

# THE ACT REPORT

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

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## 2005 WAGE RATES FINALLY IN PLACE

# Prevailing Wage Protest Denied

The Associated Builders and Contractors challenge to state prevailing wage rates has been denied by an administrative law judge.

Hearing Examiner James W. McNeely issued his order on May 6.

Just as they did in 2003, the ABC filed a challenge to the state prevailing wage rates.

Their claim was the same as two years ago, wage rates are too high and union contract information should not be considered in the calculation.

And just like two years ago the administrative law judge ruled their objections were unfounded.

In a detailed 23 page ruling

McNeely addressed each of the ABC complaints and concluded their objections should be denied.

For example, the ABC claimed the Division of Labor did not get enough information in their sur-

employees.

- public announcements to 82 newspapers and 126 radio and television stations.

- a public notice to each county commission to be posted.

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***"THE ABC ARGUMENT IS ABSURD, ... [THEY] WOULD HAVE US ALL WORKING FOR MINIMUM WAGE." ROY SMITH, SECRETARY-TREASURER, WV STATE BUILDING TRADES***

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veys.

However, documents in the hearing showed the opposite.

During 2004, just like in prior years, the division made a significant effort to get information by sending;

- 4,686 surveys to licensed contractors who had reported

- a survey to approximately 100 collective bargaining units and eight trade associations.

The requests brought in lots of information including a response rate of more than 95 percent of collective bargaining groups.

The collective bargaining information reviewed by the Division

included a list of 2033 signatory contractors.

"The fact is, the organized sector does an excellent job getting the data collected and submitted," said Gary Tillis, Business Manager for the WV Laborers District Council. "Our contracts show thousands of active contractors paying negotiated wage rates to our members all across the state."

The survey results had a lower response rate with 260 contractor surveys returned, or about 5.5 percent. For the surveys 30 of 55 counties had no work reported.

"The nonunion contractors don't fill out the surveys," said Tillis. "They complain about the data but don't even participate."

Much of McNeely's re-

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# Four Workers Get \$34,104 Back Pay

Four former employees of Precision Pump and Valve Service split a settlement of \$34,104 in a case Plumber and Pipefitters Local 625 took to the National Labor Relations Board (NLRB).

According to organizer Tim "Squirrel" Jividen, an organizing campaign was started last June at Precision Pump when he was approached by workers who were interested in a pension and other benefits.

Mike Skeens, Lloyd Smith, Chris Shannon and Bryan Bragg were part of the campaign at the Cross Lanes company.

During the campaign the company fired the four workers and charges were filed with the NLRB.

Members of Local 625 took to the picket line to support the fired workers and raised money for them. They also filed charges with the NLRB claiming the workers

were fired illegally.

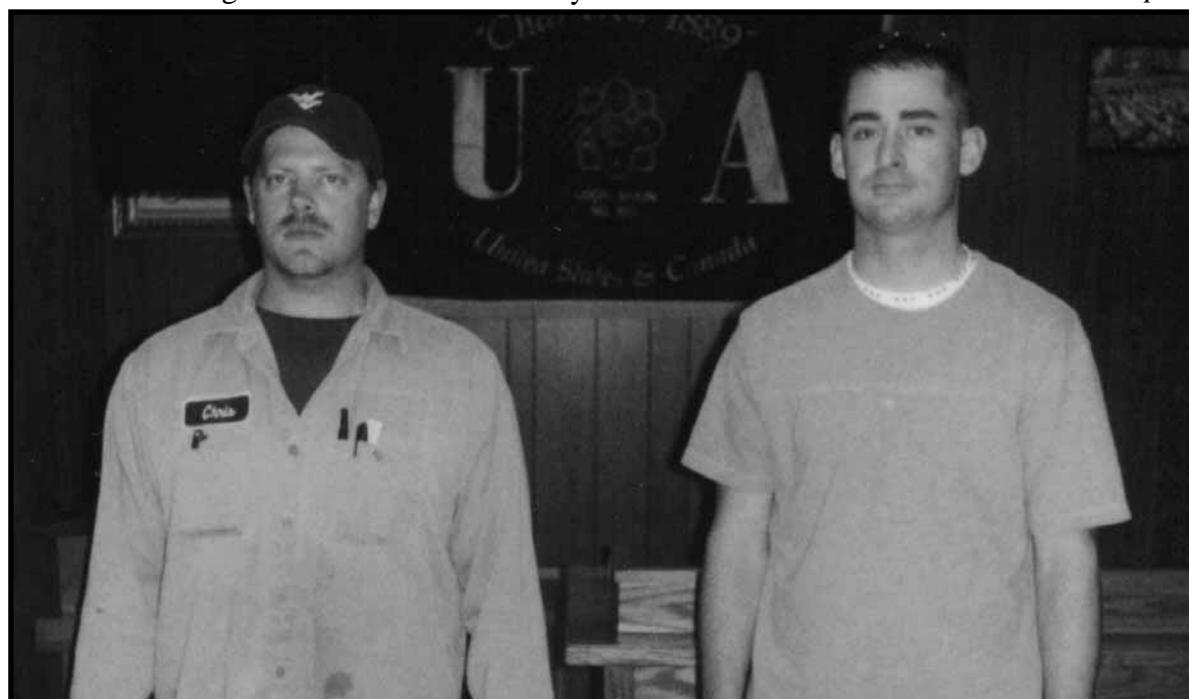
Three of the men ended up joining Local 625, all are now working elsewhere.

Eventually an election was

held on October 1 but the damage was already done and the union lost 8 to 15.

However, the investigation

*Continued on p. 3*



CHRIS SHANNON (LEFT) AND BRYAN BRAGG are two of the four workers who split a \$34,104 settlement from Precision Pump and Valve. Both are now in the apprenticeship program of UA Local 625. Not pictured is Lloyd Smith who is also in the apprenticeship program and Mike Skeens who is now working in the mining industry.

# Judge Throws Out Suit Against Longview

**M**onongalia Circuit Court Judge Russell M. Clawges Jr., has tossed out a suit aimed at stopping the Longview Power project.

The suit was filed in January of 2004 and claimed the property tax deal made between the County Commission, County Board of Education and County Development Authority was in violation of state law.

The county development authority owns the land where the proposed plant will go. Developers of the project asked for and got a lease deal that would limit their property taxes.

Nevertheless the deal will bring in more than \$100 million in new property tax revenue to the county over the 30 year term.

The challenge had claimed a

“payment in lieu of taxes” deal also known as a Pilot agreement was illegal and did not bring in enough taxes.

But Judge Clawges did not agree.

The judge granted a summary judgement to Longview after reviewing eight counts, or alleged violations, filed by the plaintiffs. In each count he found the existing evidence clearly supported Longview’s position.

“We applaud the judges decision,” said Natalie Stone, Executive Secretary of the North Central WV Building Trades Council.

“If this plant is built it will be

the largest property tax payer in the county. We believe the judge understood this suit was nothing more than another attempt to stop the project.”

Both the North Central WV Building Trades and the WV State Building Trades had

partial permission to go ahead.

The final roadblock to the billion dollar Longview project is an agreement with Allegheny Power to access transmission lines.

Negotiations between Allegheny and Longview have seen many twists and turns.

Early on Longview agreed to an Allegheny proposal to change the transmission route. But Allegheny then changed their mind and backed out of

will have to seek final approval from the PSC.

In a related event Allegheny was able to get legislation passed during the recent legislative session that will allow it to finance new scrubbers at its nearby Fort Martin power plant.

This \$400 million project still needs approval from the state Public Service Commission.

“This is good news for union construction workers and the county,” said Mark Estlack, Service Representative for Millwrights Local 1755 and a resident of the county. “In addition to the University, Mon County needs an industrial base.”

Estlack also points to the benefit of taking local coal and converting it to electricity.

“We get the construction and plant jobs and taxes created by the plant, that’s better than shipping our coal out-of-state.”

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**“WE BELIEVE THE JUDGE UNDERSTOOD THIS SUIT WAS NOTHING MORE THAN ANOTHER ATTEMPT TO STOP THE PROJECT”**  
**NATALIE STONE, EXECUTIVE SECRETARY, NORTH CENTRAL WV BUILDING TRADES COUNCIL**

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intervened in the case to support the agreement and the project.

Approval for the air permit has already been granted for the plant. The state Public Service Commission has also given

the deal. This left Longview with an incomplete PSC application.

Longview was able to delay the transmission part of their PSC case until a deal is reached with Allegheny. Then Longview

## 17<sup>th</sup> Annual Workers Memorial Day Held

**I**n 2004 34 people were killed on the job in West Virginia.

The WV AFL-CIO held its 17<sup>th</sup> annual Workers Memorial Day to make sure those workers were remembered and future on the job deaths are avoided.

“There has to be constant training and awareness that workers must have a safe work environment that protects them from injury,” said Larry Matheney, Secretary Treasurer of the WV AFL-CIO in a Charleston Gazette news article.

In 2003, 41 workers were killed on the job as compared to 34 in 2002.

National figures for 2004 are not yet available but 5,559 people were killed at work in 2003, up from 2002 figures.

The primary enforcer of work

place safety laws is the Occupational Safety and Health Administration. OSHA was formed from legislation passed on April 28, 1970.

Unfortunately funding cuts and outdated laws make it difficult to enforce job site safety.

Only eleven OSHA inspectors monitor all of West Virginia’s 50,000 businesses.

The average penalty in WV was \$663, which is \$210 below the national average.

In 2001 the Bush administration pushed through a repeal of important ergonomics standards that would have protected workers from dangerous and debilitating repetitive motion problems.

Repetitive stress injuries affect hundreds of thousands of workers each year.

Also in attendance at the

event was Larry Linch, Director of the Division of Veterans Services and the Marine Corp

League to honor West Virginian’s who died in the Iraq and Afghanistan conflicts.

Linch read out the names of 17 servicemen from WV who have died in the past year.



READING THE NAMES of the 34 West Virginian’s killed on the job in 2004 is Larry Matheney (left), Secretary-Treasurer of the WV AFL-CIO. Former ACT Legislative representative Raymond “BB” Smith rings the bell each time a name is read. In the background are members of the Marine Corp League.

# Carpenters Plan 100<sup>th</sup> Anniversary Celebration

**C**arpenters Local 604, Morgantown, is preparing for their 100<sup>th</sup> anniversary.

According to Art Centofanti, a member of the Anniversary Committee and trustee for the local, a celebration event is being planned for November 5 at the Morgantown Ramada Inn.

The event will include dinner, and a membership pin presentation.

Chartered on November 15,

1905 the Morgantown local has seen many changes.

In 1983 locals in nearby Grafton and Phillipi were merged into Morgantown to form the current local.

It became part of the Mid-Atlantic Regional Council of Carpenters when the Council was formed in 2001.

The local has approximately 150 active members and 60 retirees.

For more information call Centofanti at 864-3783.

## Prevailing

*CONTINUED FROM P. 1*

sponse was based on a prior case that went to the Supreme Court in 1994.

In *Hardy County Board of Education v. West Virginia Division of Labor* the court upheld the way the state surveyed and calculated the wage rates.

Just like in the Hardy case, the ABC argued the state must prove wages have been actually paid to each craft in every county.

"The ABC argument is absurd," said Roy Smith, Secretary Treasurer of the WV State Building Trades Council.

"Some counties don't have major projects every year, try to find new elevator projects in every county. The ABC would have us all working for minimum wage if they got their way."

Because the ABC had objected to the wage rates, the 2005 rates were never put in place. Contracts let this year have used the 2004 wage rates.

Given the Hearing Examiners decision, Commissioner of Labor Jim Lewis sent the 2005

rates to the secretary of states office to be put into effect on Friday, May 7.

All contracts that go to bid after that date will be required to use the 2005 rates.

If this decision is appealed further the case will go to the Kanawha County Circuit Court. In 2003 Circuit Court Judge Duke Bloom agreed with the hearing examiner and refused the ABC's appeal.

However the ABC has also made it clear they plan to take this case to the state Supreme Court of Appeals like they did last time. In 2003 the court rejected their appeal, but the vote was 3 to 2. With the defeat of Justice Warren McGraw last November the ABC believes they can now win before a more favorable court.

"We have had a prevailing wage law since 1935," said Smith. "It's the best economic development law we have ever passed because it supports good jobs, local workers, local contractors and provides quality work to the public at the best price."

## Boilermakers Meet With Senator Byrd



*BOILERMAKERS LOCAL 667 Business Manager George Pinkerman (right) and LEAP Chairman Raymond "BB" Smith pose with Senator Robert C. Byrd during a recent meeting in Washington, DC.*

*Pinkerman and Smith were participating in the International Brotherhood of Boilermakers legislative conference held in DC in March.*

*"We let the senator know we appreciated his 100 percent voting record in 2004," said Pinkerman.*

*Some of the issues discussed were strengthening Social Security, the Energy Policy Act, Central American Free Trade Agreement, a proposed Asbestos Bill, and ways to stop outsourcing and buy American.*

## Back Pay

*CONTINUED FROM P. 1*

continued on the charges of illegal firing. The NLRB issued a formal complaint on January 28. Before a hearing was held the company agreed to settle.

"These guys stood up for the union," said Business Manager Jeff Perry. "We stuck with them, took the case through the process and won."

Perry points out that as members of Local 625 they now enjoy the good wages and benefits a union contract brings and didn't want to go back.

In addition to the money the company also agreed to post a notice in the workplace stating they would not do anything to prevent employees from exercising their right to a union.

According to the National

Labor Relations Act a new election can not be held for a year from the last one. And according to Jividen he'll be right back at Precision Pump and Valve when the year is up.

Form NLRB-4722  
(1-02)

 **NOTICE TO EMPLOYEES** 

POSTED PURSUANT TO A SETTLEMENT AGREEMENT  
APPROVED BY A REGIONAL DIRECTOR OF THE  
NATIONAL LABOR RELATIONS BOARD  
AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT accuse employees of being trouble makers because they engaged in union activities.

WE WILL NOT lay you off, discharge you or otherwise terminate your employment because you support the West Virginia State Pipes Trade Association or any other union.

WE WILL make whole Michael Skeens, Lloyd Smith, Christopher Shannon and Bryan Bragg for the wages and other benefits they lost because of our alleged discrimination against them. They have waived any rights they may have had to reinstatement.

WE WILL expunge from our records all references to the discharge of Michael Skeens, Lloyd Smith, Christopher Shannon and Bryan Bragg and WE WILL notify them in writing that this has been done and will not be used against them in any way.

**PRECISION PUMP AND VALVE SERVICE, INC.**  
(Employer)

Dated: 3/18/05 By: George Pinkerman  
(Responsible Official) (Title)

*PRECISION PUMP AND VALVE had to post this notice in their shop to let employees know their rights and that the company would obey the law.*

## CHARLESTON RESTAURANT & DOCTORS OFFICE TARGETED

# New 'Bannering' Tactic Gets Attention

**I**t's not a picket and it's not a rally, it's a new tactic called 'bannering.'

Organizers have been using banners in the Charleston area to bring attention to contracting practices at a new restaurant called Panera Bread and a new doctors office.

The tactic combines some elements from both pickets and rallies to accomplish the same goal - to let the public know about shady practices in the construction industry.

Large, easy to read, banners are placed near the construction sites with a simple message, "Shame on You."

"Bannering is not directed towards the workers, or contractor," said Scott Brewer, Service Representative for the Mid-Atlantic Regional Council of Carpenters.

"We're aiming at the decision maker, the people buying construction services, and letting the

public know about their choices."

In early April the Carpenters found out Panera Bread, a restaurant chain based in Warren, Ohio, was going to use contractors paying low wages and no benefits.

Before the decision Brewer had been in contact with Panera Bread representative John Haas to make sure local contractors got a chance to bid the approximately \$1 million project at the Southridge Mall.

"We had fair contractors bid the job, and willing to work with this company to get the best possible price," said Brewer.

But at the last minute Panera Bread chose a contractor, Austin Construction, that does not pay fair wages and benefits.

"We're just informing the public and customers about the choice," said Brewer.

Police from both Charleston and South Charleston have been called in to harass the banner holders but union organizers

have stood their ground. And the police, once made aware of the situation, have respected the rights of workers to send their message.

In the Kanawha City section of Charleston another banner is in place that reads "Shame on Dr. John L. Goad."

Goad is a cardiologist who has hired Jarrett Construction Services to build a new office building.

Jarrett is a prominent member of the anti-union Associated Builders and Contractors and the largest nonunion general contractor in the Charleston area.

Jarrett has sub-contracted to a variety of companies, most pay low wages and no benefits, including health care.

"For a doctor to use companies that don't provide health care coverage is wrong," said Henry Neal, an organizer for the Laborers Union.

To make matters even worse one of the sub-contractors on the job is on the state Workers

Compensation default lists.

Phillips & Sons Masonry, also known as Phillips and Phillips, Triple T, and Roger Phillips owes unpaid workers compensation and unemployment premiums.

The banner got the attention of workers compensation auditors who came to the job site and demanded payment.

In addition Phillips was cited by the city of Charleston for not having a license and they are listed as having their license to do business revoked by the Secretary of State's office.

"We've gotten a lot of local support," said Brewer. "We plan on staying at both locations till after the jobs are done."

ACT Foundation  
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(304) 345-7570

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MANNING THE BANNER at the Panera Bread job in Charleston are Randall May (left) and Joe Elliott, both with the Carpenters Union. Also assisting with the banner effort are members of the Laborers Union.

**Union Trades**  
Federal Credit Union

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email: utfcuchas@charter.net

**WOAY 4**

Oak Hill

Sundays @

11:00am

**WCHS 8**

Charleston,

Huntington, Parkersburg,

Beckley, Bluefield

Sundays @ 11:00am

**WDTV 5**

Clarksburg &

Morgantown

Sundays @ 11:00 am

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Wellsburg

daily @ 11:00am &

11:00pm

**CABLE CHANNEL 10**

Wheeling, St.Clairsville &

Moundsville

daily @ 11:00am &

11:00pm