

THE ACT REPORT

VOLUME 17 NUMBER 12
DECEMBER 2008



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; Dave Efaw, Secretary-Treasurer; Steve White, Director.

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



INSIDE
Laurel Mountain Pg. 2
Visa Problem Pg. 2
Sprinklefitter Pg. 3
Tri-State Tailgate Pg. 3
Poling Wins Pg. 4

JUDGE RULES AGAINST ACKER CHALLENGE

HUGE PREVAILING WAGE VICTORY

Raleigh County Judge H. L. Kirkpatrick, III has ruled against Tom Acker's challenge to the state prevailing wage process.

Acker, a Jesuit Priest, first lost an appeal before a hearing examiner early this year when he claimed the WV Division of Labor (DOL) prevailing wage survey method was dishonest.

Acker never produced any evidence for his slanderous statements.

Each year the WV DOL sends out surveys to all contractors asking for wage data. Unions, county commissions, newspapers, and a variety of other groups are also contacted

looking for wage information.

In January, when the DOL published their annual wage results, Acker filed a complaint claiming the wage rates in four counties, Fayette, Mingo, Ohio and Raleigh, were too high.

The DOL by law had to freeze wages for workers in those counties while Acker requested a hearing.

During the hearing Acker provided no evidence to back up his claim that the DOL process was flawed or that the wage rates were too high.

Instead he argued a new wage survey should be used that would average wages and produce lower rates.

In numerous news articles Acker had stated his goal is to

cut wages for construction workers on public projects in half.

DOL Commissioner David Mullins agreed with a hearing examiner that Acker's complaint had no merit. Acker then went to Raleigh Circuit Court.

Judge Kirkpatrick did not agree with any of Acker's arguments.

He wrote "the court has concluded that there is no basis for reversing the Commissioner's Final Order."

Acker is head of a group called Forward Southern West Virginia that has been developing real estate projects in the Beckley area.

More than once complaints have been filed with the WV DOL and Federal Government

Agencies because of Acker's attempts to avoid bidding and wage laws.

Some are surprised to hear a leader in the Catholic Church is fighting a crusade to lower workers wages.

Rebich thinks its a simple case of Acker being against workers.

"Acker claimed the DOL was not using sound methods and that prevailing wages cost too much" said Rebich. "Judge Kirkpatrick said he was wrong."

Acker has said in newspaper reports he will likely appeal to the WV Supreme Court.

He has up to four months to decide whether or not to do so.

The WV Supreme Court will then have to decide whether to hear the case.

TRI-STATE BUILDING TRADES HOST PRESENTATION ON NATIONAL MAINTENANCE AGREEMENTS - NMA

Thousands of construction workers work under the conditions set out in the National Maintenance Agreements (NMA) every day.

That's one of the reasons why the Tri-State Building and Construction Trades Council hosted a meeting of the NMA Policy Committee in Portsmouth, Ohio on November 20.

The event was attended by more than 125 people representing contractors, labor and the owners of companies who regularly need construction services.

According to Steve Burton, Business Manager of the Tri-State Building Trades the meeting set out to better inform in-



MORE THAN 125 people, representing owners of construction projects, contractors and labor attended the Tri-State Building Trades presentation about the National Maintenance Agreements in Portsmouth, Ohio in November.

Continued on p. 4

65 TURBINES OK'D AT LAUREL MOUNTAIN SITE

\$255 MILLION WIND PROJECT APPROVED

The state Public Service Commission gave approval in late November for the Laurel Mountain Wind Project to be built in Randolph and Barbour Counties.

The project will include 65 wind turbines and is estimated to cost \$255 million by project developers AES, LLC.

An agreement between Laurel Mountain and the North Central WV Building Trades insures that local union workers will get the jobs building the project.

A report commissioned by the ACT Foundation shows the construction phase of the project will create around 150 construction jobs with a payroll totaling more than \$10 million.

In addition another 150 related jobs from service and supply industries supporting the construction phase.

Although items like turbines, towers and blades come from out-of-state sources an estimated \$43 million in local sales would result from the project according to the report.

“The PSC approval of this

project means good jobs for our members and economic growth for our communities,” said Natalie Stone, Executive Secretary of the North Central WV Building Trades.

Members of North Central had turned out for public hearings in support of the project. Council President Darwin Snyder also gave testimony before the PSC on the agreement to use local workers.

Other benefits from the project include state income and sales taxes, income for local businesses and at least \$450,000 in property taxes to the two counties each year.

Of course the generation of clean renewable electricity is also a big plus.

The project will be capable of generating between 125 and 132 megawatts of electricity.

An existing Allegheny Power transmission line passes through the mid point of the eight mile ridgeline where the turbines will be placed.

Opposition to the project had intervened in the hearings and focused on the size and noise of the turbines.

A hearing was held in Charles-

ton for three days in early August. The WV State Building Trades had intervened in support of the project and participated in the hearing.

According to Building Trades Attorney Vince Trivelli the approval includes some basic conditions which must be met by Laurel Mountain before the

project can begin.

Laurel Mountain must file evidence that all permits, certificates or other conditions have been satisfied from a wide range of agencies such as U.S. Fish and Wildlife, West Virginia Division of Natural Resources, and the West Virginia State Historic Preservation Office, before

starting construction.

During construction certain conditions to limit and control noise must be followed.

In addition Laurel Mountain has agreed to conduct post construction studies to assess the impact on birds and bats.

Construction is expected to start in Spring of 2009.



THE LAUREL MOUNTAIN project will have 65 turbines similar to these currently in use on the Ned Power project in Grant County. The Ned Power Project is owned by a joint venture of Dominion Power and Shell WindEnergy. The first phase was completed this year and the second phase is under construction. Union construction workers have built the entire project.

POSSIBLE VISA PROBLEM IN WEST VIRGINIA

West Virginian's don't want to work.

That's the conclusion Green Meadow Services of Cross Lanes, West Virginia wanted the government to reach when they applied to get Visas for 12 workers.

But on closer examination by the Laborers District Council and ACT, the company's application for Visas appears to have problems.

First the landscaping company offered to pay a whopping one cent more than minimum wage.

Their advertisement this Fall for workers stated they didn't want people to start until next February. And the job is only temporary.

In order to apply applicants must have a resume, and they must fax their resume to the local Job Service office.

A resume? A fax machine? A

minimum wage job starting in February?

Get the picture?

It didn't take Henry Neal, Organizer for Laborers District Council long to figure out what was going on.

“They don't want anyone to apply for the job so they can import low wage workers from out-of-the country,” said Neal.

Once the company shows the DOL no workers applied then they can press for the H-2B vi-

sas used to import workers.

Neal applied and got another member to do so as well.

Then he asked the ACT Foundation to get involved.

The H-2-B Visa program is set up by the Federal Government to allow employers to bring in foreign workers for non-agricultural jobs.

A look at H-2B applications to the U.S. DOL in 2007 found 292 of 327 foreign labor certification positions approved in

West Virginia.

The wage used by Green Meadow actually meets the formal requirement to be based on the U.S. DOL Occupational Employment Statistics database for this job, skill level and geographic area.

The H-2B program is supposed to allow foreign workers only for jobs that are “one-time, seasonal, peakload or intermittent.”

Continued on p. 3

GRANDFATHER PROVISION IN EFFECT UNTIL JUNE 30, 2009**SPRINKLERFITTERS LICENSE STARTS
JANUARY 1 IN WEST VIRGINIA****The process of
licensing
sprinklerfitters in
WV is now well un-
derway.**

The WV State Fire Marshall is currently taking applications from workers who are already doing the work and can show their experience. No exam is required for those who get their license before July 1 of 2009.

Technically, starting January 1, 2009 anyone performing the work of a Sprinklerfitter must have a license and should have it with them on the job.

The Fire Marshall is the state authority charged with supervis-

ing Fire Protection Workers and issuing licenses.

"We are working with the Fire Marshall's office to get all our members licensed," said Dave Ford, Business Agent for Sprinklerfitter Local 669.

Ford was the driving force behind the legislation in WV.

"We want to have competent people doing the work," said Ford. "And we want to keep up with other states like Ohio and have our members credentialed."

Individuals must be at least 18 years of age to apply for a Fire Protection Worker license and provide documentation of their work experience and certifica-

tions.

There are two basic type of licenses available, Sprinklerfitter Journeyman and Sprinklerfitter in Training.

The Sprinklerfitter Journeyman License requires proof of at least 10,000 hours of sprinkler work experience and passage of the WV Journeyman Sprinkler Exam.

For the Sprinkler Fitter in Training license classification, applicants must provide proof of current enrollment in an apprenticeship or training program related to fire sprinklers and provide supporting documentation of employment and good stand-

ing.

There is a "grandfather" clause in the law that permits individuals meeting the work experience requirement to skip the written exam, but they must apply before June 30, 2009. After that date, all applicants will be required to provide proof they have taken and passed the exam.

After January 1, anyone found performing fire protection work without a state license will be cited, and instructed how to get their license. If they continue to work unlicensed they are subject to misdemeanor charges, and upon conviction fines ranging from \$200 to \$5000 and jail time ranging from 30 days to one year.

Each day someone works without a license counts as a single offense with escalating penalties for each subsequent offense.

The West Virginia law is similar to Ohio in requiring fire protection work be done by licensed workers licensed by the Ohio State Fire Marshall.

VISA

CONTINUED FROM P. 2

However, this is the fourth year in a row that Green Meadow has made such H-2B request as a form of "temporary labor certification."

Green Meadow applied for 11 laborer/landscape workers for 2007, case number A-06340-17049; 11 laborer/landscape workers for 2006, case number A-05336-04261; and 10 laborer/landscape workers for 2005, case number 03413560.

In a letter to U.S. DOL offi-

Fire protection work as defined in WV Code means the installation, alteration, extension, maintenance or testing of all piping, materials and equipment inside a building in connection with fire protection systems that extinguish and control fires.

There are a number of exemptions to the licensing requirements.

People working on their own homes are not required to have a license.

Also employees of public utilities, manufacturing and mining companies don't need a license as long as they are working on their employers' property.

Those installing HVAC systems, working on outside water supply lines or in water treatment plants also don't need a license.

License application may be obtained on-line at www.firemarshal.wv.gov or by writing to Office of the State Fire Marshall, 1207 Quarrier Street, 2nd Floor, Charleston, WV, 25301 or by calling (304) 558-2191.

calling for the denial of the visa applications ACT Director Steve White wrote "This form of regular application for the same kind of work and same approximate numbers of workers would not appear to meet the conditions of such jobs."

White went on to point out the period of time for employment, ten months, is the maximum allowed under the H-2B program.

"This length period, when combined with the obvious winter break period for this type of work, indicates the employer's needs are not actually temporary," commented White.

TRI-STATE HOSTS TAILGATE EVENT

ENJOYING A NOVEMBER 15 tailgate event at Marshall University sponsored by the Tri-State Building Trades and it's affiliated local unions are building trades members and Dr. Stephen Kopp, President of Marshall University. Kopp stopped by with family members to join the crowd. "We thank the many volunteers from all the affiliates for helping make this a fun event for friends and family," said Steve Burton, Tri-State Business Manager.

57,000 TOTAL VOTES CAST**POLING WINS ELECTION BY NINE VOTES**

On election night Dan Poling was ahead by only two votes for his House of Delegates election in Wood County.

After the absentee and provisional ballots were counted Poling's lead climbed to nine votes, and stayed there.

Poling (D-Wood) was ap-

pointed to the House of Delegates seat in 2007 after Del. J.D. Beane was chosen for a Judge position in Wood County.

So, even though Poling has served in the legislature for two legislative sessions, the November ballot was his first win for the office.

And the victory didn't come easy.

"We ran a grass roots campaign, knocked on a lot of doors, attending lots of meetings and really worked hard to win this election," said Poling who is a representative for Painters District Council 53.

"I couldn't have done it without the help of the Trades and organized labor."

After election night, with Pol-

ing ahead of former Delegate Brenda Brum by only two votes a process known as a canvass was begun.

Absentee ballots that arrive right after the election, if properly post-marked are counted. And ballots that had been challenged are reviewed and a portion are counted.

"We had 612 provisional bal-

lots, about half were counted," said Poling.

Brum, who was also endorsed by labor, could have asked for a recount but did not.

As a Delegate, Poling has helped pass legislation for improved job safety, tighter enforcement of wage and payroll payments, and more funding of infrastructure projects.



DAN POLING (CENTER) meets with Speaker of the House Rick Thompson (D-Wayne) (right) and Del. Orphy Klempa (D-Ohio) during December interim meetings. The 2009 legislative session will start in February, a month later than usual, as is done every four years after a Gubernatorial election.

TRI-STATE

CONTINUED FROM P. 1

dustry representatives about all aspects of the agreement: how it is used, responsibilities of owners, contractors and labor, pre-job conferences, how disputes are handled, and safety.

The agreement uses parts of a union's regular collective bargaining agreement but standardizes language on a variety of contract areas.

Each time the agreement is used the NMA Policy Commit-

tee must agree.

An owner can request a 'yellow card site' that commits all work on the site to be done under the NMA.

A modified wage or addendum to the agreement can then be asked for.

A contractor can ask for permission to use the agreement on a job-by-job basis.

The effected crafts will be notified and have input into the decision.

One attraction of the agreement is that it provides a uniform

agreement for a project.

That means language such as work hours, shifts, holidays, overtime and many other areas are the same for all crafts working under the agreement.

Wages follow the local collective bargaining agreement.

"The NMA has been used up and down the river in our area," said Burton.

"People are comfortable with it because they understand it. And if there is a problem it gets dealt with quickly and predictably."

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

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

Union Trades
Federal Credit Union

1925 Murdoch Avenue
Parkersburg, WV 26102
(304) 485-1421 fax 485-1487
toll free 1 888 524-1421
reception@uniontradesfcu.com

600 Leon Sullivan Way, Suite 101
Charleston, WV 25301
(304) 344-0194 fax 344-0195
toll free 1 800 450-8530
receptionchas@uniontradesfcu.com



MERRY CHRISTMAS
&
HAPPY NEW YEAR from
ACT & THE WV STATE
BUILDING TRADES