The Professionals Guild of Ohio

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President Trump Strips Away Workers' Rights and Protections

During the Obama Administration, American workers, especially union workers, enjoyed a period of restored labor rights and replenished safety protections. Essentially, President Obama succeeded in reestablishing worker rights to those that existed prior to 1991—prior to the restrictions on employee rights implemented during the two Bush administrations. Here are some examples:

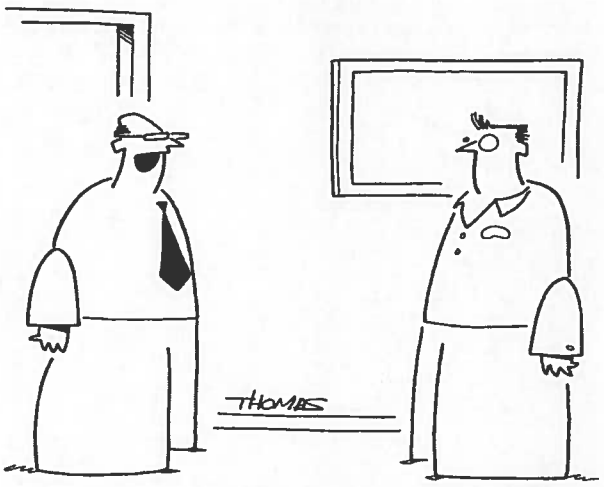
- August 2010 – OSHA revises its 40-year old crane operator regulations, setting a new standard comprehensively addressing key hazards related to cranes and derricks on construction worksites.
- January 2011 – The NLRB ruled that an employer commits an unfair labor practice when it requires employees to sign arbitration agreements that waive their rights to participate in class or collective actions in both judicial and arbitral forums.
- December 2011 – The NLRB issues a rule speeding up the union election process by postponing eligibility litigation and eliminating other management created delay tactics.
- July 2014 – President Obama signed the Fair Pay and Safe Workplaces order requiring businesses competing for large federal contracts to disclose and correct serious safety and other labor law violations.
- December 2014 – The NLRB restored the standard for defining a bargaining unit at a nonacute health care facilities to the "community of interest" standard used at workplaces prior to 1991.
- August 2015 – The NLRB issued a ruling that restored the previous definition of "joint employer" requiring a business organization to include in its bargaining unit the employees of a separate staffing company where there is "indirect" but substantial control over essential terms and conditions of employment.
- January 2016 – A Presidential Executive Order is issued for the collection of gender, race and background information regarding some 63 million workers for better enforcement of our equal pay laws and information regarding discriminatory pay practices.
- March 2016 – OSHA issues final rule creating greater protections for 2.3 million industrial and con-

struction workers exposed to respirable crystalline silica in their workplaces.

- May 2016 - The Department of Labor made changes in the administrative regulations that would have required nearly everyone paid less than $47,476 a year to be eligible for time-and-a-half pay when they worked more than 40 hours a week.
- October 2016 – OSHA issues new rule improving reporting requirements for workplace injuries, emphasizing whistleblower protection requirements.

Over the past six months, President Trump has made it his mission not only to ensure the reversal of all of the worker rights and protections implemented during Obama presidency, but to decrease worker protections to a level below those which existed under the Bush and Reagan administrations.

- March 27, 2017 – President Trump signs bill eliminating the Fair Pay and Safe Workplaces rule.
- April 6, 2017 – OSHA announces suspension of new crystalline silica regulations in the construction industry.
- May 23, 2017 – President Trump proposes a 20 percent cut in the Department of Labor budget, reducing funding for all areas of operation with the exception of an increase in the budget for the investigation into union activities.
- June 16, 2017 – Trump's Labor Department files a court document announcing that it is essentially withdrawing the Obama Administration's overtime regulations.
- June 20, 2017 – OSHA announces suspension of new crane operation safety regulations.
- June 20, 2017 - Marvin Kaplan, an anti-union attorney who has drafted legislation countermanding the NLRB's speedy election rules, is nominated by President Trump for one of the NLRB vacancies.
- June 27, 2017 – OSHA announces suspension of new workplace injury reporting regulations.
- June 29, 2017 – William Emmanuel, an anti-union attorney who strongly supports a corporation's right to force employees to sign mandatory arbitration agreements, is nominated by President Trump for second of two NLRB vacancies.
- June 30, 2017 – Acting Solicitor General for the Trump Administration files court document asserting that the Trump Administration takes the position that mandatory arbitration agreements do not violate the National Labor Relations Act.
- August 29, 2017 – Acting EEOC Chair for the Trump Administration issues memo suspending the collection of gender, race, and background information required in the Obama Executive Order.



"Do as I say and not as I do, means you better work your butt off while I'm taking a nap."

With the expected confirmation of Kaplan and Emmanuel to the NLRB, the deep budget cuts being imposed on the Department of Labor, and the pro-management labor policies being implemented by the dozens each month, President Trump is now the antithesis of the "pro worker" president he said he would be during his campaign.

PGO Wins Another Grievance Arbitration

Following the retirement of an employee occupying a Secretary 1 position in the training department at the Montgomery County Children Services (PGO Council 12), the agency informed the Union that the vacancy was not going posted in accordance with the collective bargaining agreement (CBA). The agency stated that the duties of that position would thereafter be performed by an exempt employee having a title of Human Resources Specialist.

The HR Specialist position was not an existing bargaining unit job classification.

The Union president promptly filed a grievance alleging the agency's failure to post the Training Secretary position and the agency's unilateral removal of that job from the PGO bargaining unit to be violations of the CBA. Unsurprisingly, the agency denied the grievance, prompting the PGO to move the matter into arbitration.

The central arguments presented by PGO were as follows: (1) that the work to be performed by the HR Specialist do not meet the requirements for classification as a "confidential employee" excluded from the bargaining unit pursuant to O.R.C.4117.01; and, (2) the unilateral removal of the training secretary position is a violation of the CBA's recognition clause.

The Ohio Collective Bargaining Law O.R.C. 4117.01(K) defines a confidential employee as "any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

During the arbitration, PGO established that the duties of the new HR Specialist position would be essentially the same "training secretary" duties performed previously by the bargaining unit employee in the Secretary 1 classification. Having established that foundation, it followed that the removal of the position from the bargaining unit violated the Recognition Clause of the CBA.

The arbitrator sustained the grievance, ordering that the job and its work remain a part of the bargaining unit and that the vacancy post and bid procedures be used to fill this bargaining unit position.

Council 13 Marches in Toledo Labor Day Parade

PGO Council 13 members employed by the Lucas County Children Services celebrated Labor Day by participating in Toledo's annual Labor Day parade. PGO members, other children services workers and their families joined with their AFSCME brothers and sisters as they marched with other unions to show their solidarity and respect for all the hard working Americans that have made, and continue to make, this country great. It is noteworthy and commendable that the agency director, Robin Reese (far left), showed her appreciation and support by participating in the parade. Kudos to everyone that took time out on this holiday to publicly demonstrate their commitment to workers and the unions that represent them.

Trump's Supreme Court Appointee: Corporate America's Dream Jurist

Neil Gorsuch, President Donald Trump's pick for a lifetime seat on the Supreme Court, has a long history of making rulings favoring corporations over workers, unions, and consumers. The 49-year-old Gorsuch had a legal career representing corporations before joining the Justice Department. Soon after, President George W. Bush appointed him to the federal bench.

Gorsuch has a reputation of disagreeing with the National Labor Relations Board, writing that he rejects the federal courts' 33-year history of deferring expertise of the NLRB regarding the interpretation of federal law. However, Gorsuch is fine with deferring to the ruling of the NLRB when it favors the employer.

We first reported Gorsuch's apparent bias against workers in the May issue of this year's *PGO Union News*. The following are more examples of Neil Gorsuch's judicial rulings demonstrating his anti-union/anti-worker perspective:

Compass Environmental, Inc. v. Occupational Safety & Health Review Commission

Department of Labor fined an excavating company for violating federal standards after one of its workers died in an electrocution accident. The federal appeals court upheld the $5,500 penalty, but with Gorsuch dissenting. Gorsuch took the position that the Occupational Safety and Health Review Commission did not interpret the rules correctly, and stated he would vote to overturn the Commission's finding that the employer's improper training of an employee could be penalized.

Hobby Lobby Stores v. Kathleen Sebelius

A for-profit corporation claimed "religious freedom" in order to deny its workers health insurance covering contraception, despite the Affordable Care Act's requirement contraceptive coverage requirement. The lower court ruled that a corporation is not a "person" entitled to religious protections, with the reasoning that corporations are business entities that "do not pray, worship, observe sacraments or take other religiously-motivated actions." Gorsuch sided with other judges reversing the lower court, allowing corporate business owners to impose their religious views on workers, whose religious or moral beliefs permits the use of contraception, which was supposed to be protected under the ACA.

Jensen v. Solvay Chemicals, Inc.

In this case, the employer greatly reduced early-retirement benefits without the proper notice required by the Employee Retirement Income Security Act ("ERISA"). Under the ERISA law, an "egregious" failure to provide the notice can result in the eliminated benefits being restored. The employees provided evidence that the employer had financial motive to omit information and that at least some company executives were aware of the company's disclosure obligations. Despite this evidence, Gorsuch wrote that the employer's failure to give notice was an "accidental omission" and, therefore, could not be considered an "egregious failure." The employees were not entitled to restoration of the eliminated benefits.

In the 23 ERISA cases in which Gorsuch has been involved, he has sided with employers 21 times. Despite President Trump's promise to advance the interests of workers, his first appointee to the Supreme Court, Neil Gorsuch, will likely add the fifth vote needed to roll back many protections earned over decades of advancements on behalf of workers.