

# THE ACT REPORT

VOLUME 9, NUMBER 4  
APRIL, 2000



A PUBLICATION  
OF THE AFFILIATED  
CONSTRUCTION  
TRADES FOUNDATION

The ACT Foundation is a division of The West Virginia State Building and Construction Trades Council, with offices in Charleston and Clarksburg. Steve Burton, President; Roy Smith, Secretary-Treasurer; Steve White, Director.

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

email actwv@compuserve.com



## INSIDE

Holley Bros	Pg. 2
Temp	Pg. 2
Absentee	Pg. 2
Bethany	Pg. 3
WMD	Pg. 3
Kimberly	Pg. 3
Deregulation	Pg. 4

## GOV UNDERWOOD PART OF THE PROBLEM

# WVU Hires Virginia Contractor For Asbestos Removal Job

**W**est Virginia University has hired an out-of-state contractor to remove asbestos at their Coliseum.

The contractor, USA Remediation Services of Warrenton, VA has brought in workers from out of the area.

Members of Laborers Local 679 and Iron Workers Local 549, as well as other union members, hand-billed outside the Coliseum on

March 21 and more protests are planned.

ACT has made a special tele-

vision commercial concerning the issue which is currently airing throughout West Virginia.

"We have workers right here in the Morgantown area who are trained in asbestos removal,"

said Delmer Hershman, business manager for Local 679.

"We'd like for WVU to explain to all the qualified workers in the area who are out of work why these jobs are being given to people who live in other states."

"We are tired of West Virginia workers getting overlooked by contractors working on pub-

CONTINUED ON

PAGE 4



PICTURED OUTSIDE THE WVU COLISEUM ARE LOCAL UNION MEMBERS. They are protesting the use of out-of-state workers.

## NEW CUTS IN MEDICAL BENEFITS PLANNED

# Judge Rules ACT Cannot Intervene

**A**CT's latest attempt to stop Gov. Cecil Underwood's administration from dropping law suits aimed at collecting \$200 million in unpaid Workers' Compensation premiums owed by 'Big' coal companies has been lost in Circuit Court.

Judge Thornsberry of the Mingo County Circuit Court ruled that ACT was not entitled to intervene in the case because all employers in the state would then be allowed to get involved.

ACT argued as an employer it was paying more in premiums because of the uncollected debt

of coal contractors.

The case in question was whether Island Creek Coal Company could be held liable for the \$40 million debt created by the contractors they used.

President, was in charge of workers compensation for the company.

During the end of the Caperton administration, law suits were filed against large coal

ing to prove the contractors were just agents of the larger companies.

Commissioner William Vieweg decided to drop the suits and give up on collecting the \$200 million owed. Vieweg claimed the suits were based on faulty legal theory.

ACT went to the State Supreme Court of Appeals to try to force Vieweg to keep the suits alive at least until a court decides whether the legal theory is valid or not.

The Supreme Court ruled it didn't have the authority to stop the dismissal of the lawsuits due to the separation of powers.

However, two of the Supreme

CONTINUED ON PAGE 2

**"THE COURT IGNORED THE EVIDENCE PRODUCED BY ACT AND REACHED AN ERRONEOUS CONCLUSION."**

STUART CALWELL  
ACT ATTORNEY

Both Governor Underwood and Bureau of Employment Programs Commissioner William Vieweg are former employees of Island Creek Coal.

Vieweg, in his role as Vice-

companies whose contractors defaulted on workers compensation payments.

Those suits were ready to go to trial last year, after detailed cases were assembled attempt-

# Holley Bros. Workers Will Share \$29,726.50

**S**ixty-six employees of Holley Brothers, a waste and water treatment contractor from Gallipolis, Ohio, will share \$29,726.50 in back pay.

1998, the waste and water treatment portion was recently finished.

An audit by the West Virginia Department of Labor revealed employees were not receiving fringe benefits for overtime work.

This Labor Department's ruling allowed the workers to get checks for their lost overtime benefits.

Holley Brothers appealed the initial decision on the grounds the law did not require payment of fringe benefits on overtime work. The appeal was lost.

"Their argument against the Labor Department ruling sparked our concern that workers on other Holley Brothers projects have been denied their fringe benefits," said Tommy Plymale, former organizer for the Operating Engineers.

"We have asked to see Holley Brothers' payrolls from all their projects within the last three years."

"We would like to go back farther, but the statute of limitations on lost wages is three years."

"So far we are looking at more than 30 projects."

# Temp Agencies 'Bad News' For Building Trades

**A** major threat against union workers today is the growing number of temporary employment agencies.

These temp agencies work closely with organizations like the Associated Builders and Contractors to fight unions and promote themselves as 'hiring halls without the hassle of the union.'

The National Building and Construction Trades Department of the AFL-CIO has launched a nationally coordinated multi-craft campaign to organize the workers these temp agencies employ.

Because the temp agencies do all the recruiting, screening and hiring of employees, their nonunion clients are able to underbid signatory contractors and run jobs at reduced costs.

In addition, some temp agencies provide a range of payroll services like workers' compen-

sation, unemployment insurance and tax forms which further reduces costs for the non-union contractors.

Temp agencies account for the job placement of 250,000 construction workers on average every day.

This 'temporary' work force is growing at an annual rate of 15 percent.

At this rate, in ten years there will be as many temp workers as there are union members.

The National Building Trades is asking union members to do four things:

1. Help educate other members in the community about the threat of temp firms.
2. Help reach out to temp workers to improve their conditions through union representation.
3. Help organize the contractors who use temp workers.
4. Help stop temp firm abuses by passing laws and enforcing existing regulations.

## COMP SUITS

*CONTINUED FROM PAGE 1*

Court Justices encouraged ACT to take its fight to Circuit Court, where it was lost.

"The Court ignored the evidence presented by ACT and reached an erroneous conclusion," said ACT's Stuart Calwell.

"Vieweg and the coal companies produced no evidence.

"Therefore the Court, as a matter of law, should have ruled in ACT's favor."

A new proposal by Workers Compensation officials to cut

back Workers' Comp medical expenditures will also reduce costs to coal companies in the form of lower premiums.

But Calwell questions whether the savings are really there or if this is another attack on injured workers.

"As a result of this proposal, injured workers will not be able to see the doctor as they need or get many of their necessary prescription drugs," said Calwell.

"This is just a political stunt by this administration to get Gov. Underwood re-elected."

**"THEIR (HOLLEY BROTHERS) ARGUMENT AGAINST THE LABOR DEPARTMENT RULING SPARKED OUR CONCERN THAT WORKERS ON OTHER HOLLEY BROTHERS PROJECTS HAVE BEEN DENIED THEIR FRINGE BENEFITS."**

**TOMMY PLYMALE, FORMER ORGANIZER OPERATING ENGINEERS LOCAL 132**

Holley Brothers was contracted for the waste and water treatment portion of the Lubeck Public Service Project in Parkersburg.

The project began in the fall of

Workers were receiving the benefits in the form of cash -- but only for their regular hours worked.

No benefits were being paid for overtime work.

## Out-of-Town On Election Day? Then Vote Absentee!

**Walk-in Absentee Voting: April 24-26; March 2-6**

**Mail-in Absentee Voting: Clerk must have ballot NO LATER than May 9 (preferably before)**

You may obtain the ballots to mail in to the County Clerk at the Voters' Registration office in your county. You may vote 'walk-in' at the County Courthouse or Voters' Registration office in your county.

**Look for the 'Special Election Issue' of the ACT Report early next month!**

# Protest Continues At Bethany

**U**nion members continued to protest at Bethany College in Brooke County on

**March 24 against the general contractor, ADF Construction Corporation, hired to build**

**the college's new village type dormitory.**

ADF, of Amherst, NY, brought in workers and subcon-

tractors from out-of-state to work on this \$15.4 million project.

According to a letter, obtained by ACT's Jim Lewis, from ADF officials to Bethany College President Duane Cummins, ADF "...went the extra mile in its efforts to reach out to, and include, West Virginia based subcontractors."

Lewis disagrees wholeheartedly with this statement, "They didn't go 'the extra mile' they went an extra two thousand miles to bring in a contractor from Texas who uses workers from Mexico."

Payroll records uncovered through Freedom of Information requests reveal that BR Brick and Masonry Inc. of Houston TX, a subcontractor on the job, is employing alien workers.

"We believe these Mexican workers are being underpaid and receive no benefits," said

Lewis.

"Of course, our local businesses and workers can't compete with these contractors who bring workers in from Mexico."

According to Lewis, U.S. Immigration and Naturalization Services officials have not been to the job site to determine whether or not the Mexicans have valid work visas.

"We see this type of thing happen all the time," said Joe Kochoy, organizer for Plumbers and Pipefitters Local 83, Wheeling.

"Out-of-state contractors promise to use local workers and then find every excuse why they couldn't keep their promises."

Union members and a group of Bethany College students were scheduled to hold another protest at the construction site and throughout the city of Bethany in mid-April.



PROTESTING THE USE OF OUT-OF-STATE WORKERS by contractors at the Bethany College Dormitory project are local union members during a March 24 rally.

## Three Kimberly Industries Employees Get Back Pay

**T**hree Kimberly Industries employees will share \$11,085 in back pay as a result of unfair labor practices against them by the company.

Kimberly agreed April 4 to reinstate one of the workers, pay back wages to all three, and post a notice to all employees informing them of their rights under the National Labor Relations Act.

Two members of Operating Engineers Local 132 and one member of Carpenters Local 899 were hired last September by Kimberly Industries, a subcontractor at the Luiginos Food

Processing Plant project in Parkersburg.

On Sept. 24, one of the men, Mike O'Hara, organizer for Local 132, presented the Kim-

berly superintendent with a letter identifying himself as a union organizer and his intention to organize the employees.

Local 132 filed unfair labor practice charges on behalf of the men and the employees went on strike.

**"WE WANTED TO ORGANIZE THE JOB AND WERE ILLEGALLY PUNISHED FOR OUR ACTIONS."**

**MIKE O'HARA, ORGANIZER  
OPERATING ENGINEERS LOCAL 132**

berly superintendent with a letter identifying himself as a union organizer and his intention to organize the employees.

As a result of that letter, one of the men was fired and the other two replaced.

job and were illegally punished for our actions," said O'Hara.

"And that's not right.

"We couldn't be more pleased with this decision.

"We look forward to continuing our organizing efforts."

## Workers Memorial Day

Workers Memorial Day is a day set aside by unions to remember workers who have suffered and died because of workplace hazards, and to renew the fight for safe workplaces.

**Date: Fri. Apr. 28**

**Time: 6:00 pm**

**Place: Wheeling Park Amphitheater**

*Directions: From I-70, exit at Oglebay Park, go East on Rt. 40 National Road to Wheeling Park entrance. Enter the park and go to the parking lot, amphitheater will be on the left.*

# Legislature Passes Bill Allowing Deregulation Of Power Industry

**T**he West Virginia Legislature this past session passed a bill proposed by the Public Service Commission (PSC) allowing the deregulation of the power industry in West Virginia.

Deregulation will allow West Virginians to choose which company they want to supply their electricity instead being forced to purchase electricity from their current supplier.

The most critical phase of the plan is the formation of the rules by which power generation companies must abide in order to sell electricity to West Virginia consumers.

"The rule making effort is the first step of the plan and we are participating and monitoring the process very closely," said Roy

Smith, secretary-treasurer for the West Virginia State Building and Construction Trades Council.

"The Building Trades has a particular in-

terest in what is called cross-subsidization. utilities that were able to bid projects at a lower cost than the union contractors because they have the support of the larger utility company.

**"THE RULE MAKING EFFORT IS THE FIRST STEP OF THE PLAN AND WE ARE PARTICIPATING AND MONITORING THE PROCESS VERY CLOSELY."**

**ROY SMITH, SECRETARY-TREASURER  
WV STATE BUILDING & CONSTRUCTION TRADES**

terest in what is called cross-subsidization.

"Cross-subsidization is the process by which a regulated utility company is allowed to subsidize a non-regulated company with rate payer money.

"In the past, union contractors have had to compete with companies owned by major

There will be a thirteen year transition period where rates to consumers will be frozen for the first time in four years.

Only small incremental increases will be allowed for the next nine years.

There will also be an eight member labor-management committee created for the purpose of assisting workers who might lose their jobs as a result of deregulation.

Four of the committee members will be appointed by the West Virginia Chamber of Commerce and four by the West Virginia AFL-CIO.

One member in each group must represent the construction industry.

"Because of low production costs of West Virginia coal-fired powerhouses," said Smith, "deregulation will increase the work potential for Building Trades members."

There are already several gas-fired 'peaking plants' announced or are in the planning stages

The plan goes into effect in 2001.

## WVU COLISEUM

*CONTINUED FROM PAGE 1*

licly-funded projects and who are paid with West Virginia tax dollars."

ACT's TV ad targets Governor Underwood and his veto of the 'WV Jobs Act' pilot project legislation as part of the problem.

construction workers get the jobs our taxes produce.

"His veto of the pilot project legislation effectively stalled our chances of getting any law passed to encourage local hiring.

"The project at WVU is a perfect

**"WE ARE TIRED OF WEST VIRGINIA WORKERS GETTING OVERLOOKED BY CONTRACTORS WORKING ON PUBLICLY-FUNDED PROJECTS."**

**DELMER HERSHMAN, BUSINESS MANAGER  
LABORERS LOCAL 679**

Underwood has responded, not by defending his actions, but by calling on Congressman Bob Wise to intervene and get ACT to pull the ad.

"Instead of dealing with the problem of imported workers Governor Underwood wants to hide from the problem," said ACT's Steve White.

"Simply put, Governor Underwood has done nothing to help local

example of the consequences of Underwood's action.

"West Virginia could require local workers do the work at WVU, just like the federally-funded Appalachian Regional Commission requires local workers on their projects.

"Had he not vetoed the pilot project we could have had the full 'WV Jobs Act' today."

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

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

### 'West Virginia Works' Show Times & Stations

FOX 46  
Clarksburg & Morgantown  
Saturdays @ 7:30am

Cable Ch. 10  
Wheeling, St. Clairsville & Moundsville  
Saturdays @ noon

FOX 59  
Beckley & Bluefield  
Saturdays @ 12:30pm

Cable Ch. 16  
Steubenville, Follansbee & Wellsburg  
Saturdays @ noon

FOX 11  
Charleston, Huntington & Parkersburg  
Sundays @ 11:30am

*Give us a call  
if you have an idea for a show!  
1-800-930-WORK!*