



be contributed to flexible spending accounts (FSA).

There are *many* other changes that will take place to health insurance in the U.S. under the new law. An excellent resource, with the effective dates of the changes to the health insurance system, can be found at <http://www.kff.org/healthreform/upload/8061.pdf>.

## **Your Weingarten Rights**

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

What, exactly, are Weingarten rights? You, as a union member, have a right, under law established by the US Supreme Court in a case called *NLRB v. Weingarten* (hence the name) and adopted in Ohio in a case called *Davenport*, to request union representation before or during an investigatory interview. An investigatory interview is any meeting with your employer, or a representative of your employer, who is questioning you in order to obtain information that you reasonably believe could be used as a basis for discipline or other adverse action.

Investigatory interviews may relate to the following subjects: absenteeism; accidents; compliance with work rules and policies; damage to company property; drinking/drugs; falsification of records; tardiness; poor attitude; poor work performance; slowdowns; theft; or, violations of safety rules.

It is a good idea to have a union steward present at an investigatory interview for a number of reasons. The union steward can be a witness to the events that occur during an investigatory interview. The union steward is trained in how to represent employees during an investigatory interview and can object to intimidating tactics or confusing questions, warn an employee against losing his or her temper and can raise extenuating factors during the interview to explain the employee's conduct. There is a limitation on the union steward during the investigatory interview in that he or she cannot negotiate the purpose of the interview and cannot impede the interview in any way.

Many PGO contracts require management to inform members of their right to union representation during investigatory interviews. However, some contracts do not have this requirement. If your con-

tract does not require management to inform you of your right to union representation, then it is up to you to request your union steward before or during the interview as the employer does not have to inform you of this right.

If you request union representation, the employer may ask you to give up your right to union representation, but you should always refuse to give up this right. If you request union representation and the employer ignores your request and continues to question you, you may refuse to answer the questions and the employer is guilty of an unfair labor practice and charges may be filed.

Of course, not every meeting with your supervisor will be an investigatory interview; routine meetings related to the proper performance of a job duty usually are not investigatory in nature. However, if a supervisor begins questioning you about your job performance, becomes dissatisfied with the answers and engages in hostile behavior, the meeting becomes an investigatory interview and Weingarten Rights apply.

Should you be called into a meeting that you think could lead to discipline, read the following statement to management BEFORE the meeting starts: *"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without representation present, then I choose not to participate in this discussion."*



## **Workplace Investigations Concerning Criminal Conduct**

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

There are many rights that employees possess because they work for the government. As discussed in previous editions of the *PGO Union News*, government employers are subject to restrictions imposed by the United States Constitution. For example the 4<sup>th</sup> Amendment to the United States Constitution, which prohibits the government from engaging in unreasonable searches or seizures, applies to government employers. While we usually think of the 4<sup>th</sup> Amendment as prohibiting police from searching our homes without a search warrant or from arresting us without good reason, the 4<sup>th</sup> Amendment also protects government employees to some degree by recognizing that government employers should not unreasonably invade privacy that employees may be entitled to within the workplace.

Similarly the 5<sup>th</sup> Amendment to the United States Constitution applies to government employers. Generally speaking the 5<sup>th</sup> Amendment prohibits the government from compelling individuals to incriminate themselves. The now famous Miranda rights, which we have heard countless times on television shows, come from the 5<sup>th</sup> Amendment. What many people do not realize, however, is that the 5<sup>th</sup> Amendment's privilege against self-incrimination sometimes applies in the context of government employment.

There are two main components to the 5<sup>th</sup> Amendment protection provided to government employees. The first and more established protection is that if the government employer is investigating work-related misconduct that also constitutes criminal activity and demands that an employee answer questions concerning the criminal activity under threat of discharge, any answers that the employee gives cannot be used as evidence to criminally prosecute the employee. The second protection concerns whether the employee can be disciplined by his/her government employer for refusing to answer questions during an investigation into whether the employee engaged in work-related misconduct where the misconduct also involves criminal activity.

While the law is not as clear on this point as on

the previously-mentioned protection, the Ohio Supreme Court has held that a government employee may be disciplined for refusing to answer such questions where the employee has been assured that the statements from the employee will not be used in any criminal prosecution. In reaching this conclusion, the Court reasoned that the employee involved in the case in question was subject to discipline because, although her employer threatened her with discipline for refusing to answer its questions, the employer (a police department) effectively immunized the employee by assuring her that no statements that she made would be used to criminally prosecute her.

Thus, while the Court has noted that the issue has not been squarely addressed yet, it would appear that a government employer in Ohio likely is prohibited from disciplining an employee who refuses to answer questions concerning work-related misconduct, where the employer threatens severe discipline and does not, or cannot, inform the employee that statements made by the employee will not be used in criminal prosecution of the employee (i.e. where the employer does not, or cannot, confer the proper immunity on the employee's answers).

## **Organize, Organize, Organize!!!**

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

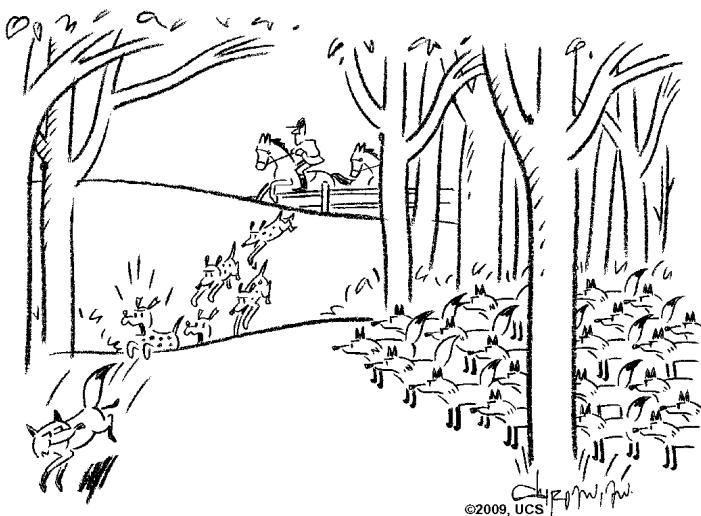
As a union field representative, it was a no-brainer to sign that union membership card when I started at PGO (I eagerly did!). But, for many others, the choice to sign a card, or even consider unionizing, is a difficult one. The reasons people don't sign a card or don't wish to organize are varied. The most common refrain we hear from non-members of our bargaining units about why they don't sign a card is that they get the benefits anyway, so why sign a card?

While attending the Labor Notes Conference, a light-bulb went off for me. I have always been a union supporter because being unionized seems so much more logical than not being unionized, but I never considered why people should sign a card if they are already unionized and get the same benefits as members in their bargaining unit. Then I realized (and I hate to admit that this has taken me so long) that in order to win gains at the bargaining table, as

well as in other aspects of our jobs, our strength is in our numbers. Employers consider the size and strength of the membership when going into negotiations, because if a large and united unit doesn't get what it wants, employees could walk out on strike or engage in tactics to put on the pressure to get the benefits they desire. It is much more difficult for union negotiators to make inroads at the bargaining table if management knows that the union does not have the full support of the entire bargaining unit.

Another benefit to being a member of the PGO is the opportunity to take a leadership role in the local and statewide union. The Union is run by you, the members, and being a member allows each one of you the opportunity to have a voice in how the union is working for you. This same benefit can be extended to non-members who sign a card; they can then vote on the contract, vote on their leadership and run for office. It's a win-win!

It is so important that we ensure new employees and non-union members of our bargaining units sign membership cards so we are united and strong as a union when we go back to the table. I firmly believe that the only way we can make significant gains in our workplaces, for better wages, better working conditions and better benefits, is if we show our strength in numbers and unite behind our common goals. So if you know someone in your bargaining unit who is not a member, please ask them to consider joining the union. If you know someone working in the public sector who is not unionized, ask them to consider organizing with the PGO! We would be happy to have them join us!



**Let Them Drink Beer!**

The PGO newsletter regularly addresses serious topics that concern employees, such as changes in the law and various activities that PGO is engaged in to protect employee rights. So we thought that from time to time we might lighten the mood with some quirky true stories involving employees, employers, and unions..

This month's story comes to us courtesy of Denmark, where apparently the citizens love beer as much as the Germans do. Approximately 250 employees of a beer maker in Denmark recently went on strike when their employer cut their daily beer ration from three beers per day to two. You read that correctly—the beer ration was reduced to two bottles per day. It seems like the employer might consider the strike a compliment to the quality of the beer!

**Summer Vacations and Solidarity**

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

I recently checked out a YouTube video of a group protesting the Westin St. Francis hotel in San Francisco in solidarity with the employees fighting for a fair contract, and it got me thinking, as the summer vacation season approaches, where should we stay if we prefer to patronize unionized hotels that are treating their employees fairly?

Unite HERE (The Hotel Employees & Restaurant Employees International Union and the textiles union) provides a searchable database of all the unionized hotels in the United States and Canada on their website at <http://www.hotelworkersrising.org/HotelGuide/>.

Wherever you are thinking about vacationing this summer, check to see if the hotel you are staying at is indeed unionized and also, that it is not being boycotted by going to this handy website and searching for your hotel. If you haven't yet planned where you will stay when you go on vacation this year, you can also search cities and states for unionized hotels that are not currently in the midst of any contract disputes with the employees.

Enjoy your summer vacation!