

1 I just have two brief questions.

2 You indicated that you felt, as I understand it,
3 that this Board cannot adopt a rule on access on two grounds.
4 One is that the statute requires us to follow N.L.R.B.
5 precedent, is that correct?

6 MR. HERMAN: That's correct.

7 BOARD MEMBER ORTEGA: Now, following the N.L.R.B.
8 precedent, first of all, were you present when Mr. Alatorre
9 was testifying?

10 MR. HERMAN: Yes, I was.

11 BOARD MEMBER ORTEGA: What would be your reply to
12 his answer about controlling precedent? He said that, if
13 you remember, that the statute was sufficiently different
14 so that he didn't have to follow it in all cases.

15 MR. HERMAN: I'm sorry, the statute what?

16 BOARD MEMBER ORTEGA: Well, did you hear his reply?

17 MR. HERMAN: I heard his reply. I'm trying to
18 recall it now.

19 BOARD MEMBER ORTEGA: He was, as you know, one of
20 the authors of this bill.

21 MR. HERMAN: Well, yes. He was originally an
22 author of another bill which specifically provided for access.
23 And that specific provision was deleted from the bill that
24 was adopted by the Legislature.

25 BOARD MEMBER ORTEGA: And he indicated that some of

1 those, as I understood it, provisions were deleted under the
2 assurances that this Board would take care of that matter.

3 MR. HERMAN: Well, I think that the Board is going
4 to look to legislative history. They would want to look to
5 the, they would want to receive testimony from all of the
6 Legislators who were involved both in drafting and finally
7 voting on the bill.

8 I think that it's not a proper way to approach
9 legislative history and the construction of legislative
10 history by taking the testimony of one of the authors of a
11 bill. Certainly that testimony is relevant, but the most
12 relevant piece of information is the product that finally
13 emerged. And the product that finally emerged does not
14 contain any reference to access by non-employee union
15 organizers.

16 BOARD MEMBER ORTEGA: So you feel we have to get
17 opinions from more than one Legislator because indeed there
18 is more than one opinion?

19 MR. HERMAN: Well, yes. And I think that as you
20 do that you're going to run into conflicting opinions and
21 ultimately you're going to be thrown back to the language
22 of the statute itself and the history in terms of prior
23 legislation that was introduced into the Legislature and not
24 adopted.

25 BOARD MEMBER ORTEGA: That's right. So it is your

1 testimony then that we should look at the bill itself?

2 MR. HERMAN: I think that's --

3 BOARD MEMBER ORTEGA: And that history might not be
4 very helpful?

5 MR. HERMAN: Well, I think that history in terms,
6 insofar as it's indisputable, is very helpful. And there is
7 no dispute that a prior piece of legislation was produced
8 that specifically provided for access and that that provision
9 was deleted from the bill that was finally adopted.

10 BOARD MEMBER ORTEGA: All right. Now, let me go
11 on to the next basis for your saying that we cannot pass or
12 not adopt a rule requiring access; and that is a
13 constitutional question, is that correct?

14 MR. HERMAN: That's correct.

15 BOARD MEMBER ORTEGA: And I have your brief before
16 me. You cite Central Hardware, the proposition that any
17 infringement however slight of the enforced constitutional
18 property rights will only, where shown to be specifically
19 supported by strong and compelling interests, is clear from
20 the case law. Is that what Central Hardware says?

21 MR. HERMAN: Yes, and it's quoted on page 6, the
22 quotation that that's based upon. Page 6 of the presentation
23 that you have has the full quotation.

24 BOARD MEMBER ORTEGA: From Central Hardware?

25 MR. HERMAN: From Central Hardware, right. And the

1 companion case cited at the same time as Central Hardware,
2 Lloyd Corporation versus Tanner, also contains some rather
3 strong declarations by the Supreme Court as to the equal
4 sanctity of employer property rights under the United States
5 Constitution.

6 BOARD MEMBER ORTEGA: Yes. Well, I've read the
7 Central Hardware and it does say exactly what you said in
8 the quotation. It does not say exactly what it says on page
9 2 of your brief. But at any rate, do you know how Central
10 Hardware was decided in terms of the members of the Court?
11 Was it a unanimous decision or five, four, three, two?

12 MR. HERMAN: If you'll hold on a minute, I'll look
13 at my copy. I wouldn't want to guess on that.

14 This is going to require going into the archives
15 of my briefcase. I have it as Lloyd versus Tanner here. I
16 don't know whether the same split was involved or not, but
17 Lloyd versus Tanner appears to be a five-four decision.

18 BOARD MEMBER ORTEGA: Perhaps that's more of a
19 rhetorical question. I have nothing further.

20 CHAIRMAN MAHONY: Any other questions?

21 I have just a couple of questions.

22 First of all, just a comment and I don't mean this
23 personally against you. I've just been amazed today how
24 ably attorneys are able to take the same N.L.R.B. decision or
25 Supreme Court case and ultimately use it to support totally

1 contradictory positions.

2 [Laughter.]

3 CHAIRMAN MAHONY: This is amazing to me. I'm not
4 an attorney. I don't possess that ability, but I think it's
5 remarkable.

6 MR. HERMAN: I'm sure over the years people will
7 be quoting your decisions for equally inconsistent
8 propositions.

9 [Laughter.]

10 CHAIRMAN MAHONY: At times I wish I could do that
11 with the Ten Commandments.

12 [Laughter.]

13 CHAIRMAN MAHONY: How long have you represented
14 the South Central Growers personally? I don't mean the
15 firm, you, personally.

16 MR. HERMAN: Well, our firm started --

17 CHAIRMAN MAHONY: You, personally.

18 MR. HERMAN: Well, I personally, I suppose, for
19 only several months. Our firm has been involved in
20 representing the South Central Farmers Committee for a number
21 of years. And it started when our office, when we just had
22 an office in Chicago and Washington and we've continued to
23 represent them in the two years we've had an office in
24 California.

25 CHAIRMAN MAHONY: Well, the reason I raise that, I

1 really would have to differ with an assumption that was made
2 that in 1965 to '70, in terms of the United Farm Workers and
3 '70 to the present in terms of the Teamsters, that, in fact,
4 workers were contacted through some other means other than
5 access. That simply is not the case. That, in fact, is the
6 whole basis of the problems we have had in the southern part
7 of the Valley that, in fact, there was consistently and daily
8 confrontation access. I'm not saying it was allowed by the
9 grower, but that, in fact, was the way it was done.

10 MR. HERMAN: I didn't mean to state that the
11 history showed that access had been granted in the past.
12 My comment was that the fact that labor contracts had been
13 negotiated certainly was some indication that contact was
14 possible outside of non-employee organizers coming on to
15 the field.

16 CHAIRMAN MAHONY: But I didn't want the conclusion
17 to be left that in fact those contracts had been obtained
18 through other means other than direct access to the workers
19 because, in fact, at least from my viewpoint, certainly that
20 was the problem.

21 Maybe the bottom line to what we've been discussing
22 here is whether or not property rights really take precedence
23 over First Amendment Constitutional Rights.

24 Do you have any feeling about that balance?

25 MR. HERMAN: Oh, I have a feeling, as the Supreme

1 Court has said, both the rights of free speech and the
2 property rights are protected by the same Constitution and
3 that's what makes the problem difficult. If there were a
4 clear constitutional priority, we wouldn't have the great
5 problem that we do now. Because of the equal parity, at
6 least the document, the Constitution gives them, I think
7 we're required on a case-by-case basis to evaluate the
8 circumstances and make a judgment as to whether in this
9 particular case the balance comes out this way or this way.
10 The difficulty of making that balance, I think, is apparent
11 from the narrowness of some of the Supreme Court decisions
12 and from the bitterness of the debate.

13 And I don't, the one thing I am sure of, is that
14 it is not going to be possible to strike a balance which
15 takes into account both constitutional rights, both interests
16 on a general basis.

17 CHAIRMAN MAHONY: I have no further questions.

18 Thank you very much, Mr. Herman.

19 MR. HERMAN: Thank you.

20 CHAIRMAN MAHONY: I believe at this time in order
21 to give our court reporter's fingers a moment to relax a bit,
22 I think we'll take a ten-minute recess. However, before we
23 go, I want to announce that tomorrow morning at 8:00 a.m.,
24 in this particular room right here, there will be a briefing
25 session for anyone who wishes to come for employers,

1 employees, student organizational people, given by staff of
2 our agency to describe their procedures and how they're going
3 to go about carrying out the representation of unfair labor
4 practices of this bill.

5 So everyone is invited who wishes to come for that
6 briefing.

7 And I would stress that we will resume exactly at
8 4:00 o'clock. It is now ten minutes of four. Exactly 4:00
9 o'clock.

10 [Thereupon there was a brief recess.]

11 CHAIRMAN MAHONY: Ladies and gentlemen, we are
12 back in session. We have a quorum up here. We'd like to
13 ask Mr. Leon L. Gordon of the Agricultural Producers
14 Labor Committee if he would please come forward.

15 MR. GORDON: Mr. Chairman, I believe some Member of
16 the Board there is missing. Shall I --

17 CHAIRMAN MAHONY: Two.

18 MR. GORDON: -- wait a few minutes?

19 CHAIRMAN MAHONY: Unfortunately they tend to get
20 into discussions in the hallways and this could go on for an
21 awful long time. And we don't want to keep all these people
22 waiting or yourself, so we simply must continue.

23 MR. GORDON: Thank you.

24 My name is Leon L. Gordon. I'm appearing on behalf
25 of Agricultural Producers Labor Committee, Los Angeles,

1 California.

2 [All Members of the Board are now present.]

3 MR. GORDON: The Committee is a trade association
4 of the citrus and avocado industries. Its members are
5 composed of citrus and avocado growers in the State of
6 California. Now, I realize the hour is growing late and
7 perhaps the patience of the Board and the audience are
8 becoming weary and so I'll try to make my remarks as brief
9 as possible.

10 And I will address myself first to answering the
11 questions which have been set forth here on the Agenda today.

12 First of all, "Is there a need for an access rule?"

13 Now, let me address myself first, let me say first that I am
14 addressing myself to the conditions as they relate to the
15 citrus and avocado industries in the State of California.

16 In these industries the harvest goes on for ten and eleven
17 and sometimes twelve months a year. And so that the people
18 who work in these industries have employment for the most
19 part for as long as ten, eleven or twelve months a year.

20 Most of these people live in the community. They have homes
21 in the community. They are a part of the community. They
22 read the local newspapers. They listen to the local radio.

23 They have in many parts of the State a Spanish-speaking radio
24 and Spanish language newspapers.

25 Now, in answer to the question, are there alternatives

1 to an access rule, I would say very definitely in this
2 industry. These people have exactly the same kinds of
3 communications that are available in the case of any
4 industrial worker or in the case of any worker who is employed
5 in a commercial establishment.

6 Now, in answer to the question should there be an
7 access rule, should it be adopted and what are its parameters?
8 Well, of course, under the circumstances of these industries,
9 there would seem to be no need for an access rule. All of
10 the usual channels of communication are open. For the most
11 part people know, the labor union organizers know where these
12 people can be located and contacted. And so I would say
13 that there is access.

14 Now, the industry, I submit, is an example of how
15 inappropriate it would be to try to make a general rule that
16 would cover all segments of agriculture.

17 Now, if a rule should be adopted, what are its
18 parameters? Well, let me answer this question simply at the
19 risk of repeating what has been said here many times today.
20 The parameters have been outlined by the Supreme Court in the
21 Babcock and Wilcox cases and the Central Hardware cases.
22 The parameters have been laid down by the precedence of the
23 National Labor Relations Board. The parameters of what the
24 rule-making authority of this Board is has been laid down by
25 the mandate of the Legislature, its mandate that this Board

1 follow the precedence of the National Labor Relations Board.
2 And finally, the parameters are limited and circumscribed
3 by Penal Code Section 602.

4 So I submit that the critical issue before this
5 Board is really the legal authority to issue any rule. I
6 submit that this Board cannot write any general access rule
7 applying to all elements or segments of agriculture without
8 in some way conflicting with Section 602 of the Penal Code.
9 And I submit that it's very basic and fundamental that a
10 Board may not through its rule-making authority circumscribe
11 or repeal in any way another statute of the Legislature.

12 I submit that there's nothing in the California
13 Agricultural Labor Relations Law which gives it that
14 authority or which expresses the intent of the Legislature
15 that this Board have authority in its rule-making authority
16 to in any way modify or circumscribe another Act of the
17 Legislature.

18 Now, I think that Mr. Inglehart of the District
19 Attorneys Association laid the matter squarely on the line
20 when he said that the Board may not in its rule making permit
21 a violation or authorize a violation of another statute.
22 Now, I submit that that is the issue before the Board and I
23 respectfully submit that this Board has no authority to issue
24 any general access rule beyond the parameters that have been
25 set out by the Supreme Court in Babcock-Wilcox or by the

1 precedence of the National Labor Relations Board.

2 CHAIRMAN MAHONY: Thank you very much, Mr. Gordon.

3 Questions from Members of the Board?

4 Forgot again.

5 Mrs. Gutierrez will translate a summary in Spanish.

6 [Thereupon, the foregoing testimony was

7 translated from English to Spanish, in

8 summary, by Annie Gutierrez.]

9 CHAIRMAN MAHONY: Thank you, Mrs. Gutierrez.

10 Questions from Members of the Board?

11 Mr. Grodin.

12 BOARD MEMBER GRODIN: I don't think we should make

13 Mr. Gordon feel bad by not asking him any questions.

14 [Laughter.]

15 BOARD MEMBER GRODIN: Mr. Gordon, during the
16 harvest season of citrus, how wide an area do workers travel
17 in the course of the year?

18 MR. GORDON: I believe that for the most part
19 citrus workers will work for a single employer during the
20 course of a year. And in many areas employment is available
21 to them through a single employer for a period of as long as
22 possibly ten or eleven months a year. They are not in any
23 sense migrant or transitory. Now, there may be cases where
24 during a slack season by one employer, a worker may work for
25 another employer in the same area. But I believe in many

1 areas in the State where there are multiple citrus crops,
2 where one crop matures as another is phased out, that
3 employment can be extended for a far greater period of time
4 than in any other commodity.

5 BOARD MEMBER GRODIN: Would you be able to estimate
6 what percentage of the work force among all employees you
7 represent, taken together, work, say, for the same employer
8 at least eleven months out of the year?

9 MR. GORDON: What percentage for eleven months a
10 year? Well, I would guess that somewhere around 70 or 80
11 percent of employees could work for a single employer as long
12 as, say, ten or eleven months.

13 BOARD MEMBER GRODIN: And they would be living
14 where in that period?

15 MR. GORDON: They would live either in housing,
16 in their own homes. Perhaps some have their own homes,
17 perhaps some have their own homes in the community, or in
18 rented homes or in housing that is made available by the
19 employer.

20 BOARD MEMBER GRODIN: Would the housing made
21 available by the employer be located on the employer's
22 land or off the land?

23 MR. GORDON: Well, probably in the vicinity; not
24 directly on the land, no.

25 BOARD MEMBER GRODIN: Would a union that was

1 organizing have access? I'm asking not the legal question,
2 but what the situation is right now.

3 MR. GORDON: Yes.

4 BOARD MEMBER GRODIN: Does the union have access
5 to such employer-owned housing?

6 MR. GORDON: I'm sure that they would because it
7 would be a matter for the individual occupant of the house
8 to decide whether or not he would talk to any union
9 organizer. He's just a, he lives in a private house, a
10 single-family residence.

11 BOARD MEMBER GRODIN: The employer does not control
12 access to the area in which the housing is located?

13 MR. GORDON: Now, we're talking about single-family
14 housing. There are labor camps used in the industry. Now,
15 in the case of labor camps, I would say the individual
16 employee does not control the matter of access, although he
17 certainly can invite friends on the premises and certainly he
18 has pretty unlimited use of that housing.

19 BOARD MEMBER GRODIN: Do unions currently have
20 access to those labor camps?

21 MR. GORDON: Yes, they do, under such regulations
22 as are consistent with the safety and security of the
23 camps and the people in them.

24 And the rules, let me say, that the rules with
25 respect to safety and security are the same rules that have

1 been in effect for a long time and they relate to everybody,
2 not just union organizers.

3 BOARD MEMBER GRODIN: Thank you.

4 CHAIRMAN MAHONY: Any other questions?

5 Mr. Chatfield.

6 BOARD MEMBER CHATFIELD: Mr. Gordon, this harvest
7 season work that these employees have access to for ten to
8 twelve months of the year, is that in one growing area or is
9 that in several growing areas?

10 MR. GORDON: Oh, I think it would be several
11 growing areas.

12 BOARD MEMBER CHATFIELD: Could you use some
13 examples?

14 MR. GORDON: San Joaquin Valley, Ventura, Riverside;
15 all of those areas have multiple citrus crops where the
16 combined harvest season would extend over the greater part
17 of the year.

18 BOARD MEMBER CHATFIELD: So, in other words, if you
19 took a look at the citrus industry as a whole that is where
20 your ten to twelve months employment harvest season --

21 MR. GORDON: No, not as a whole. I'm talking about
22 the season with respect to each one of these areas.

23 BOARD MEMBER CHATFIELD: Could you give me an
24 example of an area?

25 MR. GORDON: Ventura.

1 BOARD MEMBER CHATFIELD: Well, let's use
2 Porterville as an example.

3 MR. GORDON: All right.

4 BOARD MEMBER CHATFIELD: How long does that season
5 last?

6 MR. GORDON: Probably, the Porterville season
7 probably because they have mainly, according to my knowledge,
8 lemons, would be a shorter season than, for example, Ventura,
9 where I believe that they would be harvesting maybe twelve
10 months a year.

11 BOARD MEMBER CHATFIELD: Well, there's quite a
12 citrus belt near the Porterville area, right?

13 MR. GORDON: Yes.

14 BOARD MEMBER CHATFIELD: Would that be a two- or
15 three-month season, do you think?

16 MR. GORDON: Well, it would be certainly in excess
17 of that. I'm sure it would be more than two or three months.

18 BOARD MEMBER CHATFIELD: Up to, what, four or five
19 months, six months?

20 MR. GORDON: Longer than that. Probably at least
21 six months or longer.

22 BOARD MEMBER CHATFIELD: So if a worker lived in
23 the Delano area, for example, and worked in the citrus, they
24 might have to travel 30, 40, 50 miles?

25 MR. GORDON: In the case of, yes, if he, if the

1 worker lived in Delano and worked in Porterville, yes, he
2 would be traveling.

3 BOARD MEMBER CHATFIELD: That is not uncommon?

4 MR. GORDON: That is not, I don't think, the
5 typical situation.

6 BOARD MEMBER CHATFIELD: Well, for those workers
7 who live in Delano and work in citrus in Porterville it's
8 pretty typical.

9 MR. GORDON: Well, yes, I would have to say yes.

10 BOARD MEMBER CHATFIELD: Are labor contractors
11 used in the industry, to your knowledge?

12 MR. GORDON: Yes, they are in certain areas.

13 BOARD MEMBER CHATFIELD: And so the workers are
14 picked up at different locations via bus and brought to the
15 work site?

16 MR. GORDON: That undoubtedly is true in some
17 areas, or they go in their own automobiles to the work site.
18 From their homes to the work site by their own transportation.

19 BOARD MEMBER CHATFIELD: Could you explain a
20 little bit about the citrus industry in Ventura? What is
21 the harvest season length there?

22 MR. GORDON: They have multiple citrus crops and
23 I would say that the harvest goes on in that area something
24 like ten, eleven, possibly twelve months a year.

25 BOARD MEMBER CHATFIELD: Right in --

1 MR. GORDON: I would guess in that area there's
2 some places where harvesting goes on twelve months.

3 CHAIRMAN MAHONY: Mr. Johnsen.

4 BOARD MEMBER JOHNSEN: Mr. Gordon, just for
5 clarification in my own mind and maybe for Mr. Chatfield, too,
6 what you mean by an area in working eleven, ten or eleven
7 months, you mean that the workers would live in their own
8 homes and travel to the jobs maybe on two or three different
9 ranches, but it would be a commute thing and they would go
10 back to their home in the evening?

11 MR. GORDON: Yes.

12 CHAIRMAN MAHONY: I have just another question to
13 get my own framework here of this industry. Just a very
14 rough estimate, what percentage of agricultural workers in
15 California work in the citrus part of the industry? Would
16 you have any estimate, five percent?

17 MR. GORDON: I would hesitate to even venture a
18 guess, Mr. Chairman.

19 CHAIRMAN MAHONY: Okay. Any further questions?
20 Thank you very much, Mr. Gordon.

21 MR. GORDON: Thank you.

22 CHAIRMAN MAHONY: We have asked Mr. Jack Henning
23 of the State Federation of Labor, AFL-CIO, if he would
24 testify.

25 MS. GUTIERREZ: It was our understanding that the

1 Los Angeles County Federation of Labor had decided that they
2 would defer to Mr. Henning. Is Mr. Henning here or is anyone
3 here from the Los Angeles County Federation of Labor?

4 CHAIRMAN MAHONY: I saw Mr. Henning a few minutes
5 ago, but he must have left.

6 We already have heard from the Honorable Richard
7 Alatorre. So we'll go on now to California Tomato Growers
8 Association, Mr. Robert F. Holt, Executive Vice President.

9 MR. HOLT: Good afternoon, Mr. Chairman and Members
10 of the Board. My name is Bob Holt. I'm Manager of the
11 California Tomato Growers Association and we represent the
12 growers of tomatoes for processing in California. And this
13 is the largest single growers' segment of the food processing
14 industry in California.

15 And we estimate right now that about 30,000 workers
16 are now in the fields harvesting tomatoes. Of this number
17 a hundred percent are involved in mechanical harvesting.
18 There is no longer any hand harvested tomatoes for
19 processing in this State. We estimate that more than \$350
20 million will be returned to California growers of tomatoes
21 for processing this year based on what seems to be a
22 reasonable estimate for the 1975 crop. With a multiplication
23 factor of five or seven dependent upon what economist is
24 consulted, this industry surely has business in fact of more
25 than \$2 billion on the economy of California when processing.

1 transportation, sugar, tin, services and all related factors
2 are taken into consideration.

3 The California Tomato Growers Association fully
4 recognizes the need for the California Agricultural Labor
5 Relations Act and was a party to the conferences held with
6 Governor Brown and other concerned persons in advance of the
7 passage of this Act. We have a policy which acknowledges the
8 need to develop an orderly approach to the needs and wishes
9 of the agricultural employees and recognizes their legitimate
10 desires to organize for their betterment.

11 The Board of Directors of the California Tomato
12 Growers Association does not favor one union over another
13 nor does it favor or disfavor the joining of unions by the
14 workers of its members. Our stated desire is simply to
15 protect the legitimate rights of both growers and workers
16 involved in the extremely important and precarious business
17 of the tomato harvest.

18 In addressing ourselves to the question of access
19 to workers in the field, it is our belief that there should
20 not be any field entry permitted at harvest but that growers
21 should make reasonable efforts to make certain that organizers
22 do have access at stated times and places nearby the harvest
23 field. We feel that the access provisions within the
24 N.L.R.B. Rules are completely irrelevant when applied to
25 agriculture.

1 There's absolutely no similarity between the raw
2 product requirements of a General Motors or a Ford Motor
3 Company and those required by a fruit and vegetable processor.

4 Perishable agricultural products cannot be
5 adequately warehoused, inventoried or stockpiled without
6 great loss. Also, we are dealing with a fundamental human
7 need, and that is food. The harvest is a very critical time
8 for human needs and must be treated as a more fundamental and
9 precious condition than that which occurs when an industrial
10 plant workers are subject to organization.

11 This year California tomato growers should be able
12 to harvest over six million tons of tomatoes within an
13 intense ten-week period of peak activity. This means that
14 every moment is critical and it also draws attention to the
15 fact that no regulations should be promulgated by this Board
16 that will make it possible for workers or employees to be
17 harassed at harvest time. With rest breaks at ten to 15
18 minutes and lunch at 30 minutes, it would seem impractical
19 for organizers to talk to workers in these times without
20 disrupting the workers and curtailing harvest production.

21 Incidentally, in the rest breaks in a tomato field,
22 the rest breaks are staggered, too. If a grower has five
23 machines working, there will be five different rest period
24 times. Lunch periods might run for two or three hours,
25 staggered lunch periods.

1 But would it not be possible for a system to be
2 established whereby employers can set up times for interview
3 and organizing on or near their property but not in harvest
4 areas when union organizers could legitimately and without
5 harm to the harvest procedure or to workers tell workers
6 their story? Surely this Board has it within its capability
7 to establish such procedures.

8 There is another consideration that is vital to
9 both employees and growers. The experience of our growers
10 has shown that workers fear being subjected to coercion and
11 bodily harm and damage to personal property. And that there
12 have been many, many experiences of this nature in recent
13 years in the tomato harvest when union organizers invaded
14 fields. There have also been numerous examples of
15 vandalism of employer as well as employee-owned equipment.
16 This danger becomes greater when organizers are not
17 encouraged to meet with workers at such times and places
18 under specified and controlled conditions but are permitted
19 to roam aggressively in the fields.

20 The business of harvest is one that takes place
21 as a very intense action with trucks, harvest vehicles, and
22 employee and employer autos all getting into motion or
23 arriving at a field at about the same time. The confusion
24 and disruption presented by union organization activities
25 at this time can only lead to breaches of normal safety

1 precautions and increase the hazard and opportunity of field
2 accidents. Who would bear the responsibility of random
3 accidents of this nature? As growers we are making every
4 effort to conform to the rules of the O.S.H.A. and the
5 California State Accident Prevention Commission in addition
6 to obeying the common sense rules that have always guided
7 our actions in obeying our moral obligations to our workers.

8 Please don't view this as an artificial or made-up
9 cause. It is a very real concern and one of which the
10 grower members of the California Tomato Growers Association
11 have always been very aware.

12 In summary, I would tell you that it is the wish
13 of our membership that there be no union access to the
14 fields during harvest for reasons that refer principally
15 to worker safety and to the need to have a successful tomato
16 harvest, a matter of real impact on the economic stability
17 of California and on this State's worker force. We do
18 pledge our willingness to cooperate in any plan that can be
19 devised to assure access to workers near the fields and on
20 or near our growers' farms at the time of harvest.

21 Thank you.

22 CHAIRMAN MAHONY: Thank you very much, Mr. Holt.
23 Mrs. Gutierrez.

24 [Thereupon, the foregoing testimony was
25 translated from English to Spanish, in

1 summary, by Annie Gutierrez.]

2 CHAIRMAN MAHONY: Thank you very much.

3 Any Members of the Board have questions to ask
4 Mr. Holt?

5 Mr. Johnsen.

6 BOARD MEMBER JOHNSEN: Mr. Holt, could you
7 describe for the Board very quickly what would happen in
8 a case of a 500-acre tomato ranch, not the whole ranch but
9 a field, when it's time to harvest? How many harvesters
10 would be put in and approximately how many workers and how
11 would they get there, this kind of thing? Just briefly.

12 MR. HOLT: Well, that's a hypothetical question, --

13 BOARD MEMBER JOHNSEN: Yes.

14 MR. HOLT: -- Mr. Johnsen, and the only thing I
15 can do is give you a hypothetical answer. If that field is
16 already to go at the same time most growers would have
17 perhaps four or five machines in the field, they would be
18 employing perhaps 80 to a hundred people at that time.

19 BOARD MEMBER JOHNSEN: About 20 on each machine?

20 MR. HOLT: Yes.

21 BOARD MEMBER JOHNSEN: And would they, generally
22 speaking, drive there or come in a bus and get stopped in
23 one place or get off?

24 MR. HOLT: Well, this varies from ranch to ranch,
25 but I would say that the great majority of the employees

1 would drive to the ranch.

2 BOARD MEMBER JOHNSEN: And they would know that
3 they're supposed to go to this corner or that corner and they
4 would get on the machine or whatever?

5 MR. HOLT: Well, the great majority of the workers
6 sorting tomatoes on tomato harvesters are permanent residents
7 of the community. There are, I understand, some that, I
8 hesitate to use the word "migrants," but that they might not
9 be in the immediate community that do know that work is
10 available and they will drive to the area for work.

11 BOARD MEMBER JOHNSEN: You mentioned in your
12 testimony that you were willing to give access to the union
13 organizers in non-harvest areas. If we had a 500-acre area,
14 what would be a non-harvest area? Would that be one corner
15 that had been harvested yesterday?

16 MR. HOLT: Well, I'm speaking as a representative
17 of growers and I did mention that we would be willing to
18 cooperate with a plan that might provide access, access near
19 the fields either on or off the ranch. Now, I realize and
20 from the testimony I've heard today, there's some violent
21 opposition to access to grower's property. So there may
22 be some growers who were dead set against having an access
23 area on the property. We would work with the Board in trying
24 to establish an adjacent access area for conversations, for
25 leafletting, for talking with workers, and those workers who

1 may be interested because there is a question of worker rights
2 also. Those who may not want to listen to the story of the
3 organizer.

4 BOARD MEMBER JOHNSEN: Thank you.

5 CHAIRMAN MAHONY: Mr. Chatfield.

6 BOARD MEMBER CHATFIELD: Mr. Holt, the tomato
7 season has started, has it not?

8 MR. HOLT: Yes, it has, Mr. Chatfield.

9 BOARD MEMBER CHATFIELD: What is the policy of the
10 California Tomato Growers Association now with respect to
11 access? Right now?

12 MR. HOLT: Right now, this is our position right
13 now.

14 BOARD MEMBER CHATFIELD: Okay.

15 MR. HOLT: The tomato season started about the
16 third week in June. Tomatoes are a nomadic crop, I guess
17 you call them. They started in the desert area about the
18 third week in June. The desert area for all intents and
19 purposes now have completed their harvest. The next harvest
20 season starts right after the Fourth of July on the southern
21 San Joaquin Valley around the Bakersfield area. They're
22 finished now.

23 BOARD MEMBER CHATFIELD: I presume that there is
24 some organizing activity going on now in the tomatoes?

25 MR. HOLT: I have heard within the last two or three

1 days that there has been some organizational attempts in
2 some areas of the State, yes.

3 BOARD MEMBER CHATFIELD: All right. So what I'm
4 driving at, what would be the existing policy with respect
5 to access of those union organizers now, or do you know?

6 MR. HOLT: No, I don't because this is an
7 individual thing with the individual farmer, the individual
8 grower.

9 BOARD MEMBER CHATFIELD: I see. So the thrust
10 of your testimony then is that the Association that you
11 represent is willing to work with the Board in developing
12 something that's reasonable?

13 MR. HOLT: Yes, sir.

14 BOARD MEMBER CHATFIELD: That makes sense.

15 MR. HOLT: Yes, sir.

16 CHAIRMAN MAHONY: Mr. Grodin.

17 BOARD MEMBER GRODIN: I wonder to that end whether
18 we could be more specific about the kind of plan that makes
19 sense. For example, does it make sense to provide access
20 by union organizers to some areas which may be on the ranch
21 where workers customarily assemble prior to going to work?
22 Are there such areas?

23 MR. HOLT: In tomatoes it would probably be right
24 in the middle of the area for harvest. So it would be in
25 the working areas at that particular time. And it depends

1 again on ranch to ranch. Now, Mr. Johnsen used a hypothetical
2 figure of 500 acres. Now, a grower might have a 40-acre
3 block or a 20-acre block by which -- maybe there's only half
4 a dozen cars involved and maybe they parked alongside the
5 country road or something in order to go to work. So I
6 think it would vary from ranch to ranch.

7 BOARD MEMBER GRODIN: But if we're talking about a
8 large, several hundred acre ranch, would there be an area
9 in which employees park their cars, a parking lot?

10 MR. HOLT: I presume there would be.

11 BOARD MEMBER GRODIN: Would that be an area that
12 could be set aside for a limited number of union organizers
13 to talk to employees?

14 MR. HOLT: This is quite possible and could be.

15 BOARD MEMBER GRODIN: And that could be done both
16 before work and after work, I take it?

17 MR. HOLT: I would think probably after work would
18 be the best time. I'm sure that if it was before work there
19 might be some delays in starting up the day's work, the
20 equipment. You see, in tomato harvest the sorters ride a
21 piece of machinery and it takes a crew of, as I indicated,
22 approximately 20 to man a particular machine. So if there
23 were some delays in getting started, it would not only delay
24 the one person that was probably interested in, however many
25 people there were that was interested in the proposal, but it would

1 delay the entire operation. So I would think that after work
2 would be the best time to catch them.

3 BOARD MEMBER GRODIN: Is there a common quitting
4 time for all employees or does that vary?

5 MR. HOLT: Well, this may vary from ranch to ranch,
6 too. In tomatoes we're operating night shifts also and
7 sometimes we have to run around the clock in the tomato
8 industry.

9 BOARD MEMBER GRODIN: I mean, at any particular
10 ranch do all the employees quit at the same time?

11 MR. HOLT: I'm sure there are a number that do,
12 probably the majority.

13 BOARD MEMBER GRODIN: Are the employees on piece
14 rating tomatoes or what?

15 MR. HOLT: No, sir, on hourly rates.

16 CHAIRMAN MAHONY: Any other questions?

17 I have a couple of questions.

18 Your tomato growers represent about 30,000 workers
19 approximately, you said?

20 MR. HOLT: Yes, sir.

21 CHAIRMAN MAHONY: I suspect that many of these
22 growers have other crops other than tomatoes as well?

23 MR. HOLT: Yes, they're diversified growers.

24 CHAIRMAN MAHONY: So that theoretically if the
25 growers in your Association who would be in favor of an access

1 rule of designated space and time, that conceivably they
2 would represent other groups of workers and other crops as
3 well?

4 MR. HOLT: The crops may not be harvested at the
5 same time.

6 CHAIRMAN MAHONY: Right.

7 MR. HOLT: They could be.

8 CHAIRMAN MAHONY: Say grapes later on or asparagus?

9 MR. HOLT: Alfalfa hay or sugar beets or peaches.

10 CHAIRMAN MAHONY: And in the tomato harvest
11 everybody's on the machine, isn't that correct? No one's
12 walking along picking up tomatoes?

13 MR. HOLT: Everyone's riding the machine.

14 CHAIRMAN MAHONY: Picks up the whole plant?

15 MR. HOLT: Yes, sir.

16 CHAIRMAN MAHONY: Okay. You had mentioned
17 before that the workers fear coercion and there's been
18 vandalism in the past and other activity like that. Do you
19 feel the type of access proposal that your Association is
20 willing to cooperate with might help alleviate some of
21 these?

22 MR. HOLT: Yes. I think I mentioned in here that
23 it's without some sort of structured type of thing that we
24 fear the most vandalism or coercion or bodily harm.

25 CHAIRMAN MAHONY: Thank you very much, Mr. Holt.

1 MR. HOLT: Thank you.

2 CHAIRMAN MAHONY: As we move on I'm going to have
3 to ask that we try to limit our testimony a bit. And I
4 would ask that where possible, those who testify try to
5 limit to ten minutes rather than 15 and we try not to
6 repeat in a great measure everything that has been said
7 before so that we're trying to zero in on particularly new
8 items that you wish to offer or to offer some clarification.

9 Okay. In moving forward then to Salinas Valley
10 Independent Growers, Mr. Robert Mills, Manager.

11 MR. MILLS: Chairman Mahony and Members of the
12 Agricultural Labor Relations Board, I am Robert S. Mills,
13 Manager of the Independent Growers Association which
14 represents some hundred and eighty growers in Monterey,
15 San Benito, Santa Clara and West Fresno Counties. The
16 organization was formed approximately five years ago with a
17 stated policy that its members would accept no union
18 organization, no negotiation for union organization, or
19 negotiation for contracts without fair and equitable secret
20 ballot elections. That concept of our Association and its
21 policy is still in force.

22 In many cases our grower members are third and
23 second generation operators on ranches in which they live.
24 Their parents or grandparents have developed this property
25 and paid taxes on it for several decades. Their pride in

1 ownership and independence and their own operation is as
2 strong as any place you will find in the world.

3 As a side comment, I am not an attorney. This will
4 be brief.

5 CHAIRMAN MAHONY: As long as you recognize one
6 does not necessarily follow the other.

7 [Laughter.]

8 MR. MILLS: Specifically in Monterey County
9 union organizers have been active for five or more years.
10 During this period of time they have used all sorts of
11 techniques in which to inform the workers of their positions;
12 radio, television, newspapers -- those public and those
13 newspapers which are published by unions themselves. One
14 interesting note, I've been keeping track, that during the
15 last several months according to the various newspaper
16 reports one union at its various rallies has had more people
17 in attendance at these rallies than there are agricultural
18 workers in the Salinas Valley.

19 It is this Association's opinion that organizers
20 have had an ample opportunity to present their program.
21 Individuals in agriculture and many outside of agriculture
22 know what the problems are. Those people which are not
23 associated with agriculture tend to forget the magnitude of
24 farming operations.

25 In a ten-foot-acre field alone, there is almost a

1 half a million square feet of manufacturing space. If you
2 were to surround this with walls and a roof, you would have
3 one of the largest manufacturing plants anywhere in the world.

4 It is my understanding that under the National
5 Labor Relations --

6 CHAIRMAN MAHONY: Excuse me. I have to ask those
7 who wish to talk, would you please go outside.

8 [Thereupon the same admonition was given
9 in Spanish by Chairman Mahony.]

10 MR. MILLS: It is my understanding of the National
11 Labor Relations Act that organizers are not allowed in quote
12 "work" areas. This Association believes that the total
13 operation of a farm whether it be the access roads to the
14 field, whether it be the fields themselves, the equipment
15 area, the shop, and other areas related to the production of
16 foodstuff, all constitute work areas. Any access to these
17 areas would be disruptive and hinder the efficient
18 productiveness of agricultural commodities.

19 Just an example, I have farmed for a number of
20 years in my life and one of our problems has been with dust.
21 Many of these roads into these fields are unimproved roads
22 and unnecessary driving on these roads creates dust which
23 not only inhibits plant growth, but it also creates an
24 excellent environment for an explosive population, population
25 explosion of damaging agricultural insects.

1 While the Association believes that it's imperative
2 that agricultural control to the end degree those persons
3 who receive permission to enter upon their property, we also
4 recognize the pressures from unions and union organizers to
5 have access to workers on operating fields and ranches. We
6 would submit that in a case-by-case position that between
7 mutual agreement and agents of the Board that a non, a
8 designated non-work area be established for each ranch
9 in question. We also, as the tomato growers, would be very
10 happy to work with the Board or its agents in this matter.

11 We consider this approach and sincerely hope the
12 Board will consider this as a possible solution to the
13 access rule.

14 Thank you.

15 CHAIRMAN MAHONY: Thank you, Mr. Mills.

16 [Thereupon, the foregoing testimony was
17 translated from English to Spanish, in
18 summary, by Annie Gutierrez.]

19 CHAIRMAN MAHONY: Thank you.

20 Any Members of the Board wish to ask questions?

21 Mr. Chatfield.

22 BOARD MEMBER CHATFIELD: Mr. Mills, could you give
23 me an example of a designated work area or a couple of
24 examples, please, that make sense to you?

25 MR. MILLS: Well, I would think it, in the case of

1 harvest and let's look at harvest as controlled panic. It's
2 kind of like the Navy-Air Force when they make a landing on
3 a carrier. It's a controlled crash landing. And harvest
4 is kind of a controlled panic situation.

5 An area in which has already been harvested might
6 be designated as a non-work area. A field which is lying
7 fallow for weed control and moisture control might be
8 considered if it's an area and which is readily adjacent to
9 a convenient access to the property might be considered a
10 non-work area.

11 BOARD MEMBER CHATFIELD: Would you agree that it
12 should be an area that the workers might normally be in the
13 vicinity or might normally be there?

14 MR. MILLS: Well, I would think, obviously, that
15 an area which was designated as a non-work area in which
16 union organization could be conducted would have to be an
17 area in which workers might necessarily not be near during
18 their daily activities but they would pass by on their way
19 home from work. It would have to be an area that was
20 available to people.

21 Other speakers have talked about non-work areas.
22 The only thing that I think I've added to that comment is
23 that this area be designated by mutual consent between the
24 employer and a member or the agent of the Board.

25 CHAIRMAN MAHONY: Any other Members?

1 Mr. Grodin.

2 BOARD MEMBER GRODIN: Yes. To follow through on
3 the question posed by Mr. Chatfield, Mr. Cohen's remarks
4 this morning with respect to the concept of allowing access
5 in a designated area were three; that is, he raised three
6 objections.

7 One of them was the possibility of surveillance;
8 that is, that the grower would have supervisors, the
9 management personnel about in this area. Can I assume that
10 as part of your concept here that the grower would not have
11 supervisors in the area? That he would commit himself to
12 keep his supervisors away?

13 MR. MILLS: Well, if I can respond to Mr. Cohen's
14 comment on this morning, the thought that went through my
15 mind was that's one of the problems that we have today is
16 the distrust on the part of certain union organizers.

17 BOARD MEMBER GRODIN: I think there's admitted
18 distrust.

19 MR. MILLS: To respond specifically to your
20 question, I would not contemplate advising my members to
21 have observers or surveillance of these areas.

22 BOARD MEMBER GRODIN: And I guess the other
23 question related to that would be this; it relates to a
24 question Mr. Chatfield posed. Mr. Cohen expressed concern
25 that the Board would somehow manage and control this to its

1 own advantage if it was anxious to keep unions out. Perhaps
2 by making it clear one way or another to workers that it
3 might be in their best interest not to go into this area and
4 talk to the organization. Now, I conceive of situations
5 where that might be the case. To the extent that that's a
6 problem, the problem is eliminated somewhat if it is an area
7 in which employees would normally go so that they are not
8 conspicuous for being there.

9 For example, a parking area; is that possible?

10 MR. MILLS: Well, I would have to relate to a
11 parking area again. We have a great deal of mistrust in the
12 State of California between all factions --

13 BOARD MEMBER GRODIN: Sure. We're going to put an
14 end to that.

15 MR. MILLS: Oh, great.

16 [Laughter.]

17 BOARD MEMBER GRODIN: Maybe not this week.

18 MR. MILLS: It's pretty hard to tell an employee
19 whose tires have been slashed by whoever that he's going to
20 have to park his car in an area in which he thinks people
21 who slashed his car is going to be and allow it. This is
22 the deterrent towards that approach as I see it.

23 BOARD MEMBER GRODIN: Well, I suppose there we're
24 dealing with a situation of mutual distrust in which on one
25 hand the union thinks that the grower is going to intimidate

1 his employees into not talking with the organizer. And on
2 the other hand, the employer and perhaps some of the
3 employees are inclined to believe that the organizer is going
4 to intimidate the employees if he has any communication with
5 them. And I think what we have to push for is a situation
6 in which we can experiment with free discussion, a free flow
7 of ideas and resort to our legal remedies if anybody resorts
8 to intimidation, but to create the climate in which this
9 discussion can take place.

10 Apart from a parking lot or other areas, the term
11 "staging area" has been used, are there areas that employees
12 customarily go and congregate before they go to work, a
13 portion of which might be set aside as an area, or all of
14 which, for a limited period of time, might be set aside as
15 an area in which union organizers could go and communicate
16 where the employees would not stand out like a sore thumb
17 for being there?

18 MR. MILLS: I suspect that in answer to this
19 question I again go back to the standpoint that many other
20 speakers today have talked about, that there is no uniform
21 criteria on any ranch in the State of California. It can be
22 identical acreage. It can be an identical crop. It can be
23 identical soil-type conditions, identical irrigation systems
24 and yet there's a difference. And they could be contiguous
25 property. This is the reason that we are suggesting that

1 Board input through its agents be involved in this area.

2 CHAIRMAN MAHONY: Mr. Ortega.

3 BOARD MEMBER ORTEGA: You indicated you worked
4 for a hundred and eighty growers -- Mr. Mills.

5 CHAIRMAN MAHONY: Mr. Mills.

6 MR. MILLS: Oh, excuse me. I thought I was
7 dismissed.

8 [Laughter.]

9 BOARD MEMBER ORTEGA: I know the day is long and --
10 You indicated you have about a hundred and eighty growers
11 in your Association. Can you tell me about how many
12 employees they have in a harvest season?

13 MR. MILLS: Well, first of all you have to realize
14 our employees vary from very small to quite large, depending
15 upon which side of the fence you're sitting on. Some of
16 them will have as few as five employees at peak during the
17 season of the year. This is mainly a family farm operation
18 in what we call "junk" vegetables, Chinese cabbage, this sort
19 of thing. And that isn't usually grown in large acreages.
20 And usually it's a man and his wife and maybe one of his
21 youngsters operating a farm and they hire two additional
22 youngsters in the summertime to help with loading the crates
23 and this sort of thing.

24 And then we go from that to an operation of well
25 over 2,000 acres of productive grounds with peak employment

1 at three to 400 people. Now, the average size of our growers
2 in the Monterey County area is 354 acres. Dependent upon
3 what crop -- All right. Rather than tell you the number of
4 workers, the average peak employment on our average size
5 grower will be about 50 people.

6 BOARD MEMBER ORTEGA: Thank you. Now, I'm going
7 to ask you the same questions that have been asked by many
8 of our people. Are most of these, as far as you know, people
9 that would live within commuting distance of their work?

10 MR. MILLS: I think you have to approach this by
11 commodity-by-commodity basis, Mr. Ortega. In our area we
12 have one commodity, the market tomato industry, that most
13 of the crop harvested is done by people who are not normally
14 residents of Monterey County. In all of our other
15 commodities -- let me expand that just a minute if I might.

16 And the reason for that is that this commodity
17 comes off in the summer months. We have people coming from
18 Texas, New Mexico, Arizona, et cetera, bringing their
19 families with them. It's a change of pace or whatever you
20 want to call it. They bring their families. Those that
21 are old enough to work under our Agricultural Labor Laws are
22 placed on the labor rolls along with mother and father, and
23 at the moment that school starts in Texas, these people
24 disappear. They go back and put their, I hate to say people,
25 these agricultural workers disappear to go home to put their

1 youngsters into school. They take home some fantastic
2 amount of money for a very short period of time as a family
3 group.

4 In our other commodities which do not normally
5 come off during the summer educational vacation months, the
6 majority of the work is done by people who reside in the
7 Salinas Valley. And I would say this is somewhere in the
8 neighborhood of 90 percent.

9 BOARD MEMBER ORTEGA: Thank you very much. You've
10 been most helpful. I might say as an attorney that sometimes
11 it's better to listen to non-attorneys to get some facts.

12 MR. MILLS: Thank you.

13 CHAIRMAN MAHONY: I just have one question,
14 Mr. Mills.

15 You did mention the possibility of a case-by-case
16 or ranch-by-ranch approach. That may be easier down the
17 road, the fact that this law goes into effect today and the
18 fact that there are in effect many peak employment seasons
19 right now, in view of that this simply may not be possible
20 this year. Do you have any alternative suggestions for this
21 immediate harvest season to get around that?

22 MR. MILLS: I have none. I could be facetious and
23 say go to the Governor and ask for a bigger budget and get
24 more people aboard, but I have no answer to that.

25 CHAIRMAN MAHONY: That would be difficult.

1 Certainly all of our people are deployed for petition
2 purposes and unfair labor practice charges. And I just see
3 the tremendous problem of trying to meet that right now
4 today.

5 Thank you very much.

6 MR. MILLS: Thank you.

7 CHAIRMAN MAHONY: Mr. Andrew Church.

8 MR. CHURCH: Mr. Chairman and Members of the Board,
9 I am Andrew Church. I'm an attorney with practice in the
10 Salinas area. And I'm here representing the Grower-Shipper
11 Vegetable Association of Southern California. The
12 Association is primarily made up of shippers of fresh
13 fruits and vegetables from the Salinas and Central Coast
14 area which includes the Portola Valley and the Salinas
15 Valley.

16 I do have a prepared statement which I will hand
17 to the clerk at this time. Much of what is in the prepared
18 statement, which I will not go into at the Chairman's
19 request, has been stated by the other speakers.

20 We also feel that there is some doubt as to
21 whether or not this Board has the authority to promulgate
22 an access rule of any kind. And in any event, it should
23 follow the applicable N.L.R.B. precedent.

24 We will go along with the other statements that
25 have been made in that regard as this is just a repetition

1 of those statements.

2 I would like to address myself to the questions
3 that were asked in the Agenda. Is there a need for the
4 access rule? Now, my answers to your questions will be
5 applicable to the row crop, fresh vegetable industry in the
6 Central Coast area only. We are not knowledgeable in the
7 other aspects such as citrus, tomatoes, that you've heard
8 from, but this is in the row crop industry.

9 We do not feel that there is a need for an access
10 rule. Many of our people live in the area. For those that
11 do not live in the area, either in their own housing or in
12 the communities, they live in central areas controlled by a
13 grower either through company housing or through a farm labor
14 camp. We do feel that there has to be, and we have so
15 advised our people, that there has to be some type of access
16 to the people in labor camps.

17 We think that that's their constitutional rights.
18 There are a couple of Federal cases or at least one that I'm
19 aware of in the Midwest where a welfare rights worker was
20 allowed to come in and visit the camps. We also feel that
21 that is subject to reasonable rules and regulations since it
22 is, in a camp situation it is mainly concerned with single
23 family men type housing.

24 We also feel that there is no need for an access
25 rule because it would be very difficult to enforce. How much

1 access and when? Under the Act as you're undoubtedly aware
2 an employer has no right to petition. Suppose union
3 organizers come running out to his fields and talking to his
4 workers and his workers say, look, we don't know anything
5 about it. We may have the right to tell them what their
6 rights are under the Act, to tell them to go down and talk to
7 a representative of your Board. But we have no right to
8 petition and say, all right, let's have an election and
9 determine this thing once and for all. We don't have that
10 right. Why then should the union have the right of access at
11 any time they want in our harvesting operation which has been
12 disruptive at least in our area to a great extent.

13 Attached to a copy of my letter you will see that
14 there is reproduced, not very well I do admit, from a
15 duplicating process, of a picture that was on the front page
16 of the Salinas, California, a newspaper in our area, dated
17 Saturday afternoon, August 23rd, 1975. And it's a picture of
18 a union organizer in the field talking to three workers.
19 It is obvious that this is not on non-working time. There
20 are baskets of tomatoes in front of each one of those workers.
21 The story also carries the eight arrests resulting from
22 trespassing.

23 We have had the situation in our area of them coming
24 to the field and saying the new Agricultural Law gives us an
25 absolute right to come to your field at this time and you have

1 no right to ask us to leave. And they wave copies of certain
2 bills. One of the bills that they've been waving in front
3 of supervisors' noses is the bill that's pending now in the
4 Assembly, No. 1576, which would say that the trespass laws
5 do not apply in union organization situations.

6 We have tried to keep, at least our Association
7 on the advice that we have been giving our members, trying to
8 keep some of the peace and some of the violence down so we
9 don't have the situation that we experienced in 1970. I
10 don't think that too long a period ago some of you were even
11 involved in that situation in 1970, and I don't think either
12 union nor the growers want a repeat of that situation.

13 An offer was made, informally though it may be, an
14 offer was made to the union to follow some type of reasonable
15 access. If we would provide it, would you go along with this
16 type of rule? And the answer was, never again. The only
17 answer that we got was through the supervisors of the
18 organizers continuing to come out and saying we can come out
19 there any time we want to and you can't stop us.

20 Now, even to the extent that they wanted to test
21 it; that is, they would come out during working time. They
22 would stand in the fields. They would be asked to leave.
23 They would not leave. There was no self-help on behalf of
24 any grower. The grower was then instructed to call the
25 emergency number of the Sheriff's Department, 911, and ask

1 for assistance. The Sheriff's Office would come out to the
2 field and ask the people to leave both in English and in
3 Spanish and if they refused to leave, then arrests were made
4 and they were made on working time.

5 To what extent, another question you have is, to
6 what extent are the alternatives to an access rule? In our
7 area we have the newspaper that is present, that a copy of
8 which I said was in the Salinas, California, a newspaper of
9 general circulation. We also have a Spanish newspaper. We
10 have a Spanish-speaking station that in many instances, I
11 won't say in all instances, but in many instances to the
12 lettuce harvesting crews that station is played to the workers
13 over a loud speaking system carrying with it the advertise-
14 ments for products as well as any union messages that maybe
15 wanted to get to the workers.

16 I can indicate that any time that either union has
17 asked for a meeting of its workers and not come out and passed
18 out leaflets at any of the ranches, but have used these
19 alternate ways of getting to the workers, they have had
20 adequate showing of support at their meetings. An example
21 just very recently is one union said that there would be a
22 barbeque on a certain afternoon. This was put in the
23 newspapers and over the radio. And judging by the number of
24 cars that were around the area in which they said that the
25 barbeque was going to be held, it was a success. And there

1 was communication to the workers and the workers did, in
2 fact, show up.

3 One of the other questions is, what identifiable
4 damage would result to growers by the adoption of the access
5 rule? We have also experienced damage to employee's property
6 as well as to employer's property. And this has been during
7 these organizational drives. We have added another peculiar
8 situation and we feel that this is a damage to a grower and
9 that is in the disruption of his work force and his ability
10 to direct a crew.

11 We've had situations where organizers have come
12 out and said: "You vote for our union and that supervisor right
13 there if you don't like him, we'll get rid of him for you."
14 That type of organizational activity is disruptive to the
15 crew.

16 If they want to say that in the privacy of their
17 own home, that's fine. But where you have and are going to
18 have unfair labor practices on behalf of the employers that
19 follow the National Act and knowing that employers have to
20 be very, very cautious in what they can say in return during
21 a union organizational drive, it may be cause for more
22 disruption than not having any access rule to the field at
23 all.

24 We would also put before you that if you do adopt
25 an access rule of this kind and if the State of California

1 should adopt other labor situations, it might be used as
2 precedent for that. And I give you as an example one that
3 was given to me and I couldn't answer it. That if suppose
4 I'm in my own home and I have domestic help and a union
5 organizer comes to my front door and says, "I'm coming into
6 your house to talk to your domestic help about a union
7 organization." Do I have to let that person in my home?
8 It is their work place.

9 I just pose that as a question. I don't know
10 the answer. Under the access rules that have been talked
11 about, probably I would have to. I would have to let them
12 come in and sit in my home during their lunch break for the
13 purpose of talking union organization. How far is this to
14 be extended?

15 I would also point out that if an access rule is
16 adopted because of the trespass laws, the way that they are
17 right now, because of the attitude of the union, what makes
18 this Board feel that that rule is going to be followed?
19 It may have to be followed by growers or maybe the growers
20 will choose not to follow. Is it going to be settling or
21 creating more chaos? They're not following it now. Today
22 is a good example. The Chairman has had to ask twice that
23 people not make outbursts after a speaker has finished.
24 We've had two such outbursts. What makes, if the Chairman
25 cannot have an orderly hearing here, what makes you think

1 that we can have as representatives of growers, telling them
2 how to operate, orderly conduct in the field. I just put
3 that for your consideration.

4 We do however say that we are willing to accept and
5 would leave to the Board in its discretion as to a limited
6 number of people coming into labor camp situations or company
7 housing situations. They should be limited in number,
8 identified and the employer should have the right or the
9 camp manager should have the right of designating an area
10 or place for the people to meet, such as, the eating area or
11 in some places they have a recreation room, in other places
12 they could provide an office. So that people could meet
13 and those that did not wish to meet didn't have to. Some
14 of them are barrack type situations and the people should
15 have their free choice whether or not they want to talk to
16 any union organizer.

17 If there are situations where access cannot be
18 provided -- And in our area for at least the people that
19 I represent because they do have quite a number of workers
20 and there would be designated work places that they could
21 meet -- but if in the event there wasn't, we think that
22 then on a case-by-case basis it could be decided by this
23 Board as to where in that particular case access should be
24 provided.

25 And with that, I close my remarks and I invite any

1 questions from the Board.

2 CHAIRMAN MAHONY: Thank you very much, Mr. Church.
3 Mrs. Gutierrez, please.

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

7 CHAIRMAN MAHONY: Thank you.
8 Any questions from Members?
9 Mr. Grodin.

10 BOARD MEMBER GRODIN: Mr. Church, you have called
11 our attention to the newspaper photograph showing a tense
12 situation existing recently arising out of the access issue.
13 And you have told us about farm workers or organizers who have
14 come on the premises and said we have a right to be here and
15 we're going to stay.

16 What I wonder is this; suppose this Board does what
17 I understand you to suggest that we should do, and that is
18 essentially nothing at this point, but to say that we will
19 deal with each case as it arises under applicable N.L.R.A.
20 criteria on a case-by-case basis. What do you think is
21 going to happen between now and the time that we decide a
22 particular case at a particular farm? Aren't you going to
23 have continuing disruption of this sort because of the lack
24 of clarity that exists?

25 MR. CHURCH: If you're asking me for my personal

1 opinion, Mr. Grodin, my personal opinion is that I don't
2 think it makes any difference whether or not this Board
3 adopts a rule or not. I think the situation we've been
4 experiencing in the Salinas Valley will continue much in
5 the status quo.

6 BOARD MEMBER GRODIN: Well, if it is clear, if
7 both the Peace Officers Association and the District
8 Attorneys Association, while they had different views with
9 respect to the legality of the rule, said whatever you do,
10 make it clear so that we will know if the grower calls upon
11 us to arrest somebody who trespasses, whether it's inside
12 your rule or outside. Now if we adopt your suggestion and
13 go on a case-by-case basis, we will not be complying with
14 their recommendation.

15 Won't it be easier for you and the clients you
16 represent, not necessarily you, the clients you represent,
17 if the District Attorney knows and the Sheriff's Department
18 knows that there are some definite areas and definite periods
19 of time or definite number of people that are allowed in at
20 particular times and that if those rules are not complied
21 with, then at least so far as this Board is concerned,
22 subject to whatever other laws and constitutional principles
23 might apply, so far as this Board is concerned and this law
24 that is involved, there isn't any right of access. The right
25 of access as far as this Act is concerned is spelled out

1 here. Wouldn't that make things a lot easier?

2 MR. CHURCH: I think you missed my point,
3 Mr. Grodin. And that was that we feel that there should be
4 no access to the field at all.

5 BOARD MEMBER GRODIN: I understand.

6 MR. CHURCH: Whether it be non-working areas or
7 not. No access to the fields. And the access rule as far
8 as our operation is concerned because most of our people,
9 meaning shippers, have designated labor camps and places
10 where these people can be contacted. And we have seen by
11 actual practice that the people have been contacted in the
12 past. So any rule that would be promulgated by this Board
13 should set down some definite rules as to access to labor
14 camps. So many are allowed to come into the labor camp.
15 They shall be identified to the camp manager or the
16 supervisor of the camp. The employer shall provide a
17 designated work area, without a work area, to a place where
18 the employees can gather to meet with those organizers at
19 that place.

20 BOARD MEMBER GRODIN: In the labor camp?

21 MR. CHURCH: At the labor camp. We go along and
22 we would support that type of thing. We think they do have
23 a right. We don't feel that they have a right, and where
24 all the disruption has been happening, has been in the fields.
25 We have even had petitions from our people. Some firms, not

1 all, some firms have even sent little papers, I've even got
2 one in my office, written by workers, "Please keep everybody
3 out during our lunch period." Many of them like to eat
4 hurriedly. They go over and lay down and take a snooze for
5 20 minutes and they don't want to be bothered. And we've
6 actually had those petitions delivered to a number of my
7 clients. And taking all of this in mind, I'm trying to
8 explain to farmers that they have to give some reasonable
9 rule. We have tried to not shut it off totally and I think
10 we've been at least 80 percent successful so far.

11 BOARD MEMBER GRODIN: Are you saying that all of
12 the employees of any particular employer are living in
13 a labor camp?

14 MR. CHURCH: No, but the bus usually comes and
15 many people ride company transportation. Now, some do not.
16 But they could be known to the people that have their own
17 cars that the union organizer is going to be at the labor
18 camp at the end of work today which will be 5:00 o'clock or
19 5:30 or whatever happens to be the time, if you want to have
20 an organizer, you want to hear the union, he'll be there at
21 4:30. They have their own transportation there. The company
22 will transport the people who ride company transportation
23 back to the labor camp.

24 BOARD MEMBER GRODIN: What percentage -- that's done
25 now? Those employees who do not live in the labor camp are

1 transported back to the labor camp?

2 MR. CHURCH: No, no. There are numbers of
3 employees that drive their own cars to the field.

4 BOARD MEMBER GRODIN: Okay.

5 MR. CHURCH: What I'm indicating is that it could
6 be stated by the company that an organizer for a particular
7 union will be at this designated area of the labor camp after
8 work.

9 BOARD MEMBER GRODIN: All right.

10 MR. CHURCH: If you want to hear what he has to
11 say, go down to the labor camp. And the people that ride the
12 company transportation will be transported to that labor
13 camp.

14 BOARD MEMBER GRODIN: What percentage of the
15 average employer's employees live in a labor camp or what is
16 the range?

17 MR. CHURCH: It could range anywhere from almost
18 nothing to 100 percent. You're talking 51 different
19 operations. I think Mr. Mills said his Independent Growers
20 felt shipper's problems are multiple. They even have more
21 diverse ways of operating. And some of them use and require
22 that people ride company transportation and provide company
23 housing. Others say "Our crew comes from the community. Meet
24 us at Ranch 12 tomorrow." And they meet at Ranch 12.

25 There's usually an office or some place where they

1 can call the people together and maybe on that type of
2 base, that's why I'm saying that if you can show by a case-
3 by-case basis that the labor camp is not the proper place,
4 then there ought to be on a case-by-case basis some type
5 of arrangement made.

6 BOARD MEMBER GRODIN: How many employers are in
7 your group?

8 MR. CHURCH: Fifty-one shippers.

9 BOARD MEMBER GRODIN: Now, how many of them would
10 you say, with respect to how many of them would 80 percent
11 or more of the employees live in a labor camp?

12 MR. CHURCH: I would say in that situation probably
13 90 percent of the employers have people that live in labor
14 camps. What their individual percentages, I couldn't even
15 guess. They would range again.

16 BOARD MEMBER GRODIN: What about the idea of
17 having a designated area at the harvest location? What
18 problems does that create?

19 MR. CHURCH: Creates problems, I think that
20 Mr. Cohen alluded to, is the fact while the supervisors are
21 there, the surveillance. I will not advise my people that
22 you've got to send your supervisors away from a designated
23 work area. If the organizer wants to talk to them, he's
24 going to talk to them in the presence of the supervisor or
25 he can tell them "I don't want to talk to you now, but come

1 to a meeting at the Union Hall tonight at 7:30." If that's
2 what he wants to say, that's fine.

3 BOARD MEMBER GRODIN: You used the term "designated
4 work area."

5 MR. CHURCH: Uh-huh.

6 BOARD MEMBER GRODIN: We've talked also about a
7 designated non-working area. Is there any need for an
8 employer to have a supervisor present in a non-working area
9 such as a parking area at times when the organizers are
10 talking to employees?

11 MR. CHURCH: If you're talking about after work.

12 BOARD MEMBER GRODIN: Before or after work?

13 MR. CHURCH: That's possible.

14 BOARD MEMBER GRODIN: And if our task, as the
15 Supreme Court says it is under the N.L.R.A., is to balance
16 the legitimate property interests of the employer against
17 the interests of the employees in having themselves access
18 to union organizers, don't you see a difference between that
19 balance where we're talking about a parking lot and a living
20 room?

21 MR. CHURCH: I don't see it. If you take a look
22 at Babcock and Wilcox again, I go back to the same thing and
23 I subscribe to the statements that have previously been made.
24 If on a case-by-case basis you can show there is no other
25 reasonable means of access, you may have a point.

1 BOARD MEMBER GRODIN: Thank you.

2 CHAIRMAN MAHONY: Any other Members have questions?
3 Mr. Chatfield.

4 BOARD MEMBER CHATFIELD: Mr. Church, some of the
5 clients that you represent have existing labor contracts?

6 MR. CHURCH: Yes.

7 BOARD MEMBER CHATFIELD: What is the rule with
8 respect to access now at those locations?

9 MR. CHURCH: Our established position and it has
10 been so designated to all the clients that I represent through
11 the Association, that if you have a labor contract with any
12 union -- And I might say that in our Association we have
13 both unions represented in our Association -- that if a
14 union representative, a business agent, comes to the field
15 with the idea of administering the contract, gathering facts
16 or grievances, on other types of union business, then you
17 have to allow him into the field. That's the access rule
18 under both contracts.

19 However, if a union organizer comes out and the
20 supervisor sees him start passing out authorization cards or
21 a petition, you're to ask him to leave the field. And that
22 applies to both unions.

23 BOARD MEMBER CHATFIELD: But you agree there's been
24 no effective way to monitor what a union organizer may or
25 may not say to workers?

1 MR. CHURCH: We have not asked the supervisor to
2 go over and interfere with the conversation between the
3 organizer and the worker, no. We also have stopped any
4 indication where an organizer will come out and want to talk
5 to four or five at the same time. In other words, if it's
6 a one-on-one situation we're pretty well convinced that that
7 is administering the contract, but we want to know what
8 they're going to say to four or five unless it involves a
9 common grievance for the four or five. And that hasn't
10 happened.

11 BOARD MEMBER CHATFIELD: So in effect we're
12 confronted with a situation that soon upon us we are going
13 to be having secret ballot elections and in effect one union
14 who might have access to some workers at some locations and
15 another union access to some workers at another location?

16 MR. CHURCH: For the same company, no.

17 BOARD MEMBER CHATFIELD: For different companies?

18 MR. CHURCH: Well, different companies, as I said
19 before, we've taken the position that the business agent
20 has the right to go out for the adjustment of grievances but
21 not for the purpose of petitioning or organizing.

22 BOARD MEMBER CHATFIELD: Well, does he have a
23 right to go out to talk to individual workers about benefits?

24 MR. CHURCH: If an employee has a question concerning
25 a benefit that he's entitled to under a particular contract,

1 I think that's perfectly all right for the business agent to
2 answer.

3 BOARD MEMBER CHATFIELD: And as long as he's talk-
4 ing on a one-and-one situation, effectively you could not
5 monitor what the conversation is about?

6 MR. CHURCH: No, we probably could not. But it
7 would be fairly easy to see if he went from one to the other
8 on a one to one, I doubt that that would be legitimate union
9 business as defined in either union contract.

10 BOARD MEMBER CHATFIELD: Just one last, it's not
11 even a question. Perhaps it's an observation. I question
12 your choice of examples in characterizing this hearing as
13 "disorderly." For my part I feel that it's been a very
14 orderly hearing and I don't know that some applause from
15 time to time makes it disorderly.

16 CHAIRMAN MAHONY: Any other questions?

17 Just one, Mr. Church.

18 You gave the example of access in information
19 being given out for a barbeque. Do you have any idea whether
20 that barbeque was free of charge?

21 MR. CHURCH: I certainly do not. I was not invited.

22 [Laughter.]

23 CHAIRMAN MAHONY: Thank you.

24 MR. CHURCH: Thank you very much.

25 CHAIRMAN MAHONY: Mr. Harry Kubo representing

1 Nisei Farmers League.

2 MR. KUBO: Mr. Chairman, Members of the Board,
3 other speakers, I am not a lawyer like you are, Mr. Chairman.

4 CHAIRMAN MAHONY: I'm not either.

5 [Laughter.]

6 MR. KUBO: Yes. So my remarks will be limited in
7 scope. I think there's a lot of repetition being going on
8 by other speakers in the past. On behalf of the Nisei
9 Farmers League of which I am Chairman, we have a membership
10 of 1300 members. The average acreage of which is about 43
11 acres.

12 We have spent a great deal of time and effort
13 to interpret the law that the Governor has initiated and that
14 you as a Board are going to implement as of today, and the
15 elections to start on September the 2nd. I feel very strongly
16 that this Board is charged with the responsibility of
17 implementing this law and to see to it that there is peace,
18 hope, harmony, and tranquility existing in our farming
19 community. And also to implement this law in the spirit and
20 the intent in which it was initiated.

21 But the Nisei Farmers League cannot allow access
22 into private property for the purpose of organizing. And we
23 say this for the following reasons: One of the reasons we
24 sincerely believe this is a fact is that when the Governor
25 initiated this bill, one of the parties that he did not at

1 all ask for input into this bill was the farm worker himself.
2 Yes, he did speak to the Teamsters and he did speak to the
3 United Farm Workers and he did speak to the growers and
4 other interested groups, but the farmer himself was denied
5 this opportunity to come and put input into this Farm Labor
6 Bill which has been admitted by the Governor and by Roseburg.

7 One of the reasons why we feel that access into our
8 field has to be denied is in respect to the rights of the
9 individual. And I state this very strongly because time and
10 time again for the past four and a half years that we have
11 been in existence, workers have come to us time and time
12 again telling us that we respect the rights of the unions to
13 come and tell us about their philosophies. We respect their
14 right to believe in them.

15 But we also would like to enjoy that same right
16 and that same respect to believe in what we want to believe
17 in. And if it's our choice to work in the fields of our
18 choice, to stay out of the union, we should have the respect
19 and that right of the community.

20 The other thing is that I fervently believe that
21 if access is allowed for organizers into our fields as has
22 been in the past four and a half years, fear is one of the
23 biggest detriments to our farm workers.

24 Fear which I consider much more violent in nature
25 than a lot of other violence. People are confused. People

1 are fearful. And so consequently even in the past couple
2 of weeks organizers have been coming in the field and have
3 trespassed and have got authorization cards signed simply
4 because of coercion, threats, and other means.

5 I think the past few years has been one of a
6 myriad of problems. The primary cause of these problems
7 can be attested to trespassing. To support this statement
8 are affidavits after affidavits on file in the Fresno
9 County Sheriff's Department. The Fresno County Sheriff's
10 Department I know would like to see a no access simply
11 because it is too difficult to monitor and to police an
12 area that has limited or undefined access rights.

13 Trespassing has resulted in hundreds of thousands
14 of dollars of damages in the past four and a half years in
15 the San Joaquin Valley. In one orchard alone a thousand
16 trees were cut down to the roots, tires were slashed,
17 tractors were burnt, farm workers' automobiles were burnt.
18 And these are the things that can be deterred with a no-
19 access provision.

20 As an example, just last year 200 lugs of grapes
21 were destroyed on private property, just literally destroyed
22 completely. And I think that in essence what I'm trying to
23 say is that if this law was intended to create peace,
24 tranquility and harmony, then I think it is your responsibility
25 as a Board to see to it that this can be implemented. I can

1 assure you that the agricultural community within the
2 United Farmers League and within the San Joaquin Valley has
3 spent a lot of time and a lot of money trying to interpret
4 your law, trying to interpret what you as a Board will
5 interpret certain provisions that have been left up to your
6 discretion. Let me assure you also that if this law fails
7 to do what it was intended to do, it cannot be the fault
8 of the farmers, but rather it is the fault of the Board that
9 could not implement the type of rules and regulations that
10 are necessary to carry out the mandates under this law.

11 I'd like to thank you very much. I didn't want to
12 be repetitious on what others have said before. These are
13 just a few comments on my part in regard to my feelings as
14 far as access into private property, which I feel is one of
15 the most sacred rights that we still have left in this
16 country.

17 Thank you.

18 CHAIRMAN MAHONY: Thank you.

19 Mrs. Gutierrez.

20 [Thereupon, the foregoing testimony was
21 translated from English to Spanish, in
22 summary, by Annie Gutierrez.]

23 CHAIRMAN MAHONY: Thank you, Mrs. Gutierrez.

24 Any questions on behalf of the Members of the
25 Board?

1 Mr. Johnsen, please.

2 BOARD MEMBER JOHNSEN: Mr. Kubo, as far as your
3 members are concerned, have there been organizers in the
4 fields this year?

5 MR. KUBO: Yes. They have been trespassing into
6 the fields saying again under the new Governor's law that
7 they have this right to go and trespass into the fields.

8 BOARD MEMBER JOHNSEN: From your experience this
9 year or even last year, do organizers ever ask permission
10 to go in and organize? Do they, in your opinion, always
11 go ahead and do it?

12 MR. KUBO: Well, that's a rather difficult question.
13 What they do is they come in there and they just walk in,
14 period.

15 BOARD MEMBER JOHNSEN: They don't ask permission
16 of the foreman or anyone beforehand?

17 MR. KUBO: No.

18 BOARD MEMBER JOHNSEN: What would be the average
19 number of employees of your -- Is it 43 acres?

20 MR. KUBO: Forty-three acres. It depends, of
21 course, on the time of the year depending on the operation.
22 If it's possibly on a 40-acre, you probably got five or six
23 farm workers. And then during the harvest time that same
24 40 acres could possibly employ as many as 30 workers.

25 BOARD MEMBER JOHNSEN: Thank you.

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CHAIRMAN MAHONY: Any questions?

I have no questions.

MR. KUBO: Thank you very much.

CHAIRMAN MAHONY: Thank you very much, Mr. Kubo.
Mr. Jordan L. Bloom, Midvalley Labor Relations,
Incorporated.

MR. BLOOM: Thank you, Mr. Chairman, Members of
the Board. My name is Jordan Bloom. I'm a member of the
law firm of Littler, Mendelsohn and Fastiff, and I'm here
appearing today on behalf of the Nisei Farmers League,
Midvalley Labor Relations, Inc., California Wine Growers
Foundation, South San Joaquin Farm Production Association,
Los Padres Growers Association, and Central California
Farmers Association. Approximately 2500 to 3,000 growers
of varying sizes are members of these six associations.

And I would estimate that during various peaks
which range in every crop from vegetables to grapes and
tree fruit that these members of these associations employ
upwards of 30,000 workers a year.

On behalf of these individuals, and I will attempt
not to be repetitive as I have submitted to the Board a
legal memorandum of our position, on behalf of these growers
we wish to go on record as being inalterably, and I
emphasize that, inalterably opposed to any access rule to
grower's property under cultivation, harvesting, where

1 workers are employed.

2 Now, we contend that the Board has before it two
3 main areas of consideration. The first thing that I think
4 this Board is dutybound to decide in its responsibilities
5 to the people of this State that are looking towards it
6 to solve the problems in the agricultural sector is: Is it
7 legal and constitutional for you as the Agricultural Labor
8 Relations Board to enact any access rule to cultivated
9 properties? And I would submit to you that as many speakers
10 have come before me today and said, that the answer to that
11 question has to be "No." It has to be no for several
12 reasons.

13 The most important reason, as Assemblyman
14 Alatorre, I think, substantiated, is that the legislative
15 history of this Act makes it clear without any doubt that
16 the Legislature did not intend to give farm labor organizers
17 the right to enter private property under cultivation.
18 Had it intended to do so, it would not have amended the
19 original AB 1. Had it intended to do so, one of the sponsors
20 of that legislation would not have introduced a separate
21 piece of legislation here in California to accomplish that
22 very purpose. Had it intended to do so, it would have gone
23 on in relation to the right of access of Board members and
24 agents to provide for an equal right of access or a limited
25 right of access for labor organizers. It did none of these

1 things. So to conclude anything but that that was not the
2 intent of the Legislature, I think would be lying in the face
3 of the statute and of clear, unmistakable legislative history.

4 And we're not talking about one Assemblyman's
5 opinion or one Senator's opinion. We're talking about the
6 printed word, and there's no mistake about that.

7 My position on the constitutionality of your
8 enacting an access rule is further based upon case law in
9 this State, namely, Cotton versus Superior Court, which you
10 have before you in the memorandum. And in that case the
11 Supreme Court of this State decided that they were not going
12 to extend the industrial exception to the trespass rules for
13 labor organizers to a farm labor camp. And that was a 1961
14 decision.

15 Now, they did not even discuss the subject of
16 grower properties under cultivation. This was a farm labor
17 camp.

18 Now, we have a recent California Supreme Court
19 Decision that also discusses this subject, mostly dicta,
20 but it does discuss the subject. But that decision, UFW
21 versus Superior Court, does not talk about agricultural
22 property. So this Board's enacting an access rule under
23 any basis could not possibly be supported by constitutional
24 logic or reasoning.

25 Now, much has been discussed about the National

1 Labor Relations Act. I don't intend to go into Babcock and
2 Wilcox or any of these cases. I've covered them in my
3 memorandum, only to the extent of saying to you that the
4 phrase "case by case" has cropped up today on numerous
5 occasions. And I believe the Board is treating this
6 suggestion, which happens to be my suggestion also, in the
7 sense that a case-by-case handling of this situation is going
8 to have to be done in a vacuum. It's going to have to
9 start from scratch, and that is not the case.

10 We've got 40 years. This is the 40th anniversary
11 of the National Labor Relations Act; as a matter of fact,
12 this week. We've got 40 years of decision under that Act.
13 Forty years of decisions wherein the Board has interpreted;
14 Does the union have the available means to communicate with
15 workers which would disallow them from going into a grower's
16 property, onto a grower's property, or across a grower's
17 property? So this Board does not have to start making new
18 law. Granted, agriculture is different from General Motors,
19 but agriculture is not that different from many seasonal
20 industries which the National Labor Relations Board does,
21 in fact, assert jurisdiction over.

22 But I think most importantly, to attempt to come up
23 with a rule that would, in my instincts, at least, be
24 rational, reasonable, logical, and consistent with all
25 guarantees of freedom of association and as well as freedom to

1 refrain from that association. A rule which would be
2 uniformly applicable and reasonable to every one of the people
3 that I represent would be a virtual impossibility. Two
4 might be good for one person, but one other person might
5 need four, six.

6 How many unions are going to be involved? We're
7 talking here today as if there's only two unions involved,
8 Teamsters and United Farm Workers. We all know better than
9 that. There are numerous unions as this law continues in
10 effect that are going to have some interest or another in
11 organizing agricultural workers. You allow access to two
12 union organizers at a time, you have four unions trying to
13 organize a field. That's eight people. You're going to end
14 up with a debate on your hands. And hopefully, that will be
15 the most that it would extend to.

16 So these problem areas in attempting to sweep
17 with a broad brush an alleged constitutional concept of
18 the right to hear the other side or the right to hear one
19 union's side or the other, in my opinion, have to greatly
20 superimpose the liabilities and the potential harassment and
21 coercion that are going to result. And I don't think there's
22 anyone here that is so naive as to think that if this Board
23 came out with a rule of two at certain times, that that's
24 going to be the end of your problem.

25 You heard Mr. Cohen say that he as an attorney for

1 UFW in a sense felt that his union and his organizers had
2 the right to assert their constitutional rights as interpreted
3 by them. Now, I would venture to say as one of my
4 predecessors indicated, that whatever rule you adopt, if you
5 do not take our position and the position of others that
6 there should be no rule, that rule is not going to be
7 complied with. In fact, that rule is going to do little
8 more than encourage the very kind of activity that is going
9 on today albeit on a smaller scale.

10 And when we are told that one of the bases for
11 your enacting an access rule is because the workers drive
12 by in the cars too fast so that we can't get a handout into
13 the window, that's preposterous. If that worker has no
14 knowledge of the existence of a labor dispute; no knowledge
15 of the existence of the UFW or the Teamsters or their
16 interest in representing them; no visual sign of a red flag
17 or Teamster flag or a horse sign or whatever and is just
18 driving by, that's one thing. But we can't speak in terms
19 of hypotheticals. As a matter of fact, workers do know of
20 the attempts of unions to organize. And if the worker that
21 Mr. Cohen is worried about who's driving by in his car too
22 fast to shoot a leaflet into a window, if that worker wants
23 to hear the union side of the story as he's on his way home
24 and driving in the car, don't you think he has the right to
25 pull over and stop? Now, just quite possibly the experience

1 of these workers in the last five years have taught them
2 that it might be in their own best interest not to stop and
3 maybe why, that's why it's difficult to get a message over
4 to these people.

5 A VOICE: We can get fired. I'll leave.

6 CHAIRMAN MAHONY: Please, we cannot have any
7 interruptions of the hearing or we're going to have to ask
8 the people to leave.

9 MR. BLOOM: I'll attempt to conclude,
10 Mr. Chairman.

11 Assemblyman Alatorre, I believe, used the phrase
12 "stupid and ludicrous" to describe a proceeding or procedure
13 by which this Board would decide as important an issue as
14 the right of access to a grower's private property.

15 Now, I don't wish to engage in descriptions of
16 whether that would be stupid, ludicrous or whatever. I
17 would put to you, though, gentlemen and lady, that this
18 is precisely the responsibility, the awesome responsibility
19 that this Board is entrusted with; that is, to decide
20 difficult issues in a field heretofore unregulated. And
21 if it's stupid and ludicrous to decide one of the most
22 important issues on a case-by-case basis, how is it going
23 to look to decide all the other hundreds of thousands of
24 issues that you're going to have to decide on eligibility,
25 on challenges, on objections.

1 Is it Assemblyman Alatorre's hope that for every
2 problem that confronts you, you just draft a broad rule and
3 hope that it hits as many people or growers in the State
4 as possible? As one of the authors of one piece of
5 legislation, I doubt that very seriously. So I would submit
6 to you that that is far from stupid and ludicrous to
7 consider this case-by-case approach. Particularly, whereas
8 Mr. Herman pointed out, this area is no more subject to
9 uniform application and regulation of rules than is other
10 constitutional issues that our Courts have been confronted
11 with for years.

12 Now, a couple of final remarks. With respect to
13 the concept of an isolated area on working property, for
14 example. In effect, what you will end up with under those
15 circumstances is a captive audience under the N.L.R.A.
16 principles which in certain circumstances forbid an employer
17 from having that kind of a meeting within 24 hours preceding
18 an election.

19 The reason I call it a captive audience is that
20 if 50 employees in a field are eating lunch in a designated
21 area and a union representative, non-employee, has access
22 to that area, what do we do if, let us say, 20 of them want
23 to talk to them and 30 don't? What do we do with the 30?
24 Do they have to go some place else or do they just sit there
25 and be subjected to the conduct that they just might not want

1 to be subjected to. This is, in effect, a captive audience.

2 To put it in a non-working area I think is perhaps
3 best pointed out, the problems are best pointed out by the
4 fact that a parking lot, workers just are not, many workers,
5 several workers, I can't give you percentages, but several
6 workers, many workers might not want outside union organizers
7 allowed to congregate by places where they park their
8 private vehicles.

9 Now, that may not be a logical decision on their
10 part. Maybe they're just afraid of nothing. But don't
11 you think they ought to have the right to make that decision?
12 And I believe the answer to that question has to be "Yes,"
13 because they have as much right to refrain from participation
14 in any union activity or refrain from listening to speeches
15 or refrain from having to be harassed.

16 As many people have indicated, the union has a
17 right to communicate. Now, as a final point, I would suggest
18 to you, Members of the Board, for your consideration that we
19 cannot approach this problem on a hypothetical basis. We
20 cannot approach it in isolation of what the actual facts are.

21 We have to approach it with what we know to be
22 the case and weigh that as the N.L.R.B. does in deciding
23 are there reasonable alternatives. I say there are. The
24 clients I represent, I believe with no exceptions, do not
25 happen to have any union contracts at this time. Yet, I

1 CHAIRMAN MAHONY: Ms. Gutierrez?

2 MS. GUTIERREZ: Yes. Jordan L. Bloom.

3 (Thereupon, the foregoing testimony was translated
4 from English to Spanish, in summary, by Annie M. Gutierrez.)

5 CHAIRMAN MAHONY: Thank you, Ms. Gutierrez. Are
6 there any questions of Mr. Bloom?

7 Mr. Grodin.

8 BOARD MEMBER GRODIN: Mr. Bloom, it's clear to
9 me that neither you nor your client are enthusiastic about
10 access of any kind, except one that says; no access. But,
11 if we went contrary to your advice and moved in the direction
12 of adopting some kind of an access rule, I ask you to con-
13 sider with me what kind of rule would best serve the interest
14 of your clients.

15 You indicated that you have strong opposition to
16 any rule which would provide access to working areas. With
17 respect to non-working areas, you have indicated that a
18 parking lot is maybe a problem because employees may not
19 want union organizers around your car. Are there other non-
20 working areas --

21 MR. BLOOM: Yes.

22 BOARD MEMBER GRODIN: -- to which it would be
23 reasonable to --

24 MR. BLOOM: Yes. Our position on that is the
25 non-working area -- that the union will be fully advised of

1 within forty-eight hours after they file a petition with the
2 name and address of every single worker on our payrolls.
3 That is the non-working area we would refer to. And I
4 might point out, Mr. Grodin, that the Board's rule and regula-
5 tion, with respect to the information that must be made
6 available within that forty-eight hour period has been in-
7 terpreted, summarized and sent to every single client that
8 we represent, and the mere bookkeeping process of gathering
9 those names and addresses is a monumental chore, but it is
10 being done and this will be submitted to the Board.

11 Now as far as we are concerned, that is the ex-
12 tent of the obligation of my clients to advise the union
13 and to assist the union in contacting these employees.

14 BOARD MEMBER GRODIN: Of course that information
15 would be available to the union only after the petition was
16 filed and would be of no assistance in the organizing phase.
17 I'm not -- I agree with you, with your premise by the way
18 that the employer is not obliged to provide the union with
19 the most effective means of communicating with the employees,
20 but rather the question is whether they have any effective
21 means of communication --

22 MR. BLOOM: An alternative --

23 BOARD MEMBER GRODIN: -- and since the Board and
24 the courts have talked about the communication, not simply
25 in terms of the period subsequent to the filing of the

1 petition, but also in terms of the organizing phase. The
2 Supreme Court has said that in the Central Hardware that
3 organizational rights don't exist in a vacuum; they include
4 access by employees to people who will tell them about the
5 union and its advantages or disadvantages. Furnishing a
6 place at that time doesn't seem to go to the heart of the
7 problem. However, in Central Hardware, the court also ex-
8 pressed the fact that, after it considered all the facts
9 of this case, it indicated that the prescribed non-working
10 areas of the employer's premises in its decision.

11 BOARD MEMBER GRODIN: They indicated what?

12 MR. BLOOM: They were referring, in the Central
13 Hardware case, to the prescribed non-working areas of the
14 employer's premises --

15 BOARD MEMBER GRODIN: I understand.

16 MR. BLOOM: -- so, you know, if we are talking
17 about working areas, the Board is, of course, going a bit
18 further than the rationale employed by the court in Central
19 Hardware.

20 BOARD MEMBER GRODIN: I'm focusing on non-working
21 areas on the employer's premises and I am asking whether
22 there are any suggestions you would have on this?

23 MR. BLOOM: Okay. Let me answer that question
24 this way:

25 If I were to take one grower and sit down with you

1 at a table and draw you a map of his property and show you
2 that he had a parking lot out on the road at the end -- at
3 the edge of this property, a parking lot where they not only
4 park cars but park the buses, that parking lot was in no
5 way involved in the working day-to-day activities, it wasn't
6 in the middle of a field, for example--and work out some-
7 thing with you for that grower. I might have a shot at it.
8 I really would, because I would probably think of a rule,
9 and I know also how many employees that grower is going to
10 have during peak and fifty percent peak. I could probably
11 work out a great rule with you for that grower under those
12 circumstances, but if I were to sit down and talk with you
13 about 3000 growers, there is no way in heaven that we could
14 ever come up with a rule that would be reasonable, logical,
15 or operational for a majority of those people; it's impossible.

16 So what we have left then, we have a case where
17 that grower that we were talking about with the parking lot
18 right on the corner -- and let's take it further that he
19 has a labor camp right in the middle of his property, his
20 harvesting property -- maybe in that case there's not a
21 reasonable alternative means of communication. So if that
22 grower says he can't come into my labor camp, he can't come
23 into my property, and not only that he can't come onto my
24 parking lot, I would venture to say that the grower would
25 have violated the ALRB. I mean, that's my -- that's the

1 problem that I foresee in sweeping this whole situation.
2 I don't mean that derogatorily; I should use the words try
3 to solve this whole situation with one broadly worded as
4 specifically as possible. I don't care how specific you
5 make it, it's not going to make any difference. It just
6 can't be done.

7 I would submit that the better way of operating
8 is the case-by-case, but not in a vacuum. You are starting
9 out with a lot of factors on your side and I think that you
10 are going to find that the cooperation you receive from
11 the various parties covered by your act may surprise a lot
12 of people in this room as far as refraining from doing some-
13 thing in a broad manner that might do no more than alienate.

14 I didn't answer your question, but --

15 BOARD MEMBER GRODIN: It's been enlightening any-
16 way.

17 CHAIRMAN MAHONY: Any other members have ques-
18 tions? I have no questions. Mr. Bloom, thank you.

19 Since the hour is now 6:10 p.m., we have on our
20 list I'm not sure how many more people that wish to testify,
21 but would those who are in the room who wish to testify --
22 would you please raise your hand so we have some idea of
23 the numbers we're talking about?

24 About fourteen or sixteen; thank you. I think
25 what we shall do, because we cannot get through that number

1 very quickly, I think we shall break now and return at
2 7:30 p.m. in order to continue with the rest of the testi-
3 mony. So we will leave now and resume --

4 FROM THE AUDIENCE: I believe there was some indi-
5 cation that you were going to tell us about a meeting this
6 evening.

7 CHAIRMAN MAHONY: Oh yes. I'm not -- I announced
8 this one time that there will be a briefing session tomorrow
9 morning promptly at 8:00 a.m. in this room for members and
10 anyone who wants to listen to our staff describe how the
11 procedures will be carried out in the field. That's here
12 at 8:00 o'clock tomorrow morning.

13 (Thereupon the Board recessed until 7:30 p.m.)

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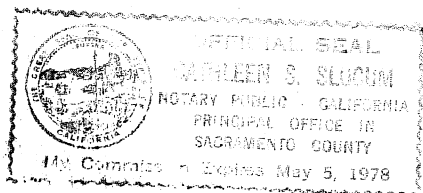
1 STATE OF CALIFORNIA)
2 COUNTY OF SACRAMENTO) ss.

3 I, CATHLEEN SLOCUM, a Notary Public in and for
4 the County of Sacramento, State of California, duly
5 appointed and commissioned to administer oaths, do
6 hereby certify:

7 That I am a disinterested person herein; that
8 the foregoing Agricultural Labor Relations Board Meeting,
9 Afternoon Session, consisting of pages numbered B-1 through
10 B-161, inclusive, was reported by me, Cathleen Slocum, a
11 Certified Shorthand Reporter of the State of California,
12 and thereafter transcribed into typewriting.

13 I further certify that I am not of counsel or
14 attorney for any of the parties to said meeting, nor in
15 any way interested in the outcome of said meeting.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 and affixed my seal of office this 2nd day of September,
18 1975.



Cathleen S. Slocum
CATHLEEN SLOCUM, C.S.R.
Notary Public in and for the County
of Sacramento, State of California
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