

# 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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# Diversified Has Problems Delivering

**P**owerball winner Jack Whittaker and his construction company Diversified Enterprises are in trouble delivering on at least two major water line projects.

In both the Union Williams and Wayne Public Service District's Diversified is late to complete their projects.

Numerous other problems plague the projects including quality issues, customer complaints and sub-contractors who have defaulted on their workers compensation.

At the Union Williams project which includes parts of Wood and Pleasants Counties, more than 1500 citizen complaints have been filed.

Citizens and customers are upset at the way Diversified, and their sub-contractor Zion, Inc., have handled the project.

Damages to property, shoddy repairs and lack of communication are some of the recurring themes of the many complaints.

Donnie Huff, organizing director for Operating Engineers Local 132 has been tracking Diversified's progress, or lack thereof.

"They have gotten numerous extensions for the Union Williams project and still are not done," said Huff.

The project had an original completion date of May 22. According to Huff, certain sections have still not even been deemed

'substantially complete.'

He has been attending meetings of the Union Williams PSD along with other trade's members from the area.

The project was bid in July of 2003 and included a number of different contracts. Diversified was low bidder on at least three sections of work with combined bids totaling around \$13.5 million.

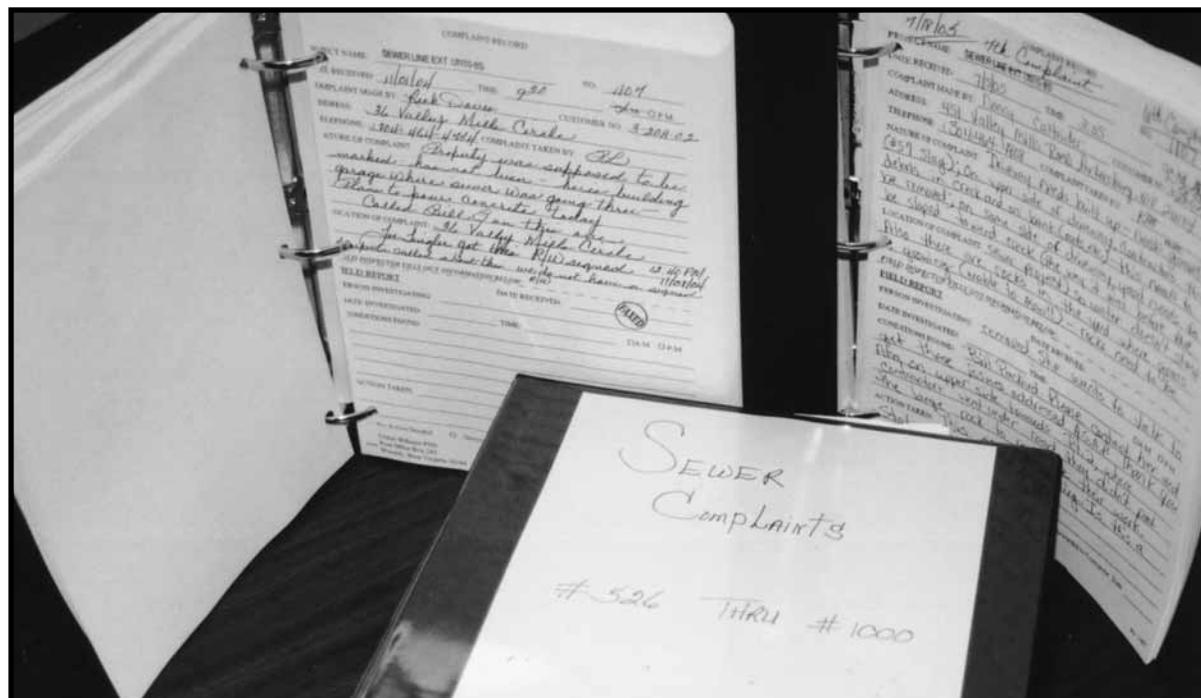
Zion, Diversified's sub-contractor, has been off-and-on the

worker's compensation default list since May of 2004.

To be placed on the default list a company must miss their quarterly premium payment by more than 60 days.

After defaulting on their payment for the first quarter of 2004, Zion was put on a repayment plan. But they failed to make those payments more than once and ended back on

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*MORE THAN 1500 complaints have been filed at the Union Williams PSD relating to Diversified Enterprises work.*

# State Trades Block Cross-Subsidies

**T**he West Virginia State Building Trades has worked out an agreement with Allegheny Power to limit the utility's involvement in the contracting business.

Last year Allegheny Power put together a deal to sell their Mountaineer Gas Company. But in order to do so they first needed to get a rate increase approved for the gas company.

Rate increases must be sanctioned by the state's Public Service Commission (PSC).

The West Virginia State

Building Trades intervened in the PSC case wanting some answers to questions about how the gas company operated a warranty

or even bidding on construction projects.

Home warranty programs promise to fix in-home plumbing,

ties are lawful.

Since utilities are guaranteed a profit, if they underbid a project they can just get rate payers to make up the difference argued the Trades.

And the utilities have access to valuable customer mailing lists and use those lists to mail out offers for their warranty program.

The practice of shifting costs from private work to regulated utility customers is called cross-subsidizing.

Utilities usually claim their construction activity is completely separate from their util-

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**"IT'S NOT FAIR TO RATE-PAYERS, LOCAL CONTRACTORS OR WORKERS WHEN BIG UTILITIES GET INTO THE CONSTRUCTION BUSINESS." ROY SMITH, SECRETARY-TREASURER, WV STATE BUILDING TRADES**

program for home owners.

In recent years utility companies have tried to extend their reach into the construction industry by offering warranty programs

HVAC, gas line or other problems and charge a monthly fee, often added to the utility bill.

The State Building Trades has questioned whether these activi-

## PARTICIPATION FOR BUILDING TRADES UNRESOLVED

# Solidarity Charters to Deal With AFL-CIO Break-Up

**Dealing with the aftermath of massive defections the AFL-CIO executive council has given the approval for new 'Solidarity Charters.'**

The charters will allow those unions that have left to continue participation in state federations and local central labor councils.

But the action does not cover trade and industrial councils, including the Building and Construction Trades Department (BCTD).

Instead, the BCTD will be

given time to review the charters.

A draft proposal was sent to executive council members August 12 for a fax-in vote.

However Building and Construction Trades Department President Ed Sullivan protested the 'fax-in vote' process.

Sullivan wrote to AFL-CIO President John Sweeney stating the issue deserved a face-to-face meeting and "consideration of alternative approaches, or amendments."

Sullivan wanted the BCTD to have four rights spelled out in the Charter.

- To decide if a solidarity char-

ter will be issued to a local union or district council traditionally and historically engaged in the construction industry;

- A building trades local granted a solidarity charter must comply with the Plan for Settlement of Jurisdictional Dispute;

- To determine whether a local building trades union seeking a solidarity charter must also re-affiliate with a central labor body; and,

- To set the method and amount of per-capita dues paid to the department and the applicable building trades council.

Meanwhile at least one indus-

trial union has asked to join the Building Trades Department.

The International Association of Machinists sent a letter to the BCTD requesting consideration for membership. The union is interested in "filling the void" for Millwright work according to news reports.

The same report mentioned the United Steelworkers has also approached the BCTD about membership.

The Machinists had once been a part of the BCTD but were expelled in the 1950's.

The Solidarity Charter proposal was approved August 30.

Solidarity Charters require locals to pay per-capita dues plus ten percent. Locals would have voting rights but members could not serve as officers in any state or local body.

Charters will not be issued to local unions seeking to re-affiliate with only some but not all state and local central bodies with which they were previously affiliated.

As the ACT Report goes to press a yet unconfirmed report has the union UNITE-HERE, which represents textile, hotel and restaurant workers also dropping out of the AFL-CIO.

## Diversified

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the default list in August.

According to workers compensation they are back on a re-payment plan, for now.

Tim Millne, with the West Virginia Laborers' District Council, has been watching Diversified's Wayne county project.

In June 2004 Diversified was low bid on the million dollar project, just underbidding a local union contractor by \$26,000.

Although the project is almost done, the original completion date was July 15.

The project has also been plagued with numerous leaks. One estimate by a city of Wayne meter reader claimed 95 percent of line connections were leaking.

"Time is money," said Millne. "The second place bidder would have done this project on time, and without the quality problems and it would have easily been worth the bid difference."

Diversified has subcontracted much of the Wayne

work to Pipemasters Inc., which is in bankruptcy.

Pipemasters and Zion are owned by the same people, Dallas Hoy Fellure and Ted Kaster.

At the urging of Millne lawyers for the Wayne County PSD sent a letter on August 10 to Diversified's bonding company alerting them to the problems on the project.

In addition, ACT researchers have uncovered some interesting documents regarding Whittaker and his former employer, Ohio based Holley Brothers Construction, Inc.

In the May 2002 issue of the ACT Report Holley Brothers Construction had walked away from approximately 17 projects in the state.

Jack Whittaker used various titles when working for Holley Brothers including Manager and Vice President.

Whittaker and John Holley ended up suing each other in 2001. Within those suits ACT has uncovered details of their agreement that go beyond a typical employer-employee re-

lationship.

Whittaker was entitled to 30 percent of the profit on each West Virginia project, or ten percent of the gross contract, whichever was less, in return for running all of the West Virginia work.

Holley Brothers still owes the West Virginia Workers Compensation Fund \$1 million in un-

paid premiums.

Diversified took over some of the Holley Brothers projects.

On one project, a water treatment plant in Naugatuck, Mingo County, Diversified took over the Holley Brothers project but ended up getting sued by the bonding company.

In February of this year Mid-State Surety Corp. filed suit

against Diversified alleging Diversified failed to complete the project and make it operational in a timely manner.

That suit is still active.

The documentation has been forwarded to the Workers Compensation fund with the request they review the Holley Brothers account and go after Whittaker for his share of the debt.



*THIS DIVERSIFIED PROJECT in Belington, Barbour County, was bid in May of 2004 and is one of many projects being reviewed by Trades Organizers.*

# Union Workers, Contractors Add \$20,000 to Reward

**U**nion workers and contractors in the Tri-State Building Trades area have added \$20,000 to a reward fund aimed at solving a horrible murder case.

The case involved four teenagers who were shot to death last spring in Huntington.

It is suspected the murders were drug related and that the teenagers were simply caught in the wrong place at the wrong

time.

On August 30 Steven Burton, business manager of the Tri-State Building and Construction Trades Council, and C.R. Neighborgall of Neighborgall Construction, presented the check on behalf of the council and the Tri-State Contractors Association.

Receiving the funds was Mary Lyons, the Huntington woman who established the reward, in front of the home at 1410 Charleston Ave., where the shootings took place. Family

members were present.

“We want to try to make a difference,” Burton told Lyons.

In tears, she responded with gratitude.

“This is such a bittersweet thing for the community to do,” she said.

“We accept it with the greatest thankfulness.”

The money came from the LEAD program (Labor, Education and Development), which is designed to finance drug testing in the workplace and provide safety training and equipment.

LEAD is a cooperative program managed by both union and management representatives.

“Through our LEAD program we have worked to eliminate drugs in the workplace,” said Burton.

“We likewise believe there is no place for illegal drugs in our communities.”

LEAD also sponsors a free magic show in schools that has reached approximately 500,000 students with its anti-drug, alcohol and tobacco message.

According to Burton, family members of the teens were on hand at the event. “They not only expressed their appreciation to local union workers and contractors, they told me they valued the role we play in building our community.”

The May 22 shooting killed Dontée Ward, 19, and Michael Dillon, 17, both of Huntington; Megan Poston, 16, of Barboursville; and Eddrick Clark, 18, of South Point, Ohio.

Supporters had raised \$14,993 for the fund previously.

# Painters, Electricians Accepting Apprenticeship Applications

**P**ainters District Council 53's Joint Apprenticeship and Training Committee is taking applications.

The Council will take applications during regular business hours, year round, with the exception of weekends and holidays, at their headquarters and local offices.

All applicants must meet the following minimum qualifications;

- Be at least eighteen years old;
- Possess sufficient educational knowledge to complete the on-the-job and related training. Must have high school diploma or GED by the completion of the apprenticeship term;
- Be physically capable of performing the essential function of the apprenticeship program without posing a direct threat to their health and safety or that of others;
- All applications will be received without regard for race, color, religion, national origin or sex.

For more information call 304/343-8259 extension 12 or stop by one of the following offices:

Painters District Council 53 - 115 Spring Street, Charleston;

Painters Local 91 - Teamsters Building, 901 Market Street, Wheeling;

Painters Local 438 - 224 North 5<sup>th</sup> Street, Steubenville, OH;

Painters Local 804 - Stanley Technical Institute, 120 Linden Avenue, Clarksburg;

Painters Local 813 & 1072 - 2001 Pine Street, Kenova;

Painters Local 93 & 1144 - 512 33<sup>rd</sup> Street, Parkersburg.

**T**he Wheeling Electrical Joint Apprenticeship and Training Committee is accepting year round applications.

Applicants must be at least 18 years of age, possess a valid drivers license, be a high school graduate or have earned a GED or two-year Associate Degree or higher.

Applicants also must earn a qualifying score on an aptitude test, show evidence of passing high school algebra or equivalent and provide official transcripts of high school and post high school training.

Selected applicants must pass a drug screening program and be residents of the either Ohio, Marshall or Wetzel Counties in WV or Belmont County, Ohio.

A \$20 application fee will be

required.

Each applicant who meets all basic requirements will be interviewed by the JATC.

For more information go to 82 Burkham Court, Wheeling, any

Monday through Friday from 8:00 to 11:30 am and 1:00 to 3:30 pm., except for holidays.

All applications will be received without regard to race, color, religion, national origin or sex.

## Charleston Trades Recognized for Safety



*CHARLESTON BUILDING TRADES Business Manager Mike Matthews holds an award given by Babcock & Wilcox Construction Company. The award credits the Council and its members for a successful project at the John Amos Plant of American Electric Power. More than 750,000 manhours were worked safely on the Unit One SCR Installation project. A similar award was also given to the Boilermakers, Iron Workers and UA.*

# Special Session Held, Gas Tax Frozen

**G**overnor Manchin called a special session of the legislature to tackle a number of legislative issues.

On top of the list was a promised pay raise for state public employees and teachers. During the regular session pay raises had been put on hold pending this special session.

The Governor also asked the legislature to look at a one percent reduction of the tax on food.

This quickly led to bitter partisan fighting with republicans advocating for an end to the full

six percent tax with democrats asking where the \$130 million budget shortfall would come from.

The state Supreme Court has been asked to intervene.

In a separate move Manchin issued an executive order to freeze, for up to one year, the scheduled three cent increase in the tax on gasoline.

The gas tax funds the state road building program and provides the much needed state funds that match federal dollars.

The state usually puts up ten to twenty cents for each dollar of road work, the rest coming

from matching federal funds.

With sharp increases in construction material costs many are concerned the road fund will not have enough to get full federal matching funds.

Also on the agenda was a measure to regulate so-called "527" political groups that pretend to be issue groups at election time.

During the session a number of appointments made by the Governor were confirmed by the Senate.

Bill Dean, Business Manager of Iron Workers Local 596, Wheeling and President of the

Upper Ohio Valley Building Trades Council was confirmed in his appointment to the newly formed Industrial Council.

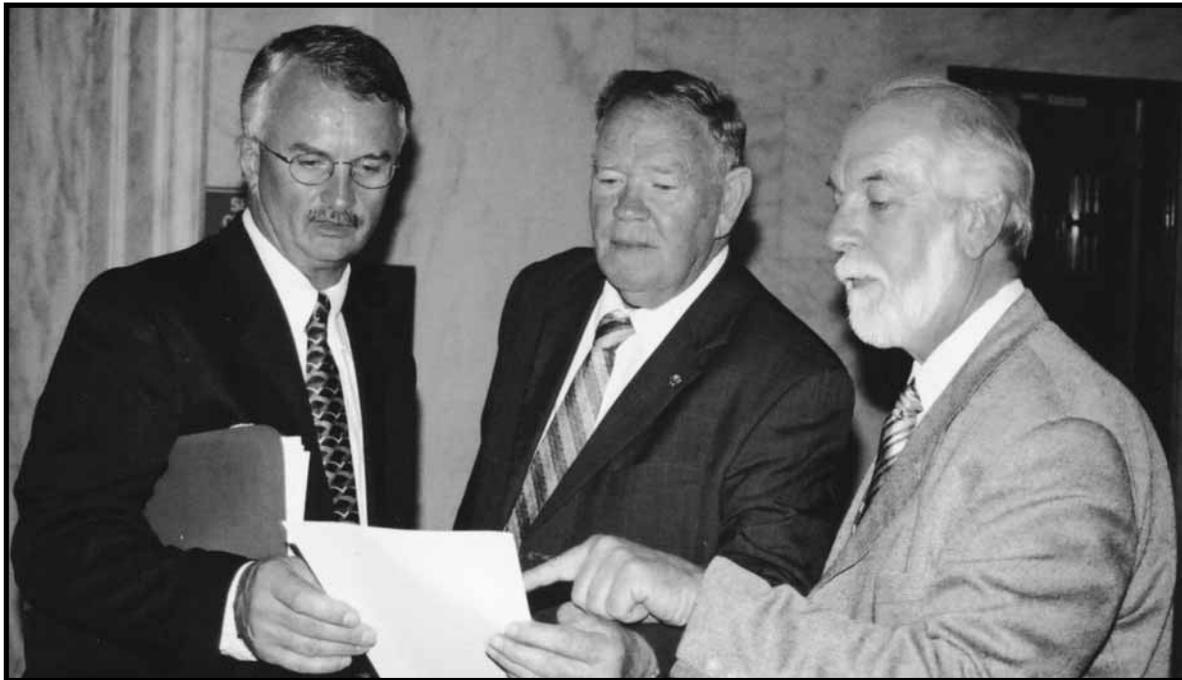
The Industrial Council will be the new regulatory group within the state Insurance Commission that regulates Worker Compensation.

Earlier this year at the Governor's first special session legisla-

tion was enacted that will completely privatize workers compensation by 2008.

The Industrial Council will be responsible for setting premium rates, the appeals process and regulations regarding the practices of insurance companies.

The legislature will continue to set the level of benefits and define what counts as a disability.



*STATE BUILDING TRADES Secretary-Treasurer Roy Smith (right) and Kenny Perdue, President of the WV AFL-CIO (left) talk with Senator Shirley Love, D-Fayette, during the September Special Session of the legislature.*

## Trades

*CONTINUED FROM P. 1*

ity work so costs will not be moved from one segment to the other.

In the Allegheny case the State Building Trades asked to see the details on how the contracting work was separate from the utility work.

In particular the Trades wanted to see how Allegheny

documented the separation of costs when they used Appalachian Heating and Cooling. Appalachian is owned by Mountaineer Gas, which is owned by Allegheny.

Mountaineer Gas had signed up customers for their home warranty program and sent Appalachian to perform the service work.

To assist the effort the ACT Foundation had located an ex-

pert in the field of utility cross-subsidization who understood what questions to ask.

Allegheny was either unable, or unwilling to document how Appalachian was not getting an unfair advantage.

Instead a compromise was reached where Appalachian was sold off, no longer a part of Mountaineer or Allegheny.

The compromise was documented as a settlement order to

the PSC proceedings on July 28, 2005.

Allegheny also agreed not to offer any new programs or expand existing ones with either their Mountaineer or Mon Power subsidiaries.

The agreement is a move in the right direction according to Roy Smith, Secretary-Treasurer of the State Building Trades.

"It's not fair to rate-payers, local contractors or workers when big utilities get into the con-

struction business."

Smith also noted the Trades had requested, and been denied, a general investigation into the issue of cross-subsidization.

Currently under review is a proposed rate increase from Dominion-Hope in which the Trades have also intervened.

"We plan to stay with this issue," said Smith. "It's not only about fairness, it could affect all of the work we do relating to utilities."

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