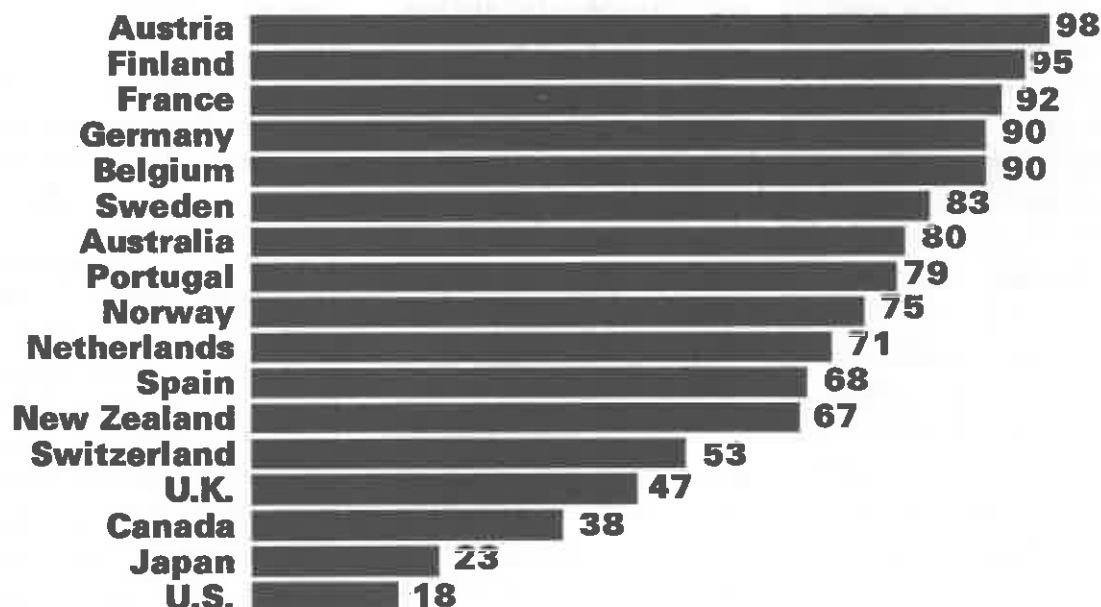
and women have a right to a safe work place, and if employers are reluctant to provide that safe work place, the federal government has an obligation and duty to protect workers.

However, despite all this, there are still some chilling facts: While construction workers account for approximately just 5 percent of the work force, they suffer 25 percent of the fatalities. Millions of workers are seriously injured on the job every year in this country. About 100,000 people a year die from diseases contracted because of exposure to chemicals and toxins in the work place. Each year, another 390,000 are diagnosed with occupational diseases. These kinds of statistics cannot be ignored, and that is why OSHA laws need to be strengthened. The Reagan and Bush administrations opposed any efforts to correct the weaknesses in the law, but with a new U.S. Presi-

dent and a new Congress, there was a realistic hope that the need to do more to reduce the deaths, illnesses and injuries in the work place would be accomplished, thus, saving both lives and money. The Republican-dominated Congress, however, has made proposals to destroy OSHA. Consider: Congress proposed a 33 percent cut in OSHA enforcement, which would likely result in about half of the federal inspectors being laid off, and possibly 50,000 more work place injuries and deaths occurring each year. Therefore be it

RESOLVED, That this 20th Constitutional Convention of the West Virginia AFL-CIO supports legislation to improve and strengthen the nation's occupational safety and health protections and urges the West Virginia congressional delegation to support such measures in House and Senate.

PERCENTAGE OF WORKERS COVERED BY COLLECTIVE BARGAINING AGREEMENTS



Source: OECD, 1994. Most country data for 1990.

APCO Power Line Hits Another Delay

APPALACHIAN Power Company's delay-plagued 765 killavolt transmission line reached another snag recently.

Bill Damon, Chief of the National Forest, told a meeting of concerned individuals in Princeton that he had never known a study to take this long. That statement was made when the Draft Environmental Impact Statement was still expected in October.

The latest delays says they need six more months, for yet another deadline made for March of 1996, with no assurance that this date will be met.

ACT, along with dozens of building trades locals, has endorsed the project and worked with the Coalition for Energy

and Economic Revitalization (CEER). According to ACT's industrial representative Bill Thomas, "the project has been delayed six times, the last of which was this past October, and the cost has risen \$3.5 million."

In 1990 APCO announced its plans for construction

of the line between Oceana and Cloverdale, Va., to meet the growing demand for electricity in southern West Virginia and southwestern Virginia.

"Construction for the power line will cost an estimated \$400 million which has been assured for union labor," Thomas said.

Thomas has attended a num-

ber of meetings expressing ACT's position on the power line and why ACT supports the project, among them a Mercer County Commission meeting, a Jefferson National Forest Ser-

ers have long had a good relationship with Appalachian Power, Thomas said. According to CEER, approximately 95 percent of work done at APCO plants is done with union labor.

'Construction for the power line will cost an estimated \$400 million which has been assured for union labor.'

ACT Industrial Representative Bill Thomas

A number of APCO office buildings have recently been built

union. The projects included a \$10 million service building in North Charleston and a similar \$5 million one in Logan.

Another plus, Thomas points out, is the increase in coal usage.

"APCO's West Virginia plants burn exclusively West Virginia coal," Thomas said. "That can only mean an increase

in coal mining and related jobs." The delay, Thomas said, is not with the builders of the power line, rather with those who must approve it.

"Since 12 miles of the proposed 115 mile route crosses the Jefferson National Forest the United States Forest Service must prepare an Environmental Impact Statement," he said.

The draft of this document is now over four years past due.

"The federal government, through the USFS, has a job to do," said Joe Haynes, CEER Coordinator.

"Let's demand this agency quit foot-dragging and get it done.

"Then APCO may move ahead with this project and get it into the hands of the state agencies that can rule on its merits."

U.S. Supreme Court Rules 'Salting' Legal

Continued from page 1
unions have done in the past and I'm sure will continue," said ACT Director Steve White.

The case then went to the high court because the other circuits were split in their findings.

According to the justices of

the Supreme Court, the NLRB's interpretation fits with the broad language of the labor law and protects employee rights.

It rejected Town & Country's argument that common-law principles would exclude paid union organizers from protection because the union, and not the company, would control the conduct of the employee.

"Common sense suggests as a worker goes about his ordinary tasks during a working day . . . he or she is subject to the control of the . . . employer, whether or not the union also pays the worker. The company, the worker, the union, all would expect that to be so," said Justice Stephen Breyer. "That union and company interests or control might sometimes differ should make no difference."

The justices rejected the proposition that the definition of employee should be restricted because union organizers "salted" at a firm might harm it by quitting at a crucial time, conducting sabotage or disparaging the company.

Breyer said nothing in the

record suggests such acts of disloyalty were present.

"If a paid union organizer might quit . . . so, too, might an unpaid organizer, or a worker who has found a better job, or one whose family wants to move elsewhere," Breyer said.

"I think we will see an increase in 'salting,' but we also

will see greater education for non-union companies which will likely develop better strategies in combatting our efforts to organize," White said.

"The ruling was definitely in our favor but that won't solve all our problems. We have won a great victory that gives us a powerful tool, now we must use it."

Black & Decker

Continued from page 2
standing job performed by the union apprenticeship programs in training the construction workforce. We equally applaud the strong cooperation which exists between the construction management and the unions within the Building Trades Council as they jointly strive to provide the best training available for craft

workers."

Roy Smith, secretary-treasurer of the West Virginia Building & Construction Trades Council, said the outcome of the boycott was a great example of unions working together.

"When the crafts work together to fight the anti-union element, 'we're a force to be reckoned with,' Smith said.

Non-Profit
U.S. Postage
PAID
Permit No. 88
Chas., WV 25301

ACT Foundation
523 Central Avenue
Charleston, WV 25302
(304) 345-7570

Workers Comp

Continued from page 1
counsel, denied Linch's claims and said the new law and regulations to be issued by July 1 will make it easier to reward safe companies and penalize unsafe ones.

"Kozak admits that the premium structure has been completely changed," said Steve White, ACT director.

"Yet most legislators weren't aware of the changes.

"Its impact hasn't even been presented to the appropriate committees."

White said another problem with the new system is "there is no clear requirement that a poor

safety record be directly related to an employer's premium, despite what Kozak says is the intent of the bill.

"All employers will pay more, with the exception of certain large employers. Their costs will be shifted on to other subscribers."

The ACT Report

A monthly publication of the Affiliated Construction Trades Foundation, an association of West Virginia building and construction trades local unions, with offices in Charleston and Clarksburg.

Officers: Bruce Tarpley, President; Dave McComas, Vice President; Willard "Bobby" Casto, Financial Secretary; Roy Smith, Executive Director; Steve White, Director.

Charleston Phone (304) 345-7570
Clarksburg Phone (304) 624-0682