

# Common Wage Process Court Ruling Reaffirms Local Control

By **J.R. Gaylor**

A recent series of court actions has brought renewed attention to the setting of wages on public construction in Indiana, which we now call “setting a common wage.”

As you might recall, one of the positive changes made in 1995 to the antiquated Indiana Prevailing Wage Statute was to expand the committee that determines wages from three to five seats. The appointments now involve:

- 2 seats by the awarding agency, a local taxpayer who resides in the county and a person representing industry
- 1 seat (a local taxpayer) by the county commissioners
- 1 seat by the State Federation of Labor
- 1 seat by the governor, traditionally from the Indiana Department of Labor (I.D.O.L.)

The significance of that change was that the local people who pay the taxes for these projects have the majority voice in this decision, unlike previously when the unions and the state of Indiana dictated the wages for all communities. The unions and state have fought this change since 1995.

The unions and state proliferated their fight recently in Dubois County. The city of Jasper held a common wage hearing and

by a 3-2 vote (three “aye” votes were local residents and the two against were from the AFL-CIO and I.D.O.L.) adopted the wage rates from survey information that the Associated Builders and Contractors of Indiana (ABC) presented at the hearing.

The Southwestern Building Trades Unions, along with some individual union members, sued the city of Jasper and the locally appointed wage committee members, claiming the committee acted in an arbitrary and capricious manner. They asked for and received a change of venue, and they prevailed in a local circuit court decision. The city of Jasper, feeling strongly that it followed the law, appealed the case along with ABC, the Indiana Association of Cities and Towns and the Indiana Municipal Lawyers Association. The Indiana Department of Labor supported the union plaintiffs.



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In reviewing the local court’s action, the Indiana Court of Appeals reversed that decision. The unions then filed an appeal to the Indiana Supreme Court, which denied transfer, ending the case in Jasper’s favor.

Citing the Indiana Court of Appeals ruling: “On appeal, we reject the Appellant’s (unions and I.D.O.L.) assertion that the committee made the wage determination without regard for prevailing wage rates in the locality. Rather, we concluded that the committee made a good faith effort to determine what wages were locally prevalent.”

The ramifications of this ruling include:

- Reaffirmation of the autonomy of the local wage committee
- Firmly establishes information from ABC as credible
- Should diminish the threats of further legal action against local entities

This is a major victory for local wage committees and local communities all across Indiana. This reaffirms the 1995 logic that local taxpayers are the best judges in determining the construction wages that are commonly paid in their respective communities.

**INFORMATION LINK**

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