

# The Professionals Guild of Ohio



## PGO UNION NEWS

**April 2011**

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### **Republicans Pass Ohio Anti-Union Law**

Ohio's Republican controlled House and Senate have passed, and Republican Governor Kasich has recently signed, legislation intended to kill collective bargaining for public employees. This union-busting law, known as Senate Bill 5, will, unless it is repealed, decimate workers' rights to organize and collectively bargain with their public employers.

As reported in last month's issue of the *PGO Union News*, the Senate-passed SB 5 prohibits, among other things, bargaining over health insurance benefits, pensions and subcontracting public employee work. The Senate's version also prohibits seniority based provisions for wage increases and lay-offs, replacing established seniority systems with "merit" based procedures. To ensure that management will always be able to keep its foot on workers' necks, SB 5 outlaws strikes by public employees and allows employers to resolve bargaining impasses by implementing their proposals.

Not to be out-done by the Senate, the House of Representatives added its own union-busting measures by prohibiting fair share fee provisions and voluntary employee payroll contributions to union political

action campaign funds. Other egregious changes in SB 5 include, among many, the following:

- Makes it easier to decertify unions by allowing an election when only thirty percent of the employees sign a petition;
- Allows management to unilaterally terminate collective bargaining agreements;
- Reduces the amount of vacation and sick leave employees can earn and forbids employers from exceeding statutory maximum rates of accrual;
- Forbids employers from paying more than 85 percent of the cost of health insurance; and
- Abolishes tenure for teachers.

All of organized labor, including PGO, has mobilized to stop SB 5 by working to put a referendum on the ballot in November.

### **Senate Bill 5: What Lies Ahead**

Now that the Governor has signed the anti-public-employee Senate Bill 5, labor unions and other organizations are mobilizing to forestall the law and ultimately to repeal it. SB 5 will hurt not only public employees themselves, but also their families, since nearly all public em-

employees will be taking home less money by being forced to pay at least 15 percent for health insurance; receiving less sick leave each year; and likely having their wages adversely affected. While repealing the law will take considerable effort, it can be done as long as everyone pitches in.

The process to repeal SB 5 through a referendum has begun. By law, the first step in the referendum process is to file 1,000 valid signatures with the Ohio Attorney General, along with proposed language summarizing the law. The Ohio Attorney General then reviews the proposed language and determines whether 1,000 valid signatures have in fact been filed. *We Are Ohio*, the committee leading the charge against SB 5, filed 3,000 signatures with the Ohio Attorney General the other day, along with proposed language summarizing the effect that SB 5 would have.

Once the Ohio Attorney General has determined that the above requirements have been met, petitions will be generated for registered voters opposing SB 5 to sign. In order to forestall SB 5 from becoming law, approximately 232,000 signatures from Ohio registered voters will need to be gathered within 90 days. Of these signatures, a portion must come from at least 44 different counties; specifically, there must be signatures from people amounting to 3 percent of the votes cast in the given county during the last election. If these requirements are met, then SB 5 will not take effect, and Ohio voters will have an opportunity to repeal the law in the next election cycle.

As soon as petitions are generated, PGO will be holding meetings to gather signatures to stop SB 5—the biggest attack ever on Ohio’s public employees—from becoming law.

**SB 5 Repeal Effort Underway**

As we await the go ahead from *We Are Ohio*, the group spearheading the effort to repeal Senate Bill 5, PGO is mobilizing its councils for the push in the coming weeks to get the signatures needed to get the repeal of SB 5 on the ballot in November. PGO field representative, *Amelia Woodward*, will be coordinating the efforts from Columbus and maintaining contact with council members interested in participating in circulating petitions.

If you are interested in participating in the petition drive, please email [awooward@professionals-guild.org](mailto:awooward@professionals-guild.org) with a personal email address. We plan to schedule a brief training on how to circulate petitions for each council that is interested in participating as soon as we have the petitions in hand.

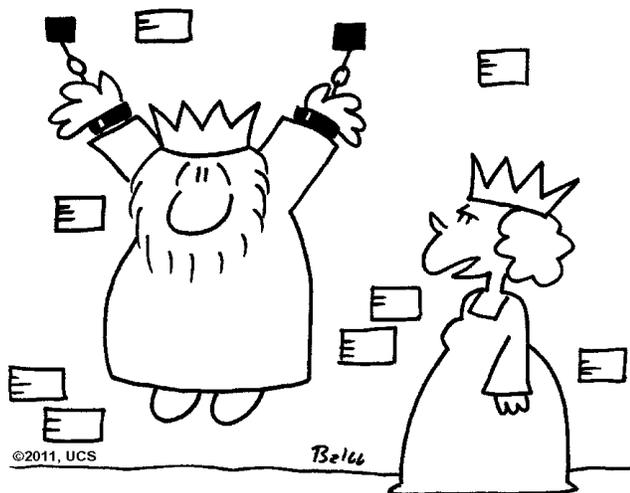
A Facebook page has also been created to post up-to-the-minute information on the effort. Please search for “Professionals Guild of Ohio” from your Facebook page and “Like” us. If your settings are turned on to receive feeds from all of your “liked” pages, you will begin getting feeds from PGO as they are posted.

*We are Ohio, and we will kill this bill!*

**PGO Wins SERB Appeal**

As we previously reported, Montgomery County Children Services and PGO Council 12 have been in negotiations on a successor collective bargaining agreement for many months. While negotiations are ongoing, employers are prohibited from altering matters such as wages. Yet during negotiations, MCCC ceased granting step increases to eligible employees. PGO filed an unfair labor practice charge to contest this unlawful action.

Working with the Ohio Attorney General, PGO tried the case against MCCC for violating state law by bargaining in bad faith. We reported that the judge assigned to hear the case considered all the



"Well, you sure got your message across to the people *that* time."

evidence and concluded that, as alleged by PGO, MCCS was violating the law by withholding step increases from eligible employees. MCCS decided to appeal the decision by the judge, and PGO filed objections to the appeal.

On appeal, the State Employment Relations Board concluded that the judge had reached the correct conclusion and that MCCS had violated the law by withholding step increases from eligible employees. Needless to say, we are pleased that the correct result was reached in the case and that employees are entitled to receive step increases that they became entitled to during negotiations.

**PGO Wins Insurance Arbitration**

Recently Montgomery County Children Services (MCCS) denied health insurance coverage to the wife of a long-time employee and PGO Council 12 member. The PGO member had worked for MCCS for nearly twenty years when MCCS denied his wife health insurance coverage. During the entire time he had worked for MCCS, he had been married to the same woman. He always had covered her through health insurance purchased through MCCS. Around 2010 Montgomery County conducted a health insurance audit to ensure that the county was not providing coverage to ineligible dependents. The employee submitted verification that, as for the past 19 years, his wife was an eligible dependent entitled to health insurance. He received notice that he had successfully verified that his wife was eligible as a dependent.

Shortly thereafter, the employee participated in open enrollment for the upcoming health insurance plan year. During the open enrollment process, which is completed on the computer, employees were not required to include middle initials in the names of dependents. Although unclear, the employee may possibly have inadvertently included his wife's middle initial, which simply had been absent previously, during open enrollment. Despite middle initials being considered unnecessary information, MCCS removed his wife from the health insurance based on one letter from the alphabet. MCCS did this despite the fact that her social security number (which is unique) matched the social security num-



ber that they had one file from previous years, and her first and last name had unquestionably remained the same.

Even though the employee subsequently submitted documentation 'verifying' yet again the obvious fact that his wife with the same social security number and same first and last name was the same person previously covered through the health insurance, MCCS excluded her from health insurance coverage for the entire year, arguing that he had needed to re-verify who his wife was and had not provided verifying information fast enough.

Believing that this is no way to treat any employee, let alone one who has devoted approximately twenty years to an employer, PGO filed a grievance. Yet MCCS remained determined to prevent his wife from having health insurance coverage during the entire plan year. After listening to all the testimony and reviewing the evidence, the arbitrator concluded that MCCS acted improperly in denying health insurance coverage to his spouse under the circumstances.

While we are pleased with the result, we believe that it is regrettable that this hard working, good employee was put through this extremely stressful situation.

**We Need Your Help**

If your name, address or telephone number has changed, we need to hear from you! Help us maintain accurate membership files by contacting the PGO office to update your personal contact information.

## **What you Should Know About Disability Separations**

*By Amelia Woodward, Esq., PGO Field Representative*

Workers that are physically incapable of performing the essential duties of their jobs, or are no longer “fit for duty,” may qualify for a disability separation. A disability separation can be either involuntary or voluntary.

An involuntary separation occurs when an employer believes the employee can no longer perform the essential duties of the job because of an illness, injury or condition. The employer will request that the employee have a medical or psychological exam completed. The employer must provide the employee with a pre-separation hearing and must provide notice to the employee at least 72 hours in advance of the hearing. The employer will consider the medical evidence and testimony at the pre-separation hearing, then will determine if the employee is no longer fit for duty, and if so, issue an involuntary disability separation order. If the employee does not agree with the employer’s decision, the employee has ten days to appeal the separation order to the State Personnel Board of Review.

After an involuntary separation, the employer must notify the separated employee how to apply for reinstatement which must be done no earlier than three months after, and no later than two years from, the date the employee was no longer performing in active work status because of the disabling condition. The separated employee can still apply for disability leave benefits after a disability separation within twenty days of the issuance of the involuntary disability separation order.

Employees who believe they are no longer “fit for duty” can request a disability separation. The employer may grant the disability separation upon request, or may require the employee to submit to a medical or psychological examination. If the exam supports the employee’s request, the employer shall grant the request. And vice versa—if the exam does not support the request, the employer shall not approve the request. The time frame to apply for reinstatement under a voluntary separation is the same as the time frame outlined above for an involuntary disability separation.

If the employee was granted disability benefits by a state retirement system, he or she has up to five years to apply for reinstatement under this law. The area of disability separation is a complicated one, and any member who has questions about this information is encouraged to contact their PGO representative or PGO attorney.

## **Still Your Child (Sometimes): FMLA and Adult Children**

*By John Campbell-Orde, Esq., PGO General Counsel*

Most people know that the FMLA allows employees to take up to twelve weeks of protected leave to care for spouses, parents, or minor children who are suffering from serious medical conditions. Many people do not know, however, that while caring for adult children generally is excluded from FMLA-protected leave, there are exceptions to the rule.

While the exceptions are narrow, they are important. Parents can take protected FMLA leave to assist adult children who are unable to care for themselves due to very serious medical issues. For instance, parents may be able to use FMLA leave for adult children who are seriously handicapped or suffering from certain serious health conditions that require parental care so that the children reasonably can function.

If you have any questions about whether you can use FMLA to care for an adult child, speak with your human resources department. If your human resources department will not grant FMLA leave to care for the child, contact PGO and our attorneys will evaluate your situation to determine whether you are eligible to use FMLA to care for your adult child.

## **PGO Election Scheduled**

Every two years, the Professionals Guild of Ohio elects officers. This election will happen in 2011. The candidates for the various union offices will be finalized during the Nominations Committee meeting following the April 16 Executive Board meeting. Ballots and postage-paid return envelopes will be mailed to the homes of card-signed members in May and must be returned by June 15.