SB2883
SD1 Late

LATE

The Twenty-Fifth Legislature
Regular Session of 2010

THE SENATE
Committee on Judiciary and Government Operations
Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

State Capitol, Conference Room 016
Tuesday, February 23, 2010; 10:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2883, SD1
RELATING TO EMPLOYMENT PRACTICES

The ILWU Local 142 supports S.B. 2883, SD1, which clarifies that conflicts between a collective bargaining agreement an an employer's policy that concern accrued and available sick leave shall require the terms of the collective bargaining agreement to prevail.

S.B. 2883, SD1 addresses a practice among a growing number of employers to undermine sick leave provisions of collective bargaining agreements or employment policies by adopting "no-fault attendance policies" which penalize employees for absence from work irrespective of the reason for the absence. An employee could be absent for a legitimate illness and able to supply a valid medical certification of the illness yet be subject to disciplinary action due to the total number of absences in a specified period.

By law, employers are required to provide temporary disability insurance or, in the alternative, sick leave that meets statutory requirements. By passing the TDI statute, lawmakers recognized that workers will become ill or injured from time to time and should be entitled to benefits to allow them to stay away from work during those periods of illness or incapacity. The law was not intended to allow employers to penalize employees for using TDI or sick leave benefits. However, over the years, employers have instituted "no-fault attendance policies" that allow employees to be disciplined or discharged for absences due to legitimate, verifiable illnesses. Such abusive employer practices should be prohibited.

Attendance policies implemented by employers are, in most cases, implemented unilaterally, not subject to bargaining, and are considered "no-fault." This means any absence, regardless of the nature, will count toward disciplinary action, which is progressively severe. In the case of one attendance policy that we know of, four incidents in a 12-month period will result in a verbal warning, five will merit a written warning, six will result in suspension, and seven will mean discharge. An employee could take sick leave for legitimate illnesses and still be subject to this progressive discipline.

We do not believe such action is consistent with the intent of the TDI law. If an employee has a cold or the flu, an employer should want the employee to stay away from work, especially if the employee's job requires contact with guests, customers, and co-workers. However, a no-fault attendance policy serves as a disincentive for employees to use their accrued and available sick leave. Thus, no-fault attendance policies and sick leave/TDI policies would seem to be in conflict.

We can understand an employer's desire to curb abuse of sick leave. We can also understand an employer's desire to establish a "no-fault" policy to remove subjectivity from the process in determining what is "legitimate" illness and what is not. However, we strongly believe that use of sick leave or TDI for illnesses that do not rise to the level of FMLA protection should not be used to penalize an employee.

SD1 limits application of this prohibition only to unionized workplaces with collectively bargained agreements in effect. While we would prefer the law to apply to all workers, this compromise will address some of the problems that have sought a legislative remedy for several years. The ILWU urges passage of S.B. 2883, SD1. Thank you for considering our testimony.