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A Division of the WV State Building Trades, AFL-CIO | Bill Hutchinson, *President* | Dave Efaw, *Secretary-Treasurer* | Steve White, *Director*

Legislative Session Done

The attack on construction workers and contractors continued during the 2019 legislative session.

The good news is many of the attacks failed.

HB 2441, the attack on the WV Jobs Act, passed two committees in the House of Delegates but failed to be voted on by the full House.

The bill would have removed the long standing requirement that a payroll document be turned in on tax funded construction projects to show compliance with the local hiring law.

"We were able to get enough votes to defeat the bill – we believe we had 54 of the 100 Delegates on our side," said Dave Efaw, Secretary-Treasurer of the WV State Building and Construction Trades Council.

Efaw credits the response of many members who contacted legislators about the importance of local hiring.

"We started with all 41 Democratic members on our side and we gained 13 Republican Delegates who supported both local hiring and open transparent government, knowing where tax dollars go."

ACT also ran a series of newspa-

per ads about the bill.

"We have caught many companies not only cheating the WV Jobs Act but cheating on their tax payments as well," said Efaw. "That anyone would try to make it easier for cheaters, is mind boggling."

Damage was done to the wage payment and collection act when

workers for a subcontractor are not paid.

Current law allows unpaid workers to hold the prime contractor responsible when they have not been paid wages or benefits.

The passage of HB 2049 makes it harder for workers to pursue such claims.

Under the new law workers of a subcontractor must notify the prime contractor within 100 days of not getting paid.

"The problem is some workers don't know if their benefits have been paid within 100 days, especially when a prime has not paid the sub or

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Del. Mike Caputo (D-Marion) (left) and Del. Phil Diserio (D-Brooke) are two of the top fighters for working families and the right to belong to a union. Caputo is a UMWA member and Diserio is out of IBEW 246. Caputo came under attack by House Republicans after he opposed a State Republican Party display labelled as hate speech. "We fully support Mike Caputo," said Diserio.

Supreme Court Next Hurdle

So-Called RTW Ruled Unconstitutional

Kanawha Circuit Judge Jennifer Bailey has ruled the so-called Right-to-Work law is unconstitutional.

Her ruling came on Wednesday, February 27, almost three years after the law was first passed by the Republican controlled legislature in 2016.

According to the ruling, RTW amounts to an unfair and illegal taking of services violating the state con-

stitution in a number of ways.

"The new law will require unions and union officials to work, to supply their valuable expertise and to provide expensive services for nothing," wrote Bailey.

Judge Bailey noted the unions provided evidence that the operation of a union requires funds for staff, lawyers, contracts, grievances, of-

fices, etc. "Prohibiting a union from collecting appropriate fees from non-members effects a taking of property; it takes money from the union, and derivatively from its members, and essentially gives it to free riders," wrote Bailey.

Judge Bailey concluded "the Act therefore violates Article III, § 9 of the West Virginia Constitution which

provides that '[p]rivate property shall not be taken or damaged for public use without just compensation."

Judge Bailey went on to explain the RTW law violated sections three and 10 of the state constitution as well.

Those supporting RTW have said the legal questions have long been

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Appalachian Heating and Cooling

SMW Local 33 Unfair Labor Practice Strike

Members of Sheet Metal Workers Local 33 working for Appalachian Heating and Cooling went on an Unfair Labor Practice strike in Charleston.

The action took place on Thursday, March 28 at a job site called the Crossings at Charleston.

Pickers were joined by a number of legislators who came to show support.

“Our members were interrogated, spied on, and questioned about their union affiliation and that is a violation of their rights under the law,”

said Steve Hancock, an organizer for Local 33.

According to Hancock a number of quality and safety issues have also been documented at the project.

“We are working with local authorities to make sure any quality or safety problems are verified and known to state and local regulators,” said Hancock.

An Unfair Labor Practice Strike is a way workers can protect their rights under the National Labor Relations Act.

The Crossings at Southridge was

reported as a \$26.5 million construction project to include 94 independent living suites, 64 assisted living

and 38 secured memory care apartments, according to newspaper reports. ■



Members of Sheet Metal Workers Local 33 picket over unfair labor practices in Charleston. Members of the legislature came to show support.

Boilermaker's 667 Apprentice Class



Apprentices from Local 667 take a scaffold class in mid-February. According to Boilermakers Local 667 Business Manager Brian Hussell these are first year Apprentices.

Apprentices Win at Legislature

One of the few areas where a small advance was made for the construction industry had to do with apprenticeship.

A bill to provide free tuition at community colleges, SB 1, was amended by Delegate Phil Diserio (D-Brooke) to include language about apprenticeship.

Diserio's amendment had two purposes. First he wanted to make sure apprenticeship was recognized as a valid and successful training method.

“If we are talking about the need for additional education after high school and recognize not everyone is going to a University we need to include apprenticeship,” said Diserio.

The second part of his amendment will require a report each year that identifies any community college which has a cooperative agreement with an apprenticeship program and gives some numbers about appren-

tics such as the number completing the program and the average wages they make.

“In Ohio the Trades we have an excellent relationship with many community colleges,” said Diserio. “For example with my Local, IBEW 246 in Steubenville, all apprentices end up with an associate's degree through Eastern Gateway Community College.”

“However in West Virginia the numbers don't really compare and I am hoping this report will lead to better outcomes for apprentices.”

A similar amendment was proposed earlier in the session by Senator Bob Plymale (D-Wayne) but rejected by Senate Leadership.

However Diserio was able to get 54 votes in the House to incorporate the measure in the bill.

In the end the Senate agreed to the Diserio amendment in order to get the bill passed. ■

33 Take and Pass

Free Drug Test Offered to State Legislators

33 of 134 State Senators and House of Delegates members in the WV Legislature took – and passed – a free drug test offered by the WV State Building Trades Council.

The Free Drug Test Day was held on Wednesday, February 13 at the state Capitol and was administered by Nursing Corps, a company that provides drug testing services for union programs.

“We wanted legislators who make laws about drug testing to understand firsthand what our members do every day when it comes to taking a drug test,” said Chuck Parker, Business Manager for Operating Engineers Local 132.

The event was also a great way to educate legislators and the public about the skilled drug free workforce in the union sector of the construction industry.

“If an employer says they can’t find a skilled drug free construction worker they are obviously looking in the wrong place,” said Parker.

According to Parker, some employers who import workers will often claim they do so because they can’t find local workers who pass a drug test.

Union contractors and workers have partnered on drug and alcohol testing programs for more than 25 years.

Testing protocols have been developed for pre-employment, annual, random, cause, and post-incident.

The key to an effective program is the random test which can vary depending on the project owner but usually is around 10 percent of the workforce.

The most common test method is a urine test but industry experts pre-

dict the saliva test, once it is approved by federal regulators, may become

the most common method over the next few years. ■



Legislators line up to participate in Free Drug Test Day sponsored by the WV State Building Trades on February 13 at the state Capitol.

So-Called RTW Rule Unconstitutional

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answered.

However Judge Bailey disagreed.

“The Plaintiff’s’ liberty and association claims appear to be novel claims largely untouched by judicial consideration.”

Judge Bailey wrote “our Supreme Court has stated that ‘the West Virginia Constitution offers limitations on the power of the state’ to curtail the rights of association and speech more stringent than those imposed on the states by the Constitution of the United States.”

“Judge Bailey was right-on with her ruling,” said Josh Sword, President of the WV AFL-CIO. “Forcing union members to pay for the representation of all workers without being compensated violates our West Virginia Constitutional rights.”

Federal law requires a union to represent all workers regardless of membership.

A fee for those services, often called an agency fee, is routinely required.

The agency fee falls short of a complete membership fee.

Judge Bailey did make it clear that under RTW unions could not require a worker to become a union member.

Judge Bailey took into consideration points made in support of RTW by Attorney General Patrick Morrisey.

One claim was unions chose to represent workers and they simply could chose not to.

Judge Bailey countered the Attorney General’s point stating, “The Court is not persuaded by this argument.

A union does have ‘choices.’

It can decide to cease its existence...”

The AG also argued because unions get great benefit from exclusive representation rights under the National Labor Relations Act (NLRA) that should outweigh the burden of paying for ‘freeloaders.’

However no evidence was submitted in support of this argument.

Instead a report from WVU used to pass RTW was evidence showing the damaging effect it will have.

The WVU report projected RTW would lead to significant lower union participation and membership.

Bailey said her ruling would be effective after 30 days, which means March 28.

Until then the RTW law remains

in place.

“We are still a RTW state until we hit that 30 day period or if the WV Supreme Court extends that 30 day period,” said Vince Trivelli, the lead Labor attorney on the case.

“On behalf of the unions of this State and their members, we will urge the Supreme Court to uphold Judge Bailey’s decision.” ■

RTW Timeline

- RTW first passed in March of 2016, to become effective July 1 of 2016.
- In June of 2016 unions filed suit in Kanawha Circuit Court.
- Preliminary injunction issued August 10, 2016.
- Second RTW bill passed March, 2017.
- Supreme Court imposes RTW by removing the injunction in September 15, 2017 in a 3-2 ruling.
- February 27, 2019 Judge Jennifer Bailey rules RTW violates state constitution.

Soup Kitchen of Greater Wheeling

Wheeling area Carpenters, BEST Volunteer

Members of the Keystone Mountain Lakes Regional Council of Carpenters and Project BEST teamed up

to collect and deliver food items to the Soup Kitchen of Greater Wheeling in February.



Members of the KML Regional Council of Carpenters and Project BEST deliver food items to the Soup Kitchen of Greater Wheeling in February.

According to Jody Bonfini, council representative with the Keystone Mountain Lakes Regional Council of Carpenters, two truckloads of items were delivered.

“Local union construction workers live here and are a part of the

community,” Bonfini said. “When we see people in need we do what we can.”

Project BEST was the staging area. LM Construction and Kenco Construction made donations and sent trucks to help with deliveries. ■

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Session Done

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only pays the sub a portion of what is owed,” said Efaw.

Another bill passed that will hurt all working families is a dramatic increase in the amount of political contributions a politician can receive.

Current law limits contributions to \$1,000 for the primary and \$1,000 for the general election.

SB 622, which was promoted by Republican Leadership, increases the amount to \$2,800 for each cycle.

“Who do you know who can give a candidate \$5,600 out of their pocket?” asked Efaw.

A long list of bills aimed at hurting the construction industry failed to pass both chambers.

A move to insert Right-to-Work language into legislation cities wanted regarding Home Rule passed the Senate but was stripped out in the House.

HB 2203 removed Contractor Licensing duties and funding from the WV Division of Labor and passed a House Committee but did not pass

the full House.

HB 2646 would have required workers to write a letter asking for their final paychecks. The measure was defeated in the House Judiciary Committee but then inserted back into a bill in the Senate Judiciary Committee. Members in the House successfully rallied to reject the Senate amendments on the last night of the session.

SB 47 to increase the tax in wind projects passed the Senate but failed to advance in the House.

HB 3020 to allow no bid contracts of almost any amount using taxpayer funds at universities and colleges passed the House but was amended in the Senate to only apply to financial services.

“That anyone would try to make it easier for cheaters, is mind boggling.”

Dave Efaw

Secretary-Treasurer
WV State Building Trades

HB 2637 would have removed the only requirement to ask if local workers will be included in major utility construction projects. It was tabled in committee as many questions were asked that could not be answered.

A number of bills to weaken the current law regarding crane operator certification, which passed the Senate last year, never moved this session.

HB 2365 to make it easier to call a worker an independent contractor passed the House but failed to pass the Senate

and instead will be a study topic for the interim session.

SB 414 would have made it easier for groups like the Ohio Valley Jobs Alliance to hide that their lawyers and expert witnesses were funded by Murray Energy.

OVJA has tried to prevent all gas fired power projects from getting the needed permits.

Any contributions to such a group would have become protected from FOIA, as would the names of any members of such groups.

The bill was tabled in the House Judiciary Committee but inserted into a bill regarding hunting licenses in the Senate. It failed in the last hour of the session.

“Of course it was another session where the teachers and school service personnel went on strike and are still wondering what their fate will be,” said Efaw.

Governor Justice has called a special session of the legislature after promised pay raises for school employees were rejected by the State Senate Leadership.

At least one good thing did happen.

Legislation providing free tuition at Community Colleges was amended to include language about apprenticeship programs. ■