

The Professionals Guild of Ohio



PGO UNION NEWS

April 2014

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**Published by
Professionals Guild
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house by members of the
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Ohio Limits Voting

*By Paul Henry, Esq.,
PGO Field Representative*

The Ohio legislature has passed two separate laws that will limit voters' ability to cast their votes in November. Senate Bill 238 eliminates the "Golden Week" for voters and Senate Bill 205 adds a variety of other restrictions on voters.

Senate Bill 238 needlessly shortens the early voting period. Prior to the passage of this law, voters could simultaneously register to vote and cast an early in-person ballot up to a week before the election. "Golden Week" has been used by voters who require more flexibility in making it to the polls. No proof has ever been provided showing a problem with how early voting was conducted in the past.

The second law, Senate Bill 205, limits election officials' ability to send absentee ballot applications to voters, prevents any pre-paid postage for voters paid for by the government, expands election officials requirements to assist those with disabilities at the polls, and permits the board of elections to discard votes cast where an absentee ballot identification envelope is "incomplete."

Senate Bill 205 gives discretion to election officials to decide whether

or not a ballot should be counted due to an "incomplete" identification envelope statement. This means the judgment of whether or not a ballot is acceptable will be decided by a distinct few based on whether they believe a voter adequately responded to the new absentee ballot criteria.

The law also conditions sending absentee ballot applications to voters only in general elections years and only if the funds to do so are approved by the general assembly. This means a person's right to vote may become subject to the whims of the legislature if it is unwilling to approve the funds. The one positive aspect of this law is additional help must now be provided to the disabled when they go to cast their vote.

These two bills were rushed through the state legislature with very little debate. After going through the House and Senate on party lines, the bills were signed by the governor making them law.

Our Democracy is undermined when the only way politicians can retain power is to rig the game in their favor to prevent supporters of the opposing party from voting. We'll have to work doubly hard to defeat money loving corporate bosses and their political allies this November.

Criminal Investigations In The Workplace

By Nicole Jackson, Esq., PGO Field Representative

A federal district court in the 7th Circuit, in the case of *Gomez v. Garda CL Great Lakes, Inc.*, held that public employees have the constitutional right to remain silent during a police investigation in the workplace. This case involved a workplace theft, and subsequent internal and external investigation. The employees cooperated during the internal investigation, and also passed a polygraph exam. However, during the police investigation, both employees chose to invoke their Fifth Amendment right to remain silent. Since the employer was working with the police during the investigation, the employer questioned the employees about their refusal to cooperate with police and both employees were fired.

The employees sued, claiming among other things that they had been retaliated against for exercising their constitutional right to remain silent in the police investigation. The court agreed, finding it was possible that the supervisor had retaliated against the employees for exercising their protected constitutional rights. The court held that the constitutional right to remain silent is a public policy, and that it was possible that terminating the employees violated public policy.

Public sector employees enjoy Constitutional protections in the workplace that employees in the private sector do not have. Among those protections is the Fifth Amendment right against self-incrimination. For public sector employees, that means they cannot be forced to answer their employer's questions under threat of discharge and thereby incriminate themselves. Instead, before being compelled to answer incriminating questions, the employee must be extended immunity from prosecution for answering. This right is re-

ferred to as the *Garrity* right, from the 1967 U.S. Supreme Court case *Garrity v. New Jersey*.

A public employer may require an employee to answer questions in an internal agency investigation if the employee is told that no answers will be used to prosecute the employee. Employees should always get an immunity from prosecution, or "*Garrity warning*" in writing before answering any questions in an internal criminal investigation. On the other hand, in an external police investigation the employee should ask for an attorney before answering any questions.

Workers in the private sector do not have these *Garrity* rights since the Fifth Amendment applies only to the government, not private actors. Workers should consult their union representative and an attorney when called into an internal or external criminal investigation to ensure their rights are protected.

Obama Working to Get More Employees Overtime

By Nicole Jackson, Esq., PGO Field Representative

President Obama's latest efforts to help workers comes by way of his proposals to extend mandatory overtime pay to more workers. President Obama signed an executive order at the beginning of March requiring the Labor Department to write new rules to ensure that more workers get overtime pay. This is something the President has power to do without Congress, since the Department of Labor is responsible for setting the rules to carry out the Fair Labor Standards Act.

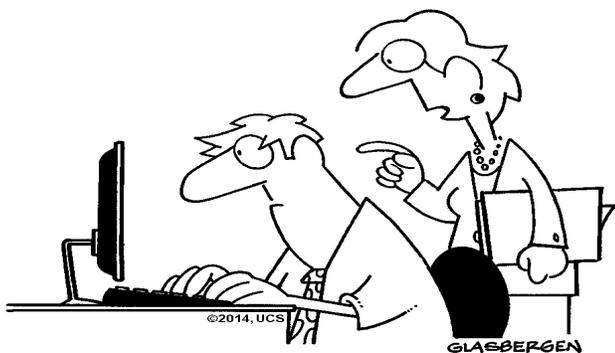
Of course, opponents of paying workers a fair wage for extra work, namely republican House speaker John Boehner from Ohio, are crying that corporations just can't pay, despite the fact that corporate profits and productivity are at record highs.

Under the new rules that President Obama is seeking, fewer salaried employees could be blocked from receiving overtime. Under current law, employers can refuse to pay overtime to workers who earn as little as \$455 a week. In addition, President Obama has proposed to change the rules that allow employers to define which workers are exempt from receiving overtime based on the kind of work they perform (e.g., executives, managers, supervisors, etc.).

The current rules are sometimes abused by employers to avoid paying overtime. Walmart is one company that has been in the news for the abuse of



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SCHWAB



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 "It's our new Productivity Enhancer keyboard. If your typing slows down, it automatically injects coffee into your fingertips."

overtime. In 2008, Walmart agreed to pay \$640 million to settle 63 federal and state class actions for alleged overtime violations. In 2012, Walmart was fined by the U.S. Labor Department for denying workers overtime pay, and ordered to pay \$4.8 million in back wages.

Amazon Warehouse Workers Headed to the Supreme Court

By Paul Henry, Esq., PGO Field Representative

The Supreme Court has agreed to hear a case which will determine whether Amazon.com (and companies like it) will have to pay employees for mandatory security checks. The current case arose in Nevada where Amazon warehouse workers were being required to spend nearly thirty minutes in line at the end of their shifts as part of an anti-theft procedure on the part of the employer. This has raised the question of whether or not the time spent standing in line is compensable under the Fair Labor Standards Act.

After working its way through the lower courts, the U.S. Court of Appeals for the Ninth District heard the case and sided with the employees. This decision was immediately appealed to the Supreme Court. The Ninth District's ruling has drawn the attention of pro-business lobbyists and warehouse workers alike. The lobbyists have filed briefs with the Supreme Court expressing their opposition to the opinion. Workers across the country have been emboldened and are also filing claims in the courts hoping for a ruling like the one by the Ninth District.

Even though standing in line at a security checkpoint has been mandated by the employer, it is unclear whether or not the Supreme Court will choose to affirm the Ninth District's ruling. There has been speculation the Supreme Court hearing this case may be bad news

for workers. The Ninth District has historically been seen as a pro-labor court while the Supreme Court has trended towards conservatism and rolling back workers rights. The case is set to be heard before the court in the upcoming year's October term.

Walmart Retaliates Against Workers for Protected Activities

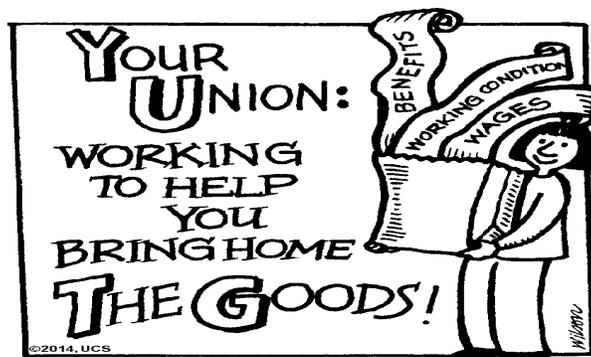
By Nicole Jackson, Esq., PGO Field Representative

Early this year the National Labor Relations Board (NLRB) filed a formal complaint charging Walmart with violating the rights of protesting and striking workers. The NLRB says Walmart illegally fired, disciplined or threatened more than 60 employees in 14 states for participating in legally protected activities such as strikes and protests.

The NLRB complaint against Walmart cited an internal Walmart memorandum that a Walmart official read to workers in February of 2013 that addressed protected labor activities: "It is very important for you to understand that the company does not agree that these hit-and-run work stoppages are protected...should you participate in further union-orchestrated intermittent work stoppages...the Company will treat any such absence as it would any other unexcused absence..."

The complaint also alleges that Walmart violated the National Labor Relations Act when during two national television news broadcasts and in statements to employees at Walmart stores in California and Texas, Walmart unlawfully threatened employees with reprisal if they engaged in strikes and protest.

Walmart is the world's largest retailer, and has one of the most aggressive anti-union operations in place. Workers all over the U.S. have teamed up with labor activists to stage hundreds of protests at Walmart stores in major cities. Hopefully the NLRB charge will be the first of many to come down on Walmart for violating workers rights.



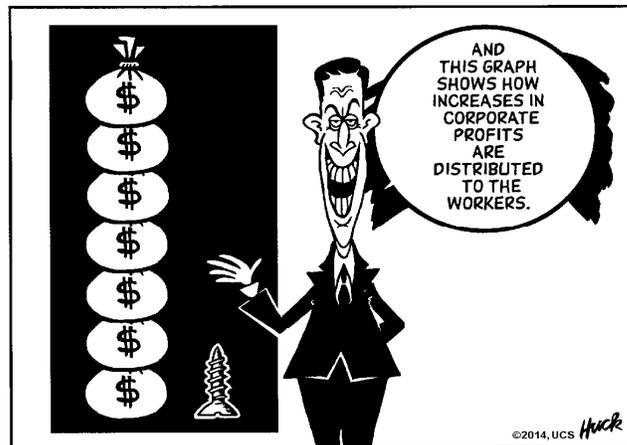
Major Concessions a Sad End of an Era For American Workers

By Paul Henry, Esq., PGO Field Representative

Trouble has been brewing in Washington State for quite some time. Boeing, the well known aircraft manufacturer, insisted that it could no longer continue doing business as usual. Plans to build the new 777X were announced, but it was not clear where the plane would be built. Boeing claimed that unless major concessions were made, it would have to move its business from Washington to a more “economic friendly” climate. When Boeing attempted to get the workers to accept these concessions, the Machinists Union took it to a vote. In what looked to be a decisive rejection of management’s bullying tactics, the proposed concessions were voted down by a margin of 2 to 1.

Boeing has been incredibly profitable for Washington, so much so that the state has given it billions of dollars in tax incentives (corporate welfare) to remain within the state. Sadly, the tax incentives Boeing received weren't enough; it wanted to continue filling its coffers by cutting the benefits it once offered to its workers and by also reducing workers salaries. With so much concern that the state would lose Boeing, the Union was urged to take another vote. This time, the workers accepted defeat and voted narrowly to accept the concessions 51 percent to 49 percent.

These concessions prevent new hires from having the ability to earn a pension. New employees will also take a significant cut in starting pay and will now be required to pay a sizable increase to their healthcare contributions. With all the concessions



that were made, one would think that the company had to cut costs everywhere. This was not the case; executives and investors were rewarded with a 50% increase in stock dividends.

As much as I would like to say that what happened in Washington was a fluke, this has been the trend across the nation in both the public and private sector. Employers, whether or not they have been profitable, have begun to chip away at the benefits Unions have fought so hard for. The public sector held out the longest but the state and local governments have begun transitioning public employees from pension programs to 401Ks all in an effort to "save money." Employers have implemented massive changes in healthcare, switching from more traditional plans to those which are cheaper for them but have a sky high deductible for employees. The one constant in this trend is that the changes are good for the employer but bad for the worker.

Even though a battle was lost in Washington, the war is far from over here in Ohio. Since the Boeing workers are in the private sector, they do not face the same limitations on contract duration that we do. They are stuck in their contract until 2024. In Ohio's public sector, contracts are not allowed to exceed three years. It is important to think of this as an opportunity. Even though employers are attempting to push through cuts in wages and benefits just as they did at Boeing, we have the opportunity to go to the bargaining table much more often. Even though the bargaining may be hard and the employer may attempt to impose cuts, if all the workers stand together, the storm can be weathered, and sometimes it is possible to even come out on top.

