

## \$300 MILLION ROAD PROJECT WAS NEVER BID

# ACT Sues DOH and Coal Operator

**ACT filed suit on December 2<sup>nd</sup> against the West Virginia Department of Highways and Nicewonder Contracting in order to stop their deal to build a 12 mile section of four-lane highway in Mingo County.**

The \$300 million project known as the Red Jacket Section of the King Coal Highway

was put together earlier this year.

Claiming the agreement would save taxpayers 'at least \$150 million' the Federal Highways Administrator called the deal 'a model for the rest of the nation.'

ACT got involved at the urging of a number of crafts because union construction workers and contractors are denied any opportunity to work on the huge project.

"If this is the new model then we are out of business," said Ronnie Burdette, Business Man-

ager, Operating Engineers.

Key to the DOH's argument is the supposed savings the project will realize. But the savings come more from huge amounts of coal to be mined, without mining regulations or quality standards used for road construction.

"If they bid the project, any contractor could estimate the value of the coal and work that into their bid price," said Burdette.

ACT's investigation has un-

covered a long list of problems, including the complete lack of competitive bidding as required by law, as well as no payment of Davis-Bacon or prevailing wage rates.

Federal law does allow for an exception to bidding but only in emergencies or unique cases where huge savings will be realized.

At the same time the DOH claims that having coal under the ground in WV is unique. Transportation Secretary Fred Van Kirk stated the same contract-

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## Mon General, Trades Sign Agreement

**Monongalia General Hospital and the North Central WV Building Trades have signed an agreement to use local union construction workers for the hospitals proposed \$82 million addition and renovation project.**

The agreement was reached in November after a series of discussions triggered by Mon General's application to the state Health Care Authority.

Mon General is a private not-for-profit hospital based in Morgantown.

The ACT Foundation requested more information about the project and asked for a public hearing.

Those actions got both side talking and led to the agreement.

"We were concerned about health care costs and about making sure local workers, who themselves have health care benefits, get to build the project," said Darwin Snyder, president of the North Central WV Building Trades.

Mon General was concerned

getting a quality skilled local workforce to build their project and wanted to avoid any delays the hearings would cause.

"This agreement paves the way for a first class medical facility," said Mon General's CEO David Robertson.

Mon General also liked the agreement because of the apprenticeship programs, health benefits and elimination of work stoppages it guaranteed.

While there is no limitation on who can bid the project, local union workers will be used at the wages and benefits they have negotiated for the area.

The agreement is very similar to what nearby Ruby Memorial Hospital has used for more than 30 years. It also is similar to a recent agreement reached with United Hospital Center.

The project involves the expansion and renovation of the

hospitals intensive care unit, emergency department, outpatient services and other support functions of the hospital.

The application will now be considered by the state Health Care Authority which still must approve the expenditure if it is to go forward.

A decision is expected in the next month and the project will hopefully be started in about one year.

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**THIS PARKING lot in front of Monongalia General Hospital is where their new addition will be located.**

# Beckley Mechanical Signs SMW Agreement

**A**fter a six year struggle, Beckley Mechanical has finally signed a collective bargaining agreement with Sheet Metal Workers Local 33.

Whether or not this is the end of the fight is still to be learned.

The agreement came after years of fighting that included many job site actions, the National Labor Relations Board and the Federal Fourth Circuit Court of Appeals.

The agreement was signed on November 16, 2004 and both sides are working on final details to put the agreement into effect.

"We're ready to focus on the future and show this company that the skills we offer are an asset they can rely on," said Randy Gombos, organizer for Sheet Metal Workers Local 33.

Gombos, along with fellow organizer Dave Mains, stayed with the campaign from the start.

The struggle with Beckley Mechanical started in 1998. Gombos met one of Beckley Mechanical's workers on a job site. The worker wanted to know how to get into the union.

That started a campaign to organize Beckley Mechanical.

About ninety percent of the 25 or so employees signed authorization cards asking for a union, but when the election came the union lost by a vote of 17 to 4.

The reason for the change was an intense anti-union campaign by Beckley Mechanical's owner Bill Mahaffey.

Mahaffey was aided by the lawyer for the anti-union Associated Builders and Contractors, West Virginia Chapter.

Part of the anti-union cam-

paign included a letter to all employees telling them not to 'vote themselves out of a job.' It is illegal to say a vote for the union will mean job loss.

With a long list of violations, the Sheet Metal Workers went to the National Labor Relations Board and filed charges about the election.

Because the damage to the union's effort was already done, Local 33 asked the NLRB to consider using the Gissel rule. The Gissel rule acknowledges that a new election would be pointless due to the atmosphere already created by an employers misconduct.

Instead of a new election the employer would be forced to bargain as if the union had won the election.

After investigating the case, the NLRB agreed with the unions complaints and ordered the company to bargain.

Negotiations started in May of 1999, but instead of the battle ending there, it had only just begun.

For the next four years Mahaffey, with the assistance of anti-union lawyer Fred Holroyd, resisted all attempts by Local 33 to bargain and reach an agreement.

"We tried to negotiate, but they just kept running us around," said Mains.

When documents were requested the company did not comply. Meetings were canceled. Proposals were not taken seriously. The company changed wages and work conditions without negotiating.

Local 33 did not sit by and wait for the NLRB to take action. While their complaints were being processed, Local 33 took their fight to Beckley Mechanical, wherever they could find



**MANY PROTESTS** against Beckley Mechanical took place during the Sheet Metal Workers campaign. Local Building Trades members held this event in front of the Beckley Federal Court House earlier this year.

them.

At one point the Sheet Metal Workers enlisted the support of the WV AFL-CIO and got hundreds of union members to march on the federal court house in Charleston.

They protested the fact that Beckley Mechanical had just been given a federal contract to help build a prison in Alderson when at the same time another arm of the federal government, the NLRB was in Federal Court trying to get Beckley Mechanical to follow the law.

Protests also took place at the Beckley Federal Courthouse and in front of Beckley Mechanical's office.

A long series of complaints were issued by the NLRB ordering the company to comply with the law. Each time the company would promise they would comply, settle the charges, then promptly ignore their promise.

The companies behavior was so bad that the NLRB went to the Fourth Circuit Court and got

an enforcement order to compel Beckley Mechanical to provide documents, meet in timely manner, and negotiate in good faith. But even with a Federal Court order the company still refused to cooperate.

The NLRB then turned the case over to their Contempt Litigation division. After another investigation, the NLRB went back to the Fourth Circuit looking for a contempt charge.

According to Gombos, right before the court date Beckley Mechanical once again pled they would cooperate and the NLRB agreed to another settlement.

However, this time strict penalties were negotiated that would require significant fines if Beckley did not live up to their promise.

For each new labor law violation there would be a \$5000 penalty plus \$250 per day until the company came into compliance. There would also be a \$1000 fine, plus \$200 per day, "for any officer, agent or attorney who in active concert and participation violates the Judge-

ment."

Within two weeks of the settlement agreement Beckley Mechanical again violated the agreement. Local 33 filed more charges and the NLRB along with their Contempt Unit agreed violations had been made.

When the second charge of contempt was about to go to court and facing a possible fine of perhaps \$250,000, Beckley finally agreed to sign Local 33's agreement.

Beckley Mechanical is now signed to the existing agreement, which expires in June of 2005, plus the next agreement negotiated between Local 33 and the Southern West Virginia Sheet Metal and Roofing Contractors Association.

"This victory could not have been accomplished without the support and staff of Local 33," said Gombos. "This campaign shows our commitment to organizing."

"We also had tremendous support from many other unions. We could not have prevailed otherwise."

# Marion Judge Stops \$265 Million UHC Project

**A Circuit Court Judge has told United Hospital Center their proposed \$265 million new hospital project in Harrison County was approved illegally.**

Judge Fred Fox of Marion County made his ruling right before Thanksgiving.

Fox overturned the state Health Care Authority's ap-

proval of the project.

The ACT Foundation had intervened in the approval process and urged support for its approval after UHC and the North Central WV Building Trades reached an agreement to use local union construction workers to build it.

Judge Fox relied on an old rule, which has since been eliminated, to make his ruling.

When UHC first applied for approval to build the new facility,

the state had a requirement that replacement hospitals be located within five miles of the existing one.

In 2002 the geographical limit was changed to within 15 miles of the existing facility.

During three days of hearings before the authority in June of 2003, lawyers from United, Fairmont General and the West Virginia Chapter of the Associated Builders and Contractors sparred over United's original

proposal.

The ABC opposed it because of the agreement to use local union workers with health care and pension benefits. ACT Director Steve White testified in support of the project and pointed out the economic benefits local construction hiring would bring.

The Health Care Authority approved the project in October of 2003.

Fox ruled that although the

proposed hospital would comply with existing rules, it did not at the time of application.

Allowing the plan to go forward "would have a devastating effect upon [Fairmont General Hospital]," Fox wrote.

The ruling has stopped all design work and planning on the project.

UHC plans to appeal the ruling to the State Supreme Court.

The state Health Care Authority may also appeal.

## ECONOMIC DEVELOPMENT, PENSION DEBTS, TABLE GAMES, HEALTH CARE

# Legislative Session Plans Already Underway

**This years legislative session will start in February rather than January as is the custom when a new governor is elected.**

But the delay in the session start does not mean there is a slowdown in legislative activity.

A series of 'transition team committees' have been formed by Governor-elect Joe Manchin to discuss the new administrations approach to a wide range of issues from economic development to tourism, taxes, budget, training, education and health care.

A number of building trades members have been playing a role in those committees, making sure construction workers' voices are heard.

Bill Dean, president of the Upper Ohio Valley Building Trades, is part of a committee looking at economic development.

"Our first meeting was a good one," said Dean. "There was a variety of people, like bankers, plant managers, and labor who all agreed we wanted to work together on economic develop-

ment programs for the benefit of the state."

Another issue being discussed is the huge debt of state pension funds. These funds, for teachers, state troopers, judges and others have never been funded properly. It is estimated they need billions of dollars to meet their current obligations. How to find the money to fund these obligations will be tough.

While the transition teams meet other legislative activity continues to take place.

One of the biggest sources of income for the state, video lottery and slot machines, may be on the decline due to a new law passed in Pennsylvania.

Pennsylvania has approved legislation to allow slot machines which will stop the growth and perhaps reduce WV's take in the future. Maryland is considering similar legislation.

One response being talked about is to allow counties that host the four existing race tracks in the state to vote on table games at these facilities. It is argued that table games will attract people, increase employment and make up for lost revenue

from other states.

Governor Wise has said he would call a special session of the legislature to consider table games, but leadership in the House and Senate have been less enthusiastic.

The ACT Foundation is hoping to work on a bill to address rising health care costs this legislative session. One of the factors driving up health care expenses is the increasing number of individuals without health insurance.

Workers for all public works projects are entitled to prevailing wage rates which include health care benefits. However, companies that do not provide benefits pay the health care portion as a cash payment rather than a benefit.

Workers on public works projects who are paid cash instead of a health benefit, have no insurance and may add to the uncompensated health care problem. Furthermore, companies that already provide health care for employees struggle to keep up with rising costs.

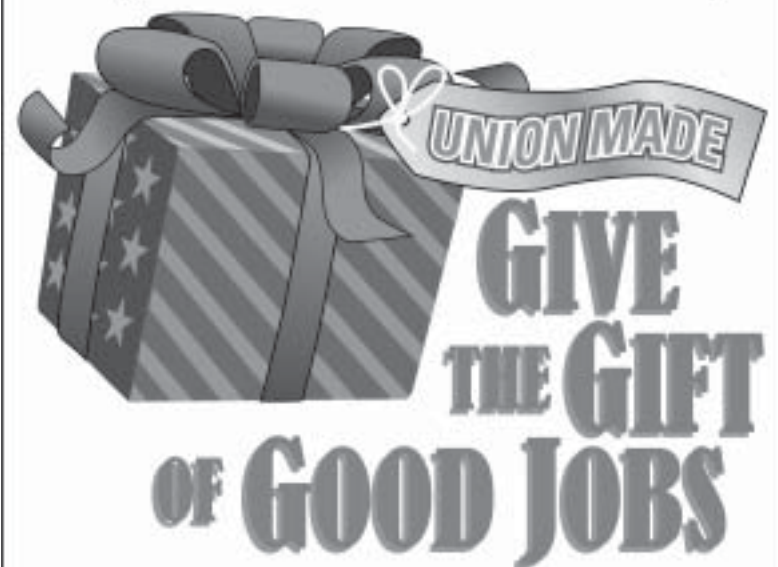
One possible solution would be to require bidders on tax funded construction projects to

have health care for their workers. Since prevailing wage laws already require health care payments there would be no additional cost to the state. Companies that did not provide health care benefits to em-

ployees would not be able to bid.

"We are talking with legislators to see if we can find ways to help those who have health care keep it," said Steve White, ACT Director.

## Shop Union for the Holidays



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Union Label & Service Trades Dept., AFL-CIO

# \$100 Million Pendleton Windmill Project Planned

**A \$100 million windmill project in Pendleton County could create 200 union construction jobs.**

Liberty Gap Wind Force LLC is proposing to build 50 windmills and produce 70 to 100 megawatts of electricity.

But the project has already run into opposition and set backs.

An agreement with the Pendleton County Commission that would have secured easements for the 138-KV transmission line has been cancelled.

The potential use of eminent domain by the County created a firestorm of controversy.

Nevertheless the project is still a possibility according to the developers.

The windmills, standing around 400 feet tall, will be located along a ridge top east of the South Branch of the Potomac River, south of Franklin.

Liberty Gap Wind Force is a wholly owned subsidiary of US Wind Force LLC. US Wind Force reached an agreement with the North Central WV Building Trades and the WV State Building Trades in 2002 when they proposed a project in Grant County.

The agreement insured local union workers would build the project, however, that project

has yet to be built. And the deal covers all any other U.S. wind force projects in the state.

In the company's November 16<sup>th</sup> application to the state Public Service Commission (PSC), Liberty Gap Wind Force referenced the agreement with the Trades as part of their evidence of the economic benefit the project will bring to the state.

The developers will now have to negotiate with private land owners to find a way to build a transmission line.

The line is needed to connect to Allegheny Power System's North Franklin substation.

The project has also generated some controversy from lo-

cal land owners and environmental groups.

According to news reports, a local citizens group has been formed to oppose the project.

According to the PSC application, the project must start operations by late 2005 in order to qualify for a federal renewable energy tax credit.

Liberty Wind Force asked the PSC to speed up the permit to help meet the tight deadline but PSC staff refused.

The developers now hopes to get the six month construction project underway next summer.

Once complete the project will employ between 5 and 12 employees.



**THESE WINDMILLS built on Backbone Mountain in Preston and Tucker Counties are the first in the state and similar to those proposed for the Pendleton project.**

## ACT

CONTINUED FROM P. 1

ing approach will likely be used to build other highway segments passing through the states coalfields.

The violation of bidding and wage laws is just the start of a long

list of ways this project has side-stepped laws and regulations on road building and mining.

Nicewonder gets to decide where the highway is located, shifting it to ridge tops rather than the original locations closer to population centers.

They also get to change im-

portant interchange locations.

Earlier this year the DOH blocked the Public-Private Transportation Act, legislation that would have allowed private companies to participate in such projects, but required strict bidding, prevailing wage and quality standards to be followed.

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