

# The Professionals Guild of Ohio



## PGO UNION NEWS

March 2015

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### **Judge Denies Butler BDD Motion to Dismiss PGO Lawsuit**

By Nicole D. Jackson, Esq.,  
PGO Field Representative

In Fall of 2013, PGO Council 7 members became aware that its employer, Butler County Board of Developmental Disabilities ("BCDD"), had revised its drug and alcohol testing policy to require random alcohol and drug testing. This unilateral change was implemented without negotiating with the Union during the term of a 3-year collective bargaining agreement. On behalf of its members, PGO filed a federal lawsuit against BCDD, challenging the random drug and alcohol testing components added to its policy.

PGO believes that the random drug and alcohol testing is a violation of the workers' Fourth Amendment rights to be free from unreasonable searches and seizures. The complaint also alleged assault and battery, invasion of privacy, reputational damage, unlawful confinement, deprivation of the workers' collective bargaining rights and wrongful discharge. The defendant, BCDD filed a motion to dismiss all of PGO's claims.

Judge Timothy Black has issued an order, denying BCDD's motion to dismiss the lawsuit. The U.S. Su-

preme Court in *Skinner v. Railway Labor Executives' Ass'n*, held that alcohol and drug testing, absent suspicion, invades the privacy interests of employees and is a search and a seizure governed by the Fourth Amendment, which can only be justified if the employer has a "special need."

Subsequent cases have carved out exceptions to the general rule against random drug and alcohol testing, allowing employees that occupy "safety sensitive" positions to be tested without suspicion when those workers are candidates for (pre-employment), or attempting to transfer to safety sensitive positions. The parties dispute whether or not the workers at BCDD occupy safety sensitive positions.

In his decision denying BCDD's motion to dismiss the lawsuit, Judge Black wrote "no judicial precedent or federal or state statute or rule requires suspicionless random alcohol and drug testing of these employees or establishes that the HSP and CSP jobs are "safety-sensitive." The lawsuit is still pending and trial is set for December 7, 2015.





**PGO Wins Wage Grievance For Council 12 Members**

*By Chauncey M. Mason, PGO Executive Director*

PGO recently won the arbitration of a grievance for veteran workers that were improperly removed from the “grandfather” wage schedule at Montgomery County Children Services (PGO Council 12). On December 1, 2008, PGO and the Montgomery County Commissioners (“County”) entered into an Addendum to the 2007-2010 collective bargaining agreement (“CBA”) pertaining to salary schedules. The relevant part of that Addendum provided for a new pay structure for employees hired after January 1, 2009. However, the Addendum stated that “all current employees as of December 31, 2008 will be grandfathered in the pay structure and provided with the same or higher maximum step pay...” The parties subsequently entered into a successor CBA which incorporated the new wage structure.

PGO believed that all employees working in the bargaining unit prior to December 31, 2008, would be grandfathered indefinitely which meant that they would always receive the highest rate provided under the two-tier wage structure. However, the Union discovered that this was not the case when, in March 2013, a grandfathered employee was placed on the lower paying new hire wage schedule following a promotion. In that case, PGO pursued a grievance to arbitration and the arbitrator split his award, restoring the aggrieved employee’s grandfather status but ruling that the County would be able to revoke the grandfather status of employees that accept a promotion after the date of his ruling, January 2, 2014.

After this ruling was issued, the Union conducted an investigation to determine if any grand-

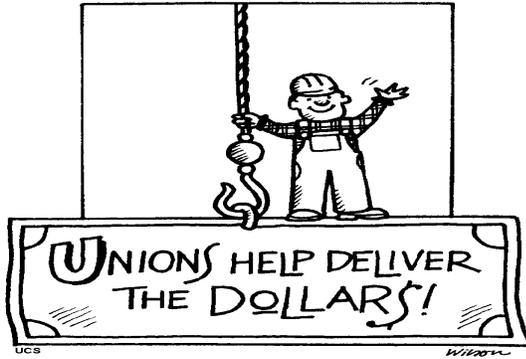
fathered employees had been removed from the Grandfather Pay Scale prior to January 2, 2014. This investigation revealed that nine bargaining unit employees had their grandfather status revoked before this date. Following this discovery, the Union requested that the County restore the grandfather status and pay to these employees. The County refused and the Union’s grievance was eventually appealed to arbitration.

During the arbitration, PGO contended that based on the prior arbitration award, these nine employees were entitled to retain their grandfather status under the Doctrine of Collateral Estoppel. In the prior arbitration decision, the arbitrator made it clear that it was not fair to revoke the grandfather status of the employee because she was not provided with any notice that she would lose this status. The nine employees in the later arbitration also had their grandfather status removed without any notice. Under these circumstances, the nine employees were entitled to have their grandfather status restored.

The arbitrator agreed with the Union in this case and ruled that the County “acted improperly in clear violation of the Addendum to the 2007-2010 Contract pertaining to salary schedules when it revoked the grandfather status for each of the nine employees when they moved to other positions.” He determined that this action deprived these employees of their right to benefit from the higher paying Grandfather Pay Scale. The arbitrator found that the prior arbitration decision acted as a precedent to the current grievance because the nine employees had their grandfather status removed without notice from the County to the same extent as the employee in the prior case. The arbitrator ordered the County to reinstate the nine employees’ grandfather status and place them on the higher paying Grandfather Pay Scale for their particular job grade and step.



The PGO Executive Board is scheduled to meet April 18, 2015 at 10:30 a.m. at the Montgomery County Children Services offices, 3304 North Main Street, Dayton, Ohio.



**PGO Contract Negotiations**

**PGO Council 6**

PGO members working at the Lucas County Veteran Services Commission have settled a wage reopener for the third and final year of their contract. Effective January 1, 2015, base wages on the salary schedule will increase by 2 percent and employees will receive step increases on their anniversary dates this year. Additionally, each employee will receive a \$500 lump sum ratification payment. Council 7 chief steward *Sonya Jenkins*, steward *Kevin Chadwick* and PGO executive director *Chauncey Mason* represented the Union during these negotiations.

**PGO Council 7**

The Union and the Butler County Board of Developmental Disabilities recently ratified a new 3-year contract. Workers will receive a \$550 lump sum in the first and second years of the contract. There will be a contract reopener in the third and final year to negotiate wages, performance pay, pay ranges, and longevity pay. Other changes included a more considerate overtime scheduling procedure and improvements to the sick and personal leave provisions. Council vice-president *Joan Langguth*, secretary *Chris Jasper*, treasurer *Terri Elms*, steward *Cindy Hibbard*, PGO field representative *Nicole Jackson* and PGO executive director *Chauncey Mason* served on the Union bargaining committee for these negotiations.

**PGO Council 10**

Greene County child welfare caseworkers represented by PGO have a new 3-year contract with the Greene County Commissioners, effective February 16, 2015. In the first year, Council 10 members will receive wage increases ranging from 2 to 7 percent depending upon their classification. Longevity pay-

ments will be discontinued at this time but employees receiving a longevity supplement or scheduled to be eligible for one this year will have it rolled into their base pay. All employees will receive 2 percent raises in 2016 and 2017.

Other significant changes include: the parties agreed to incorporate the county administrator in the grievance procedure to consider disputes before submitting them to binding arbitration; a second cash-in request period per year was added to allow for the payment of accrued compensatory time; and, a \$20 per month stipend will be paid to employees electing to use personal cell phones for agency business.

In these negotiations, the Union was represented by Council 10 president *Shane Caldwell*, vice president *Karen Kibler*, secretary-treasurer *Kate Mezera*, steward *Greg Yoxheimer*, delegate *Elizabeth Jackson* and PGO executive director *Chauncey Mason*.

**2014 Cost of Living Holds Relatively Low and Steady**

Every year, the Bureau of Labor Statistics tracks the Consumer Price Index (CPI). The CPI also reflects the rate at which inflation is occurring. Monthly reports are released and at the end of the year, the Bureau provides the average rate at which inflation occurred. In 2014, the CPI increased by 1.7 percent. This is slightly higher than the rate recorded in 2013, 1.5 percent, but the rate of increase has remained relatively low over the last three years. In 2012, the cost of living rose by 1.7 percent and in 2011 the cost of living rose by 3 percent.



"Remember when I walked past your desk this morning and didn't fire you? In today's economy that counts as a raise and promotion."

**Know Your Basic Rights Under the Fair Labor Standards Act**

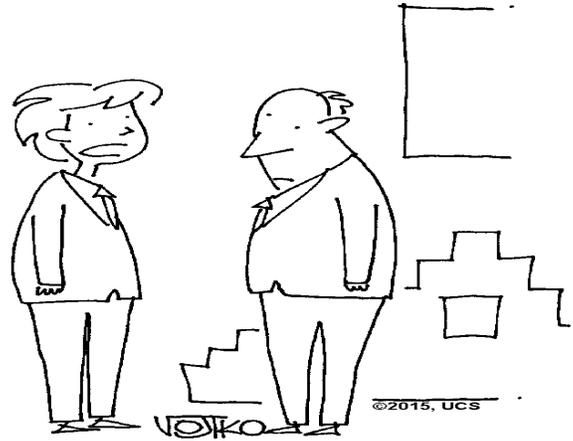
*By Nicole Jackson, Esq., PGO Field Representative*

As part of President Franklin Roosevelt's "New Deal" legislation, Congress enacted the Fair Labor Standards Act (FLSA) in 1938 establishing a minimum wage, the forty-hour workweek, guaranteed "time and a half" pay for overtime hours in certain jobs, and prohibiting child labor. In 1963, an amendment to the FLSA was added to guarantee "equal pay for equal work," or the "Equal Pay Act." The Equal Pay Act ensures that men and women doing the same job with equal skill and responsibility are compensated with equal wages and benefits.

**Wages:** Under the FLSA, workers may not be paid below the federal minimum wage--currently set at \$7.25 per hour. Workers must also receive "one and a half times pay" for any hours worked over forty in a week. The FLSA does not require employers to pay employees for time off, such as vacation, holidays, or sick days. However, many employers provide full-time workers with paid time off, especially in unionized workplaces.

**Hours:** Surprisingly, the FLSA does not put a limit on the number of hours a worker may work in a week, unless the worker is a minor. However, the FLSA requires that the worker be paid "time and one half" pay for all hours worked over forty in one week. Workers that are exempt from the FLSA overtime pay requirements are not entitled to overtime pay. The nature of the work involved dictates whether a worker is exempt or non-exempt from FLSA overtime pay. The most common exemption from the FLSA overtime pay requirements is for those workers that are considered executive, administrative, or professional.

State or government agencies may legally allow their employees time off in place of wages provided that it is in accordance with the terms of a collective bargaining agreement, or if the employer and worker agree to the arrangement before work begins. In the private sector, the practice of employers offering workers time off from work in lieu of cash payments for overtime is illegal in most situations. Comp time must be awarded at the rate of one-and-a-half times the overtime hours worked.



"I dress like you in the hopes of being paid like you."

**Lunch and Break Periods:** Many people mistakenly believe that the FLSA requires an employer to provide a lunch break or rest periods. Some states have laws that require lunch and break periods, but Ohio does not have a law requiring lunch and break periods. The FLSA only requires that if an employer does offer a short break (lasting between 5 to 20 minutes), that the worker is paid for the break. "Bona fide" meal periods (typically at least 30 minutes), are not required to be paid under the FLSA. For a handy reference guide to the FLSA, see [www.dol.gov/whd/regs/compliance/hrq.htm](http://www.dol.gov/whd/regs/compliance/hrq.htm).

**PGO Election Scheduled**

The PGO Constitution requires an election of state union officers this year. Nominations for officers must be made by a Nominations Committee composed of one member chosen by each PGO Council. Additional nominations may be made by a petition signed by one percent of the membership and presented to the executive director by April 15. The candidates for the various union offices will be finalized during the Nominations Committee meeting following the April 18 executive board meeting. Ballots will be mailed to members in May and must be returned by June 15.

**We Need Your Help!**

The PGO is updating its membership data base to prepare for the upcoming election of state union officers. If you have moved, or if you have never received mail from PGO, please contact our office to update or confirm your contact information.