

# THE ACT REPORT

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# WV SUPREME COURT RULES FOR TRADES ON KING COAL HIGHWAY

Once again the West Virginia Supreme Court of Appeals has issued a ruling in favor of the Affiliated Construction Trades and their case about bidding and wages at a King Coal Highway project.

The latest round directs Kanawha Circuit Court Judge James Stucky to recognize ACT as a valid participant in a case that has been in the courts since 2004.

Stucky had ignored an earlier ruling in 2011 that basically said the same thing.

Lawyers for Nicewonder Construction, now owned by Alpha Natural Resources,

had argued ACT had to prove it met certain requirements before the Judge could hear the actual case.

At dispute is a 12 mile stretch of the King Coal Highway in Mingo County.

In 2004 the West Virginia Division of Highways signed a no-bid contract committing more than \$100 million in taxpayer funds to assist a mountaintop mining project.

The idea was to use the overburden from the mine for road base material and to realign the road so it followed the mining area. The resulting mountaintop removal site could be used for parts of the highway and qualify as acceptable post-mine use, relieving the coal company of

returning the site to its original contour.

ACT objected not to the mining/road building concept but to the no-bid contract using tax funds. In addition ACT argued any public construction contract must contain provisions for minimum wages for construction workers, the King Coal Highway project had no wage provisions.

The case ended up in federal court for years. First, Judge John Copenhaver ruled the Davis Bacon wage rates had to be paid but the no-bid contract was to be allowed since he considered it a unique circumstance.

Then after waiting years for a final decision Copen-

haver changed his mind and said ACT did not have standing to even bring the case in federal court because ACT members had not bid nor worked on the project.

Rather than appeal to the Federal Fourth Circuit Court of Appeals in Richmond ACT decided to take the case to state court.

State law made it clear ACT had standing and also that bidding and wage protections had to be followed.

"We thank the Supreme Court once again for upholding the law," said Steve Burton, President of ACT and the WV State Building Trades Council.

"Now we want a final decision."

# NATURAL GAS PRICES LOW, BUT HOPE GAS CUSTOMERS PAY MORE

On June 25, after months of vocal opposition from the public and a legal challenge by ACT, an Administrative Law Judge (ALJ) for the West Virginia Public Service Commission (PSC) issued a recommended decision allowing Dominion-Hope Gas to increase a portion of gas rates to West Virginia consumers by more than 30 percent.

More than 4,000 letters were sent to the PSC opposing the rate increase but none in support.

An expert hired by ACT uncovered that much of the increase was a result of Do-

minion-Hope's bad business decisions involving a practice known as "hedging."

Customers are now left to pay the \$18 million in losses as a result of the company's failed

business strategy.

Still unanswered was how  
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ACT EXPERT GEORGE DONKIN (left) and attorney Vince Trivelli prepare for a hearing on rate increases requested by Hope Gas at the Public Service Commission.

# PAINTERS SIGN BRIDGE CONTRACTOR

Years of organizing efforts have paid off for the Painters Union.

Bridge painting contractor VHP Enterprises, based in Tarpon Springs, Florida, recently signed a union agreement.

The company had won numerous bridge painting jobs in West Virginia and other states that had local workers upset.

“Our contractors couldn’t compete and we wanted to know why,” said Brian Stanley, Director of Marketing for Painters District Council 53. “The bridge painting market is something we are really trying hard to reclaim not only here in WV but all over

the country.”

One tactic used by the Painters was to communicate directly with the public near where projects were located.

They let the public know not only were the contractors importing workers from outside the region, they were also dealing with dangerous lead based paint.

Lead detection kits were given away and at one local restaurant it was learned the workers were bringing in lead contamination.

The activities were taken not just in West Virginia but in other states where the company was working.

“Overall this was a multi-pronged campaign over a two year period,” said Stanley. “A

lot of people were involved, it was a real team effort and it is paying off.”



DAVE SHAVER, (left) an organizer for Painters Council 53, distributes information about the dangers of lead paint to a Braxton County resident. Shaver is one of five new organizers hired by the Council.

## LABORERS OFFER APPRENTICESHIP OPPORTUNITIES

The West Virginia Construction Craft Laborers’ Joint Apprenticeship and Training Committee accept applications year round.

Those interested can apply at any WorkForce WV Employment Services Office on the third Friday of each month.

Applicants must be at least 18 years old, have a high school diploma or GED, a valid driver’s license and must be physically able to perform the work of the trade.

Applicants will be given a test administered by the WV

Job Service office and if they pass may be interviewed.

A substance abuse test will be required at some point in the process.

Documents such as a copy of a birth certificate, a valid driver’s license, transcripts of grades and proof of a high school degree or GED will be requested at a later date.

The apprenticeship program consists of a combination of on-the-job training and hands-on classroom training.

The WV Laborers’ Training Center in Mineral Wells provides 408 hours of class-

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## HOPE GAS

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much profit was made by the unregulated company used by Hope to buy their hedges.

That company, Virginia Power Marketing Inc., is owned by Hope Gas parent corporation Dominion Resources.

As a result, during a period of record low prices for natural gas, West Virginia customers are paying higher prices.

Hedging entails locking in pricing for gas months in advance.

The company’s hedging strategy began in 2006, when natural gas prices were high. Month after month Dominion-Hope “hedged” and thereby locked in the price at high rates in anticipation of natural gas prices continuing to increase.

However, the opposite occurred. For a 72 month peri-

od Dominion-Hope lost with their hedging program for all but five of those months causing losses of \$18 million.

“Absent the hedging program, Dominion-Hope’s customers would have been paying lower prices for gas for almost the entire duration of the hedging program,” the ALJ stated in the ruling.

The \$18 million loss for Dominion-Hope customers may mean an \$18 million gain for Dominion Resources because they own the company Dominion-Hope used for the hedges.

“We’re troubled that consumers must face large price increases when they should be enjoying the lowest gas prices in years,” said Steve White, director of ACT.

“And we want to know if in fact Dominion Resource or its affiliate profited from the very losses customers are now obligated to pay.”

White points out the ALJ

did throw out a portion of the hedging losses because Dominion-Hope had gone over an agreed upon limit to hedging.

Repeatedly the ALJ wrote that allowing and encouraging Dominion-Hope to use hedging does not mean the company has a blank check.

The ALJ also wrote that Dominion’s own witness testified that Dominion-Hope failed to ‘engage in independent decision making’ regarding hedging which is contrary to PSC standards.

While ACT wanted the hedging program terminated or severely curtailed, the ALJ didn’t rule on the future of Dominion-Hope’s hedging strategy stating that ACT could bring their concerns to the PSC itself, and this wasn’t subject to modification by the ALJ.

ACT will appeal the ruling to the three-member Public Service Commission.

PREVAILING WAGE LAW UPHELD**COURT DEFENDS \$222,020 BACKPAY AWARD**

The West Virginia Supreme Court of Appeals ordered an out-of-state contractor to pay \$222,020 in back wages to workers building the WV History Museum.

The ruling came on June 8 and upheld a May 3, 2011 Kanawha County Circuit Judge ruling and a prior order of the West Virginia Division of Labor.

After investigating the museum project at the Capitol Complex in Charleston the DOL issued an order on July 8, 2010 to Themeworks Inc. to pay its employees the prevailing wage rate for construction work performed.

Florida based Themeworks objected saying the work was not construction but art.

Themeworks was a subcontractor on a \$17.6 million project to completely rebuild the museum depicting West Virginia's history.

The project bid in late

2007.

DOL investigated the project after a contractor complained about the poor contract language and what they saw as a competitive disadvantage given to out-of-state firms bidding the project.

At issue was the work performed to build the sets or displays that museum goes viewed.

A hearing, held before an Administrative Law Judge saw Scott Brewer of the Carpenters union testify about many projects in the region where his members, and members of other craft unions, built similar sets and displays, such as at gaming facilities and Cabela's.

After a Kanawha Circuit Court Judge upheld the DOL, Themeworks appealed to the state Supreme Court.

The Supreme Court was asked to review the determination that the work was construction rather than art.

In what is called a 'Memo-

workers will have successful careers. Topics include pipelaying, mason tending, instrument reading, environmental remediation and much more.

The recruitment, selection, employment and training of apprentices shall be without discrimination because of race, color, religion, national origin or sex.

For more information visit their web site [www.wvcccl.org](http://www.wvcccl.org) or to receive a free brochure send a self-addressed stamped envelope to: West Virginia Laborers' Training Center, P.O. Box 6, Mineral Wells, WV 26150.

random Decision' the Court wrote "Themeworks explains that its employees use a degree of skill and creative ability that goes much further than simply following blueprints.

"They have to determine the best way to fabricate an item, such as determining how to make a piece of plastic look like a piece of rusty metal."

However the argument did

not sway a single Judge in the five person court.

In their unanimous decision the Court also wrote "Themeworks's employees constructed, improved, enlarged, painted, and decorated.

"Contrary to the interpretation urged by Themeworks, nothing in the statutory definitions limits the application of the Act solely to the rote execution of blueprints."

Another issue before the Court was the category of pay the workers were to receive.

The DOL had figured the back wages based on the Carpenter rate which was the highest rate of all the occupations worked.

Themeworks argued to pay at a lesser rate but when asked for payroll records showing when different types of work were performed the company could not produce any.

**ROOFERS 188 HELPS NEIGHBOR**

*Pictured are members of Roofers Local 188 who volunteered their time and skills to help a neighbor in need.*

*Noticing a roof badly in need of repair just adjacent to their union hall the Wheeling based Local got the idea to combine a community service project with a training session for apprentices.*

*So in early June on a Saturday members of the local re-roofed a garage with help from area businesses including Kalkreuth Roofing.*

*"The garage roof beside our union hall was a good job to train on and give something back to the neighborhood," said Gary Zadai, Business Manager for the Local. "And our Apprentice Coordinator John Dolak gets credit for involving apprentices."*

*In addition to Zadai and Dolak, instructor Bill Porter and JATC Board member Gary Blum as well as foreman Eric Antonacci, Roy Apsotolec and trainees Kevin Truax, Jason Palmer, Brian Kosky, Bill Mitchell, Mark Voltz, Lloyd Rose and Daniel Toothman.*

**LABORERS**

*CONTINUED FROM P. 2*

room and hands-on training free of charge including meals and lodging.

Apprentices will also learn on the job in their home areas while earning a paycheck, for a total of 4000 hours, approximately two years.

Upon completion of the program apprentices will have earned Journeyman status and receive a certificate from the U.S. Department of Labor.

The areas of training provide a wide variety of skills to ensure highly productive

# LOCAL HIRING RESOLUTIONS ADDING UP

County Commissions, City Councils and others continue to adopt resolutions supporting local hiring for Marcellus and Utica Shale related industries.

The latest groups include the State Democratic Party and the city councils of Follansbee, Hundred, Pine Grove and Weirton.

So far ten counties in West Virginia and Ohio, and 11 city councils have passed resolutions.

The WV State Senate also passed a resolution during the legislative session earlier this year.

The northern panhandle has seen a huge increase in drilling and related activity but with it has come an out-of-state invasion of companies and workers.

State employment statistics show no increase in employment in the gas industry. In fact employment dropped from 2010 to 2011 according to recent state reports.

For construction workers

the news has been mixed. Many crafts such as those involved in pipeline work have seen full employment.

But unemployment remains very high for most crafts.

Contractors building Dominion's \$500 million gas processing plant project in Marshall County have turned down hundreds of local construction workers seeking employment only to import workers from far off states like Texas and Oklahoma.

"The benefits gained from a few motel room rentals is nowhere near what our economy would feel if more hiring was being done locally," said Dave Efaw, Secretary-Treasurer of the WV State Building Trades.

"We appreciate the leader-

ship of these elected officials to show support for local hiring."

Resolutions have been adopted by the county commissions of Brooke, Hancock, Harrison, Marshall, Ohio, Wetzel and Wood and in Ohio Belmont, Harrison and Jefferson Counties.

City councils of Benwood, Follansbee, Glen Dale, Hun-

dred, McMechen, Moundsville, New Martinsville, Pine Grove, Triadelphia, Weirton and Wheeling also have adopted resolutions to support the hiring of local workers and contractors.

The public can read and sign a local hiring resolution, called the Marcellus Principles, online at [jobsforlocalworkers.com](http://jobsforlocalworkers.com).

## UA LOCAL 565 APPRENTICESHIP

The Parkersburg Plumbers Joint Apprenticeship will be issuing applications during the month of July through Tuesday, July 31.

Applications will be available from 9:00am till noon each day, except none on weekends.

Those interested should go to 593 Cedar Grove Road, Parkersburg (two blocks from WVU-P).

The five year program teaches all aspects of the plumbing and pipefitting trade including pipe fitting and welding, medical gas, CAD, instrument technician, blue print reading, plumbing, heating and cooling.

Apprentices are paid while on-the-job and also go to school for a minimum of 216 hours per year.

To qualify an applicant must be at least 18 years old, have a high school diploma or GED, a valid driver's license

and be physically able to perform the work of the trade.

A copy of the applicant's birth certificate, driver's license, high school diploma or GED and DD214 form if a veteran will be requested at the time of application.

Completed applications, together with all supporting documents, must be submitted by July 31.

Applicants must reside in the area of Local 565 which includes Calhoun, Jackson, Pleasants, Tyler, Wirt and Wood County in WV; and Morgan County south of Route 78, Meigs, Monroe, and Washington County in Ohio.

Applicants must pass an aptitude test administered by WV Workforce as well as an alcohol and drug test.

The recruitment, selection, employment and training of apprentices shall be without discrimination because of race, color, religion, national origin or sex.

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## CONTRACTOR PLEADS GUILTY TO KICKBACKS

A Beckley contractor pleaded guilty in federal court to requiring illegal kickbacks from former employees according to a press release from the U.S. Attorney's office.

Alfred Williams, 72, a former operator of Beckley-based Williams Mechanical, Inc., admitted that for approximately 10 years, he routinely required at least one-third of his employees to return cash to him from their paychecks as a condition of their continued employment.

Williams further admitted that throughout the illegal scheme, he received between

\$600 and \$1000 cash each week from the employees. Over a ten year period that ended up equaling more than \$400,000.

Williams Mechanical, Inc. performed work as a plumbing sub-contractor for numerous public works projects financed with government funds. According to state and federal law, the company was required to pay worker the prevailing wage rates and report the wages paid on certified payrolls.

Williams admitted he was aware of the legal requirements, yet failed to meet those obligations. The defendant also admitted he required employees to return cash to him

from their paychecks, which hid the fact he was paying less than the prevailing wage.

Also, during the scheme, Williams misreported the hours employees actually worked and paid them based upon improper job classifications.

The West Virginia Division of Labor began the investigation then turned it over to the U.S. Department of Labor.

Williams faces up to five years in prison and a \$250,000 fine when he is sentenced on October 25, 2012 by United States District Judge Irene C. Berger. At the plea hearing, the defendant also agreed to pay restitution of up to \$520,000.