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MEETING  
AGRICULTURAL LABOR RELATIONS BOARD

STATE CAPITOL  
Room 4203  
Sacramento, California

THURSDAY, AUGUST 28, 1975  
1:20 P.M.

ORIGINAL

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MEMBERS PRESENT

- 1  
2 Bishop Roger M. Mahony, Chairman  
3 Mr. Joseph R. Grodin  
4 Mr. Joe C. Ortega  
5 Mr. LeRoy Chatfield  
6 Mr. Richard Johnsen, Jr.

MEMBERS ABSENT

- 7  
8  
9 NONE

STAFF PRESENT

- 10  
11  
12 Ms. Annie M. Gutierrez, Executive Secretary  
13 Ms. Jeanne Bosetti, Secretary  
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AFTERNOON SESSION

1:20 P.M.

CHAIRMAN MAHONY: Ladies and gentlemen, the afternoon session will now come to order.

Before we resume with our testimony and our witnesses, I would like to give formal, official notice that beginning seven days from today; that is, the 4th of September, 1975, the California Agricultural Labor Relations Board will meet at its Board offices at 4433 Florin Road, Sacramento, at 9:00 a.m. We'll meet that day and every working day thereafter for the month of September at 9:00 o'clock to consider the following Agenda items each day:

Number 1. Personnel matters.

Number 2. Administrative problems and staffing.

Number 3. Reports from General Counsel concerning the field operations.

Number 4. Report from Executive Secretary.

Number 5. Discussion of policy matters.

Number 6. Review of current representational matters; and

Number 7. Review of current unfair labor practice matters.

To the extent possible a more detailed Agenda will be provided seven days prior to the hearing, but this notice would constitute official seven-day notice that we will meet



1 at 9:00 a.m., beginning next Thursday.

2 Is Assemblyman Alatorre present? All right.

3 We will then proceed to our next witness.

4 Mr. Don Dressler, Legal Counsel representing the  
5 Western Growers Association.

6 Before Mr. Dressler testifies, I will at the  
7 conclusion of the formal testimony of all subsequent  
8 witnesses ask Mrs. Gutierrez to give a very brief Spanish  
9 summary of the testimony for the benefit of those who do not  
10 understand English.

11 MR. DRESSLER: Mr. Chairman and Members of the  
12 Board, I'm Don Dressler, representing Western Growers  
13 Association. Our address is 1811 Quail Street, Newport  
14 Beach, California.

15 Western Growers Association represents fresh  
16 vegetable, melon, potato, and strawberry growers in  
17 California. And in that capacity, serving as their legal  
18 counsel, I have represented a number of growers in labor  
19 matters, including some hundred and fifty employers who at  
20 this time have labor contracts with either the Western  
21 Conference of Teamsters or the United Farm Workers Union.

22 With regard to the rules of access, we submitted  
23 to the Board on August 11th, a comment on what was then  
24 proposed Rule 17. We pointed out a number of what we feel  
25 are serious legal problems concerning the jurisdiction of the

1 Board to issue certain regulations and the restrictions on  
2 them should they desire to issue some kind of a rule  
3 regarding access.

4 Without taking time at this point to go into those  
5 again, I'd like to restate our observations and, if necessary,  
6 we're prepared to make another copy available of that letter.  
7 We do think just basically, however, that there are serious  
8 constitutional rights of property owners involved in the  
9 proposed rule, plus the question of the jurisdiction of the  
10 Board to issue any regulations which would be more pervasive  
11 or more expansive than the regulations adopted by the  
12 National Labor Relations Board and the precedent that it has  
13 established.

14 There are provisions in the statute that talk  
15 about following applicable N.L.R.B. precedent and with  
16 regard to the issue of access, there's quite a line of  
17 cases regarding access.

18 The Board has asked if there is a need for an  
19 access rule, and there have been a lot of comments today  
20 about the need for a clear, simple, understandable rule  
21 that everyone can follow. The problem with a clear, simple,  
22 understandable rule is that agriculture in California,  
23 particularly the fresh vegetable, melon, and potato industry,  
24 is not a uniform monolithic creature that has similar  
25 conditions all over.

1           We have, for example, in some parts of the State  
2 strawberry growers that are harvesting their crops  
3 approximately eight to nine months of the year. The small  
4 work forces, many of these growers only have a few acres of  
5 land, perhaps ten acres of land involved in the production  
6 of strawberries. Their employees live year-round and are  
7 residents of communities such as Watsonville and Castroville  
8 or Oceano or other portions of the State. These individuals  
9 are as much a part of the community and in as stable an  
10 employment situation as any industrial employer that would be  
11 covered by the National Labor Relations Act.

12           There's no lack of reasonable alternative methods  
13 for unions to talk to these kinds of individuals. They live  
14 in the community. They're available. In most of these  
15 communities there are established union offices in both  
16 United Farm Workers Union and various Teamster Unions and  
17 other unions as well. They know of the activities of unions.  
18 They are listening to the local Mexican language or Spanish  
19 language radio stations or to other publications or news media  
20 available to them.

21           Just as any other member of the community has an  
22 opportunity to know what's going on, so do these agricultural  
23 employees have an opportunity to know their rights under the  
24 State Farm Labor Law and the desires of unions.

25           On the other hand, we have some seasonal operations

1 where, particularly with regard to cantaloupe or some other  
2 crops, we have a highly perishable commodity that must be  
3 processed, must be harvested, and significant crop damage and  
4 loss can occur if the crop isn't harvested when the crop is  
5 ready. At this point if we have rules of access which  
6 provides an interference with the production and harvesting  
7 of the crop, not only will the grower of the crop suffer,  
8 but if the whole crop is damaged, the employee's opportunity  
9 to work on that job will be jeopardized.

10           There are employees of all kinds in agriculture.  
11 Some companies have only five employees or less, others have  
12 literally thousands of employees. We cannot see that there  
13 would be a broad, general rule that would apply to all these  
14 circumstances. Instead, we can concur with the concept that  
15 there should be a reasonable available knowledge to workers  
16 of the unionization efforts of various unions. The workers  
17 should have the right to take opportunity to avail  
18 themselves of this information. But I'd like to emphasize,  
19 the paramount right is that of the worker, not of the  
20 union.

21           And perhaps when the unions are asking for rights  
22 of access and they're stating that this would be the most  
23 effective way to talk to the workers, that we're confusing  
24 that they don't have the right to interfere with other  
25 people's rights, the right of the workers or the right of the

1 farmers just because something would be easier for them or  
2 more beneficial to them. You have to balance right. And  
3 the National Labor Relations Board and the U. S. Supreme  
4 Court and other Federal Courts have had to wrestle with this  
5 problem for a long time.

6 There are industries and jobs covered by the  
7 National Labor Relations Act that are as transient and as  
8 seasonal and present as many varied conditions as  
9 agriculture in California does. And we would suggest the  
10 appropriate procedure is to follow those established  
11 guidelines and those methods to deal with the situation.

12 Even as simple a rule as saying that you would  
13 designate one part of an employer's property for a union  
14 organizer to, one union organizer or two union organizers  
15 to talk to crews makes no sense if we don't think there is  
16 any justification in a situation where a man only has five  
17 year-round employees; they live in the local community; they  
18 have an opportunity to talk to the union somewhere else.  
19 In fact, we question the jurisdiction of the Board to grant  
20 access to union organizers under that kind of a circumstance.

21 One of the questions that the Board has asked is:  
22 What are the damages that would result if they adopted an  
23 access rule? Unfortunately, we are not dealing with a non-  
24 violent situation. I don't think that it's necessary to  
25 characterize any one party as responsible for what has

1 happened in California agriculture in the last ten years.  
2 But I personally have been involved representing employers  
3 in farm labor disputes for the last five years, and there  
4 have been repeated numbers of instances of confrontations  
5 and violence and disturbances, property damage, and the list  
6 could go on and on. In fact, just this week in the Santa  
7 Maria area, where two Teamster organizers, as I understand it,  
8 were talking with a crew on non-working time and several  
9 United Farm Workers organizers came to talk with that crew,  
10 that a fight erupted among the union organizers that didn't  
11 involve the employer or the workers, but the tensions are  
12 that high and they're going to be higher.

13 I don't think there's any secret that there are  
14 literally hundreds of workers in many parts of the State that  
15 are leaving California now rather than to be here to be  
16 subjected to harassment or intimidation which they fear in the  
17 next few weeks as the State Farm Labor Law is implemented.  
18 In this kind of a situation to encourage confrontations or  
19 to encourage this kind of continuing hostility, we think,  
20 would be disadvantageous to the workers most, but also to the  
21 employers and to the unions, and it cannot help establish  
22 farm labor peace.

23 If it's the objective of the Farm Labor Board and  
24 the State Farm Labor Law to bring labor peace to California  
25 agriculture, then we suggest the best way to do that is to not

1 encourage confrontation or to not encourage violence, but to  
2 adopt, instead, the principles of the National Labor Relations  
3 Board and the Courts interpreting that law.

4 I would point out that the United States Supreme  
5 Court has found that enactment of the National Labor  
6 Relations Act did not repeal trespass laws and that the  
7 balance, if it had to be applied, meant balancing employer's  
8 rights to run his business and to run his property with the  
9 union access. There is no way that any rule you could adopt  
10 would apply to all of these circumstances. And certainly  
11 there is no jeopardy to allowing Unfair Labor Practice  
12 Hearings or challenges to elections to resolve some of these  
13 issues because there is no need, we feel, to have an instant  
14 solution in the next 15 days to all of the problems of  
15 California agriculture.

16 If there are employer misconduct, and there  
17 probably will be; and if there is union misconduct, and there  
18 probably will be, let there be a procedure to file charges,  
19 to have hearings, to examine the facts and to make rulings  
20 that affect those circumstances.

21 We are advising all of our members in California of  
22 the precedent under the Federal law and we're suggesting that  
23 until they learn otherwise, they follow that precedent.  
24 Many employers that we represent are voluntarily allowing  
25 unions to have access to their property during non-working

1 time to talk to their employees, and this includes not just  
2 Teamster organizers but the United Farm Workers organizers  
3 as well. But other employers do not do that because of the  
4 nature of their work force, the fact that they have a  
5 perishable crop that they cannot stand interruption in or  
6 because of the fear of violence. I've personally seen much  
7 of this violence and there are others who probably will  
8 testify later who can tell you about it as well. But the  
9 emotions are too high to run the risk to say we'll adopt a  
10 rule and hope nothing happens. It's just too dangerous a  
11 situation and the need for secret ballot elections is too  
12 paramount to have it affected or influenced by violence.  
13 How can you have a fair, impartial, secret ballot election  
14 when the day before or two days before there were fist-fights  
15 in the field? It just doesn't make sense and it's not  
16 necessary.

17 I think that that concludes my remark. We feel  
18 that it is inappropriate for you to adopt a rule that would  
19 apply to all circumstances. That there are precedents  
20 available and we think that this would be within the  
21 jurisdiction of the Board to follow.

22 CHAIRMAN MAHONY: Thank you very much, Mr. Dressler.

23 I'm going to call on Mrs. Gutierrez now to give a  
24 brief summary in Spanish for those who speak in Spanish.

25 [Thereupon, the foregoing testimony was



1 translated from English to Spanish, in  
2 summary, by Annie Gutierrez.]

3 CHAIRMAN MAHONY: Thank you very much,  
4 Mrs. Gutierrez.

5 Any Members of the Board have questions they'd like  
6 to ask Mr. Dressler? Mr. Johnsen.

7 BOARD MEMBER JOHNSEN: Mr. Dressler, we've heard  
8 quite a bit about the migrant nature of the work force in  
9 fresh vegetables. You probably employ more field hands than  
10 any other single industry in California. How migrant is your  
11 work force, would you say?

12 MR. DRESSLER: Well, it's somewhat difficult to  
13 say, but in most of the producing areas of the State, the  
14 migrant nature of the work force is really not the accurate  
15 description because of the growing seasons of vegetables.  
16 The vegetable production in the Coast Regions of the State,  
17 in the Salinas Valley, the Watsonville area, Oxnard, and  
18 Santa Maria basically run twelve months of the year for  
19 various commodities. Other crops such as lettuce, for  
20 instance, is growing and being harvested essentially twelve  
21 months a year by the same workers in different locations but  
22 with the same company.

23 And we have found frankly in reviewing statistics  
24 for our industry, that except for the months of February and  
25 March, the rest of the year we have approximately the same

1 work force with a slightly higher work force in July and  
2 August. But primarily we have a fairly stable work force  
3 except for February and March. And the workers even in the  
4 perishable crops, such as cantaloupes, may be harvesting on  
5 the west side of the San Joaquin Valley for 90 days or longer.  
6 The season this year began approximately July 1st. It was  
7 somewhat delayed because of weather and will continue past  
8 October 1st. So that at least for vegetables and melons and  
9 strawberries which are not really a seasonal crop, the  
10 migrant work force is not an accurate description at all.

11 BOARD MEMBER JOHNSON: Then you're saying that most  
12 of the work force is living in established communities and  
13 is readily accessible?

14 MR. DRESSLER: That's correct.

15 BOARD MEMBER JOHNSON: You mentioned that you asked  
16 your farmer members to allow voluntarily access to union  
17 organizers. Can you tell us how successful that's been and  
18 what percentage have agreed to do this?

19 MR. DRESSLER: Well, we have suggested to them what  
20 the Federal precedent is and I would say in the Salinas area,  
21 and there will be later testimony about that, there have been  
22 a number of companies and I couldn't tell you exactly how  
23 many that have allowed access during the day. As far as I  
24 know it's almost universal that access is allowed to union  
25 organizers in labor camps. We have, not because of the State

1 Supreme Court, because I don't believe the decision says  
2 what Mr. Cohen said, but in any event, we feel that it is  
3 in the interests of the worker's rights and the camp  
4 resident's rights to allow union access at that location.  
5 And as far as I know, that's widespread.

6 BOARD MEMBER JOHNSEN: Would your organization  
7 support an access rule that allowed organizers in employee  
8 housing areas?

9 MR. DRESSLER: I think that that again kind of  
10 overstates the situation because I point out that the Board  
11 has severe jurisdictional problems going beyond the case law  
12 of the National Labor Relations Act. And there are numbers  
13 of our employers that provide housing that is in a very  
14 real sense, that is not closed housing. That is close to town  
15 where the workers eat many of their meals in the community.  
16 They are openly available in the community and for contacts  
17 and for meetings and I don't think that the Federal law  
18 permits union access to that kind of a housing facility.

19 Where you have closed facilities which are  
20 restricted of access, the workers don't have contact with  
21 outsiders, at that point I think that it would be appropriate  
22 for some kind of access rule.

23 I just point out, I don't know the jurisdictional  
24 authority of this Board to enact anything that's broader than  
25 the Federal Regulations and we would oppose any such

1 regulation to be broader than the Federal.

2 BOARD MEMBER JOHNSEN: Thank you.

3 CHAIRMAN MAHONY: Any other Members of the Board?  
4 Mr. Grodin.

5 BOARD MEMBER GRODIN: Mr. Dressler, first I'd be  
6 interested in any observation you have regarding the  
7 suggestion that the language of our statute, the encouraged  
8 language which I assume you heard discussed this morning, is  
9 different from the language which appears in the National  
10 Labor Relations Act, and may imply that the balance is  
11 somehow struck differently here?

12 MR. DRESSLER: If I could point out, I would say  
13 that there was some discussion about that policy provision;  
14 however, I think the operative provisions really are the  
15 unfair labor practice sections which would make it an unfair  
16 labor practice for an employer to interfere with his employee's  
17 rights and those are verbatim from the National Act.

18 And also, the employee rights section makes it  
19 clear that employees have a right to refrain from these  
20 organizing activities. So I think that the change, the  
21 wording, the conjunctive difference in the policy provision  
22 is really De minimus when you view the operating provisions.

23 BOARD MEMBER GRODIN: But apparently don't you view  
24 the operative provisions of the Act in light of the preambles  
25 so far as you review this?

1           MR. DRESSLER: Well, I think that you cannot  
2 overlook the expressions of the rights of employees' section,  
3 and I don't think that you can overlook the provisions of  
4 I believe, it's Section 1148, talking about following  
5 applicable Federal precedent, particularly where the unfair  
6 labor practice sections are verbatim from the Federal law.

7           BOARD MEMBER GRODIN: Let's take your premise that  
8 we look to the Federal precedent and under Federal precedent  
9 the rule is that if alternative methods of effective  
10 communications do not exist between union organizers and  
11 employees, then under those circumstances access may be  
12 allowed; is that a fair --

13          MR. DRESSLER: I think that's approximate, if it's  
14 been requested.

15          BOARD MEMBER GRODIN: Yes. So that as a factual  
16 matter our inquiry turns then so far as applying Federal law  
17 to the issue whether at all the reasonable effective methods  
18 of communication do exist between unions and farm workers.  
19 Now, you have suggested that under certain circumstances  
20 there are alternative effective methods of communication and  
21 you gave as an example the strawberry crops where there are  
22 very small crews and the workers live year-round in a stable  
23 community and they don't travel about.

24                 With respect to the growers that you represent,  
25 what percentage of the total number of employees would you

1 say falls into that strawberry category?

2 MR. DRESSLER: I'd say in terms of having people  
3 that are stable and a part of the community, probably 85 to  
4 90 percent of the work force are local residents that work  
5 year-round near where they live.

6 BOARD MEMBER GRODIN: Well, now, with respect to  
7 the discussion that you had with Mr. Johnsen regarding the  
8 migrant nature of a work force, I understood you to say that  
9 some crops are run essentially on the twelve-month basis with  
10 the same work force but in different locations.

11 Where that occurs; that is, where the work is in  
12 different locations even though it's the same work force,  
13 does the work force remain resident in the same place or do  
14 they move about?

15 MR. DRESSLER: For a significant number of these  
16 there are short periods of time, perhaps several times during  
17 the year, when they have a three-week season in the west side  
18 of the San Joaquin Valley or a few weeks' season in Blythe,  
19 California, and then they'll have a five-month season in  
20 Salinas and a five-month season or approximately that in  
21 the Imperial Valley, so that for most of the year, for  
22 practically ten months of the year, they are residents in one  
23 location stably. Maybe in two different places at various  
24 times of the year, but there are very short so-called holes-  
25 in-the-crop production pattern which are filled up by moving

1 into an area for a few weeks and moving on, but that's a very  
2 limited part of the year.

3 BOARD MEMBER GRODIN: Let's say a worker spends the  
4 majority of the year either in the Salinas Valley or the  
5 Imperial Valley, what sort of living accommodations is he  
6 likely to live in in those two places; a trailer, moving in  
7 with relatives or friends? Is he going to have an apartment  
8 or house of his own?

9 MR. DRESSLER: Some of those workers are residents  
10 basically in Mexicali, and who live in temporary housing in  
11 various towns in the Salinas Valley. Frankly, due to the  
12 regulations and the increased restrictions on employer-supplied  
13 farm labor housing, it's becoming very much a diminished  
14 factor. Every year it becomes more insignificant. And  
15 although there is some labor camp housing, it is diminishing  
16 and very little is being built to replace it.

17 BOARD MEMBER GRODIN: I understand. So they're  
18 residents in Mexicali and they live in some temporary  
19 quarters in Imperial Valley or Salinas when they work there.

20 MR. DRESSLER: When they're residents in Mexicali,  
21 they're working from home essentially in the Imperial Valley.

22 BOARD MEMBER GRODIN: In the Imperial Valley, okay.  
23 And when they move to Salinas?

24 MR. DRESSLER: They would be living in some kind of  
25 temporary housing.

1 BOARD MEMBER GRODIN: Would that be an apartment  
2 or some place with an address?

3 MR. DRESSLER: It varies depending on the workers.  
4 There are labor camp facilities in the Salinas area.

5 BOARD MEMBER GRODIN: Trailers?

6 MR. DRESSLER: I'd be hard put to say exactly what  
7 portion of the work force lives in labor camps.

8 BOARD MEMBER GRODIN: You talked about interference  
9 with production and harvesting of crops. Would you be more  
10 explicit as to how, in what manner you are concerned or your  
11 clients are concerned that access may adversely affect the  
12 production and harvesting of crops?

13 MR. DRESSLER: Well, let me say this. When you're  
14 dealing with a perishable commodity, one which you have  
15 limited time to choose whether to harvest or not, if you get  
16 behind a day or two days in a lettuce field, you disrupt your  
17 whole pattern of harvesting. If you miss a day or so at the  
18 peak of the cantaloupe season, you may lose the rest of the  
19 crop because the vine will deteriorate. And the same problem  
20 exists with regard to many other commodities.

21 There is a need to have a continuity of work  
22 performed there. And where there are disruptions and the  
23 crew, for fear or intimidation or whatever, fails to be able  
24 to be available to work, at that point there is a significant  
25 loss, not only to the employer, but also to employees who would



1 lose later chances at harvesting that crop now that it's  
2 now made unharvestable. And we've seen that so many times  
3 since 1970. We have hundreds of instances of this kind of  
4 event.

5 BOARD MEMBER GRODIN: Are those instances of  
6 substantial numbers of union organizers of pickets blocking  
7 access and encouraging employees --

8 MR. DRESSLER: Occasionally, primarily, but not  
9 exclusively. And the members have now heightened to the  
10 point where you have a sensitivity of the workers, a fear.  
11 And there is no need, we feel, to have that fear capitalized  
12 on by union organizers bothering them at their work site.

13 BOARD MEMBER GRODIN: Now, when you say "bothering  
14 them at their work site," let's distinguish between visits  
15 by union organizers before and after work at some either  
16 designated location or parking area on or off the access  
17 road and meeting them out in the field as they are working.

18 With respect to visitation in designated areas and  
19 parking areas along the road in limited numbers, do you find  
20 there some real threat to the employer's production and  
21 harvesting capability?

22 MR. DRESSLER: Well, as was referred to by the  
23 California Peace Officers Association, we find, frankly, there  
24 have been many instances of vandalism or malicious mischief,  
25 or whatever word you would like to use, to employees' cars

1 where they have disobeyed the wishes of the union's  
2 supporters. So they become very uneasy and they become  
3 afraid of their possessions when they see union organizers  
4 in the areas of their automobiles. I think that that's  
5 not a, I think that's a substantial concern.

6 BOARD MEMBER GRODIN: Could it be some area other  
7 than the area of their automobile? Is there an area, for  
8 example, in most farms, some staging area where employees  
9 customarily show up and congregate before going out to their  
10 assigned locations in the field?

11 MR. DRESSLER: I think then, again, you get to the  
12 nature of the crop and the nature of the farm operation.  
13 I don't think that there is such a thing as a customary  
14 practice because some employers provide buses where they  
15 pick up in town, others pick up at the labor camp, others  
16 have workers drive to the fields in their own cars. Some  
17 have work locations adjacent to public roads, others have  
18 them fairly, almost inaccessible because of the nature of  
19 their geography.

20 I don't know of any so-called custom. Even lunch  
21 periods, there's no custom as far as lunch. Some companies  
22 bring a hot lunch for the people to eat in the fields.  
23 Others bring their meals with them. Others leave the field  
24 to go somewhere else to eat. Others have a commercial  
25 catering truck available supplying meals.

1           What I'm most concerned about is there is no such  
2 thing as custom per se. It's not like there's always an  
3 industrial plant, a parking lot and a cafeteria. That's  
4 not the nature of California agriculture.

5           BOARD MEMBER GRODIN: Turning now to field  
6 visitations, visitations to work areas as distinguished from  
7 parking lots or the staging areas, would there be a problem  
8 from the grower's view; if so, what is the nature of the  
9 problem, if organizers were allowed on premises in limited  
10 numbers? Let's take the lowest number that has been  
11 suggested, two, and start with that.

12           If there were two organizers in an identified  
13 vehicle going on the property under circumstances in which  
14 they were required to identify themselves to the  
15 superintendent as they went on and identified themselves as  
16 organizers for the union and tell them they're going on and  
17 with the restriction that they may be on that property only  
18 during lunch hours and rest periods, let's say -- And I  
19 understand that's a flexible concept. They vary from farm to  
20 farm -- what's the problem with that?

21           MR. DRESSLER: Well, two organizers with one  
22 irrigator, I think, would be unduly oppressive and unnecessary.  
23 We have irrigators that work alone and certainly there's no  
24 need to have two organizers talk with him alone.

25           Perhaps the reason I suggest it's best that there

1 would not be a general rule of access is that in  
2 accommodation, if there was some understanding that there  
3 is an application in California of this Federal rule, that  
4 better there be a discussion between management and union  
5 representatives seeking access with the auspices of the  
6 Board available if there is an unsatisfactory performance  
7 because maybe it would work for some employers to say  
8 come and talk to our crews in the morning, but for other  
9 employers that would be a substantial hardship.

10 If you're trying to put together a lettuce wrap  
11 machine and you have to fill every position before the  
12 machine could go, any interference with getting the workers  
13 available to start the machine to start production with the  
14 tremendous expense involved of that, is a hardship. For  
15 other employers, in a hoeing crew, for instance, it might not  
16 be that difficult.

17 BOARD MEMBER GRODIN: What would your reaction be  
18 then to the establishment of a general principle or guideline  
19 for access but with the qualification that employers could  
20 establish as an alternative substantially equivalent or  
21 superior methods of communications between union organizers  
22 and their employees and that that would be subject to  
23 approval by the General Counsel of the Board?

24 MR. DRESSLER: That's very difficult for me to  
25 answer because I'm not sure what the general rule would be and

1 how you'd apply it. But could I say this, as I envision the  
2 Act's operation, I could be incorrect, if the union is  
3 attempting to organize different employees, with the  
4 exception of a handful of crops, maybe five out of 300,  
5 the employees are there long enough for a union to have  
6 felt that they were being mistreated or not gaining adequate  
7 access and to file an unfair labor practice charge. Merely  
8 the filing of a charge with the investigation, as you know  
9 under the Federal Act, may lead to employer compliance to  
10 get the case settled.

11 Now, we feel that you have to tailor these things  
12 to the unique circumstances.

13 BOARD MEMBER GRODIN: Mr. Dressler, my problem is  
14 this: I've had a lot of experience under the National Labor  
15 Relations Act and I know you have, too. I know how long it  
16 takes to process an unfair labor practice charge. I know  
17 what the limitations are and the kinds of remedies that can  
18 be provided. Saying that we are going to leave the question  
19 of access to case by case adjudication, determining each case  
20 without regard to any kind of general principle but simply  
21 on the ephemeral guideline of alternatives means, A, extensive  
22 litigation; B, prolonged litigation, and means, C, the  
23 deferral of any kind of meaningful guidelines until after  
24 all of the major elections, or I don't know, the major  
25 elections, but initial elections under the Act have taken

1 place and at a time when to overturn those elections and  
2 conduct new ones, would not be a very effective remedy for  
3 anyone. And that is a practical problem that we confront  
4 more acutely than under the National Labor Relations Act  
5 because of the peak season requirement and the requirements  
6 by the statute that relate to it.

7 And that's why I'm concerned about following your  
8 suggestion that we just leave everything to the future and  
9 decide things on a case by case basis as they arise.

10 MR. DRESSLER: Could I suggest that perhaps it would  
11 be appropriate that a principle or a policy statement to the  
12 Board along these lines would be appropriate but still to  
13 realize that the nuts and bolts of what is reasonable under any  
14 particular case is going to be very difficult. I don't believe  
15 that there is a possibility of adopting a rule that would be  
16 appropriate for all circumstances.

17 BOARD MEMBER GRODIN: Being that the circumstances  
18 vary, wouldn't everybody be better off with some fairly  
19 definite program for, alternative programs, that took into  
20 account the legitimate interests of the grower in not having  
21 his crop disrupted, in not having his employees harassed and  
22 so forth, but yet establish some minimal opportunity for  
23 contact by union organizers on the premises? Wouldn't  
24 everybody really be better off with a clear and predictable  
25 rule of that sort?

1 MR. DRESSLER: Well, if the clear and predictable  
2 rule was in furtherance of the Federal rules, I would say so.  
3 But to the extent that they exceed Federal rules, you're  
4 talking about prolonged and protracted litigation. Let me  
5 assure you that there would be just as long and protracted  
6 litigation if it was an overreaching rule. And I don't  
7 know that we help anyone with that kind of a circumstance.

8 BOARD MEMBER GRODIN: I have no further questions.

9 CHAIRMAN MAHONY: Mr. Ortega.

10 BOARD MEMBER ORTEGA: Yes. Just very briefly,  
11 as I understand your position you're against the general  
12 rule that's acceptable across the board, but you suggest  
13 that we follow the N.L.R.B. precedent and issue a case by  
14 case rule, is that right?

15 MR. DRESSLER: I think that's the most appropriate  
16 means to deal with the diverse nature of agriculture.

17 BOARD MEMBER ORTEGA: Let's get a little  
18 hypothetical then.

19 On certain circumstances under that guideline, you  
20 could issue an access rule in a given case, is that correct?

21 MR. DRESSLER: That's correct.

22 BOARD MEMBER ORTEGA: Then you could say you find  
23 that there's not an effective and reasonable access rate  
24 and therefore the employer must allow access to the  
25 organizers. That's a possibility?

1 MR. DRESSLER: I think that's possible.

2 BOARD MEMBER ORTEGA: I think that's what you  
3 suggest we follow. Now, if we do that, let me ask you this.  
4 Would the possible damage you spoke about that would come  
5 from a general access be the same or would it be any different?

6 MR. DRESSLER: I think that the reason we feel  
7 that's a more appropriate mechanism is that we would have an  
8 opportunity to come forward in that circumstance and show  
9 you from our side of the point, if I was representing the  
10 employer, we could show you what we feel the problems are  
11 and you could evaluate them and understand them. Whereas  
12 in the abstract it sounds simple to adopt a rule such as  
13 proposed Rule 17, but in application, in reality, that works  
14 a great hardship in many circumstances. If we had an  
15 individual case basis, you'd be able to evaluate the impact  
16 of the grower and understand whether it was necessary or  
17 not. And also, we'd have a mechanism to review if it was  
18 necessary.

19 BOARD MEMBER ORTEGA: I understand what you're  
20 saying, but I don't think you quite answered my question.  
21 It was: Would the damage that you talked about in crops  
22 be any different under a case by case determination of the  
23 access or under a general rule of access?

24 MR. DRESSLER: Well, my bias would be to say that  
25 in a case by case method, the damage would be less because



1 we'd have an opportunity to show you the reasons for  
2 different rules or different applications in different  
3 circumstances.

4 BOARD MEMBER ORTEGA: I think, though, I'm not  
5 getting argumentative, what you're saying is that on a case  
6 by case basis with no access rule that there's been less  
7 damage?

8 MR. DRESSLER: No, I don't think that I went that  
9 far. I think that what I said is that, for instance, in  
10 some circumstances having two organizers available on the  
11 corner of a field to talk to workers who are interested  
12 might work, but it might work hardship, would be  
13 inappropriate in some other circumstance. So if you were  
14 able to evaluate which are the appropriate ways to deal with  
15 a given problem, I think the damage would be less.

16 BOARD MEMBER ORTEGA: Thank you. I have no  
17 further questions.

18 CHAIRMAN MAHONY: Mr. Chatfield.

19 BOARD MEMBER CHATFIELD: Mr. Dressler, what is the  
20 policy of the Western Growers with respect to the existing  
21 contracts that you have now with respect to access?

22 MR. DRESSLER: Well, first of all let me say that  
23 the Western Growers Association itself doesn't have any  
24 existing contracts. I was, on behalf of a number of  
25 companies, a negotiator in the Teamster agreements which were

1   executed from a number of our companies several months ago.  
2   I'm also representing a company in negotiations with the  
3   United Farm Workers. Under both of those contracts, the  
4   United Farm Workers' agreement and the Teamsters' agreement,  
5   there is a section called Access of Union Organizers.  
6   Basically it provides that union organizers have an access  
7   for official union business and there's certain provisions  
8   about notification of the company and not interfering with  
9   business operations as standard in many union contracts.

10           And as far as I know, both types of contracts are  
11   being observed. Where it's enforceable against the company,  
12   I believe, it's still a valid contract. And therefore, those  
13   contract provisions are being observed.

14           BOARD MEMBER CHATFIELD: To the best of your  
15   knowledge all of the contracts pertaining to this access  
16   provision are being observed?

17           MR. DRESSLER: As far as I know.

18           BOARD MEMBER CHATFIELD: As far as you know. And  
19   how do they interfere with the--

20           MR. DRESSLER: First of all, let me say that there  
21   is a world of difference, I think you're aware, between  
22   organizing and administering a union contract. And I might  
23   further say that where you have a contract and you have a  
24   grievance procedure, many times union organizers' presence  
25   in the field is helpful to the employer in explaining the

1 contract to the workers, administering problems such as  
2 discipline. There are many justifiable reasons to have an  
3 union organizer on the property which benefit the employer  
4 and are part of the contractual scheme including grievance  
5 procedure.

6 BOARD MEMBER CHATFIELD: Would your answer indicate  
7 then that there is no significant damage to production with  
8 that access regulation in the contract?

9 MR. DRESSLER: Insofar as the current contracts  
10 are phrased, I think, that's true. And I point out that  
11 I think that issue is a negotiable one and you have  
12 differences of opinion across the bargaining table about what  
13 the scope of access should be.

14 BOARD MEMBER CHATFIELD: But you don't know of a  
15 single labor union contract that does not have this access  
16 rule, do you?

17 MR. DRESSLER: I do.

18 BOARD MEMBER CHATFIELD: That you represent?

19 MR. DRESSLER: Not that I personally have  
20 negotiated, but I'm aware of union contracts that do not have  
21 access provisions.

22 BOARD MEMBER CHATFIELD: To the best of your  
23 knowledge has the access provision of these labor union  
24 contracts been used by the unions involved to prepare for  
25 these upcoming elections?

1 MR. DRESSLER: I don't have personal knowledge of  
2 that.

3 BOARD MEMBER CHATFIELD: Well, do you have any  
4 knowledge that union organizers are being denied access to  
5 these properties?

6 MR. DRESSLER: As far as I know, no employers that  
7 are in our industry are denying organizers access to their  
8 property where they have a union contract calling for access.  
9 And I might just point out further that many of those  
10 employers are voluntarily allowing other union organizers  
11 access at non-work times also.

12 BOARD MEMBER CHATFIELD: Now, what about a situation  
13 where there is no union contract? What is the policy of your  
14 organization with respect to their advice to clients?

15 MR. DRESSLER: Our advice basically is based on  
16 what we think the law is under the National Labor Relations  
17 Act.

18 BOARD MEMBER CHATFIELD: Which is?

19 MR. DRESSLER: And we feel that there is no need  
20 or appropriate role for union organizers during the day on  
21 working premises. However, we have made recommendations  
22 where there is company housing that access be allowed to  
23 organizers in that housing.

24 BOARD MEMBER CHATFIELD: That's all.

25 CHAIRMAN MAHONY: Mr. Dressler, just a few

1 questions. I'm not an attorney so I do not speak well to  
2 N.L.R.B. precedence. But really at the bottom line, would  
3 it be safe to say that dealing with farms and the  
4 agricultural industry in terms of field workers, not farm  
5 labor camps, that there really isn't any precedent?

6 In other words, neither the Board nor the  
7 Supreme Court has ever really dealt with a case about or  
8 organizers or any other access of field workers as such?

9 MR. DRESSLER: I think that that's not correct  
10 for two reasons. First of all, we have a line of cases,  
11 many of them involving members of my association that are  
12 involved in packing houses that are under the jurisdiction  
13 of the National Labor Relations Act, truck drivers that are  
14 agricultural, and there are access problems there. And I  
15 think one of the speakers who will be up here later,  
16 Mr. Breshears, is familiar with some of these cases because  
17 he did much of the organizing.

18 We've had that same problem. They're just as  
19 perishable. They're in many places in the same locations  
20 as the crops.

21 Second, I think you have a line of cases with  
22 ships at sea and ships and logging camps and resort hotels  
23 that are all analogous. So that I don't think it's,  
24 although farming per se is not the subject of the N.L.R.B.  
25 precedent, because it hasn't been under their jurisdiction.

1 I think you can look at the logging camp cases, the resort  
2 hotel cases, and the ship cases because they're all on point.

3 CHAIRMAN MAHONY: But, in fact, there has never  
4 been a case about field organization?

5 MR. DRESSLER: Well, yeah, except that the  
6 packing shed --

7 CHAIRMAN MAHONY: Packing shed workers are all  
8 inside a definable packing shed, so that is not hand  
9 harvesters and people out in fields in rows and orchards and  
10 things.

11 MR. DRESSLER: If I could respectfully comment  
12 that strawberry workers are all within a well-established,  
13 defined patch and asparagus workers also. So that the  
14 difference is one of quality.

15 CHAIRMAN MAHONY: They're of quality, but there's  
16 an awful lot of acreage though where that is not true in the  
17 State of California.

18 MR. DRESSLER: That's why we feel that an overall  
19 rule doesn't work.

20 CHAIRMAN MAHONY: And secondly, you made a  
21 statement which I think I have it fairly accurate here,  
22 how can you have a fair secret ballot election if you've  
23 had conflict for two or three days before the election?  
24 I believe that's substantially what you said. My question  
25 is: How can you have a fair secret ballot election if, in

1 fact, the parties do not have the opportunity to hear all the  
2 sides of the unions that are going to be on the ballot that  
3 they're going to be faced with? Maybe my question would be  
4 worded better this way: Is not this Act more concerned with  
5 making certain that workers have the right to vote and to  
6 vote an intelligent way? Isn't that a graver concern than  
7 the possible tension or conflict that might result in  
8 access?

9 MR. DRESSLER: Well, I could suggest that I think  
10 in the long run the policy of the Act is to have a stable  
11 labor peace, a program that works. And I think that that  
12 is an important objective that has to be kept in mind. And  
13 to the extent that there is intimidation and workers do not  
14 feel free to express their true desires because of fear, then  
15 we've prevented that objective from coming about.

16 CHAIRMAN MAHONY: Any other Members have questions?

17 BOARD MEMBER GRODIN: Just one follow-up question.

18 You suggested to me by an answer that you gave to  
19 the Chairman, you say that some of your members are  
20 voluntarily allowing access to other unions; that is, to  
21 non-incumbent, non-contracted unions before or after hours.  
22 Could you elaborate on what, to the extent you know, what the  
23 circumstances are there? What kind of access is being  
24 provided?

25 MR. DRESSLER: Could I suggest that Mr. Church, I

1 believe, is going to be a witness a little later, is from  
2 Salinas and is more familiar with those details than I am.

3 BOARD MEMBER GRODIN: Thank you.

4 MR. DRESSLER: Thank you.

5 CHAIRMAN MAHONY: Thank you very much.

6 I'd like to go out of order and call the  
7 Honorable Richard Alatorre, Assemblyman of the 55th  
8 District.

9 ASSEMBLYMAN ALATORRE: Thank you very much,  
10 Mr. Chairman.

11 Mr. Chairman and Members, my name is Assemblyman  
12 Richard Alatorre.

13 On June the 5th, the Governor signed into law  
14 what I consider to be probably one of the most historic acts  
15 as it relates to agriculture here in the State of  
16 California. In the process of the deliberations of this  
17 particular bill, all the parties were brought in and pretty  
18 much we received a unanimity of opinion as to the aims and  
19 objectives of this bill.

20 Now, the aims and objectives of this bill as I  
21 see it is to provide farm workers the opportunity without  
22 coercion the fundamental right that has been provided to  
23 other workers here in this country. And that is the right  
24 to freely organize and to choose for themselves the union of  
25 their choice or no union at all.



1           Let me refer you to 1140.2, of the enacted  
2       Senate Bill 1 and it reads very nicely and very succinctly.

3           "It is hereby stated to be the policy of the  
4       State of California to encourage and protect the right of  
5       agricultural employees to full freedom of association, self-  
6       organization and designation of representatives of their own  
7       choosing. To negotiate the terms and conditions of their  
8       employment and to be free from interference, to be free  
9       from restraint or coercion of employers of labor or their  
10      agents in the designation of such representatives or in the  
11      self-organizations or other self-concerted activities for the  
12      purpose of collective bargaining."

13           Now, I think that the bill is very clear. Now to  
14      me, I think, it's ludicrous if, in fact, we are going to  
15      implement this bill. And let me just say to you that in the  
16      travels I have made since the enactment of this bill, the  
17      thousands of farm workers that I have spoken to in relation-  
18      ship to this bill trying to educate them somewhat as to the  
19      aspects of the legislation, the factor remains, gentlemen,  
20      that farm workers are very, are somewhat concerned because  
21      in the past certainly they have not been afforded the same  
22      rights and opportunities that other workers have been  
23      provided.

24           And there has been, they're somewhat, there's  
25      a great deal of optimism, but still there's a great deal of

1 pessimism.

2 Now, fundamental to this legislation I feel is  
3 the right for any labor union, whether it's United Farm  
4 Workers, whether it's the Teamsters, or any such agents that  
5 are interested in trying to organize farm workers, I think  
6 it's fundamental to provide those people reasonable access.  
7 Now, I think that it's important, it's important if, in fact,  
8 we are going to implement this bill in the manner in which  
9 and in the spirit upon which this bill was enacted into law  
10 that some reasonable access provisions be provided.

11 I listened to the testimony, and I have not been  
12 here to listen to the other people that have testified, but  
13 I listened to the testimony of the gentleman that preceded  
14 me. And he talked about the fact that it would be much more  
15 reasonable, much more reasonable to provide on a case by case  
16 basis access provisions. That you gentlemen should determine  
17 on a case per case basis the rights and under what parameters  
18 you're going to set up for access.

19 Now, this job in trying to implement this bill is  
20 large enough. I think that it's stupid; I think that it's  
21 ludicrous for anybody to talk about trying to provide on a  
22 case by case basis whether, in fact, union organizers should  
23 in fact be provided access onto the field.

24 Now, you mentioned, Bishop Mahony, the fact that  
25 the matter on how, the point that you raised was in reference

1 to how are you going to provide an opportunity for  
2 organizations, whether it's the two mentioned unions or  
3 another union, the ability to be able to carry his or her  
4 message to the workers. I think that it's very difficult  
5 and I think that it's important that we provide in the rules  
6 and regulations that you are going to be adopting, an access  
7 provision.

8 I think that the bill is very clear. This bill  
9 is for workers. And I think that it's important that  
10 access in fact should be provided.

11 Now, this is a different kind of an industry. Now,  
12 it would be fine for you to say that you are going to provide  
13 a ruling on a case by case basis, but let me remind you that  
14 by the time that you would provide for a ruling on some of  
15 the vegetables and some of the fruits that are picked here  
16 in the State of California, by that time the harvest would  
17 in fact be over with. And how are you going to instill upon  
18 the workers that this bill was a bill that was meant to  
19 provide for an open openness, as far as the process is  
20 concerned if you do not allow for access?

21 Now, we have seen since the signing of this  
22 particular measure people that have been intimidated, people  
23 that have been in fact arrested. I can just cite to you the  
24 example in Oxnard where you have seen people in a city that  
25 have been arrested, United Farm Worker-organized, that have

1     tried to seek access to talk to the worker that have been  
2     arrested. The District Attorney has clearly stated that he  
3     is not going to file any of these cases.

4             I think that it is your responsibility. It is not  
5     the responsibility of anybody else to make sure that people  
6     are, in fact, provided the opportunity to listen to both  
7     sides of the message. Now, that could be to the asset of  
8     one union and it could be to the detriment of the other, but  
9     I think that it is important that union organizers should,  
10    in fact, be provided a process upon which they can be  
11    provided full access to a ranch.

12            Now, it's interesting to note that when you talk  
13    about access, it seems to me that the gentleman that spoke  
14    and probably other people that are going to be speaking, they  
15    talk about the interference of the harvest. We are not  
16    talking about interfering with the daily operation of the  
17    farm. What we are talking about is providing union organizers  
18    the opportunity to enter into the ranch or enter into any  
19    other premises not during work time, but during before work,  
20    after work, during break hours and during lunch time. And I  
21    don't think that this would interfere with the on-going  
22    operations of any particular ranch.

23            And one other fact. There is a section, 1166.3,  
24    that clearly states that no provision that will be enacted  
25    by the Legislature or any other municipality should conflict

1 with anything that was adopted with this particular piece of  
2 legislation. I don't think that, as the law enforcement  
3 agencies of this State feel, that an access provision should  
4 not, in fact, be provided. I think that it's fundamental to  
5 this bill. And if, in fact, we are talking about implementing  
6 this bill on a fair and impartial basis, this bill could  
7 potentially be gutted. This bill could potentially be a farce  
8 if, in fact, we do not provide for access for union  
9 organizers to freely be able to talk to the workers, to be  
10 able to present their case. And only in that manner can, in  
11 fact, we maintain the spirit upon which this legislation was  
12 enacted.

13 This legislation was enacted so that farm workers  
14 could be guaranteed the right to organize if, in fact, they  
15 chose to. And I think that fundamental to any regulations  
16 that are to be adopted, I think that it's important that you  
17 provide for an access provision in the regulations that you  
18 adopt.

19 It is your responsibility, gentlemen. It is nobody  
20 else's responsibility. I think that if we're talking about  
21 the implementation on a fair basis, I think, the access  
22 provision is very basic to this legislation.

23 If you have any questions, I'll be more than glad  
24 to answer.

25 CHAIRMAN MAHONY: Thank you very much.

1 [Applause.]

2 CHAIRMAN MAHONY: Any Members have any questions  
3 they'd like to ask?

4 Mr. Ortega.

5 BOARD MEMBER ORTEGA: Assemblyman Alatorre, you  
6 know one of the things that we have been faced with is the  
7 phrase in the bill that says that we should follow N.L.R.B.  
8 precedent where applicable. Is it your feeling that that  
9 "where applicable" phrase would indicate that we may divert  
10 from N.L.R.B. precedent in the access?

11 ASSEMBLYMAN ALATORRE: I think that it's, that we  
12 have never had any legislation whether it's in this country  
13 or in this State to include agriculture. I think  
14 agriculture is a different type of an industry. I think that  
15 many of the regulations and many of the rules that you are  
16 going to be adopting, I think, are going to move away from  
17 N.L.R.A. type of regulations. I think that you are going to  
18 be in the forefront of trying to come to grips with this  
19 particular problem and I think that "where applicable," I  
20 think that, yes, but I think that we are talking more than  
21 not, that many of the things that were outlined under the  
22 National Labor Relations Act are not applicable to  
23 agriculture.

24 BOARD MEMBER ORTEGA: Thank you.

25 CHAIRMAN MAHONY: Any other questions?

1 Just one question, Assemblyman.

2 During the time that the bill was being put  
3 together, I realize that you had a key role in that, was  
4 there ever any discussion by any of the parties or any fears  
5 brought forward about the question of access as you recall?

6 ASSEMBLYMAN ALATORRE: I think that it was  
7 fundamental as far as I was concerned. And I've spoken to the  
8 other authors of the bill, and I think that if, in fact, we  
9 are going to come under this particular situation where there  
10 is some question because agricultural interests in the State  
11 feel that an access provision is in conflict to their  
12 particular interests, I think we would have written it into  
13 this bill.

14 We had a bill, Assemblyman Torres and I carried a  
15 bill, AB 1576, that addressed itself to the whole question of  
16 the trespass provision. The reason why we have not pursued  
17 this legislation was because the Governor, the administration,  
18 as well as the Democratic leadership, felt that it was really  
19 within the purview of the Agricultural Labor Relations Board  
20 when it was formed and that they should, in fact, direct  
21 themselves and address themselves to this particular issue.  
22 And I think that in our deliberations I think that it was  
23 understood that we were going to have an access provision.

24 I think that industrial workers have been provided  
25 access. Union organizers have been afforded this opportunity

1 and why should we treat agricultural workers any differently  
2 than we treat industrial workers. They have been provided  
3 these opportunities. And maybe what we are talking about  
4 is a lot broader type of an access provision. And the only  
5 reason that we are talking about this is because we are  
6 talking about a different kind of an industry. We cannot  
7 correlate and we cannot compare the industrial workers and  
8 industrial units with what we are talking about in  
9 agriculture.

10 CHAIRMAN MAHONY: Any more questions?

11 I would like to apologize. I forgot to ask  
12 Mrs. Gutierrez to summarize Mr. Alatorre's comments in  
13 Spanish, and I'm very sorry for that omission.

14 Mrs. Gutierrez, would you like to --

15 [Thereupon Assemblyman Alatorre gave further  
16 testimony in Spanish.]

17 [Applause.]

18 CHAIRMAN MAHONY: I'm going to have to again  
19 remind the members of the audience out of respect for  
20 everybody who comes to testify, please refrain from any type  
21 of expression of your likes or dislikes.

22 [Thereupon, the foregoing was translated  
23 from English to Spanish by Annie Gutierrez.]

24 CHAIRMAN MAHONY: I'd like to call now on  
25 Mr. Richard, is it Iglehart?



1 MR. IGLEHART: Iglehart.

2 CHAIRMAN MAHONY: Iglehart, the legislative  
3 representative from the California District Attorneys  
4 Association.

5 MR. IGLEHART: Mr. Chairman and Members, my name is  
6 Dick Iglehart. I'm a Deputy District Attorney from Alameda  
7 County and representing here today the District Attorneys  
8 Association.

9 We were notified yesterday that you would request  
10 our testimony today on some of these issues and I might say  
11 that I found today to be very educational and enlightening  
12 and perhaps will help better prepare us for some of the areas  
13 that lay ahead of us.

14 The California District Attorneys Association  
15 does not have any position regarding the questions you have  
16 proposed on your Agenda; whether or not there is a need for  
17 an access rule; to what extent are there alternatives; what  
18 identifiable damage would result, et cetera. Those, of  
19 course, are not within our jurisdiction. There are other  
20 policy questions to be decided by the Board.

21 I think the fourth issue on your Agenda is one that  
22 we should address ourselves to: "Should an access rule be  
23 adopted, what should be its parameters? How should it be  
24 limited?"

25 I would echo the statements that probably most

1 everyone else has said here today, that if there is an access  
2 rule, I would like to get into some of the legal discussion  
3 as to the power of this Board to have such a rule, but if  
4 there is such a rule I will agree that it should be as  
5 specific as possible so we don't transfer the present  
6 litigation, the present hostilities that have occurred to  
7 simply the new, broad definitions as perhaps were suggested  
8 in the preliminary rule or the now existing Rule 17.

9 And so I would encourage this Board and I would  
10 implore that if there is an access rule to be adopted, let  
11 it be as specific as possible so that we know exactly where  
12 we are. So growers know where they are. Obviously, so all  
13 the parties know where they are, and particularly this:  
14 If you have a rule that says a reasonable number can be  
15 there for a reasonable amount of time, that at some time or  
16 another things become unreasonable, a Sheriff is called, a  
17 case may be charged, and then you put us District Attorneys  
18 in the position of perhaps challenging your rules or at  
19 least you put us in a position of litigating your rules.

20 I might say that the powers that you have to  
21 intercede in such matters would, I think, be looked upon  
22 favorably by District Attorneys in terms of the early, the  
23 early ground of determining what exactly the rules are.  
24 What the law should be in these areas. You may well want  
25 to invite your counsel to intercede in the legal actions that

1 I'm sure will develop from whatever rules you agree upon.  
2 So that there is input from the Board from the trial level  
3 on as to the meanings of, the legality of, interpretation of  
4 any rules agreed upon by this particular Board. With the,  
5 I think, perhaps at the expense of getting into law school  
6 dialogue, there is a question, I think, that this Board has  
7 to decide and that's whether or not it has the power to  
8 adopt an access rule. And, of course, there's been signifi-  
9 cant testimony on the point. I think that essentially,  
10 generally speaking, legislation doesn't grant to other  
11 agencies or boards the power to allow a violation of the law.  
12 They often grant the power to make rules and regulations,  
13 violation of which can either be as prescribed by the Codes  
14 a misdemeanor or an infraction, or in this case an unfair  
15 labor practice, but the Legislature does not grant and has not  
16 in the past as far as I'm aware of, granted to a board such  
17 as this the power to excuse compliance with the Penal Code  
18 statute, except where they make exceptions.

19 And clearly in this particular Code they made an  
20 exception in 1151(a). They specifically said at the top of  
21 page 7, "The Members of the Board or their designees or their  
22 duly authorized agents have the right of free access to all  
23 places of labor."

24 Now they specifically gave you, your employees and  
25 agents the right of free access. I'm sure that someone's going

1 to argue in some Court of law that by implication they didn't  
2 give anyone else the right of free access. But in any case,  
3 the Legislature spoke specifically as to your right of  
4 access and perhaps if just another sentence had been added  
5 there, a couple of months ago we wouldn't be here arguing  
6 today.

7 But there is a clear question and I can't offer any  
8 illumination on it, but there is a clear question of whether  
9 or not you have the power to excuse a violation of the Penal  
10 Code statute. And I suggest perhaps you may want to have  
11 either the Attorney General's assistance on that through an  
12 opinion or you may want to avoid that. You may want to  
13 simply rely on your own legal counsel's opinion on that issue  
14 and go from there. But it clearly will be a matter, I'm  
15 sure, that will be litigated if any rules come as to access.

16 Just one other point. Well, a couple of others that  
17 come to mind after hearing the testimony today. If there is  
18 a rule granting some type of access and hopefully as  
19 specific as possible. I think that you should include, and I  
20 think that Mr. Grodin had indicated this, I think you should include  
21 some type of identification for the person or persons coming  
22 onto the land. I, as a District Attorney, see some problems  
23 involving persons who perhaps are not on land for any other  
24 reason than perhaps to conduct themselves in a criminal  
25 fashion arguing that they are perhaps organizers.

1           I wouldn't want to taint the rules that come from  
2 this committee with the decisions that may come from that  
3 kind of a case. And so I think that the clear  
4 identification would be important and however you may choose  
5 to address that issue.

6           You may find that you want to recommend to the  
7 Legislature that they do make amendments to 602 of the Penal  
8 Code to give you clear authority in this area. And I suspect  
9 the Legislature would be, they seem to be very willing to  
10 pass this type of legislation and I suspect that there would  
11 at least be a favorable reception to recommendations of this  
12 Board as to exceptions to 602 of the Penal Code.

13           Again, I would point out, that if you do make a  
14 rule as to access, that the enforcement of that rule is  
15 going to be primarily, in terms of the positive enforcement of  
16 that rule, is going to be primarily up to you. It will be  
17 unfair labor practice for an employer not to allow this or  
18 perhaps for a labor organizer to or labor organization to  
19 have more than the allowed number come on or whatever. Those  
20 will all be unfair labor practices. When it falls over into,  
21 well, maybe the enforcement as I pointed out before, is going  
22 to be a matter for law enforcement and for law officers of  
23 the county.

24           So we have a, you know, kind of very mixed  
25 jurisdiction there. You are charged to enforce the rules,

1 the affirmative application of the rules. It will  
2 unfortunately fall upon us in most cases to enforce the  
3 negative implication of the rule when one person excesses  
4 or goes beyond their rights on your rule, then it will  
5 perhaps be in violation under 602 and there will have to be  
6 criminal liability or there may be criminal liability.

7 Those are some of the issues that have come to mind  
8 since listening to the testimony and I apologize for not  
9 being perhaps more prepared. We were notified just yesterday  
10 that our testimony would be needed. As I say, we have no  
11 formal position as to the issue of whether or not a rule  
12 regarding access is needed.

13 I wish you luck.

14 [Laughter.]

15 MR. IGLEHART: And I'm sure that in the end we'll  
16 be able to come through with some pretty good rules in an  
17 area that I think has begged for some consistency in the  
18 past.

19 CHAIRMAN MAHONY: Thank you.

20 MR. IGLEHART: Be glad to answer any questions.

21 CHAIRMAN MAHONY: I agree it will take more than  
22 luck.

23 Any Members of the Board have questions of  
24 Mr. Iglehart?

25 Oh, I'm sorry.

1           May I ask Mrs. Gutierrez to give a brief resume  
2 in Spanish. I must apologize.

3           [Thereupon, the foregoing testimony was  
4 translated from English to Spanish, in  
5 summary, by Annie Gutierrez.]

6 CHAIRMAN MAHONY: Thank you, Mrs. Gutierrez.

7 Questions of Members of the Board?

8 Mr. Johnsen.

9 BOARD MEMBER JOHNSEN: Mr. Iglehart, did I under-  
10 stand you to say towards the end there that if we  
11 promulgated a regulation on access, in regards to what it  
12 was if we'd had one, that the situation might develop  
13 whereby we had conformity with our regulations so therefore  
14 it's not an unfair labor practice, but the farmer would still  
15 be in a position or the worker would still be in a position  
16 to find themselves in violation of the trespass laws? Do  
17 we have a dual situation here?

18 MR. IGLEHART: No, I didn't say that or if I did,  
19 I didn't mean to say that. What I said was that if at the  
20 point at which a person goes beyond your rule, that person  
21 may well be directly sitting in the middle of a violation of  
22 the trespass laws. And so because of that, it's imperative  
23 that your rules are as specific as possible. So we don't  
24 have a judgment that perhaps in one county a reasonable  
25 number of people is ten or one per 20 or whatever it is and in

1 another county it's some other determination and we have to  
2 go through some type of a Penal Code or some kind of  
3 misdemeanor jury trial before we can get the issues  
4 litigated in an Appellate Court and whatever. And that's  
5 why, I'm simply pointing out, at the point that you do  
6 adopt rules, a person goes beyond those rules, they probably  
7 will be in terms of access in violation of trespass.

8 BOARD MEMBER JOHNSEN: They would also be in  
9 violation as far as we're concerned with the unfair labor  
10 practice perhaps or maybe not?

11 MR. IGLEHART: If, as I understand your question,  
12 I think it depends on how the rule is written, but they  
13 could well be.

14 By the way, I think you may want to look into,  
15 you might want to get more teeth into what you can do to  
16 a person who commits an unfair labor practice. I'm not  
17 sure that you have a significant enough of a power in that  
18 situation to effectively and quickly deal with what might be  
19 very critical time periods in unfair labor practice  
20 violations.

21 CHAIRMAN MAHONY: Any other Members have questions?  
22 Mr. Ortega.

23 BOARD MEMBER ORTEGA: First of all, you represent  
24 the District Attorneys Association. Is that the elected  
25 District Attorneys or all people who are in the District



1 Attorney's Office?

2 MR. IGLEHART: All of them. Elected, they have to  
3 pay more.

4 BOARD MEMBER ORTEGA: Pardon?

5 MR. IGLEHART: The elected D.A.'s have to pay more.  
6 Their dues are more.

7 [Laughter.]

8 BOARD MEMBER ORTEGA: You represented the elected  
9 D.A.'s as well as the staff?

10 MR. IGLEHART: Yes. In the California District  
11 Attorneys Association, every elected District Attorney is  
12 a member and there's approximately 700 members of Deputy  
13 District Attorneys.

14 BOARD MEMBER ORTEGA: All right. You made a  
15 statement that, I think, I heard it right. You said that  
16 you might find yourself challenging our rules and I wondered  
17 what circumstance would bring that up?

18 MR. IGLEHART: Well, what I was pointing out was  
19 that, again, in a situation in which your rules are unclear  
20 and we have, let's say, a trespass violation rule, and that  
21 would be a principal area with an access rule, then a  
22 defendant would probably say, "I was legitimately in that  
23 area because I was complying with Rule 25 of the  
24 Agricultural Labor Relations Board, and I statutorily had  
25 authority to be there." If it is the opinion, first of all

1 it would have to be the opinion of the District Attorney  
2 that this was a violation of the law and of such a rule  
3 for there to be a charge in the case. So if that's, at  
4 least that preliminary determination has been made,  
5 the District Attorney would be saying, "No. In fact, these  
6 rules allow you to do less than what you were doing." And  
7 what I'm saying is you may then, we may in the situation  
8 whereby the determination of perhaps unclear rules, by the  
9 determination that rules are not as specific on the part of  
10 the Board, you may be forcing the District Attorneys to be  
11 in a situation where they perhaps limit the rules promulgated  
12 by you in the enforcement of the Penal Code sections.

13 In other words, that's going to be a very important  
14 issue in your litigating and trespass case whether or not  
15 that person was within the rules, within your rules or not.  
16 Obviously, if they were, they probably would never have been  
17 arrested and charged in the first place.

18 BOARD MEMBER ORTEGA: Right. As I understand, what  
19 you're talking about is a question of facts as to whether  
20 they violated 602 or whether our rule would prevent  
21 prosecution for a 602 violation, is that right?

22 MR. IGLEHART: Well, that's another issue whether  
23 or not you can issue rules that would allow a violation of  
24 602. And I presume if you do, that that issue will be  
25 challenged as quickly as possible. And needless to say, life

1 will continue while those people are run through the Courts.

2 BOARD MEMBER ORTEGA: Yes. But the challenge will  
3 not be by the District Attorney's Office. As I understand  
4 the office of the District Attorney is to uphold and enforce  
5 all rules of the State of California or its agencies.

6 MR. IGLEHART: That's correct. But let's be clear  
7 that it is not our charge or at least the legislation has not  
8 made it the charge of the District Attorney to enforce unfair  
9 labor practices.

10 BOARD MEMBER ORTEGA: That's correct.

11 MR. IGLEHART: And so because of that we're only  
12 talking about a violation of the Penal Code statute. And  
13 once we get the legal question as to your authority, if you  
14 do make such a rule, to make a rule granting violation of  
15 602. Once we get that settled, and that's a preliminary  
16 issue that's got to be settled. Once that's settled, then  
17 the question will be whether or not a particular defendant  
18 was, in fact, within the parameters of the rule or not. If he  
19 wasn't, if he argued that he wasn't, then that's going to be  
20 a legal issue that's going to come up probably during any  
21 trial. And that's the argument for being as specific as  
22 possible.

23 BOARD MEMBER ORTEGA: Well, I don't want to get  
24 into an argument because we don't have very much time and  
25 we're working in hypotheticals. But it seems to me that if

1 you get into that situation, it's not the District Attorney's  
2 function as you described it to challenge rules of various  
3 boards and agencies of the State --

4 MR. IGLEHART: No.

5 BOARD MEMBER ORTEGA: -- you wouldn't challenge  
6 our rules.

7 Now, the defendant raises a defense. You might  
8 say that's not a defense that's available to you because  
9 of the facts in your situation. But as I understand it,  
10 the District Attorney and certainly not the District  
11 Attorneys Association, as I understand it, would say we're  
12 going to challenge your rules on this.

13 MR. IGLEHART: No, not at all. But let's say you  
14 say for a reasonable period of time or a reasonable number  
15 of people and some gross number of people come on and in  
16 the determination of a particular District Attorney that's  
17 in violation of what's meant by "reasonable." And so he  
18 charges the case. And the defendants say it was a reasonable  
19 number of people that could have access. And we say, no,  
20 Judge, it couldn't have been. They couldn't have meant that  
21 whatever, you know, we're talking about hypotheticals. And  
22 so we are perhaps in a position where we are litigating some  
23 of the issues that perhaps you should decide first.

24 BOARD MEMBER ORTEGA: Yes, I see that. But that's  
25 why I asked about the organization you represented

1 initially because I just want to make clear that the  
2 District Attorneys Association hasn't decided that a policy  
3 matter --

4 MR. IGLEHART: We're sworn to uphold the law, not  
5 to try and get around it.

6 BOARD MEMBER ORTEGA: I have nothing more.

7 CHAIRMAN MAHONY: Any other questions?

8 Mr. Chatfield.

9 BOARD MEMBER CHATFIELD: I'm sorry, is it  
10 Iglehart?

11 MR. IGLEHART: Iglehart.

12 BOARD MEMBER CHATFIELD: Mr. Iglehart, is it fair  
13 to say that there is a good deal of confusion or a great deal  
14 of confusion among District Attorneys now whether to  
15 prosecute some of these access violations?

16 MR. IGLEHART: Yes, it's fair to say.

17 BOARD MEMBER CHATFIELD: Would it be reasonable  
18 to conclude that they would welcome something definitive  
19 one way or another?

20 MR. IGLEHART: Yes, that's fair to say, too.

21 CHAIRMAN MAHONY: Thank you very much, Mr. Iglehart.  
22 I'd like to call Mr. Jerry Breshears, the Fresh  
23 Fruit and Vegetables Workers Local 78.

24 MR. BRESHEARS: Mr. Chairman, Members of the Board,  
25 actually I hoped that I could be here today talking about the

1 unit question. I've been trying to get an answer to it for  
2 some time now. And I see on the Agenda that there's an  
3 opportunity tonight to meet with the staff.

4 I was kind of amused at Mr. Dressler's comments  
5 that the strawberry workers over there in Watsonville were  
6 going to be able to tell what their rights were under the new  
7 law. We've been trying to find out about the unit question,  
8 how that's going to be resolved, for about three weeks.  
9 I hope that they're able to understand what their rights  
10 are, but I really rather doubt it.

11 Generally our union and, I think, the Meat Cutters  
12 International endorses the position of Mr. Cohen. We think  
13 that access to the workers to explain to them the benefits  
14 of the union, the rights of a union contract are essential.

15 Access, I think, there's going to be access one way  
16 or the other. Either the employer, the employer obviously  
17 has access. They're on his premises and he's free to talk to  
18 them individually or practically at will. And we know that  
19 the union, various unions can have access to workers over  
20 another union. For example, we have some packing houses that  
21 are under the new Farm Law and some of ours are under the  
22 National Labor Relations Act. So we're concerned where we  
23 stand in light of these elections. So we decided to go out  
24 and secure authorizations from these packing house workers  
25 whom we think may be under the California Act and it didn't

1 take us very long to get them.

2 We just walked in the plant and told everybody who  
3 would to sign these cards. In 15 minutes we could sign up a  
4 hundred and fifty workers. The employer neither agreed nor  
5 disagreed. He didn't have anything to say about it and  
6 probably wouldn't have cared anyhow. So we had the access  
7 because we have contracts. Now, that wouldn't be quite so  
8 easy in a plant that you didn't have a contract, but I think  
9 that you're naïve if you don't understand that a union with  
10 a contract with an employer is going to have a decided  
11 advantage over one that doesn't.

12 And perhaps what the Board might be considering is  
13 in the emergency nature of the regulations that you're about  
14 to, you're promulgating in this particular issue as it's  
15 considered. You might also have to talk about it in, what's  
16 the concept, affirmative action. You have some people in  
17 with a decided advantage and you have to have access in order  
18 to offset that advantage.

19 But I think there will be access by all sides,  
20 anyone who wants to. When we organize a plant we demand  
21 access and we don't always get it under the law. We may have  
22 to sneak some people into a packing house and they may have  
23 to charge in there at noon and sign people up when the boss  
24 happens to be gone to lunch. And we've been thrown off of  
25 plants before. And we've been arrested before. So access is

1 going to be there. It's a question of whether it's going to  
2 be in there under some rules and regulations and a system  
3 that's fair to all, or whether it will be one union is  
4 allowed a little advantage over the other or the employer's  
5 got his right to speak against the organization or where  
6 everybody just fights it out.

7 I hope that you would promulgate a rule that was  
8 fair to all parties. I think you certainly want to consider  
9 that an agricultural worker is not the same as an industrial  
10 worker. The seasons are short. The addresses, even though  
11 you live in a community, you have these P. O. boxes.

12 We petition with the National Labor Relations  
13 Board from time to time and we're supposed to get a list of  
14 employees, a timely list, ten days. Give you time to  
15 organize and talk to everybody. You get a list and the  
16 addresses, they list the name and addresses. It says P. O.  
17 Box 1821, Waco, Texas, here on California General Delivery.  
18 There's no way in the world we can operate with those lists.

19 So the list concept that might very well be viable  
20 in an industrial setting where people have permanent  
21 residences or a plant that's going to be there for six or  
22 eight months or years, I should say, having a list of names  
23 and addresses of employees is valuable. It has no such value  
24 for agricultural operations. At least not with those that  
25 I'm associated with. And we represent melon workers and



1 carrot workers and asparagus workers, cauliflower workers,  
2 date workers, all kinds of vegetable and melon workers in  
3 California, practically every valley where they operate.

4 That really kind of sums up my statement on it.  
5 I think access is essential.

6 CHAIRMAN MAHONY: Thank you, Mr. Breshears.

7 Members of the Board wish to ask questions?

8 I'm sorry. Mrs. Gutierrez.

9 [Thereupon, the foregoing testimony was  
10 translated from English to Spanish, in  
11 summary, by Annie Gutierrez.]

12 CHAIRMAN MAHONY: Thank you.

13 Questions from Members of the Board?

14 Mr. Chatfield.

15 BOARD MEMBER CHATFIELD: Mr. Breshears, what type  
16 of access rule did you propose regarding those unorganized  
17 packing sheds that your union might be interested in?

18 MR. BRESHEARS: Well, we would like to have the right  
19 to go into the plant at times when they're not working, when  
20 they're on their scheduled breaks or on their meal periods.

21 BOARD MEMBER CHATFIELD: But do they have scheduled  
22 breaks?

23 MR. BRESHEARS: Most of them do, yes.

24 BOARD MEMBER CHATFIELD: Fifteen minutes?

25 MR. BRESHEARS: Normally it's 15 minutes, once in

1 the morning and in the afternoon or ten-minute breaks every  
2 two hours. Basically, if you could get in at noon and you  
3 could get in in the morning and in the afternoon, it would  
4 probably solve your problem.

5 BOARD MEMBER CHATFIELD: Well, failing an access  
6 rule, not having an access rule, how would you go about  
7 organizing these workers? How could you? Be arrested?

8 MR. BRESHEARS: We've faced that situation where we  
9 had to be arrested. We try not to be arrested. You try to  
10 get in and get out before they see you. And you get as many  
11 as you can and the next day you send somebody else in.

12 But you're facing a confrontation. That's not a  
13 very palatable way to go because the confrontation where the  
14 police comes in and drags you off is not conducive to  
15 convincing people that they ought to join your union. So it  
16 has a disadvantage. Even the employer throwing you off is  
17 coercive because you're talking about unorganized people.  
18 They don't know what their rights are. And you're talking as  
19 though you're going to protect them and you get hauled away,  
20 it leaves a lot of doubt in their mind. So you try not to  
21 get caught.

22 BOARD MEMBER CHATFIELD: So how would you go about --

23 MR. BRESHEARS: In a packing house you have some  
24 advantage over a field. It's a fixed location. So you  
25 pamphlet at the entranceways, night and day. When they come

1 and when they go. You try to track a few of them down.  
2 Follow their cars and meet them at their homes. There's some  
3 ways to do it. But if you're talking about a field  
4 operation, we've had experience trying to organize field  
5 workers ourselves back ten, twelve years ago, and the  
6 employer, even if you're next to a road and you have a field  
7 crew that's working next to you, you start talking to them and  
8 they'll take them half a mile in so you can't talk to them.  
9 We've even used public address systems to stand out on the  
10 road and try to talk to them and have them come out with their  
11 P.A. system to keep you from being able to communicate with the  
12 workers.

13           So the only practical way is to go into the area  
14 where the people are working and with some reasonable rules  
15 and not in fear of the worker.

16           BOARD MEMBER CHATFIELD: Well, in your experience  
17 in those packing sheds which you have organized, is it not  
18 disruptive to do this?

19           MR. BRESHEARS: No, it's not disruptive. I've  
20 worked in the fields and packing houses all my life when I was  
21 a child. I never worked for an employer who didn't allow your  
22 cousin or your uncle or your aunt or somebody to come in and  
23 chat with you. Visitors come and go in a field situation.  
24 It's not like an industrial plant where you have to sign in,  
25 but they come and go freely. It's only when they learn it's

1 a union organizer that they get really up-tight about it.

2 So what they're talking about is keeping the union  
3 from communicating with the workers. They don't care if your  
4 Uncle Joe comes out to tell you that he needs to borrow ten  
5 bucks.

6 BOARD MEMBER CHATFIELD: There was some testimony  
7 this morning that the crux of this Act is to allow self-  
8 organization. How does that square with your experience?

9 MR. BRESHEARS: Well, I was interested in the  
10 question. What is self-organization? You know, an organiza-  
11 tion has to have a form of some sort and I guess the only  
12 thing I know is the union. And the union has a headquarters  
13 and has people who, you know, somebody has to get the  
14 petition or get the authorizations and do that sort of thing.  
15 Self-organization is good. You know, it's good to have  
16 people inside the plant. That's the best kind of help you  
17 can get. But you still have to have other people who can  
18 provide the information that the workers don't have, provide  
19 the forms and that sort of thing.

20 CHAIRMAN MAHONY: Mr. Johnsen.

21 BOARD MEMBER JOHNSEN: Mr. Breshears, just a quick  
22 question here. What percentage of your packing houses are  
23 National Labor Relations Board packing houses?

24 MR. BRESHEARS: We estimated at the hearing when  
25 the law was enacted that some 60 to 65 percent would not be

1 covered by the National Labor Relations Act and that's really  
2 a guess. A packing house could vary from day to day; not  
3 from day to day, from week to week. And it's based on some  
4 kind of obscure criteria that the N.L.R.A. has. I don't think  
5 they know.

6 As a matter of fact, we have a case right now that's  
7 a question of some, that has been before the Board for a year  
8 and a half, and we haven't even heard from it. We filed and  
9 we just wait. I think the guys who filed are dead.

10 [Laughter.]

11 BOARD MEMBER JOHNSEN: Well, these 35 or 45 that  
12 are National Labor Relations Act packing houses, do you have  
13 any special access rules to get into those or do you do it the  
14 way you described to Mr. Chatfield?

15 MR. BRESHEARS: There are no special rules that  
16 I'm aware of. It's kind of an ad hoc situation. We do the  
17 best we can.

18 BOARD MEMBER JOHNSEN: You have no access rules  
19 but you are able to organize these 35 or 40 percent?

20 MR. BRESHEARS: You're able to organize, but what  
21 we found, you spend one year -- We have to set up three years  
22 to organize a packing house. The first year you secure the  
23 cards. You petition. Then the Board says, well, you have to  
24 wait to the peak of the season. So that's next year.

25 Next year you wait to the peak of the season, you

1 have the election. You have to do the process of organizing  
2 again. If you win the election, by that time the peak's over.  
3 By the time you're certified and the objections are filed and  
4 you get that all resolved, the season's over and you can't  
5 negotiate in the winter or in the off season. So you're in the  
6 third year before you ever start to bargain with the employer.  
7 I would hope that the intention of the Agricultural Act in  
8 California was to expedite that and eliminate those two- or  
9 three-year delays.

10 BOARD MEMBER JOHNSON: So an access rule wouldn't  
11 help you in that situation?

12 MR. BRESHEARS: Oh, sure. It would expedite your  
13 securing the cards. And in the first stage you might get the  
14 cards and the election the same year, depending on the length  
15 of the season, of course.

16 CHAIRMAN MAHONY: Mr. Ortega.

17 BOARD MEMBER ORTEGA: There was some discussion this  
18 morning about an access rule that would limit the access to  
19 certain designated areas. Mr. Cohen even indicated that was  
20 not a very viable rule as far as his union was concerned. Do  
21 you doubt his view? If so, would you tell us why.

22 MR. BRESHEARS: Well, I can understand his view.  
23 We've had further testimony from other people that you've  
24 heard this morning about the hostility and the suspicions  
25 that's generated over the past several years. And I can well

1 understand that if you said, okay, in this block over here  
2 all you people that want to go talk to the union go over  
3 there, that there's going to be some reluctance of people to  
4 go because of the hostility that everybody admits that the  
5 employer has towards the union. And I don't think that's  
6 a very effective way to approach that problem, at least today.

7 And undoubtedly somewhere down the road it might  
8 work, but I don't think it will work now. It might very well  
9 work in a packing house because the relationship hasn't been quite  
10 the same as it has been out in the fields.

11 BOARD MEMBER ORTEGA: You're saying that if the  
12 area was designated, say, a packing area or staging area  
13 because of the conditions that have existed for the past few  
14 years, that employees might be intimidated or might be afraid  
15 to go to where the union organizer is?

16 MR. BRESHEARS: I think it's clearly established  
17 that if the company doesn't want a union in, the employees  
18 are going to be reluctant to associate with or talk to someone  
19 that they know is a union agent. And the employer knows he  
20 is a union agent. And I think the designated area idea would  
21 have you working under that handicap.

22 BOARD MEMBER ORTEGA: So then you agree with  
23 Mr. Cohen that an access rule must be to the field or to the  
24 work site?

25 MR. BRESHEARS: I agree with him. I think what you

1 need is the right of an individual not necessarily to meet as  
2 a group or in a meeting, but to meet on a one-to-one basis;  
3 to talk, to ask, to be able to learn what the union's all  
4 about. And you can do that with one or two people at a time  
5 whereas if you have a designated area, you're crowded into a  
6 ten-minute time slot and you really aren't talking to people  
7 to transmit any two-way communications. Simply, you've got  
8 to make a speech.

9 BOARD MEMBER ORTEGA: Thank you.

10 CHAIRMAN MAHONY: Any further questions?

11 Just one last question, Mr. Breshears, on the  
12 same issue of access.

13 Do you feel that the possibility of having  
14 alternatives in terms of access might be a way to get around  
15 that? For example, maybe having a variety of ways in which  
16 workers can hear about the union?

17 MR. BRESHEARS: I think that there's some merit  
18 to that idea of alternatives. I agree with Mr. Dressler in  
19 the sense that all work situations are not the same and you  
20 might consider the particular situation in setting forth  
21 specific rules. I think alternatives would be helpful.

22 CHAIRMAN MAHONY: Thank you very much.

23 I'd like to ask Mr. Joseph Herman, Attorney  
24 representing the South Central Farmers Committee.

25 MR. HERMAN: Mr. Chairman, Members of the Board, my



1 name is Joe Herman. I'm a partner in the law firm of  
2 Seyfarth, Shaw, Fairweather and Geraldson from Los Angeles,  
3 and I'm appearing this afternoon on behalf of the South  
4 Central Farmers Committee.

5 The South Central Farmers Committee consists of  
6 approximately 65 growers in the Bakersfield, Delano and  
7 Coachella areas.

8 I have a prepared statement which I'd like to  
9 review with the Board and I will distribute copies at the  
10 conclusion of the statement. While the statement does not  
11 follow the structure set forth in the Agenda, I believe it  
12 touches upon all four of the points that are mentioned in the  
13 Agenda. At the end of my comments I'd like to respond  
14 briefly to several points that were raised by other speakers  
15 this morning and this afternoon.

16 First of all, I'd like to touch upon a preliminary  
17 point. The subject of these hearings has been described  
18 broadly as access. And the focus, however, has been just  
19 on access by non-employee union organizers to an employer's  
20 property and not on access by employee union organizers.  
21 This narrow focus, I believe, distorts the picture because  
22 often the most effective organizers are employees. And such  
23 employees have ready access to other employees while they are  
24 on the employer's premises. So, I think, it's false to argue  
25 as some of the other speakers have that unless non-employee

1 union organizers are given a right to enter an employer's  
2 property, the unions will not have access to the employees.

3 The union through employee organizers has total  
4 access limited only by the unwillingness of other employees  
5 to talk to the employee organizers.

6 Turning to the question of access by non-employees,  
7 there are two basic reasons why this Board should not, indeed,  
8 cannot adopt a general rule requiring access by outside union  
9 organizers to an employer's private property.

10 First, it is clear under the Act that the Board  
11 does not have the authority to adopt a general rule requiring  
12 that non-employee union representatives be granted access to  
13 an employer's property; whether that property be growing  
14 fields, a packing shed, a parking lot, camp housing, or other  
15 kind of processing facility. This conclusion is compelled  
16 by Section 1148 of the Act which requires the Board to follow  
17 applicable precedence of the National Labor Relations Act.

18 Section 1152 of the Act which defines the rights  
19 of agricultural employees is identical to Section 7 of the  
20 National Labor Relations Act. And the only statutory basis  
21 for this Board directing access to employees on private  
22 property by outside union organizers is Section 1152 of the  
23 Act.

24 As other speakers have mentioned, decisions under  
25 Section 7 of the National Labor Relations Act make it clear

1 that except in very limited and special circumstances there  
2 is no right to access to an employer's property. The case  
3 of Babcock and Wilcox has already been mentioned and there is  
4 the more recent case involving Central Hardware.

5         These cases make it clear, and these come from the  
6 highest authority that we have, the United States Supreme  
7 Court, that non-employee organizers have only a very limited  
8 and qualified right to access to an employer's property.  
9 And I think it's clear from the legislative history of this  
10 Act that the Legislature did not intend for this Board to  
11 have authority to acquire on a generalized basis that  
12 employers grant non-employees the right to come onto private  
13 property in order to communicate with employees.

14         Assembly Bill Number 1 from the 1975-1976 Regular  
15 Session provided for regulated entry upon an employer's  
16 property following the filing of a petition. This provision  
17 was removed from the Agricultural Labor Relations Act as  
18 enacted while Section 1152 remained. The fact that the  
19 Legislature saw fit to remove this specific provision confirms  
20 the conclusion that the Legislature was satisfied and intended  
21 to rely upon applicable Federal law in this area.

22         Second, even if the Legislature had authorized this  
23 Board to adopt a general rule requiring access by non-  
24 employees to an employer's property, such a rule would be  
25 inconsistent with the provisions of the United States

1 Constitution. The United States Supreme Court has held  
2 repeatedly that an infringement, however slight, of the  
3 employer's constitutional property rights is permissible only  
4 where there is showing of a compelling need for such an  
5 infringement.

6           The nature of agriculture employment in this State  
7 simply is too diverse to allow for any generalized access  
8 rule. There are growers with fixed, permanent and residential  
9 work forces and there are growers with seasonal, migrant and  
10 non-residential work forces. This diversity precludes this  
11 Board from adopting any generalized rule. Certainly a record  
12 would have to be made and no such record has been made to  
13 date in these hearings that circumstances in California  
14 agriculture are so generalized and so consistent that a  
15 consistent and uniform rule is justified.

16           The Babcock and Wilcox case establishes that access  
17 can be granted only where the particular facts in a  
18 particular situation give the union an absolute need to  
19 access. The standard is not one of convenience but one of  
20 absolute necessity. And that necessity has to be demonstrated  
21 on a case-by-case basis.

22           Certainly the experience of the members of the  
23 South Central Farmers Committee has not been that union  
24 organizers have been unable to contact our employees. The  
25 past years, during the past six or eight years, a majority of

1 our members have had contracts both with the United Farm  
2 Workers and with the Teamsters. And these organizations do  
3 not seem to have had any difficulty in contacting our workers.  
4 In the light of their success I don't think there's any basis  
5 for this Board developing a presumption that non-employee  
6 union organizers require access to an employer's private  
7 property.

8 Furthermore, it should be remembered that the Act  
9 allows employees either to engage in or to refrain from union  
10 activities. In the absence of the compelling circumstances  
11 required by Babcock and Wilcox, a rule requiring union access  
12 to an employer's property is one that has the effect of  
13 facilitating union organization.

14 We don't believe that it's either wise or  
15 appropriate for this Board to depart from a posture of strict  
16 neutrality and to, in fact, promote union organization,  
17 when the Act mandates that employees have the equal right  
18 not to be represented by a union.

19 In sum, we believe that both the nature of the  
20 constitutional issue as raised and the language and history  
21 of the Act command the conclusion that no general rule could  
22 or should be adopted. Proper respect for all competing  
23 interests and the statutory and constitutional limitations  
24 on this Board can be achieved only on a case-by-case basis.  
25 Where the Board does determine that access to a particular

1 part of an employer's property is required, it will have to  
2 place clear limitations as to the time, the numbers, manner  
3 and location and duration of such access. It is suggested  
4 that any entry by non-employees even when necessary under  
5 Babcock and Wilcox be allowed only to a limited number of  
6 bona fide union organizers during non-working hours in non-  
7 working areas and at times when petitions for elections may  
8 be properly filed under the Act. I think these requirements  
9 are clear and were spelled out in the Central Hardware case.

10 I want to specifically mention the disruptive  
11 possibilities of a rule which would demand access to a  
12 particular grower's property at a time when that grower has  
13 a collective bargaining agreement or is involved in  
14 negotiations with a certified union.

15 In addition to limiting the periods when non-  
16 employee access must be granted, the Board should also limit  
17 the area into which non-employees are privileged to enter.  
18 Basically I think there are three different categories of  
19 areas and I think they each have to be considered separately.

20 First are working areas. With regard to working  
21 areas we know of no circumstances which would ever allow  
22 non-employees to enter an employer's private property.  
23 The Central Hardware case in defining the accommodation that  
24 must be made between the competing interests clearly noted  
25 that non-employee access would at all times be restricted

1 to prescribed non-working areas. We know of no case where  
2 the National Labor Relations Board has compelled entry by  
3 non-employees into the work area. In fact, even in the labor  
4 camp cases the N.L.R.B. has allowed access only during  
5 employees' free time and under reasonable regulations.  
6 This is because the infringement and disruption of employer's  
7 property rights must be restricted to the least offensive  
8 available means.

9           It is clear and shouldn't need any explanation to  
10 state allowing access to an employer's productive areas during  
11 working hours when work is being performed including lunch  
12 hours and rest periods is the most disruptive of offenses.  
13 Clearly access to property at times surrounding productive  
14 activity is wholly unnecessary to provide for effective  
15 communication to the affected employees.

16           The natural corollary of this is that access can  
17 never be necessary during break periods during a working day.  
18 Break periods serve an essential function for the worker as  
19 well as for the employer. The rest that they give the worker  
20 is clearly necessary to insure his health and safety. These  
21 periods are effective only if the employees have the  
22 opportunity to rest free from the unwarranted intrusion and  
23 interference by outsiders.

24           Practical considerations also command the conclusion  
25 that access to the work areas be at all times prohibited.

1           Let me carry on some of the practical problems  
2 arising from allowing access to working areas. First of all,  
3 it would obviously create a severe and unnecessary burden for  
4 the employer both in terms of controlling the work force and  
5 in terms of monitoring what the non-employee organizers are  
6 doing.

7           Secondly agricultural operations like any industrial  
8 activity, often entail risks of injury from equipment and  
9 methods and the employer would be unnecessarily subjected  
10 to risks and liability from this exposure to non-employees.

11           Third, and probably most importantly, such  
12 unnecessary access could easily lead to confrontation and  
13 violence arising from the refusal of union organizers to  
14 leave when they are interfering with work; from situations  
15 where the employee may not want to be interfered with; from  
16 situations where a disagreement arises as to whether the  
17 particular time period allowed for access is expired; from  
18 situations where an argument develops as to whether or not  
19 the proper number of organizers are attempting to come on.  
20 These risks are unnecessary and will be disruptive of the  
21 achievement of the purposes of the Act.

22           As to parking lots and other non-work areas, it's  
23 difficult for us to see very many situations where employees  
24 who would use a parking lot will be beyond the contact of a  
25 labor organization through traditional channels of union



1 contact. In both the Babcock and Wilcox and Central Hardware  
2 cases, the Supreme Court was presented with parking lot  
3 situations. And in each case the Court held that the Labor  
4 Board, the National Labor Relations Board could not lawfully  
5 require an employer to grant access to non-employee union  
6 organizers. This doesn't mean that there wouldn't be rare  
7 situations where access by non-employees to parking lots will  
8 be appropriate, but certainly the great weight of the case  
9 authority is that with reference to parking lots access will  
10 not be required.

11 Finally, as to camp housing, the California Supreme  
12 Court's recent decision, we believe, does not stand for the  
13 proposition that union organizers have an absolute  
14 constitutional right of access to labor camps on an employer's  
15 property. Rather that right must be balanced against the  
16 employer's property rights which also are protected by the  
17 Constitution.

18 Only when the housing is open to the general public  
19 so that it attains a quasi-public status, do non-employee  
20 union organizers have a right of access and even in that  
21 situation there must be reasonable limitations put on the  
22 right of access.

23 Let me just conclude by stating that once again our  
24 position is that under both the terms of the statute, its  
25 legislative history and in addition the United States

1 Constitution, this Board may not lawfully adopt fixed and  
2 generalized rules regarding the right of non-employee union  
3 organizers to enter an employer's private property. Moreover,  
4 even if the Board had the authority to adopt a general rule,  
5 the practical problems that such a rule would present, argue  
6 against its adoption. Proper accommodation of the rights of  
7 all parties can be achieved only by a careful case by case  
8 evaluation of the circumstances in each situation.

9 I'd like in addition to comment on two or three  
10 points which have been raised either by Members of the Board  
11 with other speakers or by the speakers themselves.

12 CHAIRMAN MAHONY: I would just remind you,  
13 Mr. Herman, you have two minutes.

14 MR. HERMAN: All right. I'll be very quick.

15 First of all, Mr. Smith stated that under a majority  
16 of present Teamster contracts they have access. For those  
17 of our members who presently do have contracts with the  
18 Teamsters non-employee union representatives are permitted  
19 to come onto the employer's fields only for the purpose of  
20 administering the labor contract and not for organizing  
21 purposes.

22 Moreover, such entry is carefully regulated and  
23 limited to non-working times.

24 Secondly, Mr. Cohen stated that Article I, Section  
25 2 of the California Constitution is broader than the First

1 Amendment of the United States Constitution and that  
2 therefore it would be constitutional for this Board to adopt  
3 a broader rule than the National Labor Relations Board may  
4 adopt. The fact is that the U. S. Constitution is just as  
5 binding on this Board as it is on the National Labor Relations  
6 Board. While the California Constitution may impose  
7 additional restrictions on the Board, it cannot give this  
8 Board powers it does not have under the Federal Constitution.

9 Finally, let me comment on what probably has been  
10 the most pervasive problem that has been raised and that is  
11 the problem of certainty and uniformity.

12 As desirable as these objectives are they should  
13 not, they cannot be attained at the price of constitutional  
14 rights. There are many, many difficult, legal and social  
15 problems which defy resolution by a simple general rule.  
16 The problem of obscenity is certainly a continuing free  
17 speech problem. I'm sure that movie theatre owners, book  
18 publishers, et cetera, would welcome a simple, clear-cut  
19 general rule which would tell them the answer to what is  
20 and what is not obscene. No rule of that kind is possible  
21 with that problem. There are countless other difficult and  
22 tractable social problems which defy resolution by a simple  
23 rule. What we have here is a clash of competing legitimate  
24 interests. The employer's legitimate interest in operating  
25 his property free from outside disruption and we have the

1 that includes access for organizational purposes.

2 BOARD MEMBER CHATFIELD: Well, would it include  
3 access to workers to tell them about a meeting that was going  
4 to take place that evening?

5 MR. HERMAN: The provision has been limited to  
6 allowing access for the purpose of administering the labor  
7 contract. And if the purpose of the meeting related to  
8 administration of the contract, then they would be allowed  
9 such access. If the purpose of the meeting were organization-  
10 al to solicit cards to submit to this Board in support of a  
11 petition, access would not be allowed.

12 I might add --

13 BOARD MEMBER CHATFIELD: Are you suggesting that  
14 you act as a censor over what a union organizer can say to  
15 workers?

16 MR. HERMAN: It isn't a question of censoring what  
17 they say. It's a question of controlling the purposes under  
18 which they can enter our property. And I don't think there's  
19 anything startling about that. We wouldn't allow them to  
20 enter our property for the purpose of engaging in political  
21 activities. The purpose is limited to legitimate union  
22 business. And as we interpret that phrase, it is limited to  
23 administering the collective bargaining agreement.

24 BOARD MEMBER CHATFIELD: So, for example, they could  
25 talk to workers about benefits under the union contract?

1 employee's interest in working free of outside disruption.  
2 We also have their interest and right in communicating with  
3 each other and with outsiders on the subject of union  
4 organization. The resolution of these competing legitimate  
5 interests cannot be done on the basis of a general, simple,  
6 and flexible rule.

7 Thank you.

8 CHAIRMAN MAHONY: Thank you very much, Mr. Herman.  
9 Mrs. Gutierrez.

10 [Thereupon, the foregoing testimony was  
11 translated from English to Spanish, in  
12 summary, by Annie Gutierrez.]

13 CHAIRMAN MAHONY: Thank you very much.  
14 Questions from Members of the Board?  
15 Mr. Chatfield.

16 BOARD MEMBER CHATFIELD: Mr. Herman, I'm sorry I  
17 missed the very opening remarks of your testimony. You  
18 represent employers that have union contracts?

19 MR. HERMAN: Yes, that's correct.

20 BOARD MEMBER CHATFIELD: And under these union  
21 contracts, union organizers do have access to the property,  
22 to the workers?

23 MR. HERMAN: For certain limited purposes. And as  
24 we interpret the section of the current agreement that some  
25 of our members have with the Teamsters, we do not believe

1           MR. HERMAN: If a question arose that a worker had  
2 as to whether or not a particular benefit, whether or not  
3 they were receiving a particular benefit, certainly.

4           BOARD MEMBER CHATFIELD: Can they enter on a daily  
5 basis?

6           MR. HERMAN: Under certain controlled conditions  
7 requiring prior notification; I mean, the conditions are  
8 carefully controlled.

9           BOARD MEMBER CHATFIELD: Could you enter more than  
10 one time during the day?

11          MR. HERMAN: Well, yes, I suppose if the problems  
12 that were required --

13          BOARD MEMBER CHATFIELD: Well, who makes the  
14 decision, let's put it that way, the employer --

15          MR. HERMAN: Well, if a dispute develops between  
16 the employer and the union as to the propriety of access in a  
17 particular case, I suppose, ultimately that would have to be  
18 resolved through the grievance procedure which ends in  
19 arbitration. It's a provision of the labor contract. And  
20 like every other provision of the labor contract, if there  
21 is a disagreement, it ultimately has to be resolved by a  
22 neutral arbitrator.

23          BOARD MEMBER CHATFIELD: But it is your impression  
24 or your understanding that access as a matter of course is  
25 afforded to union organizers on these properties, access to

1 the workers?

2 MR. HERMAN: For the purpose of administering the  
3 labor contract.

4 BOARD MEMBER CHATFIELD: Is an employer required  
5 to be present or a supervisor required to be present when the  
6 union organizer is on the property talking to workers?

7 MR. HERMAN: No. Well, you mean present so that he  
8 can be a party to the conversation?

9 BOARD MEMBER CHATFIELD: Yes.

10 MR. HERMAN: No.

11 BOARD MEMBER CHATFIELD: Then in what sense would  
12 it be controlled?

13 MR. HERMAN: It's controlled as to the time. It's  
14 controlled as to the duration. It's controlled as to the  
15 number of people. It's controlled as to every possible  
16 diminsions of circumstance is controlled.

17 BOARD MEMBER CHATFIELD: But in fact the employer  
18 does not know or the supervisor does not know and cannot  
19 know what a union organizer may say to those workers or not?

20 MR. HERMAN: Well, that's true, but very often  
21 there will be a pending grievance which provides the  
22 justification for entry. There will be a preliminary  
23 explanation as to what the purpose is if a question is raised.  
24 And as I say if a disagreement develops, there is a procedure  
25 for resolving that disagreement.

1 BOARD MEMBER CHATFIELD: Well, let me pose a  
2 hypothetical, then.

3 If the union wanted to notify the workers of a  
4 meeting that evening regarding legitimate union business,  
5 they would have access to those workers to so notify them?

6 MR. HERMAN: In one form or another, that's  
7 correct. It might be through written notification or it  
8 might be through personal contact.

9 CHAIRMAN MAHONY: Mr. Johnsen.

10 BOARD MEMBER JOHNSEN: Mr. Herman, you've indicated  
11 in your earlier testimony that most of your members had union  
12 contracts with one union or another.

13 MR. HERMAN: I can't give you offhand the percentage.  
14 A substantial number of the members of the South Central  
15 Farmers Committee have had contracts both with United Farm  
16 Workers and with the Teamsters.

17 BOARD MEMBER JOHNSEN: Am I to assume then that  
18 there was no problem of access as far as union organizers  
19 were concerned in getting those contracts originally?

20 MR. HERMAN: Well, as I say, they were able to  
21 get the contracts without any access by non-employee  
22 organizers.

23 BOARD MEMBER JOHNSEN: Thank you.

24 CHAIRMAN MAHONY: Any questions?

25 Mr. Grodin.



1           BOARD MEMBER GRODIN: Mr. Herman, first of all, I  
2 want to say that you presented a very well reasoned  
3 argument, presented it well.

4           I ask you to indulge me in three factual  
5 assumptions which I don't ask you to agree with and which I  
6 propose to discuss with you in a moment. Assumption number  
7 one is that not in every case but in most cases, the  
8 generality of cases, the picture with respect to farm labor  
9 is different than it is in the typical industrial situation.  
10 And that one of the differences is that given a generally  
11 high degree of mobility of the work force; given a general  
12 lack of stability in terms of residence addresses; given a  
13 general lack of ownership of motor vehicles and so forth,  
14 that as a general matter, not in all cases, but perhaps  
15 the majority, maybe the great majority of cases, there really  
16 now are no effective alternative methods of access for  
17 organizers other than face-to-face contact with the worker  
18 somewhere on or about the grower's premises.

19           That's assumption number one which I ask you to  
20 indulge me.

21           Assumption number two is that we can, Members of  
22 the Board with your cooperation and the cooperation of other  
23 representatives of growers and unions, can devise rules which  
24 would permit a minimum requirement for access, for  
25 communication without adversely affecting in any substantive

1 way the legitimate interests of the employer in operating  
2 his business and getting the job done. We're not saying  
3 in any substantive way. I mean to exclude the obvious  
4 interest of anybody and not having people without their  
5 permission enter on this private property. And I mean to  
6 exclude also the interests of the employer, you also  
7 understand, who does not have a union if he doesn't want to  
8 have a union, but I'm talking about disruption of the work,  
9 interference with property and so forth.

10 If we could devise rules that you as a reasonable  
11 person, if you were on a contract to this agency, could come  
12 up with rules that would allow reasonable methods of  
13 communication that would not be disruptive to the employer's  
14 legitimate interest.

15 And the third assumption is that if we don't do  
16 that, we are going to have a continuous series of, a  
17 continuation of uncertainty of aggravation and perhaps even  
18 the violence of which concerns you. That is a continuation  
19 of the present state of affairs deferring until the  
20 determination of unfair labor practice cases which you and  
21 I know can be a long way away and involve a lot of work for  
22 lawyers and members of the agency in terms of practical  
23 results in actual cases that may have little impact.

24 If you indulge me in those three assumptions, would  
25 you still say that this Board had no authority to adopt rules

1    which guarantee that kind of minimal access without  
2    interference with the employer's legitimate interests?

3           MR. HERMAN: Well, I think those three assumptions  
4    assume away the problems. And --

5           BOARD MEMBER GRODIN: Okay. Now, let's talk about  
6    the three assumptions, then.

7           MR. HERMAN: Let me just, just to answer your  
8    question. If it could be demonstrated in all cases that  
9    there is no effective alternative means of access --

10          BOARD MEMBER GRODIN: I didn't say all. I said,  
11   great majority.

12          MR. HERMAN: Well, I think I would want to tie with  
13   that an assumption that circumstances in California  
14   agriculture were so consistent and uniform that a general  
15   rule was justifiable and I don't believe that that is the  
16   case.

17          BOARD MEMBER GRODIN: I don't ask you to indulge  
18   in that assumption. I assume a great variety of situations  
19   but that overall in the overwhelming majority of cases, the  
20   circumstances are such that alternative methods of access are  
21   either non-existent or non-effective. And that doesn't mean  
22   that every situation is identical, but that with respect to  
23   that issue in most cases that is. I'm willing to discuss  
24   that assumption with you, but that was my assumption, not  
25   that everything was uniform and consistent.

1           MR. HERMAN: Well, I think without the  
2           assumption that there was sufficient uniformity to justify a  
3           general rule, the Board does not have the authority to adopt  
4           a general rule. Does not have the authority constitutionally  
5           to impose upon property owners the kind of infringement that  
6           an access rule would impose. But I think it requires a  
7           showing of such uniformity before a rule like that would be  
8           constitutionally permissible.

9           BOARD MEMBER GRODIN: You mean if there's a single  
10          exception, if there's a single employer, let's say, all of  
11          whose employees live year-round in a community otherwise  
12          accessible to the union, that we cannot adopt a rule that  
13          would apply to that employer?

14          MR. HERMAN: Well, I think clearly we're not talking  
15          about a single employer. I don't know how to measure. I'm  
16          not sure what the dimensions and parameters would be. But I  
17          have a feeling based partly on what I've heard today that  
18          there is a substantial number of agricultural operations  
19          outside of those involved in the South Central Farmers  
20          Committee which have relatively permanent stable work forces.  
21          And I think given that fact it's very difficult for this  
22          Board to come up with a rule which is based upon a contrary  
23          assumption.

24          BOARD MEMBER GRODIN: How about a rule which  
25          includes a definition of a stable work force?

1           MR. HERMAN: I'm not sure, are you saying that the  
2 Board would adopt a rule saying that if "X" percent of the  
3 workers are present for such-and-such a period of time, then  
4 this kind of access is not justifiable? I think you probably  
5 as we thought about it there would probably be a lot of  
6 other variables that we would want to crank into it and the  
7 rule would get probably so complicated that we wind up with  
8 a case-by-case determination anyway.

9           BOARD MEMBER GRODIN: With respect to my second  
10 assumption that it would be possible to devise a rule which  
11 would not interfere in any substantive way with the legitimate  
12 interests of the employer, would you believe that could be  
13 done?

14           MR. HERMAN: I wouldn't want to deny the ingenuity  
15 of the Board; however, I have yet to see a rule like that.  
16 I've taken some time to try to think of a rule which would  
17 be workable and fair and I haven't been able to come up with  
18 it. And I've talked to some other people who have made a  
19 similar attempt and I'm, I have an open mind on the subject,  
20 but I am skeptical.

21           BOARD MEMBER GRODIN: Let's start with the  
22 designated areas and move from there. Is there any problem  
23 with the situation in which before and after work the union  
24 organizers have access to a designated area in which employees  
25 normally congregate and not, let us assume, in their immediate

1 work areas but in a parking lot or in some staging area, is  
2 there any problem with a limited number of identified  
3 organizers, and I give you any number you want, being able  
4 to talk with employees in that period?

5 MR. HERMAN: I think certainly by removing the  
6 organizers from the working areas you've removed a substantial  
7 number of the problems. I have a little bit of a problem  
8 as to being how certain we can delimit a staging area or area  
9 that will meet the kind of test that you're describing.  
10 But hypothetically, certainly if we could get an area like  
11 that and it's segregated and easily defined, I think we would  
12 have taken a large step towards avoiding any interference with  
13 what you've referred to as legitimate employer interests out-  
14 side of the legitimate interests of the remaining non-union.

15 BOARD MEMBER GRODIN: And in a situation in which  
16 the employees have an established lunch break and an  
17 established area or customary area in which they spend that  
18 lunch break, do you see any problem there in allowing again  
19 a limited number of identified union organizers to communicate  
20 with the employees?

21 MR. HERMAN: I see a much greater problem there  
22 because the voluntariness from the employee's point of view  
23 is much less there. An employee can come to work when he  
24 wants to and probably leave when he wants to. He isn't  
25 forced to sit around and listen and be exposed to non-employee

1 union organizers. At lunch breaks that might not be the case.  
2 There may just be a single period in a single place where  
3 employees take their lunches and in that situation there is  
4 an element of involuntariness in their exposure to non-  
5 employee union organizers.

6 BOARD MEMBER GRODIN: With respect to the rest  
7 periods, you indicated that they should not be intruded upon.  
8 But is there any difference in the nature of an intrusion  
9 if organizing is conducted by employee organizers or by non-  
10 employee organizers?

11 MR. HERMAN: I think there can be a substantial  
12 difference. I think that employee organizers, number one,  
13 will be approaching people who they know and there will be  
14 already some relationship established which will avoid the  
15 kind of fear and intimidation that comes from being  
16 approached by someone you don't know. And I know that  
17 Members of the Board are aware of the kind of fear and  
18 intimidation that have occurred in organizing situations.  
19 And I think by opening the fields to anyone who can present  
20 some identification that he's a union organizer, you're  
21 exposing employees to the possibility of being intimidated  
22 by people they're not familiar with.

23 BOARD MEMBER GRODIN: I have no further questions.

24 CHAIRMAN MAHONY: Mr. Ortega.

25 BOARD MEMBER ORTEGA: Thank you for your patience.