

Activist denounces wage law calculations

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by George Hohmann

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CHARLESTON, W.Va. -- Father Thomas Acker said a huge share of any federal stimulus money that might be coming the state's way for construction projects stands to be wasted because of the archaic prevailing wage law.

Acker also characterized the method of calculating the prevailing wage as "inept, unprofessional and corrupt."

State Labor Secretary David Mullins, who oversees the system, said Acker is wrong and noted that Acker lost when he took the issue to court.

The law, which dates to 1935, directs Mullins' agency -- the Division of Labor -- to set the minimum pay employees receive when working on state-funded construction projects such as roads and schools.

As a practical matter, it is invariably determined that union pay scales should apply, no matter what the actual "prevailing wage" is for all classifications of work in any given area of the state.

Acker is a Jesuit priest who served as president of Wheeling Jesuit University. He now is executive director of Forward Southern West Virginia Inc., a Beckley-based economic development organization.

Acker said the state spends more than \$1 billion a year on projects subject to the prevailing wage law. The way the prevailing wage is determined is rigged so that it is always artificially high, he contends.

"If the prevailing wage were accurately calculated, for the same \$1 billion you would hire 2,000 more workers at an average salary of \$60,000, build four new schools and pave 25 miles of road -- all for the same price we're paying now. Every single year. That's the difference," he said.

The economic stimulus bills being considered on Capitol Hill apparently contain another \$1 billion or so for West Virginia that may be subject to the prevailing wage law, Acker said.

He said the law sets artificially high wages because the state Division of Labor conducts a survey that's designed to represent organized labor and under-represent non-union contractors.

"If you, as a master's of business administration student, did that and turned it in, you would get an 'F' and would probably be kicked out of graduate school," he said.

Acker spoke Monday at the Charleston House Holiday Inn during a lunch meeting of the Charleston chapter of American Business Clubs.

Each year the Division of Labor sends out 100 surveys to organized labor and about 4,000 surveys to independent contractors, Acker said. Organized labor returns all of their surveys, but independent contractors receive a different, more cumbersome survey. Independent contractors returned only 0.7 percent of their surveys last year, he said.

"The union is not at fault," Acker said. "The Division of Labor takes the union wage and makes that the prevailing wage."

Acker challenged the way the law is implemented but lost in Raleigh Circuit Court last year. Judge H.L. Kirkpatrick ruled there was no basis for overturning the way the state determines the prevailing wage. Acker has until April 1 to appeal Kirkpatrick's ruling to the state Supreme Court.

Acker said organized labor represents about 15 percent of the workers in West Virginia and since the margin of victory in many elections is only 3 or 4 percent, "people don't want to take on organized labor." That's why neither the judiciary nor state Legislature will tackle the issue, he contends.

"The issue could be addressed very easily," he said. "The governor appointed the commissioner of labor. Once you're appointed or elected, you serve all of the people."

But state Labor Secretary Mullins "simply caters to the 15 percent," Acker said.

Mullins said, "It is a legislative fix. If he's unhappy with the law, he should take it to his legislators as all constituents should."

"He has failed to prove his case before an administrative law judge -- we prevailed there -- and before a Raleigh Circuit Court judge," Mullins said. "We conform to the requirements set forth in the West Virginia code, and the courts have consistently agreed with us. The (state) Supreme Court did in 1994 and we haven't changed anything since."

Acker said Gov. Manchin "has a great reputation for handling money" but "lets \$200 million a year slip through his fingers" because, for some inexplicable reason, he won't insist that Mullins do the prevailing wage survey in a professional manner.

"The governor has an 80 percent approval rating," Acker said. "I'm afraid he's pocketed that. He's hoarded it up. All he has to do is call up David Mullins and tell him, 'Your method of surveying is unprofessional. It doesn't pass the sniff test. It doesn't pass an eighth-grade education test. Do it right and get back to me.' That would change it immediately. He (the governor) doesn't have to change the law. He just has to ask the Division of Labor to do an honest evaluation."

During a question-and-answer session following his speech, Acker was asked what he thinks the governor will do.

"Everyone tells me the governor won't do a thing," he said. "I will continue to pressure him. It's an inept, unprofessional and corrupt survey, and the governor could correct that by saying he wants professionalism. I challenge him to do that."

Acker said he is in a good position because "I get no benefit from this. I'm not elected. I don't represent a business. I represent what you would call academic integrity and distributed justice. If this plan worked, the pay of 85 percent of construction workers would increase, the pay of 15 percent would go down. I'll hound him until he throws me out of the state."

Mullins said Acker "misrepresented himself a bit" when he said he has no personal interest.

"He represents Forward Southern West Virginia, which is contemplating several projects in the area," Mullins said. "That's his whole problem with prevailing wage."