

Bargaining Unit Nominees

Elections for our Local Officers and Business Unit Officers and stewards will be held this month. Ballots will be mailed from Anacortes on December 12th. **They must be returned to the Anacortes Post Office by January 5th, 2009.** The Ballot Committee (which consists of Retirees) will pick up the ballots from the Post Office at 5 pm, Monday January 5th and will proceed to tally them that evening.

Thanks to the nominating committee: Dennis Mosher, Rodney Shimata, Bob Bell, and Dean Harada. Your vote is important!

Unit Chair Candidate

Jason Sakamoto is running for re-election as our business unit Chair. He has served as Chair since February of this year.

Jason works as a Board Operator 1 in Area 2 on Crew 3. He started working for Tesoro in March 1992. Before that, Jason worked as an auto mechanic on exotic sports cars.

In his spare time, he likes to play with remote control vehicles of all types: cars, boats, tanks, airplanes, helicopters.



Recording Secretary Candidate



Clay Deaver has been working at Tesoro since October 2001 in the Maintenance Department as an I & E Technician A.

Clay is an amateur radio and electronics hobbyist; he has had his ham radio license since 1972. He plays bass and guitar in blues bands, lastly gigging with the Night Shades from Kailua. He's a former member of the American Federation of Musicians Local 668.

In his spare time, Clay grows vegetables, tastes fine wines, and is a member of the Waikiki Yacht Club where he served on 3 Transpac Yacht race committees. Clay says, "I grew up in a union town where you shopped at union stores, ate in union house restaurants and bought your car from a unionized dealership or drove in shame; ahh, those were the days!"

Workers Committee Candidates (vote for three) in alphabetical order

Glen Furumizo is a candidate for the Workers Committee. He works as a Maintenance I & E Technician A. He started work at Tesoro in August 2005. Prior to that he was a airplane mechanic for Aloha Airlines for 17 years.

Glen can be seen riding his Kestrel bike with his wife, Karla. She's a Social Worker for HMSA and is also Glen's nutritional influence. In addition to cycling, he can be found swimming at Ko'olina Lagoon a few times a week. In his spare time, he also likes the remodeling projects around the house. He just finished tiling in the kitchen and plans to install a hardwood floor in the living room soon..



Jon-Michael Kalima is running for re-election to the Workers Committee. He started Tesoro as a Labor Pool Trainee in October 2001 and now is an Outside Operator 5 in Area 1, Crew 3.

His union obligation began as a Shop Steward for Area 1, Crew 3 in 2005, then elected to the Workers Committee in 2007. In his own words, "being a Committee Member has been an enlightening

experience and wishes all members could witness and share in union activities”.

Jon’s two loves in life are his son Christian and daughter Bree, they bring him all the heartache and pride one man can live with. His two joys are surfing and golf with a dash of travel to exotic lands. With the new contract and negotiations looming, Jon feels the union and its members are in good hands and we all need to stand tall and come together pointing in one direction.

John ‘Bubba’ Smith started with Tesoro in October 1992, after retiring from the U.S. Army. He began his career in the Tankfarm and has achieved the position of Board Operator I and is currently assigned to Crew 3, Area 3.



John serves as President of the Board of Directors for his Condominium Association. Under his leadership and guidance, the Association has prospered and gained the respect of its residents. He is also an Assistant Pastor of the New Life Christian Faith Fellowship Church serving the Waianae Community, doing various projects and services benefiting the residents.

In his spare time (when he has some) he enjoys cruising in his Hummer, spending “quality” time with his foster children and grand kids, working around his house, doing community projects (homeless outreach, Christmas Hoolaulea at his Assn, etc), and whatever is asked of him (work OT, helping out someone in need, doing his honey do list, etc)

Dominic Vespoli is running for re-election to the Workers Committee. He began working at Tesoro as a contract designer. After 3 ½ years as a contractor, he was hired by the I&E shop in August 2005.

He has served the Union as a Steward and has been a Workers Committee member since February.

Dominic and his wife, Joshlyn have one son, Dominic, Jr. In his spare time, he enjoys playing poker, exercising and playing ukulele with his band Kaena.



Times Supermarket is not “at home in the Islands.”

- Times deleted jobs of long-time employees, many of them female.
- Times drastically reduced healthcare for injured workers and their families.
- Times took away the guarantee of a 40-hour workweek for full-time workers.
- Times eliminated the employee annuity (retirement) plan.
- Times lied when it said it would recall union workers by seniority.

Times decided to eliminate the jobs of deli workers in all its stores last year, long before the economy became an issue. The majority of these workers were female with more than 25 years of loyal service. Some were just a few years away from retirement. But Times decided to put profits before people, eliminating the unionized deli worker positions and moving the positions to the non-union grocery department where it could employ new workers with less or no experience to save on costs. What about the loyal union worker with seven kids to feed, or the grandmother who needed to work a few more years before becoming eligible for Social Security and Medicare? Where do you find a new job at 62 years old? Is that the way to treat our kupuna?

And then there's the issue of injuries on the job. It is not uncommon for people in this industry to suffer work-related repetitive stress injuries, strains and sprains, slips and falls, and even more serious injuries such as the loss of fingers or limbs. Overtime work increases the likelihood of these injuries, especially when fatigue sets in. Times drastically reduced their responsibility to provide continuous medical coverage for injured workers. Doesn't Times value its workers? What about their spouses and keiki? Times would be taking medical coverage away from them, too. How is that caring for the Times 'Ohana?

How can workers provide for their families without the guarantee of a 40-hour workweek? Hawaii's high cost of living makes the guarantee all the more important. The owners of Times expect a profit. The management at Times expects a full paycheck. Why shouldn't workers expect to make a reasonable living, too? Workers need a 40-hour workweek and benefits to support themselves and their families. Where's the Aloha for people who simply want to make an honest living?

When workers have loyally committed their entire working lives to you and your company, and put their heart and soul into growing the company's business, they deserve recognition for it. Despite admiration for the work ethic of its employees, Times no longer wanted to contribute to the long-standing annuity plan that was established to provide employees with retirement funds at the end of their careers. Where's the company's loyalty to the workers and all their efforts to make Times successful?

Where's Times' business ethics? Times publicly stated that it would recall union workers by seniority after the strike ended, but then they proceeded to recall whomever they wanted to without regard to seniority. Most employers, particularly in Hawaii, will follow through on promises, especially those made publicly. Disregarding promises shows disrespect for those involved and the community as a whole. How can you trust a company that says one thing and does another?

We invite you to continue to check the www.boycotttimes.com website for informational updates and current commercials that present the workers' side of the story in this ongoing labor dispute.

Please support us and Boycott Times until workers have a fair contract. Mahalo!

Adapted from the BoycottTimes.com website

Japanese union rallies to support Pacific Beach Hotel workers

A Japanese delegation of union leaders rallied yesterday (Dec 1st) at the **Pacific Beach Hotel** in support of the local union representing more than two dozen hotel workers laid off a year ago.

International Longshore & Warehouse Union Local 142 has been protesting against the hotel since workers lost their jobs in Dec. 2007 following management changes, including the cancellation of a operating contract with **Outrigger Enterprises Group**.

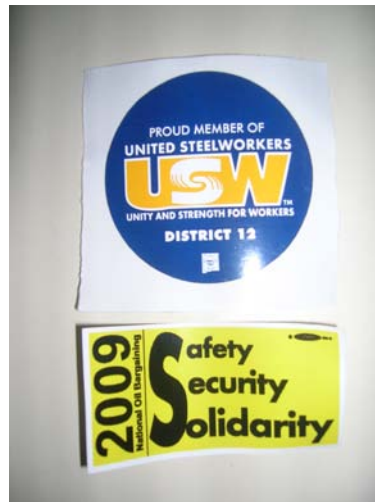
The hotel claims that the layoffs were due to a decline and further anticipated drop in Waikiki tourism.

The national AFL-CIO contacted Japanese unions, including the **Japanese Trade Union Confederation**, seeking their support against claims of violations of U.S. federal labor law. The Japanese unions aren't affiliated with ILWU. The union said the hotel rejected a petition signed by 64,785 workers from Japan calling for Pacific Beach to reinstate the 32 laid off workers. The union has sent out thousands of notices to travel wholesalers to discourage bookings and later called for a boycott

The **National Labor Relations Board** has issued a formal complaint against owner **HTH Corp.** following charges by the union of unfair labor practices. A ruling is not expected until late 2009.

Adapted from the 12/2/08 Star Bulletin

Want this Prize?



Answer the question:

What fruits were crossed to produce the nectarine?

The first 10 people to email the correct answer to usw.hawaii@gmail.com will have their name entered into a drawing for 2 USW stickers.

Congratulations to last month's winner, Gene O'Brien. He correctly answered the question: Which country produces 2/3 of the world's vanilla: MADAGASCAR! Gene won a USW magnetic bumper sticker. Congratulations, Gene!

Contract Countdown To 02/01/09



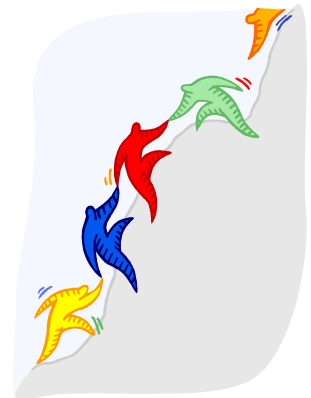
As of our December meeting 12/11/08, there are 52 days (4 paydays) left in our Contract

Our contract ends just 52 days from our December general meeting. The best way to avoid a strike is to prepare for one. The Union encourages each member to diligently save 3 months wages between now and February 1, 2009. That's just 4 paydays away.

Keep yourself informed as we move forward with negotiations. You can still be added to our mailing list by submitting your home email address to leowoitas@hotmail.com

Your USW International has developed a newsletter specifically for the oil sector. It's called **The Oil Worker**. A USW staff member will be putting it together and posting regular updates on the USW web site. Check it out by going to - www.oilbargaining.org

Mahalo for your Kokua!



The USW 12-591 would like to acknowledge the following individuals for their contribution in helping their Union brothers and sisters:

Dennis Mosher

Landon Iwamoto

Rodney Shimata

Dean Harada

Robert Bell

Hope & Goodwill



Jon Kalima's father died on November 26, 2008; his step father died on December 10, our deepest sympathy to Jon and his family.

Tom Lind to Visit Island

Tom Lind is scheduled to arrive in Honolulu on Wednesday, December 17. He will meet with the Workers Committee to prepare for negotiations the next day. If his schedule permits, perhaps we will re-schedule our December General Meeting so members will have an opportunity to meet with him.

DOL's Final Rule on Family and Medical Leave

Providing Military Family Leave and Updates to the Regulations

On November 17, 2008, the Department of Labor (DOL) published its final rule to implement the first-ever amendments to the Family and Medical Leave Act (FMLA), signed into law by President Bush in January 2008, which provide new military family leave entitlements and to update the regulations under the 15 year-old FMLA. The final rule will improve communication between employees, employers, and health care providers to make the law operate more smoothly, and provide needed clarity for both workers and employers about their responsibilities and rights under the FMLA leave. The Final Rule does not reduce the law's coverage for workers who need FMLA leave. Updating and clarifying the regulations will reduce uncertainty and provide greater predictability in the workplace for everyone. The Department of Labor engaged in an extensive, transparent, multi-year fact-finding and review process before proposing changes to the FMLA in February 2008. The final rule was developed in response to:

- The passage of the military family leave provisions in the National Defense Authorization Act (NDAA) for FY 2008, Public Law 110-181;
- U.S. Supreme Court and lower court cases invalidating portions of the Department's regulations;
- The Department's 15 years of experience enforcing and administering the FMLA;
- Discussions with various stakeholders over the past six years (including a Fall 2007 stakeholder meeting that included health care providers); and
- The receipt and review of over 4,600 public comments in response to the 2008 Notice of Proposed Rulemaking (NPRM); the review of over 15,000 public comments in response to the Department's December 2006 Request for Information (RFI); and the publication of the June 2007 FMLA Report on the RFI. The Final Rule is responsive to the many comments submitted to the record. The Department received numerous comments in response to the RFI and the proposed rule reflecting the value of the FMLA to employees who take leave to care for a newborn child, for an ill family member, or for their own illness. However, DOL also heard about areas where the regulations are not working well; where there is ambiguity in the regulations; and where there is increasing friction between employers and employees as a result of these problems. The final rule improves on these areas and addresses many of these concerns.

HIGHLIGHTS OF THE REGULATORY CHANGES IN THE FINAL RULE

Military Family Leave: Section 585(a) of the NDAA amended the FMLA to provide two new leave entitlements:

1) Military Caregiver Leave (also known as Covered Service member Leave): Under the first of these new military family leave entitlements, eligible employees who are family members of covered service members will be able to take up to 26 workweeks of leave in a "single 12-month period" to care for a covered service member with a serious illness or injury incurred in the line of duty on active duty. Based on a recommendation of the President's Commission on Wounded Warriors (the Dole-Shalala Commission), this 26 workweek entitlement is a special provision that extends FMLA job-protected leave beyond the normal 12 weeks of FMLA leave. This provision also extends FMLA protection to additional family members (i.e., next of kin) beyond those who may take FMLA leave for other qualifying reasons.

2) Qualifying Exigency Leave: The second new military leave entitlement helps families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. This provision makes the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for "any qualifying exigency" arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. The Department's final rule defines qualifying exigency by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

The final rule also includes two new DOL certification forms that may be used by employees and employers to facilitate the certification requirements for the use of military family leave.

The *Ragsdale* Decision/Penalties: The final rule includes a number of technical regulatory changes to reflect current law following the U.S. Supreme Court’s decision in *Ragsdale v. Wolverine World Wide, Inc.*, which invalidated a penalty provision of the regulations. *Ragsdale* ruled that the current regulation’s “categorical” penalty for failure to appropriately designate FMLA leave, which in that case would have required the employer to provide an additional 12 weeks of FMLA-protected leave after the 30 weeks of leave the employee had already received, was inconsistent with the statutory entitlement to only 12 weeks of FMLA leave and contrary to the statute’s remedial requirement that an employee demonstrate individual harm. Several other courts have also invalidated similar categorical penalties in other notice provisions of the current regulations. The final rule therefore removes these categorical penalty provisions and clarifies that where an employee suffers individualized harm because the employer failed to follow the notification rules, the employer may be liable.

Light Duty: At least two courts have held that an employee uses up his or her 12 week FMLA leave entitlement while on a “light duty” assignment following FMLA leave. Under the final rule time spent performing “light duty” work does not count against an employee’s FMLA leave entitlement and that the employee’s right to restoration is held in abeyance during the period of time the employee performs light duty (or until the end of the applicable 12-month FMLA leave year). If an employee is voluntarily performing a light duty assignment, the employee is not on FMLA leave.

Waiver of Rights: The final rule codifies the Department’s longstanding position that employees may voluntarily settle or release their FMLA claims without court or Department approval. Although this is not a change in the law, the clarification is needed because a recent Fourth Circuit decision interpreted the Department’s regulations as prohibiting employees from either prospectively or retroactively waiving their rights. Prospective waivers of FMLA rights continue to be prohibited under the final rule.

Serious Health Condition: The final rule retains the six individual definitions of serious health condition while adding guidance on three regulatory matters. One of the definitions of serious health condition involves more than three consecutive, full calendar days of incapacity plus “two visits to a health care provider.” Because the current rule is open-ended, the Tenth Circuit has held that the “two visits to a health care provider” must occur within the more-than-three-days period of incapacity. Under the final rule, the two visits must occur within 30 days of the beginning of the period of incapacity and the first visit to the health care provider must take place within seven days of the first day of incapacity. A second way to satisfy the definition of serious health condition under the current regulations involves more than three consecutive, full calendar days of incapacity plus a regimen of continuing treatment. The final rule clarifies here also that the first visit to the health care provider must take place within seven days of the first day of incapacity. Thirdly, the final rule defines “periodic visits” for chronic serious health conditions as at least two visits to a health care provider per year since that provision is also open-ended in the current regulations and potentially subjects employees to more stringent requirements by employers.

Substitution of Paid Leave: FMLA leave is unpaid. However, the statute provides that employees may take, or employers may require employees to take, any accrued paid vacation, personal, family or medical or sick leave, as offered by their employer, concurrently with any FMLA leave. This is called the “substitution of paid leave.” The current regulations apply different procedural requirements to the use of vacation or personal leave than to medical or sick leave. Complicating matters even further, the Department has treated family leave differently than vacation and personal

leave. Accordingly, under The final rule, all forms of paid leave offered by an employer will be treated the same, regardless of the type of leave substituted (including generic “paid time off”). An employee electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the employer’s policy that apply to other employees for the use of such leave. The employee is always entitled to unpaid FMLA leave if he or she does not meet the employer’s conditions for taking paid leave and the employer may waive any procedural requirements for the taking of any type of paid leave.

Perfect Attendance Awards: The final rule changes the treatment of perfect attendance awards to allow employers to deny a “perfect attendance” award to an employee who does not have perfect attendance because of taking FMLA leave as long as it treats employees taking non-FMLA leave in an identical way. This addresses the unfairness perceived by employees and employers as a result of requiring an employee to obtain a perfect attendance award for a period during which the employee was absent from the workplace on FMLA leave.

Employer Notice Obligations: The final rule consolidates all the employer notice requirements into a “one-stop” section of the regulations and reconciles some conflicting provisions and time periods under the current regulations. Further, the final rule clarifies and strengthens the employer notice requirements in order to better inform employees and allow for a better exchange of information between employers and employees. Employers will be required to provide employees with a general notice about the FMLA (through a poster, and either an employee handbook and upon hire); an eligibility notice; a rights and responsibilities notice; and a designation notice. In order to ensure employers are able to better inform employees under the new notice provisions, the final rule extends the time for employers to provide various notices from two business days to five business days.

Employee Notice: The final rule modifies the current provision that has been interpreted to allow some employees to provide notice to an employer of the need for FMLA leave up to two full business days *after* an absence, even if they could have provided notice more quickly. Lack of advance notice (*e.g.*, before the employee’s shift starts) for unscheduled absences is one of the biggest disruptions employers point to as an unintended consequence of the current regulations. The final rule provides that an employee needing FMLA leave must follow the employer’s usual and customary call-in procedures for reporting an absence, absent unusual circumstances. The final rule also highlights (without changing) the existing consequences if an employee does not provide proper notice of his or her need for FMLA leave.

Medical Certification Process (Content and Clarification): The final rule, which is the result of significant stakeholder feedback (including a Fall 2007 meeting at the Department on medical certifications) recognizes the advent of the Health Insurance Portability and Accountability Act (HIPAA) and the applicability of the HIPAA privacy rule to communication between employers and employees’ health care providers. Further, in response to specific concerns raised by employees about medical privacy, the Department has added a requirement to the final rule that specifies that the employer’s representative contacting the health care provider must be a health care provider, human resource professional, a leave administrator, or a management official, *but* in no case may it be the employee’s direct supervisor. Further, employers may *not* ask health care providers for additional information beyond that required by the certification form. The final rule also improves the exchange of medical information by updating the Department’s optional Form WH-380 to create separate forms for the employee and covered family members and by allowing—but not requiring—health care providers to provide a diagnosis of the patient’s health condition as part of the certification.

In addition, the final rule specifies that if an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee seven calendar days to cure the deficiency. These changes will improve FMLA communications, protect the privacy of workers, and help ensure that the employees who need leave will get it and not be subject to repeated requests for additional information or be denied FMLA leave on a technicality.

Medical Certification Process (Timing): The final rule codifies a 2005 DOL Wage and Hour Opinion letter that stated that employers may request a new medical certification each leave year for medical conditions that last longer than one year. The final rule also clarifies the applicable time period for recertification. Under the current regulations, employers may generally request a recertification no more often than every 30 days and only in conjunction with an FMLA absence unless a minimum duration of incapacity has been specified in the certification, in which case recertification generally may not be required until the duration specified has passed. Because many stakeholders have indicated that the current regulation is unclear as to the employer's ability to require recertification when the duration of a condition is described as "lifetime" or "unknown," the final rule restructures and clarifies the regulatory requirements for recertification. In all cases, the final rule allows an employer to request recertification of an ongoing condition every six months in conjunction with an absence.

Fitness-For-Duty Certifications: The current FMLA regulations allow employers to enforce uniformly-applied policies or practices that require all similarly-situated employees who take leave to provide a certification that they are able to resume work. This is called a "fitness-for-duty" certification. The final rule makes two changes to the fitness-for-duty certification process. First, an employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. Second, where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

Chairman's Column

by Jason Sakamoto



If you don't count when we first went union, this will be the first time we will be bargaining with the company. We may be the second refinery that Tesoro acquired; we are the youngest of Tesoro's refineries when it comes to being part of a union. Five out of the six other Tesoro sites have been unionized for quite some time now, all before Tesoro acquired them. Each site has Business agents, Unit Chairs, and Delegates that make up our Tesoro Council and I have learned much from them. We have been in almost constant contact with each other on various issues, including bargaining. I am proud and honored to be a part of the process and to know these people that make up our Tesoro Council and Union.

With that said, our International rep Tom Lind will be arriving here on the 17th and we will be having our first meeting with the company on the 18th on December. Some sites have already met and others will meet later. We will be having special meetings concerning bargaining issues. ***Please make sure to attend***; nothing great was ever achieved without enthusiasm (and Hawaii is enthusiastic)! There is a time to be visible and that time is now. For the last few weeks we have been doing a few mobilization activities such as stickers and the petition. For the few of you out there who think that sticking a sticker on your helmet, coffee mug or other personal items is not that big a deal, I'd like to remind you of the stir the "11/17/06" stickers brought about. There were more than a few people from management who thought that was a big deal. Should any member of the management team give you a hard time about any stickers or any other concerted activity, please bring it to the attention of the Workers Committee.

Elections are right around the corner and the ballots should be sent out soon and you should be getting them sometime mid-December, so keep an eye out for them.

On November 17, 2008, the Department of Labor (DOL) published its final rule to implement the first ever amendments to the Family Medical Leave Act (FMLA). Some of these changes will be the Military Caregiver Leave which will allow eligible employees who are family members of service members who suffered injury or illness in the line of duty to take up to 26 workweeks of leave in a "single 12 month period". This is an increase from the current 12 weeks, and hopefully there will be none of our brothers or sisters will need this. Another amendment is to count FMLA against them in Attendance Award programs. Currently you can still take FMLA

and still get your quarterly Perfect Attendance Award. There are more changes than this, but I thought that this might be enough to pique your interest.

Check out www.oilbargaining.org for more information about the ongoing negotiations.

Don't forget to read our Local newsletter online at www.usw12-591.org/newsletters.htm
You can also read past issues of this newsletter.

Read the AFL- CIO's LabelLetter at www.unionlabel.org and find Union-made goods and services.

If you would like to be added to the mailing list for this newsletter, send your email address to leowitz@hotmail.com .