

The Professionals Guild of Ohio



PGO UNION NEWS

September 2010

PGO Officers:

President

Kay Cox

Vice President

Eric Kanthak

Secretary

Dan Ehle

Treasurer

Jenny Gardner

Executive Director

Chauncey M. Mason

Published by
Professionals Guild
of Ohio

P.O. Box 7139
Columbus, Ohio 43205

Questions or comments can
be directed to the Executive
Director.

E-Mail:

cmason@professionalsguild.org

Phone:

614-258-4401 or
800-331-5428

Fax:

614-258-4465

*Produced and printed in-
house by members of UFCW
1059*

PGO Wins New Election in Clark County DD

Last summer employees of Clark County Board of Developmental Disabilities expressed an interest in obtaining union representation from PGO. Based on the interest, PGO sought an election.

Before the election could occur, however, the employer withheld regularly-scheduled raises from the employees interested in organizing, while providing the same raises to other, non-union employees. The employer also sent the employees coercive communications suggesting that unionizing would be harmful and the employees might not receive the raise if they voted to unionize.

PGO believed that the actions by the employer were unlawful from the beginning and filed an unfair labor practice charge against the employer for withholding the raises and coercing the employees. The employer insisted that it had acted lawfully.

Recently an administrative law judge with the State Employment Relations Board concluded PGO was correct all along—the employer had violated Ohio law in multiple respects. The decision was appealed to the full State Employment Relations Board (SERB), which just issued its final decision in the matter. SERB agreed with the administrative law judge, concluding that the employer had violated three different provisions in the collective bargaining

law by discriminating against employees who sought to unionize and coercing those employees.

While PGO regrets that the employer engaged in the unlawful conduct in the first place, and then incorrectly insisted that it was actually following the law by withholding raises and sending its communications to employees, PGO is pleased that SERB upheld the unfair labor practice charge filed by PGO. This decision vindicates not only the rights of the employees involved, but the right of all public employees in Ohio to seek union representation without being coerced by their employers.

Consequently, SERB has ordered that a new union election be held and that PGO be permitted to use the employer's work site to meet with employees during non-work time. The decision from SERB reflects something our members already know: Their union is committed to fighting for the rights of Ohio's public employees and to being as effective as possible in doing just that.

PGO Overturns Member's Suspension

An arbitrator recently concluded that Montgomery County Board of Developmental Disabilities suspended one of its employees without just. The arbitration decision overturned an unfair and inappropriate suspension issued against a long time employee. The employee had been suspended without pay for five days for allegedly taking unapproved

leave, even though the employer did not deny the leave request before the employee took the leave. After the employee had already returned from visiting an ill and elderly parent, the employer attempted to deny the leave request submitted weeks before the leave began, and suspended the employee for five days.

PGO assisted the employee in filing a grievance under the union contract. But even after the grievance was filed the employer insisted that it had just cause to suspend the employee and refused to admit its mistake in doing so. Recognizing that this is no way to treat any hard-working employee, let alone one who was devoted years to an employer, PGO appealed the suspension to arbitration.

During the arbitration the employer maintained that the employer had denied the employee's leave request in advance, even though the facts pointed to the opposite conclusion. The employer hired an expensive private representative to try to justify the suspension. During the arbitration hearing PGO pointed out that the employer did not deny the leave request before the employee went on leave and that the employee had been suspended from work in violation of the union contract.

After hearing all the evidence and arguments the arbitrator concluded what had been obvious to PGO and the wronged employee for months: the employer did not have just cause to suspend the employee for supposedly taking unapproved leave. The employee will be reimbursed for lost pay, have the suspension eliminated, and be made whole for the losses she suffered.

Congratulations to our member for standing up for her rights and to PGO General Counsel **John Campbell-Orde** for his vigorous and successful advocacy for PGO and this member.

Help Us to Stay in Touch

Has your name changed? Have you moved? Do you have a new telephone number? If so, please let your Union know about the change.

Help us maintain accurate membership files by contacting the PGO office to update your personal contact information.

Nursing Mothers at Work

by Amelia Woodward, Esq., PGO Field Representative

As we adjust to the changes brought on by the recent health reform legislation passed this past Spring, one noteworthy piece of legislation, buried in the over two thousand pages of new law, is an amendment to the Fair Labor Standards Act (FLSA) related to breast-feeding in the workplace. Nursing mothers do not usually bring their children to work to breast-feed, but many nursing mothers will express breast milk during the workday by using a breast pump and saving the expressed milk for the infant to consume later.

The new amendment requires employers subject to the FLSA to provide a space other than a bathroom for nursing mothers to pump in a private area, out of the view or intrusion of co-workers and the general public. It also requires the employer to provide reasonable break time for a nursing mother to express milk for one year after the child is born. The employer is not required to pay a nursing mother during a break to pump breast milk but if the employer already provides paid breaks, an employee will be paid if she uses those breaks to express milk.

A Fact Sheet issued by the Wage and Hour Division of the U.S. Department of Labor dated July 2010 explains that these regulations were effective as of March 23, 2010. If you have any questions related to this new regulation, please contact PGO's main office in Columbus.



RIGHT-WING PREDATOR DRONE

Ohio Supreme Court Strikes a Blow Against Pregnant Women

by Amelia Woodward, Esq., PGO Field Representative

The Supreme Court of Ohio recently ruled that “an employment policy that imposes a uniform length-of-service requirement for leave eligibility with no exception for maternity leave is not direct evidence of sex discrimination,” reversing an appellate court ruling that held otherwise (*See McFee v. Nursing Care Mgt. Of Am., Inc.*, Slip Opinion No. 2010-Ohio-2744). This means that if an employer has a policy that requires all employees work for one year before being eligible to take leave of any kind (for an illness, injury, or to have a baby), an employee’s job will not be protected and that person could be terminated should he or she need to take time off for any reason.

The Pregnancy Discrimination Act here in Ohio was written to prevent this from happening, and to prohibit leave policies that directly discriminate against women because they bear children. The Ohio Administrative Code, the regulations that better define the law, states “where termination of employment of an employee who is temporarily disabled due to pregnancy or a related medical condition is caused by an employment policy under which insufficient or no maternity leave is available, such termination shall constitute unlawful sex discrimination.” (OAC 4112-5-05(G)(2)).

The Court read this in light of another regulation which states “women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. *When, under the employer’s leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time*” (emphasis added) (OAC 4112-5-05(G)(5)). The Court read the second sentence qualifier of a regulation and interpreted that as the law, instead of reading the first section defining discrimination as any policy where insufficient or no maternity leave is available as the law protecting all women when they are pregnant. In this particular case, there was no maternity leave available, only a minimum length of service requirement for a leave of absence.

Maternity leave is different from a leave of absence; maternity leave has a specific purpose protected by law, a leave of absence could be for any reason and is not protected under the law. If there wasn’t a maternity leave policy, terminating someone for a pregnancy related leave is discrimination.

This new “interpretation” of the law will have a significant impact on the lives of all women across the state of Ohio because so many people, men and women, have been laid off in the last few years. With so many people starting new jobs, especially women, in fields that probably pay significantly less than their prior jobs, the likelihood more and more women are going to be terminated because they didn’t meet a minimum length of service requirement to have babies may increase exponentially.

I have heard a lot of arguments defending the Court’s decision, but in its application, women will be the ones significantly impacted by it to the detriment of our families and our livelihoods. Women’s unique ability as the sole bearer of offspring changes the way we should be treated in the workplace when we are disabled due to pregnancy. The intent of the discrimination laws was to protect women from exactly this scenario, termination for pregnancy. The Court has set us all back fifty years.

Many of our contracts have maternity leave provisions that will protect pregnant women in their jobs, so please contact your local Union leadership or PGO staff if you have any questions or concerns.



"Boy, sinners must have a *terrible* union!"

PGO BDD BBQ

Early Intervention Specialists (Council 21) and Workshop Employees (Council 7), all PGO members of the Butler County Board of Developmental Disabilities, recently enjoyed some camaraderie and BBQ together at a social gathering sponsored by the PGO. PGO Field Representative *Ameila Woodward* and PGO General Counsel *John Campbell-Orde* assisted Councils 7 and 21 Presidents, *Kelly Ray* and *Mindy Flora*, in organizing the event.

In an effort to bring our two BDD councils together and to increase membership, PGO organized and held the barbeque for members and employees interested in becoming members at the Butler County Board of Developmental Disabilities on July 28. Members shared their stories about their experiences in the various departments within the agency and got acquainted with their fellow PGO members in the two councils while enjoying a barbeque meal. Everyone enjoyed the gathering and hope to do it again in the future.

The Family and Medical Leave Act Extends Rights

The Department of Labor recently extended the coverage of the Family and Medical Leave Act (FMLA) provisions to cover same-sex couples and non-traditional families upon the birth or adoption of a child or for the care of a child with a serious illness. FMLA provides up to twelve weeks of unpaid leave to employees for their own serious illness, the birth of a child, the adoption of a child or to take care of an immediate family member with a serious illness. The new provision will protect the employment of other family members living in the same household with a child that have a serious illness and must take time off work to care for the child up to twelve weeks of unpaid leave.

Although FMLA leave has been expanded, the new policy statement limits the type of leave that can be taken to caring for a newborn, bonding with an adopted child or taking care of a child with a serious illness. Same-sex partners are still unable to use FMLA to take time off to care for a partner who has become seriously ill in states that do not recognize same-sex marriage, Ohio included.

The FMLA is a complicated law so if you have questions about its application, please call the PGO office or your attorney.

Source: *LaborNotes*, August 2010.

Taxes: Who Pays?

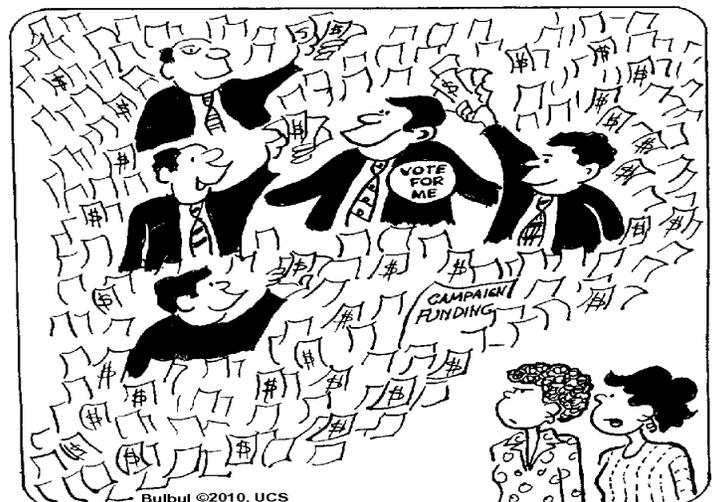
Are taxes too high? That all depends on where you sit on the income ladder. When it comes to the state and local taxes that pay for basic services, working people pay nearly twice as big a proportion of their income as wealthy people do.

Nationally, the bottom fifth of earners—making an average of \$10,700 a year—pay 11 percent of their income in state and local taxes. By contrast, those in the top 1 percent—with incomes from all sources averaging \$1.8 million—pay less than half that, 5.2 percent.

This upside-down tax system is the result of states' heavy reliance on sales taxes and property taxes, which hit working people much harder than the rich. Personal income is taxed at a much lower rate by states than by the federal government, and nine states don't collect personal income tax at all.

What about big corporations? State and local governments get less than 5 percent of their tax revenue from corporate taxes. At the federal level, corporate taxes have declined tremendously in the past two generations. Whereas corporations used to pay a third of all federal taxes collected, today they are paying 10 percent, thanks to expanded loopholes, a steady stream of business tax cuts, and rampant tax avoidance.

Source: *Labor Notes*, August 2010.



"How does a low wage citizen get heard through that wall of corporate campaign cash?"