

The Professionals Guild of Ohio



PGO UNION NEWS

October 2017

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PGO Fights to Preserve Bargaining Rights for Corrections Officers

Throughout their existence, public employee unions have been the vanguard for maintaining living wages and fair benefits for state, county, and municipal workers. For this reason, public sector unions have come under attack by conservative Ohio legislators whose agenda is to use every possible means to diminish the rights of workers and cut taxes for corporations and wealthy individuals.

In December of 2010, John Kasich was then a Governor-Elect who vowed to execute public sector collective bargaining reform. After losing his bid to abolish collective bargaining rights for all public employees in 2012, he has changed his strategy and is now stripping rights away in small pieces.

When the Ohio Collective Bargaining Law was enacted in 1983, court employees were excluded from the benefits of that law. At that time, community-based correctional facilities operated under the court system, thus generally excluding those employees guaranteed collective bargaining rights. However, the law did contain a provision that allowed the courts to voluntarily negotiate with

such employees, should it choose to do so.

On April 15, 1999, the Lucas County Court of Common Pleas did establish a bargaining relationship and negotiated an initial collective bargaining agreement with PGO, on behalf of the Lucas County Correctional Treatment Facility employees. These employees are members of PGO Council 15. Successive CBA's have been negotiated by PGO ever since.

In 2006, the law was changed. One of the changes transferred correctional treatment operations from the court to the county. County employees are public employees, so these employees would have collective bargaining rights unless there was a specific exemption for them. So, the legislature amended the collective bargaining law to eliminate the right of workers in community-based or district based correctional facilities to seek union representation or otherwise engage in collective bargaining.

However, the legislature also added a grandfather clause in the law that allowed community and district based correctional employees that were already unionized and operating under an existing CBA to retain their union status. Thus, PGO continued

to represent Council 15 members under this grandfather clause, and these employees had all the rights provided under the collective bargaining law.

Prior to the expiration of the last CBA this summer, PGO filed a timely Notice to Negotiate a successor CBA. Soon after, PGO and CTF exchanged proposals. In its proposals, CTF took the position that its employees were no longer public employees entitled to the rights provided by the collective bargaining law. On May 26, 2017, CTF filed a Motion to Dismiss PGO’s Notice to Negotiate. PGO countered by filing a memo in opposition to CTF’s motion and requesting an order compelling CTF to resume the bargaining process.

CTF bases its refusal to bargain on one tiny provision buried in the 2,874-page Biennial-Budget Appropriations Bill that the governor signed into law on June 30, 2015. Hidden in this bill that contained more than 1,000 statutory amendments and over 240 new laws, was a provision that deleted 11 words and two numbers from the existing collective bargaining law. The deletion removed the grandfather clause in the law allowing community and district based correctional employees that were already unionized and operating under an existing CBA in 2005 to retain their union status.

In opposition, PGO has established that some of the language in the law specifically grandfathering the CTF employees’ collective bargaining rights was not altered or repealed and that the change in the law is in violation of the Ohio Constitution’s Single Subject Rule. Nevertheless, on July 13, 2017, SERB



“By not getting a raise, you’re making a nice contribution to our bottom line.”

granted CTF’s motion and dismissed PGO’s Notice to Negotiate.

PGO has since filed an appeal of the dismissal in the Court of Common Pleas in Franklin County seeking to restore public employee status under the collective bargaining law and reverse SERB’s order dismissing PGO’s Notice to Negotiate.

Workers Block Right to Work in Missouri

The results astounded everyone who thought they knew the Missouri labor movement: more than 300,000 signatures to repeal “right to work.” Thousands of union members and allies marched through the streets of the state capital August 18 to deliver 163 boxes of petitions signed by 310,567 Missourians. The signers called for a referendum to repeal the right to work law passed by the legislature earlier this year.

The signatures gathered were more than three times the number needed. Although signatures were needed in only six of the state’s eight Congressional districts, there were enough to qualify in all eight, and they came from all 114 Missouri counties. The state was forced to postpone the August 28 implementation of right to work until November 2018, when voters will determine its future.

The petition drive was coordinated by We Are Missouri, a coalition of unions both in and out of the state AFL-CIO. Volunteers from Missouri Jobs with Justice and the Sierra Club stepped up too.



“HOLD IT, IS THAT A VIDEO CAMERA?”

With over a year to go until the vote and with deep pockets and interests on each side, the Missouri right to work duel promises to be the most expensive and ugly in state history. Many here are having flashbacks to a previous clash—Labor successfully fought-off a 1978 attempt to put right to work in the state’s constitution. In 2018 Missouri can help reverse the pendulum in the Midwest, not only to undo right to work but also to revitalize its labor movement. This happened after the 1978 fight, and the momentum is there to do it again.

Source: Labor Notes, October 2017

Sixth Circuit Hands Rare Win to Workers

The Sixth Circuit Court of Appeals, whose jurisdiction includes Ohio, has issued a ruling that could benefit workers that have suffered discrimination in the workplace. A public school teacher in Kentucky, was terminated from her position with the Jefferson County Board of Education. On the day she was terminated, she filed a grievance claiming her termination was a violation of her rights under the collective bargaining agreement. Following denial of her grievance by the superintendent, an arbitration was scheduled to begin nine months after the date of termination.

Five months prior to the scheduled arbitration, the teacher filed a charge with the EEOC alleging her termination was the result of discrimination on the part of the county board of education. The CBA with the board of education has a provision that



"I'm giving you 50% off, so it'll only cost you an arm."

states, “[i]f the employee opts to pursue a complaint using another agency, the parties agree to hold the grievance in abeyance until the agency complaint is resolved.” Pursuant to this provision in the CBA, the teacher’s grievance arbitration was postponed pending resolution of the charges filed with the EEOC.

Upset that her arbitration would not proceed as scheduled, the teacher filed a second EEOC charge alleging that the postponement of the arbitration constitutes retaliation for filing an EEOC charge.

Ultimately, the teacher filed suit in the Western District of Kentucky alleging age and race discrimination, and alleging the school retaliated against her by holding her grievance in abeyance during the EEOC process. She also alleged that the teachers association was liable for the retaliation because it agreed to the challenged CBA provision. The district court granted partial summary judgment against the teacher, finding that the grievance abeyance was not an adverse employment action. The teacher then appealed the case to the Sixth Circuit Court of Appeals.

On appeal, the Circuit Court reversed the judgment of the lower court, holding that the provision in the CBA is “retaliatory on its face” for providing an abeyance of grievance procedures until the resolution of any agency action initiated by the complaining employee. This decision provides that grievance proceedings should not be postponed or denied on the basis of a charge being filed by an employee with an outside agency involving the same subject as the grievance. This should allow for faster resolution of claims filed by workers.



"When I was asking about how much memory you had left, it wasn't about you, Andrews!"

U.S. Supreme Court is Now in Session

October is the month that the U.S. Supreme Court begins its annual term. With the appointment of Neil Gorsuch, the Court will have its full nine members for the first time since the death of Justice Antonin Scalia on February 13, 2016. During this term, the Court will be making decisions in several cases that could have major consequences far into the future. These cases raise issues of religious liberty, immigration, cell phone privacy, and voting rights. The Court may also be reviewing the legality of the President's travel ban.

- **Travel ban:** *Trump et al. v. International Refugee Assistance Project, et al.*

The President's order temporarily banning travel from several Muslim-majority countries has been slated to be one of the first matters taken up by the Court. However, the recent revisions to the order, which now includes the three non-Muslim-majority countries of Chad, North Korea, and Venezuela, prompted the Court to cancel oral arguments that had been set for October 10. No word from the Court as to the current status of the case or whether the oral arguments will be rescheduled for this term.

- **Worker Rights:** *National Labor Relations Board v. Murphy Oil USA; Ernst & Young LLP v. Morris; Epic Systems Corp. v. Lewis.*

The Court will decide whether employers can force its employees, at the time of hiring, to sign mandatory arbitration agreements that waive all rights to pursue a class-action lawsuit to obtain redress for the employer's work violations.



- **Partisan Gerrymandering:** *Gill v. Whitford.*

Gerrymandering allows the political party in power to redraw legislative district boundaries in order to maximize the voting effectiveness of its voters while minimizing the voting effect of the voters supporting a rival party. The Court will determine whether using party affiliation as a basis for drawing legislative district boundaries violates the U.S. Constitution.

- **Ohio Voter Registration:** *Husted v. A. Philip Randolph Institute.*

It will be determined by the Court whether or not Ohio's voter registration process, which allows the state to cancel a person's voter registration if they go six years without casting a ballot, is constitutional.

- **Religious Liberty/LGBT Rights:** *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission.*

At issue in this case is whether or not a private business owner can legally refuse to provide goods or service to a gay person or couple because of the owner's personal religious beliefs.

- **Whistleblower Protection:** *Digital Realty Trust v. Somers.*

The Court will determine whether the Dodd-Frank Act, which protects government employee whistleblowers who report wrongdoing to the Securities and Exchange Commission, also protects employees who report wrongdoings internally.

- **Cell phone privacy:** *Carpenter v. U.S.*

This case will determine whether investigators need to obtain a warrant for cell tower data to track and reconstruct location and movements of cell phone users over extended periods of time.

Going Through Changes? Let Us Know

Has your name changed? Have you moved? Do you have a new telephone number? If so, please let our office know. Help us maintain accurate membership files by contacting the PGO office to update your personal contact information. Keeping us informed will allow us to serve you better.