



ated to change this, and personal leave will no longer be deducted from sick leave. PGO also negotiated an improved leave donation policy that is better tailored to Lucas County VSC's size. Some other less significant changes to the contract were also made.

PGO's bargaining team consisted of PGO general counsel *John Campbell-Orde*, as well as local leaders *Jana Oyerbides* and *Sonya Glover*.

## **Shape Shifter: Changes in Your Bargaining Unit**

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

It is important for all bargaining unit members to pay attention to any new positions created by their employer as well as the work being done by non-bargaining unit employees. Keeping a watchful eye on such matters helps maintain bargaining power for all employees in the bargaining unit.

Bargaining units—the group of employees represented by your union—often change over the years. After employees initially vote to have a union, the State Employee Relations Board (SERB) certifies the union. When certifying the union the SERB describes which positions are included in the bargaining unit (and thus represented by the union) and which positions are excluded from the bargaining unit (and thus not represented by the union). Over time, however, employers frequently create positions that did not exist when the union was certified. Consequently such positions are not listed in the certification describing which positions are included in the bargaining unit and which positions are not.

Disputes sometimes arise between employers and unions about whether a newly-created position should be included in the bargaining unit. It is important for PGO to know about any new positions created by your employer so that PGO can determine whether the position should be included in the bargaining unit and take appropriate action. PGO can petition the SERB to include the new positions in the bargaining unit.

It is also important to keep an eye on what work non-bargaining unit employees are doing. Under state law, public employers cannot have employees who are outside the bargaining unit perform work

that is done by bargaining-unit employees, unless the union agrees or the employer bargains with the union to impasse. Supervisors are excluded from most bargaining units in Ohio. Thus if a supervisor starts performing a work typically done by subordinates who are in the bargaining unit, the employer likely is engaging in impermissible behavior.

## **PGO Council 13 Expands**

The Lucas County Federation of Children Services Workers, PGO Council 13, recently added new members through the state's Opt-in Voluntary Recognition procedures. In an Opt-In VR, a majority of a group of employees have to sign membership cards before a petition for Union representation is filed with the employer and the State Employment Relations Board. SERB will certify the Union if the employer does not object or file a petition for election within twenty-one days after the petition is filed.

Last year, the Lucas County Children Services created new educational specialist and educational monitor job classifications and filled these positions with three employees. Unfortunately, the agency decided that these new positions would be excluded from the Union. The Union investigated the situation and determined that these positions should be included in the bargaining unit. All three employees wanted to join the Union so a petition for voluntary recognition was filed. The agency initially objected to the petition but subsequently withdrew its objections and agreed to allow union representation.

## **PGO Fights for Union Job**

A little more than three years ago, the Montgomery County Commissioners decided to abolish the county's children services board and merge children services with the county's department of job and family services. PGO represents all of the children services employees and another union, AF-SCME, represents the non-professional employees at JFS.

This merger has created many challenges for the PGO. One of the biggest concerns has been thwarting management efforts to undermine PGO representation through the merger and subsequent reorganization.

The most recent example of this occurred when management transferred a worker from JFS into children services without notifying PGO. Management decided that this worker would be excluded from PGO representation. PGO disagreed and filed a Petition for the Amendment of Certification to accrete the position into the PGO bargaining unit. The employer objected to the Union's petition. SERB, however, was able to mediate a resolution to the disagreement that resulted in the job being added to the bargaining unit.

**Voice of a PGO Union Leader**

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

Roy Higgins, our featured leader this month, is President of Council 8 and recently led the Union in the completion of its successor contract negotiations for the contract years 2010 through 2013. Roy has been a Children Services Caseworker for nine years—the first five years as an Investigator in Protective Services at Muskingum County and the last four with Guernsey County Children Services.

**What is your educational background?**

*I completed my Bachelor of Science degree in 2000, majoring in criminal justice and corrections. I was hired in at Muskingum County Children Services as a child abuse investigator and although my background wasn't in social work, I was suited to the position because I wanted to help people, and also protect children.*

**As Council President, what struggles are you faced with on a day to day basis?**

*Luckily, there haven't been any major problems within our council. I think it speaks a lot to the strength of the agency that there isn't a lot of conflict.*

**What would you tell someone who is not unionized about why they should be in a Union?**

*I would tell the non-unionized person to compare the benefits of union county agencies with those of a non union county agency that does similar work. My wife and I are perfect examples; she works in a non union county, where they have twice the staff*



**Roy Higgins, PGO Council 8 President**

*that we do and twice the caseload, and I make significantly more with good benefits. In her county they also took away the hour paid lunch, which we have fought hard to keep because it is such a great benefit. I would also say that when someone is non-union they don't have a say in the matters that are important at their jobs, but in a union everyone does have voice.*

**What are the biggest advantages to union membership in your opinion?**

*I think the biggest advantages to union membership are the increased benefits, job security, and that it minimizes favoritism, like if management gives someone the boot in order to hire someone they like. It also minimizes favoritism in terms of the pay rates of the employees.*

**How can the PGO improve in helping you in your role as council President?**

*I have no complaints. I haven't needed much, and whenever someone has tried to get a hold of the staff at PGO, someone at PGO has gotten back to them in timely manner. So I can't say there are any ways I can think to improve services from the PGO.*

**What activities are you involved in outside of the Union and your job?**

*I am an outdoorsy kind of guy and I like to spend free time off-roading, doing some four wheeling, and traveling around the rural areas of Ohio.*

**The Americans with Disabilities Act: When Are You Covered?**

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

As our health insurance and health related costs increase, more and more Americans are foregoing the yearly check up to save money in these difficult economic times. This trend could lead to exacerbating physical problems that may turn into a disability. Knowing what your rights are at work if you are living with a disability is important.

The plain meaning of the ADA is that employers cannot discriminate against an employee with a disability. To discriminate is to treat someone differently based on a characteristic that is protected by law. Disabilities are protected by law. The employer is required to provide a reasonable accommodation when requested by the employee. The employer must provide the requested reasonable accommodation to enable the employee to carry out the essential functions of their jobs. The employer does not have to provide a reasonable accommodation if it would impose an undue burden on the employer.

A disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

Whether a disability is a physical or mental impairment depends on whether the disorder or condition affects a body system. The list of impairments is not exhaustive, but there are exclusions such as compulsive gambling and pyromania.

For the impairment to qualify as substantially limiting, it must either prevent someone in that range of jobs from doing something the average person with the same skills, training and abilities can do, or significantly restrict the condition, manner or duration of something an average person with the same skills, training and abilities does.

What constitutes “Major Life Activities” prong of the ADA test is less clear. The U.S. Supreme Court has held that “major life activities” are those that are of central importance to daily life. In determining this, courts may consider the nature and severity of the impairment, any permanent or long term

impact of the impairment and the duration of the impairment.

The employer is basically required to provide any modification that will help an employee with a disability do the job in response to a reasonable accommodation request. A reasonable accommodation request must be made by the employee with enough specific information to inform the employer that the accommodation is needed because of a disability. The reasonable accommodation must only be effective at helping the employee do their job, not necessarily that it is the “best” means available, or the one accommodation the employee suggested, to help the employee do their job.

An employer may not be required to provide a reasonable accommodation if it would cause the employer an undue hardship. An undue hardship is anything that is significantly difficult or expensive to provide, considering the type of business it is, and the resources available, among other factors a court may consider.

*Author’s Note: The ADA is a relatively complicated law that continues to be developed through litigation. This article is intended for informational purposes only and should not be construed as legal advice. If you have questions about the ADA, please contact the EEOC, OCRC, PGO or an attorney.*

