

# The Professionals Guild of Ohio



## PGO UNION NEWS

**December 2012**

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Published by  
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# HAPPY HOLIDAYS

### **Presidential Election: A Win for Workers**

The presidential election is over, so no matter whom you voted for you can be happy at least that there will be no more campaign ads for another few years. For middle-class workers, however, there are some additional things to celebrate when it comes to labor and employment law.

While federal labor law unfortunately remains broken, we can be confident that the National Labor Relations Board (NLRB) will continue to be governed by people who understand that labor law is crucial in giving employees a meaningful voice in the workplace and also understand the need to counteract the unfair pressure employers frequently impose on employees. While we do not expect dramatic changes in the law, it will be interpreted and enforced in a reasonable manner over the next four years and should continue to slowly move in the right direction.

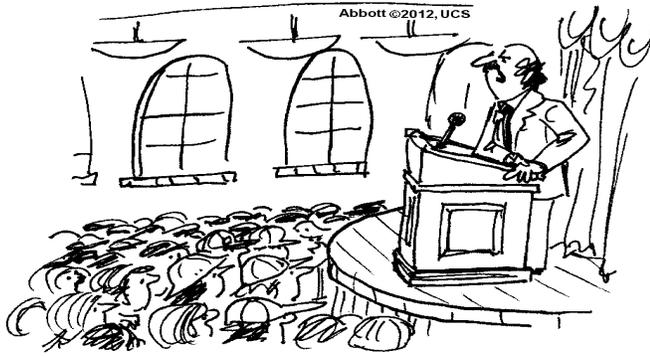
While the NLRB enforces only private-sector labor law, and not public-sector law, its decisions often influence how the law governing public employees is interpreted. And, as we

saw with the Senate Bill 5 fight, public-sector union members and private-sector union members standing together is very important to success.

Furthermore, we can be confident that efforts to enforce other federal employment laws will continue to be strong. The Obama administration ramped up efforts to enforce important employee protections such as overtime, minimum wage, and discrimination laws, and we expect those enforcement actions to continue to be strong.

Lastly, President Obama and his administration has a demonstrated commitment to funding important public services administered by the states. While its stimulus package created some controversy, it provided substantial funds to states and saved thousands of public-sector jobs, allowing county, state, and city employees to continue to serve their communities.

Though we certainly do not expect more state assistance on that scale, we can be confident that when decisions about federal spending and funding are made, the impact that those decisions would have on state services (for example, children's services and services for those with disabilities, etc.), will be treated as important considerations.



“Apparently there has been a bit of confusion about your retirement fund and my bonus.”

**The Great Twinkie Caper**

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

Have you noticed something missing from the convenient store lately? The makers of one of the most iconic American brands, Twinkies, is currently going through its second bankruptcy in eight years. Hostess, the maker of Twinkies, Ding Dongs and other snack foods, is blaming its unions and 18,500 employees for its financial problems despite clear evidence of mismanagement, greed and "vulture capitalism."

The company came out of its first bankruptcy in 2009 harpooned by a private equity group called Ripplewood Holdings, immediately incurring 50 percent more debt than when it first went into bankruptcy in 2004. Along with this unsustainable amount of debt came broken management promises to update factory equipment, trucks and other assets. Management opted instead to give themselves lavish raises, including a 300 percent raise to the CEO.

The employees, represented by the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union (BCTGM), had already made substantial concessions in an effort to keep the company going while it transitioned out of its first bankruptcy. In July 2011, the company stopped paying into the employees' pension fund. During recent contract negotiations, the union, while not seeking better pay or benefits, refused further concessions that would have resulted in a 30 percent pay cut for employees.

Additionally, the company planned to close ten to twelve plants, a move that would lay off workers even if the union had agreed to management's concessions. The company brazenly demanded these

concessions while simultaneously giving its top executives 35 to 80 percent raises.

The federal bankruptcy judge overseeing the bankruptcy proceedings ordered the parties to mediation but, unfortunately, it failed so now the company can proceed with liquidation. This is a classic example of how vulture capitalists are allowed to pillage viable companies and then blame the workers when they inevitably fail. The loss of the Hostess cannot be laid at the feet of workers, but must be blamed on the greed of those at the top.

*Sources: Center for Economic and Policy Research at [www.cepr.net](http://www.cepr.net) and John Nichols with The Nation at [www.thenation.com](http://www.thenation.com).*

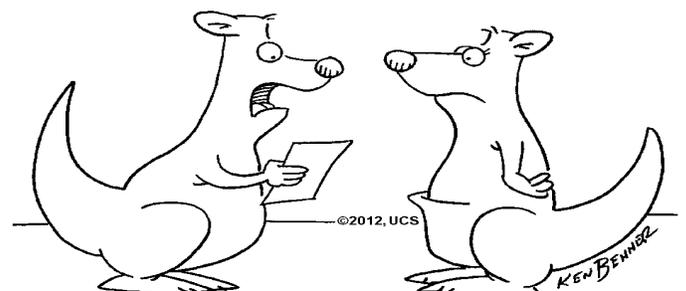
**Pay Stubs Make Good Reading**

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

Do you review your pay stubs to check that the right amount of money is being deducted for federal, state and local taxes or do you throw them in a file and assume the numbers are right? Are you sure that you are receiving the correct amount of sick leave, or other paid time off? If you aren't checking your pay stubs for deductions and credit of accrued leave, it's a good idea to start.

“To err is human.” Since payroll is processed by people, it's a good idea to check for mistakes. You should review the accumulation of paid time off (e.g., sick leave, vacation or other leave) to ensure that you are being credited with the correct of amount of time.

You should also check that you are receiving the correct amount of pay. Your pay may be based on your years of experience/service with your employer or another governmental agency, your education (e.g., college degree, professional license, etc.) and other factors. Check your contract to verify your



“Our paychecks bounced again.”

correct rate of pay. If you are overpaid and the employer catches the mistake, you may be required to repay the overpayments. This can be financially difficult especially if the mistake continued for a long period of time.

If you see a discrepancy on your pay stub, contact your union representative right away. They will be able to help determine whether further action needs to be taken.

**Discipline: Justice Delayed...**

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

There are certain basic principles that employers must comply with to discipline employees consistently with their union contract. These principles generally fall into two different categories: process and substance. The lines between the two are somewhat blurry, but the distinction can be useful.

On the substance side, the employee must have actually committed the act in question and the act must either be obviously wrong or clearly prohibited by a reasonable employer policy. Discipline must also be reasonably proportionate to the misconduct (for example, you don't fire someone for coming back from lunch one minute late). In addition, employees must generally be treated consistently with regard to discipline. If two employees engage in the same misconduct, but one employee is disciplined while the other employee is not (or gets significantly less discipline), the discipline may be overturned.

On the process side, employers must give employees due process before issuing significant discipline. This means an employer must conduct a reasonable and appropriate investigation into the alleged misconduct and give the employee a chance to respond to the allegation before deciding whether to issue discipline. Failing to give due process usually will result in discipline being overturned.

Another important principle is that discipline must be issued within a reasonable time after the employer knew or reasonably should have known that the employee engaged in misconduct. For instance, if an employer learns that an employee has punched a coworker, does nothing and then six months later disciplines the employee for punching his coworker, the discipline probably will be overturned.

This might seem somewhat strange, but there are very good reasons for it. First, employees should have some certainty with regard to discipline. It is unnecessarily disruptive otherwise. If an employer knows or has reason to know about employee misconduct, the employee should also know whether he/she will be disciplined for it. Otherwise, an employee could spend years unsure whether he/she might be disciplined or fired if the boss happens to be in a bad mood one day, which is unfair. It is important that employees know where they stand so they can correct their behavior and move on.

Another important reason is that unreasonable delays are due process related. If an employer has reason to suspect something inappropriate happened, but does not initiate an investigation into the matter, the employer is not complying with its due process obligations and is sending a signal that the employer does not view the potential misconduct as important enough to investigate. Furthermore, witnesses and evidence may become less reliable as time passes.

The obligation that discipline be issued within a reasonable time after the employer knows or should reasonably have known about the misconduct is sometime stated in a union contract and sometimes not. Whether it is stated may impact what exactly the "reasonableness" standard is, *but the principle will apply either way*. Of course, there are really no "hard and fast" rules when it comes to discipline. What is an acceptable delay in discipline may vary from case to case, or based on language in the union contract. So, if this issue comes up in your workplace, talk to your PGO representative.





**Walmart Workers Fight Back: Change is Coming**

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

Walmart, the largest retailer in the world and the largest private employer in the U.S., has waged a successful battle against workers trying to unionize, until now. A series of one-day strikes, taking place all over the country, have brought attention to a movement within Walmart of workers standing up and demanding better wages and working conditions. Although this is not the first time workers have struck Walmart to oppose its unfair labor practices (Florida Walmarks experienced a series of strikes back in 2006), it is the first time the unrest has spread to multiple cities in multiple states. Walmart employees are not unionized but they are organizing through a group called OurWalmart. OurWalmart is not a union, but it is backed by the United Food and Commercial Workers.

Warehouse employees in Illinois, run by a Walmart subcontractor, walked out on strike after they were suspended for taking grievances demanding a living wage and regular work hours to management. Warehouse workers in California struck over poor working conditions. Workers have also filed lawsuits against the warehouse subcontractors for violating wage and hours laws. While these employees don't work directly for Walmart, the subcontractors that pay them are engaged in business solely for the benefit of Walmart. Legally, Walmart isn't responsible for what takes place in the warehouses, but their supply chain is directly affected by any labor actions that arise at the warehouses.

Walmart employees have also used strikes to protest management retaliation. Employees complaining about low pay and poor working conditions have been threatened, suspended and fired. Employees have also filed over twenty Unfair Labor Practice charges with the NLRB, accusing Walmart of firing and severely cutting back the hours of employees who are active in the OurWalmart movement. More protests were held on Black Friday, the biggest shopping day of the year.

**Buy Union Made in the USA**

The holidays are upon us and where we spend our money matters. The Union Label website is a great place to start if you are looking for gifts made in the USA by union workers. Check it out by going to [www.unionlabel.org](http://www.unionlabel.org). You can search by category or key words.

If you are looking for big ticket items like computers, there are two websites to help you find union built, made in the USA PCs. Go to [www.unionbuilt-pc.com](http://www.unionbuilt-pc.com) and [www.computersmadeinusa.com](http://www.computersmadeinusa.com). When booking your hotel reservations when you travel over the holidays, be sure to check [www.hotel-workersrising.org](http://www.hotel-workersrising.org) to avoid staying at a hotel that is being boycotted because of its poor labor practices. And, as always, pack those stockings full of sweet treats from Hershey's, Russell Stover, or See's Candies, all made by union brothers and sisters.

**Tis the Season: Holiday Reminder**

We are in the holiday season. So, this is a good time to remind everyone, especially new employees, that there usually are some restrictions relating to holidays. Like most things, this will vary from union contract to union contract. However, common provisions require an employee to work their last scheduled shift before and after a holiday or be on FMLA leave during that time in order to receive holiday pay. Also, some contracts prohibit using vacation leave to extend a holiday.

If you might have an issue in this regard, check your union contract, particularly the articles on holidays, vacation, and sick leave or talk to your local union representative.

