MEETING

AGRICULTURAL LABOR RELATIONS BOARD

STATE CAPITOL

ROOM 4203

SACRAMENTO, CALIFORNIA

FRIDAY, AUGUST 29, 1975

2:15 P. M.

ORIGINAL

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MEMBERS PRESENT

Bishop Roger Mahony, Chairman

Mr. Joseph Grodin

Mr. Joe Ortega

Mr. LeRoy Chatfield

Mr. Richard Johnsen Jr.

MEMBERS ABSENT

NONE

STAFF PRESENT

Ms. Annie M. Gutierrez, Executive Secretary

Ms. Jeanne Bosetti, Secretary

(AFTERNOON SESSION, AUGUST 29,1975, 2:15 P.M.)

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CHAIRMAN MAHONY: The meeting will please come to order.

I would like to explain to the members of the Board and the audience some time problems we do have in order to get some guidelines and how you want to deal with them. First of all, access to this room will cease at 5:00 o'clock. The State of California is going on a three day holiday for Labor Day and they are closing up this room and the marshals are going home and we do not have access here. So at 5:00 we must be out of here.

Besides that, whatever this Board decides to adopt on any other matters, either access or simple questions in terms of regulations itself, we must have in typed, eight copies and signed at the Secretary of State's Office by 4:30. So, that being the situation, I would like to suggest to the Board members that we defer the Economics question at this moment and take up the access issue first.

Any members of the Board have any objections to that?

(No objections acknowledged.)

CHAIRMAN MAHONY: Last night we did close the formal hearing on the access issue, access to property by union representatives. Therefore, no more testimony will be

taken on the issues of access.

At this time I would point out that we have heard a complete day and nights worth of testimony, various points of view from several dimensions, both ends of the spectrum and even some in the middle. This Board has had an ample opportunity to hear all of that testimony; we have had ample opportunity this morning, prior to 10:00 o'clock, to review any documentation that has been submitted and so, at this time, I would like to ask what the pleasure, what the wish of the Board might be concerning the question of access.

BOARD MEMBER JOHNSEN: Mr. Chairman.

CHAIRMAN MAHONY: Yes, Mr. Johnsen.

BOARD MEMBER JOHNSEN: We heard a great deal of discussion yesterday on the access question and I felt that the discussion led us to one conclusion, one obvious conclusion. And at this time, Mr. Chairman, I would like to move that the Agricultural Labor Relations Board not adopt a rule or regulation on access. And that we follow the National Labor Relations Board precedent in handling access questions on a case-by-case basis.

CHAIRMAN MAHONY: It has been moved by Mr. Johnsen that the C.A.L.R.B. not adopt a rule or regulation on the issue of access, but that we follow the N.R.B. precedence in this matter.

Is there a second to the motion?

(No response.)

CHAIRMAN MAHONY: I will second the motion.

Do any members of the Board have discussion on the question of the proposal before us?

BOARD MEMBER JOHNSEN: Mr. Chairman and members of the Board, it was my observation that in the many, many witnesses that we heard yesterday, that the legal question of the Board's right to promulgate rules and regulations in this particular area was very forcefully presented to us, at least forcefully enough to, in my mind, suggest that there is a real question as to whether or not we had the legal right to do this and the type of question which I feel we should ask our own general counsel staff to do more research on.

Secondly, I think that the question of property rights of the employers was brought forth in, again, in a very forceful manner. And I feel that the employer is not adequately protected if we do adopt the access rule.

And then third, perhaps even more telling, gentlemen, was the fact that when we got to the question, as to all the witnesses, if an access rule was developed, what would be some of the guidelines, we ran into a real hornet's nest. The complexity of developing an overall rule in regards to access was obvious.

The employer representatives cited the many

variables in farming practices and very many variables in the fields and the like. They cited the lack of designated times or places for breaks, for lunch, et cetera. They cited the damage and potential damage to crops, to their equipment, from strangers being in the field and the like.

The unions too talked about the complexities and they cited problems with interference of supervisors if designated areas, for example, were used to comply with the access rule. And so they felt the only access would be a complete freedom to go on the farm at any time. We heard from many workers who cited the harassment they suffered from organizers, while other workers talked about their desire to have organizers on the farm and the harassment they received from employers.

The Peace Officers Association and the District Attorneys cited the problems they had had with trespassers and with the enforcement of the trespass laws and they advocated first, that we make no rule in this area on the question of access. But if we should make a rule, they advocate we make it very, very definite.

The total testimony expressed, at least in my opinion, Mr. Chairman and members of the Board, the extreme difficulty we would have in developing an access rule on this very, very short notice and the very, very volatile situation we have with petition being filed next Tuesday.

And that is my reason for my motion, which is, in effect, delay action and maintain the status quo on the question of access at this time.

CHAIRMAN MAHONY: Any other members?

Mr. Grodin.

BOARD MEMBER GRODIN: I am against this motion. I think if we adopt this motion, we will be shifting our responsibility under the statute. The statute declares that in enacting this legislation, the people of the State of California seek to insure peace in the agricultural field by guaranteeing justice to all agricultural workers in stability in labor relations, and that this enactment is intended to provide certainty in the sense of fair play from presently unstabled and potentially volatile conditions in the state.

I think if we adopt this motion, we act directly contrary to that stated policy. This motion would not satisfy the requests of the law enforcement officials who appeared before us for a rule that provided definiteness and predictability. On the contrary, it would relegate the case-by-case decision.

All of the problems that have been raised before us and leave the parties precisely where they are, the parties including the growers, the workers, the unions, and the law enforcement officials. It would, far from

adding certainty, it would simply defer to some future date the kind of decision, which to the extent, practicable right now.

I agree that we are in a serious time restraint. I agree further that it is difficult for us, without having had experience directly under our statute yet, to adopt any rule with any degree of certainty, that it is going to work. I think it is our obligation to try. I think we ought to try to establish a rule which would meet so far as possible the kinds of objections to which Mr. Johnsen referred in his support of the motion.

CHAIRMAN MAHONY: Any other member wish to be heard?

BOARD MEMBER ORTEGA: Very briefly, I think Mr. Johnsen accurately summarized the testimony of which we had a great deal. I think some of the items that people addressed themselves to we are all concerned about. All the members of the Board are concerned with potential violations; we are all concerned with disrupting the number one industry in California. We have the concerns of the rights of the workers that want no union and we have the concerns that were addressed by many of the speakers.

But, in deciding whether to adopt the rule or not, I think we have to look at, indeed, N.L.R.B. precedence and find either that the unions have an effective means of

communicating with the employees. I know there is a great deal of testimony and I also know that the Board members are not going to weigh the number or forcefulness of the testimony, but look at it seriously and try to do it on the basis of fact.

I think we have ample evidence, that indeed there is not an effective alternative means of communication. And therefore, I will speak against this motion and vote it a contrary motion.

CHAIRMAN MAHONY: Any other members wish to be heard?

BOARD MEMBER CHATFIELD: Yes.

CHAIRMAN MAHONY: Mr. Chatfield.

BOARD MEMBER CHATFIELD: One of the things that I think was established in yesterday's testimony was the fact that there is access granted now to at least one of the unions with respect to a good many of the ranches that they have in their contract. So we are confronted with the situation. It seems to me, where one union, because they have a contract which is not certified under this new law, where those organizers do have access to those workers, it just doesn't seem to me that it is fair or -- how we are going to be able to withstand the challenges to those elections in the next several weeks when one side, through the permission of the employer, has access; another side,

regardless of what side it is, does not have access. I mean, it just doesn't make any sense to me.

I think, I personally think it would be a very legitimate challenge to overturn the outcome of an election. It just seems to me that if the legislature departed willingly from the National Labor Relations Act by mandate, in every instance, secret ballot elections, that those elections should be the determining factor which union, if any, the workers want.

Now, how on earth can you have secret ballot elections and campaign by rival unions, if you will, without access to the workers? I mean, it justifies any reasonable credibility. As far as workers feel harassed, certainly, we had testimony yesterday that some workers testified that they felt harassed by union organizers because, not because they had access, because they did not have access, but somehow managed to gain access.

Then, let us put it to a vote. Let us let the secret ballot elections determine once and for all that those workers at that ranch, that was here testifying yesterday and late into the evening, do not want a union, so be it. Let us let them have the opportunity to vote. Let them vote "no union."

The law provides that if the workers vote for no union, that no organizing could take place there for a

period of a year. I think that there will be less likelihood of strikes at harvest time if we adopt an access rule. Because, about the only defense that the union would be able to have in order to trigger an election where there could be little or no campaign, in order to minimize the inequality of one union not having access and another union having access is to call for a strike, try to get the workers to strike. That way you shorten, you try to minimize your losses by not having access. And yet, we heard testimony time and time again from employers yesterday pleading with us, if you will, to minimize strikes or the possibility of strikes because of food volume in fields, because of perishable crops, because the harvest season is short.

I believe, as far as the volatile nature of the predicament that we find ourselves in, that some reasonable access provision would tend to relieve the pressures or the tensions that are there. So that at least everyone has their day in court with respect to the workers, who the Governor said, "Any union worth its salt is going to have to win over the minds and hearts of the workers, otherwise, they will be voted out."

I think that a very telling argument was made by one organizer yesterday, one of the union's, who pointed out a very simple fact, that you can't even know who to organize; who you are going to have to try to talk to if you

don't have some access to the workers there. Whereas, you can't organize in a vacuum, you can't just run into town and say, "I am organizing." You have to find out according to the law, at least as I read it, there has to be secret ballot elections at the employer's property, ranch. So they have to organize with respect to the employer. If you cannot make contact with workers, how are you going to know the difference, how are you going to know what names there are?

Of course, it has been pointed out that because of the migratory nature of the workers, the addresses are of little or no use. And even if you are able to get a name or an address, you have such a short period of time because the law mandates that you can only have the secret ballot elections during 50 per cent of the peak. And then that the elections must be held within seven days of the filing of the petition, which is an extremely short period of time, or forty-eight hours in case of a strike.

Another reason that I think that workers do not have an affective alternative means or the unions do not have affective means to organize workers, is because of the labor contracted system. When workers come in a bus, picked up at different points, the union knows not where, brought a mile or two inside the fields, taken home by bus, dropped at points, the union knows not where, I mean, I just think that -- I mean, either workers under this law

have full freedom of association and the right to organize or they don't.

Now, I don't think we should try to perpetrate a hoax on people. I don't see how you can have secret ballot elections without access.

Two final points, one is that the law grants these rights to farmers. I think it is our obligation to provide the rules and regulations so that these workers know what rights they have under this law and that will take access and it should take access. And quite frankly, I think everyone should cooperate to grant that access so that workers know once and for all what their rights in California are. Why should they go a single day longer without knowing exactly what that law provides for them? Whether I like it or don't like it; whether you like it or don't like it.

And my final point is, I just don't see how things could be any worse than some of the testimony I heard yesterday and that is with the no access provision. There is no access, there is not supposed to be access. So at the very least, it seems to me, we should take a modest step forward, try something new.

CHAIRMAN MAHONY: I have just a comment or two myself. The witnesses we heard yesterday, especially the farm workers, themselves, regardless of what side they were on in terms of the issues, one thing that troubles me is

that they seem to be very, very much informed. That the farm workers knew what the issues were. And the reason it troubles me is I am wondering whether or not the alternate means of communication may not in effect be working.

The farm workers who were here last night and testified one way or the other, gave ample evidence that they certainly knew what the issues were and who the unions were and that somehow they have been reached. And I am just wondering whether or not under Dick Johnsen's proposal that it might be better for us to go on a case-by-case basis until we can see if there is a need for a permanent rule to be adopted later on this fall.

Any other members of the Board wish to be heard?

BOARD MEMBER JOHNSEN: Mr. Chairman, I would like to close, I think it is probably time to close on my motion and state that I feel this legislation was passed by the California legislature to provide secret ballot election procedures for the workers. The rights of the workers was provided for, not the rights for people who want to organize them, regardless of who those people might be.

I feel, to reiterate the fact, I feel our inexperience in this area leads us to only one conclusion, that we need to go slowly in this area and follow, as the bill dictates the National Relation Board's precedence and decide these issues on the basis of fact. I agree with

Chairman Mahony, that it was apparent from yesterday's testimony, plus what we read in the newspaper, that access on a voluntary basis is working because of the fact that we have countless numbers of contracts and we have countless, countless, countless numbers of authorization card claims by both unions. So, they must be getting those authorization cards in a viable alternative way.

Therefore, gentlemen, members of the Board, I urge you to vote on my motion.

CHAIRMAN MAHONY: Any other discussion by the members of the Board? We will call for the question, but I want to be certain that everyone understands this motion because its effect is negative in the way you are voting.

Mr. Johnsen's motion was to move that the California Agricultural Labor Relations Board not adopt a rule or regulation on the issue of access, but rather we follow the N.R.B. precedence in this matter.

So, if you vote "Yes" on the motion, you are voting "No" on access. If you vote "No" on the motion, then you are open apparently to access. I want to make sure it is clear on the negative vote.

BOARD MEMBER CHATFIELD: "No" means what?

CHAIRMAN MAHONY: If you vote "Yes" for this motion, that means you do not want an access rule. If you vote "No" on the motion, it means you want something else.

BOARD MEMBER GRODIN: I understand that, Mr. Chairman, there is one thing that you said, I think, that was a little different than the way that the motion stated, you said that when you vote for the motion, we vote N.L.R.B. precedence.

I intend to vote against the motion and I want it understood that I do not regard that as a vote not to follow N.L.R.B.'s precedence, but rather, as a vote not to defer decision of this matter on a case-by-case basis. I think we have a basis for applying N.L.R.B.'s precedence as grounds for a limited general rule.

CHAIRMAN MAHONY: All right. Will the secretary call the roll?

MS. GUTIERREZ: Mr. Johnsen?

BOARD MEMBER JOHNSEN: Yes.

MS. GUTIERREZ: Chairman Mahony?

CHAIRMAN MAHONY: Yes.

MS. GUTIERREZ: Mr. Chatfield?

BOARD MEMBER CHATFIELD: No.

MS. GUTIERREZ: Mr. Grodin?

BOARD MEMBER GRODIN: No.

MS. GUTIERREZ: Mr. Ortega?

BOARD MEMBER ORTEGA: No.

CHAIRMAN MAHONY: The motion is defeated three to two.

Do any of the members of the Board wish to pursue anything else in the same manner?

BOARD MEMBER CHATFIELD: Mr. Chairman.

CHAIRMAN MAHONY: Mr. Chatfield.

BOARD MEMBER CHATFIELD: I would like to offer a motion. I would like to put forward in my motion of proposed Rule 17, "Access to Workers in the Fields by Labor Organization."

"A labor organization shall have the right to a reasonable number of designated representatives to enter the premises of agricultural employers for the purpose of engaging in organizing activity. Such representatives shall, on request, identify themselves to the employer or his designated agent.

Such rights shall be limited to confering with the employees during the pre-starting times, lunch breaks, postworking times and established rest periods. The designated representatives shall not remain on the employer's premises for more than a reasonable duration of time nor engage in any conduct disruptive of the employer's premises,

property or operations."

CHAIRMAN MAHONY: Thank you. Is there a second to that motion?

BOARD MEMBER ORTEGA: I will second that motion.

CHAIRMAN MAHONY: The motion is seconded by Mr. Ortega. Any discussion on the question?

BOARD MEMBER CHATFIELD: I feel that this is a modest access proposal. It does not condone, in any way, any type of disruptive activity on the employer's premises, property or operations. I believe that full freedom of association dictates that we take this modest step forward with this rule of access.

CHAIRMAN MAHONY: Any other comment on the motion?

Mr. Grodin.

BOARD MEMBER GRODIN: Mr. Chairman, I think I will urge a vote against the motion on the following grounds. First, I think, it is subject to the same objection I had with respect to Mr. Johnsen's motion, although not the same extent. That is to say, upon reflection and upon hearing the evidence presented yesterday, it seems to me that any rule that we adopt should be more specific than the one that Mr. Chatfield now proposes. And particularly, for example, I think that there should be a precise limitation on the number of organizers who enter the premises.

So that there will be no dispute as to what con-

stitutes the reasonable number, I think that, that allowing access on the premises during rest periods may constitute an ambiguous situation, may present ambiguity, where not all the workers take a rest period at the same time, particularly, in the case of piece workers.

The rule can be interpreted as giving organizers the right to remain on the premises all day long and, I think, if we are going to adopt a rule in this area, and I believe we should, it should be a more limited and more precise rule. Rather than proceed by way of amendment to Mr. Chatfield's proposal, I intend to vote against it and if it is defeated to attempt to propose a compromise position on my own.

CHAIRMAN MAHONY: Mr. Johnsen.

BOARD MEMBER JOHNSEN: Mr. Chairman, I too am opposed to Mr. Chatfield's proposal here on access for many of the same reasons that Mr. Grodin has just expressed.

I think, however, it goes far deeper than even Mr. Grodin's expressed in its basic violation of the right of the farmer, the employer, to his basic property rights, and I feel that that is taking on entirely too much responsibility by this Board to try to violate those basic rights of the employer and landowner. I think the way the motion is worded here, and I thank Mr. Chatfield for having it typed out so we could look at it, I think it is just a wide-

open door for organizers in reasonable number, with no definition of a reasonable number to be on the property at reasonable durations of time, with no definition of a reasonable duration of time and the limitations being so broad to be three starting times, lunch break, postworking time, established rest periods, meaning, in most farming operations that the organizer could find a reason to be on that property twenty-four hours a day if he so desires.

And I just think that there is no way in the world that we should put ourselves in the position of passing this kind of a motion. I urge a no vote.

CHAIRMAN MAHONY: Mr. Ortega.

BOARD MEMBER ORTEGA: Mr. Chairman, I share some of Mr. Grodin's concerns. He has made a good point. However, I think what is a reasonable number is not as ambiguous and as vague as we might think at first looking at it. Reasonable is a term that is used in a great many of our laws.

Law enforcement agencies, for example, continually have to make a determination of whether a certain activity is reasonable or not reasonable, to indicate whether it is legal or not legal. The law is just full of instances where the word "reasonable" is used.

On the other hand, if we define a specific number, we could still have the same problems as to a proportional

basis, two organizers, say for so many workers, or two organizers for so many acres and so on. We might still have to have a measuring stick or counter and find out whether the number is indeed a correct number.

I think what this motion envisions is what we have been assured by practically all speakers, and that is the good faith effort to bring peace to the fields of California. And I think if the importers, the farmers, and the employees, the farm workers and the law enforcement agencies and others approach our regulations with a good faith effort to bring peace to the fields, I think we have to define as well as we can the rule of access. For that reason, I urge a yes vote on this motion.

CHAIRMAN MAHONY: Members, certainly we have had a great deal of input on Rule 17. This is the one I referred to yesterday, when I said a draft copy had been circulated among the parties. This is, in fact, is the one that was circulated and we have received back a tremendous volume of material on it in which many objections were made, many legal and impractical objections, because it is so extensive and contains virtually no limitations. And besides that, it doesn't really give us or our staff any way to determine where there is no gauge, how do you enforce this.

How do we determine, even though Mr. Ortega says that is commonly known, how do we in agriculture gauge

reasonable number. I just feel that it goes so far in that direction that I find it almost impossible to really deal with. I think we would have as many problems with this rule as we have now without any rule.

I think that if this group is going to consider anything, certainly it cannot be at all in this kind of direction. So I, personally, am not in favor of this extensive approach to this issue at all.

Anyone else?

Mr. Chatfield.

BOARD MEMBER CHATFIELD: It just seems consequential to me that if organizers have access, reasonable number of people, and if the workers feel harassed or are intimidated or fearful of the union, whatever, that there is automatic corrective action available and that is secret ballot. And you cannot force workers in a secret ballot situation to do that which they do not wish to do.

It is one thing for us to try to talk about what has happened up to yesterday, when there was no mechanism, there was no way, there was no voice, no secret ballot voice for the farmers. But now, there is and that is why I believe that -- I just feel that this, my motion is relatively modest and a reasonable step forward. I urge the Board to adopt this motion.

CHAIRMAN MAHONY: Any other Board member wish to

comment on the motion?

The motion before us is to adopt the language of former Rule 17, "Access to Workers in Fields by Labor Organizations." Unless a member wishes me to read it, I am not going to reread it because Mr. Chatfield has Xeroxed copies to you up here and it has been fully read to the members of the audience. Unless you have any further questions, then I will call for the question on this motion.

The motion is to adopt the language of, which was referred to as the former Rule Number 17. Ms. Secretary, will you please call the roll?

MS. GUTIERREZ: Mr. Chatfield?

BOARD MEMBER CHATFIELD: Aye.

MS. GUTIERREZ: Mr. Ortega?

BOARD MEMBER ORTEGA: Aye.

MS. GUTIERREZ: Mr. Grodin?

BOARD MEMBER GRODIN: Aye, excuse me, no.

CHAIRMAN MAHONY: Let me explain, the last time we had a negative vote. This one this time we vote aye, you are voting to adopt former Rule 17. And your testimony earlier on this motion is --

BOARD MEMBER GRODIN: Mr. Chairman, four hours of sleep is getting to me.

CHAIRMAN MAHONY: So, to vote no is to vote against the Rule 17.

BOARD MEMBER JOHNSEN: Mr. Chairman, how did Mr. Grodin vote?

MS. GUTIERREZ: I have recorded a no vote.

BOARD MEMBER JOHNSEN: Thank you.

MS. GUTIERREZ: Mr. Johnsen?

BOARD MEMBER JOHNSEN: No.

MS. GUTIERREZ: Chairman Mahony?

CHAIRMAN MAHONY: No.

The motion to adopt Rule 17 is defeated by a three to two vote.

BOARD MEMBER GRODIN: Mr. Chairman.

CHAIRMAN MAHONY: Mr. Grodin.

BOARD MEMBER GRODIN: I would like to propose a compromise rule which is not yet in final drafting form. I have here some scribbling that I did over the noon hour.

Let me preface my proposal with this observation, which I intend to be part of the setting for consideration of the motion. I think we are in a situation at which inaction is equivalent to action. That is, I don't think we can sit back and do nothing in this situation, even though to do anything with any degree of certainty is difficult. What I am proposing is a rule which would take effect upon publication, but with which would be subject to review after a period of thirty days in which we would ask our regional directors to assess the impact of the rule and

report back to us on their observations with respect to its effectiveness in achieving the purpose of the statute.

Moreover, even within that thirty day period, I would suggest that any party may bring to our attention, by petitions for amendment, or other appropriate procedures, a proposal for modification of the rule on the basis of evidence that in particular situations it is working a hardship either to the union's legitimate rights of organization or to the employer's legitimate concerns with their rights of property or to the rights of the employers under the statute.

I would preface the rule by the observations which the Supreme Court has made in the cases that have been so often cited to us, and, which you correctly observed, Mr. Chairman, frequently cited in support in precisely conflicting views. My understanding of the Babcock Case and the Central Hardware Case could not, and this is as follows, and this is in part a quotation from those opinions.

> "Organizational rights are not viable in a vacuum. Their effectiveness depends in some measure on the ability of employees to learn the advantages and disadvantages of organization from others.
>
> When alternative channels of effective communications are not available to a union,

organizational rights must include a limited right to approach employees on the property of the employer. Under such circumstances, both statutory and constitutional principles require that a reasonable and just accomodation be made between the right of the unions to access and the legitimate property and business interests of the employer."

Now, with respect to the evidence that was presented before us, I recognize that there is considerable variety of circumstances in which agricultural employees work and in which union organizers have to operate. I think we have to strike some balance between adopting a rule that would be absolutely inflexible without respect to variations and a rule which would be so vague as to encourage further chaos.

My impressions from the testimony yesterday, as well as from books and reports that have been made to the agency of the State of California with respect to the nature of agricultural labor, leads me to the conclusion that generally, unions seeking to organize agricultural employees do not have available alternative channels of effective communication. Alternative channels of effective communication which have been found adequate in industrial settings

do not exist or are insufficient in the context of agricultural labor.

And, as I have said before, I think the legislatively declared purpose of bringing certainty and a sense of fair play to a presently unstable and potentially volatile condition in the agricultural fields of California can best be served by the adoption of rules on access which provide clarity and predictability to all parties.

Relegation of the issue to case-by-case adjudication or the adoption of an overly general rule would cause further uncertainty and instability and create delay in the final determination of elections.

Accordingly, to what I would propose is as follows: That the Board will consider the rights of employees under Labor Code Section 1152 to include the right of access by union organizers to the premises of an agricultural employer for the purpose of organizing, subject to the following limitations:

First, that organizers may enter the property of an employer for a period of thirty minutes before he started to work and thirty minutes after the completion of work to meet and talk with employees in areas in which employees customarily congregate before and after working.

Second, in addition, organizers may enter the employer's property for a total period of one hour during

the working day for the purpose of meeting and talking with employees during the lunch periods at such location or locations as the employees customarily eat their lunch. If there is an established lunch period, the one hour lunch period shall include such lunch break. If there is no established lunch break, the one hour period might be any time during the working day.

I would provide further, that access shall be limited, access under both of those provisions, to two organizers for each work crew on the property, provided that if there are more than thirty workers in a crew, there may be one additional organizer for every fifteen additional workers.

I provide further, that upon request, organizers shall identify themselves by name and what labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.

Further, the right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

In the pending further regulation by this Board,

no access shall be permitted after the results of an election held pursuant to this act had been certified.

Let me just explain that last part. The purpose of allowing access is to allow an opportunity for union organizers to have contact with employees for the purpose of organizing them and preparation for an election campaign. Once the campaign is over, once the election has been held and the results finally certified, which means any objection to the election disposed of, then organizer's access under this rule should cease.

Now, I recognize that it will be necessary to determine some point which access rights would again accrue. Because, say, that they cease for an eternity would not be appropriate. We do not yet have rules nor do we have published decisions which clarify the statue with respect to the filing of petitions, rather current contract in effect. And pending the adoption of such rules or principles by decision would be inappropriate to specify when access, under this rule, could commence again. But for purposes of the limited period of time, which I have in mind for the experimental nature of this rule, that is not the problem.

I don't mean, of course, that access under this rule is the only access which employees might have after an election is held. Of course, if a union negotiates an agreement which provides it access for the purpose of handling

grievances under that agreement, it will have such access as the contract provides.

Now, that is the substance of my proposed rule. I have one additional thought, which I have not completely clarified in my mind in which, in an effort to win support for my position, I throw out to you in general form in the hope that, particularly, the two gentlemen at the end of the table might find a way at arriving at an agreement on this point.

It seems to me that prior to elections, access rights under this rule should not be unlimited in duration. That is to say, the purpose of this rule is to provide an exception to the ordinary principles that unions organize off the employer's property except for the extent that there are employees on the property who will conduct the organization for them.

And the purpose of the rule is to provide some minimal initial basis for contact between the union and employees, in an effort to offset the difficulties which have been enunciated to us in the testimony regarding the problems which union organizers have in contacting most agricultural employees in transitional situations. But, if union organizers go on and they have contact with the employees, they have a chance to talk with them, a reasonable opportunity, and I don't mean necessarily just once, I would

think there ought to be some limit on the period of time in which they could continue that kind of access. And I don't know precisely what that limit should be.

It occurs to me that the limit might well be different with respect to entering upon the property during a lunch break than it is with respect to entering upon the property before and after work. Because, for two reasons, one, because entering upon the property at the time of the lunch break is more likely to be disruptive of the employer's legitimate concerns with business operations and it also is more likely to be disruptive of the legitimate concern of the employees to their own privacy.

I think it is reasonable to take into account the interest of the employees in not being constantly the subject of and over a long period of time the subject of what they might regard as harassment by union organizers; what might be more neutrally described as attempts by union organizers to communicate with them.

So, I would suggest that there be two-time limitations attached to the -- excuse me, let me just finish that thought. Whereas, the presence of union organizers at locations where employees customarily congregate before and after work is not likely to nearly be as disruptive of the employer's business nor of the employee's privacy.

I would suggest that, perhaps that there be two-

time limitations, one applicable to the access on lunch period and the second applicable to the access before and after work and that the second period should be longer than the first and I have no fixed ideas as to what those periods ought to be.

CHAIRMAN MAHONY: You have heard the motion.

BOARD MEMBER GRODIN: The motion, I think, in the sense in which we adopted the motional symbols, that motion of intent, at this point, requires some further clarification by way of language. Particularly, on the issue that I have left open.

CHAIRMAN MAHONY; Does someone wish to second the motion of Mr. Grodin's?

(No response.)

CHAIRMAN MAHONY: I will second the motion of Mr. Grodin's.

Would members like to discuss this with Mr. Grodin, ask questions, get clarifications, what he has in mind?

Mr. Johnsen.

BOARD MEMBER JOHNSEN: Mr. Chairman, perhaps before that, either the chairman or Mr. Grodin could restate the motion in one, two, three, four things. I would like to fully understand the printed page you passed out. It is obviously a work sheet. Just give us the five points.

BOARD MEMBER GRODIN: Sure. One, organizers may enter the property of an employer for a period of thirty minutes before the start of work and thirty minutes after the completion of work to meet and talk with employees in areas in which employees customarily congregate before and after work.

Two, in addition --

BOARD MEMBER CHATFIELD: Are you reading or what?

BOARD MEMBER GRODIN: I am reading from the bottom of what I gave you.

Okay, we should now have two sheets before us. Let us number those sheets one and two and let one be the sheet which is elite typing and let two be the sheet with my obviously home-made typing. Okay, I am reading from sheet two and at the bottom of sheet two.

Organizers may enter the property of an employer for a period of time of thirty minutes before the start of work and thirty minutes after the completion of work to meet and talk with employees in areas in which employees customarily congregate before and after work.

Two, from the same sheet up above.

BOARD MEMBER CHATFIELD: I am sorry, I am lost.

CHAIRMAN MAHONY: Okay, on the bottom of Page Number 2, there is a little letter "a". At the bottom, let us number that with our pages and numbers, let us label

that as Section "a" of the motion; that one sentence is Section "a" of Mr. Grodin's motion. "Organizers" through after "working day."

BOARD MEMBER GRODIN: I wish to exclude that beautiful language I used for the purpose of an operative provision of Paragraph A.

B. In addition, organizers may enter the employee's -

BOARD MEMBER ORTEGA: Excuse me, where are you reading from now?

BOARD MEMBER GRODIN: Here.

BOARD MEMBER ORTEGA: "B" on this page.

BOARD MEMBER GRODIN: In addition, the organizers may enter employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period at such location or locations as the employees customarily eat their lunch. If there is an established lunch period, the one hour period shall include such lunch break. If there is no established lunch period, the one hour period may be at any time during the working day.

Let me just explain what I have in mind by the one hour period. I realize that most lunch breaks are for a half hour. If we say that union organizers can go on the property for a half hour to talk to employees, there may very well be a dispute as to how long that they are

with the employees as compared with the amount of time which may be required after entry upon the property to locate the employees and then go out again. It seems to be sensible to simply adopt maximum limitations on the amount of time they can spend on the property from the moment they enter until the moment they leave.

And the one hour period, from the testimony that I heard, ought to be adequate for allowing them to accomodate and establish the lunch break, where an established lunch break exists and ought to also be ample opportunity in the cases where there is no established lunch break for workers to take their lunch break at that time if they want to talk to union organizers. If they do not want to talk to union organizers, that is their business.

CHAIRMAN MAHONY: Just for clarification on the work sheet you handed us, there is a clause which is apparently left out.

BOARD MEMBER GRODIN: That is correct. I have left that out in my presentation here because I deliberately want to leave that question open.

Okay, C, and I am turning now to Page 1 and we pick up with C there.

BOARD MEMBER CHATFIELD: So A is gone and B is gone.

BOARD MEMBER GRODIN: That is correct.

Access shall be limited to two organizers for each work crew on the property, provided that if there are more than thirty workers in a crew, there may be one additional organizer for every fifteen additional workers.

D. Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.

E. The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.

F. Pending further regulation by this Board, no access shall be permitted, I think that should be, "under this rule," after the results of an election held pursuant to this act had been certified.

Now, one further observation, that this rule does not attempt to deal with the question of labor camps. There are constitutional rights which have been enunciated with respect to access to labor camps and it may well be that access to labor camps is also part of the employees' rights under this statute.

But, from the testimony I heard yesterday, the principle problems exist with respect to access to the fields and it is with respect to that issue only that this rule is designed to deal. It is not attempting to regulate one way or the other the question of access to labor camps. And obviously, it cannot control whatever constitutional right may exist as has been argued.

That may be greater than this rule. We can't amend the Constitution of the State of California or the United States.

CHAIRMAN MAHONY: Okay, thank you, Mr. Grodin. We have this motion which I have seconded, is A through F, and the items we have just read and identified for us on the work sheets he gave us.

Mr. Ortega.

BOARD MEMBER ORTEGA: Mr. Chairman, I follow Mr. Grodin's attempt to compromise and I think it is a good faith effort.

Let me proceed. I think the best way to proceed is to attempt to offer an amendment to Mr. Grodin's motion and see if he will accept them. If not, I think I would just defer the matter and just state that I can see the handwriting on the wall on our other motions.

But let me see, one of these, Mr. Grodin, on the subject B on the lunch breaks, your motion says that or-

ganizers may enter the property for one hour at such location or locations as the employees customarily eat their lunch.

My amendment is to drop that last phrase "at such locations." My reason for that is that first of all, it really doesn't add anything, because obviously, if the organizers are going to talk to the employees, he is going to go where they are, generally where they eat their lunch.

On the other hand, if the employers designate a certain place where they are going to eat their lunch, the organizer might be there by himself and I will offer that amendment.

BOARD MEMBER GRODIN: All right, now the purpose of this language is not to say that the union organizer has to show up in the place where the employees customarily eat their lunch, if in fact they are eating their lunch somewhere else. And if you want to strike the word "customarily," I have no objection. My concern with designating the location was really to take care or attempted to deal with the problem of piece workers and if the piece workers leave their work to eat lunch somewhere, then it seems to me that is where the union organizer ought to go to talk with them and not while they are working.

BOARD MEMBER JOHNSEN: Can I just raise the question on Mr. Ortega's amendment here. If we were to adopt

your amendment and allow the organizers to go anywhere in the fields, I think this would cause some additional problems with the grower. I think the idea if we go for this kind of thing, the idea of having the employees to -- a customary place where the workers come to eat would be a means of confining where the organizer goes, the employer would then know that this general area is where this act would be taking place, not out somewhere in the fields, and all the problems that were brought out yesterday about people running around.

I think there would be more control if we restricted him to a customary eating place. And I agree that customary eating place may vary from day to day.

BOARD MEMBER GRODIN: Well, Mr. Johnsen, would anything be lost if we struck the work "customary," so as to take care of Mr. Ortega's problem that "employees may customarily eat at one location"?

BOARD MEMBER JOHNSEN: Looking at it from the standpoint of the organizer coming on the ranch, if it is a place where they are eating in a different place where he is going to go, he is going to go, I would think, to the customary place and if they are not there, because the crew is ending up at the end of the row or some such thing like that, then he would move on to that place no doubt.

BOARD MEMBER GRODIN: Well, I just want to take

care of that no doubt situation and not have the fear that the organizer was restricted to a place where the employees customarily eat their lunch, if that is in fact where they do eat and there would be no loss if they took out the word "customarily."

BOARD MEMBER JOHNSEN: All right, take out the word "customarily."

CHAIRMAN MAHONY: Mr. Grodin, I feel that taking the word "customarily" out then allows the adaptation if the workers in fact eat at the end of the row where the grapes were picked that day.

BOARD MEMBER GRODIN: Would you say that again, please?

CHAIRMAN MAHONY; If the workers decided to eat their lunch at the end of the row of the grapes of a particular section, at the end of that row, and maybe they customarily eat their lunch for that day before or after, I think the word "customarily" makes it clear, wherever they are having lunch is the place.

BOARD MEMBER GRODIN: Yes, I agree.

BOARD MEMBER CHATFIELD: You mean you are suggesting that we take it out?

CHAIRMAN MAHONY: Yes.

BOARD MEMBER ORTEGA: That was amended, which he may accept. Now, let me offer another one. On Section A

you have the same phrase. "In areas in which employees customarily congregate before and after work," and I have the same problem with that.

Although I brought B up first, because it is a different situation, the problem that I see is that who is going to determine for the organizer? Is the employer going to tell him, "We customarily meet at Y place and you are to be there and only there." Mr. Grodin, I believe you can see what the problem may be with that.

BOARD MEMBER GRODIN: So, you are proposing to take out the work "customarily"?

BOARD MEMBER ORTEGA: We are talking about an amendment, "in areas where employees customarily congregate before and after work." So that the rule would then be "when the organizers may enter the property of an employer for a period of thirty minutes before the start of work and thirty minutes after the completion of work to meet and talk with employees."

BOARD MEMBER GRODIN: Well, my concern with that, and maybe it doesn't make any practical difference, is that I started with an attempt to accomodate the views expressed by some grower's representatives in distinguishing between the working and non-working areas. But, the more I thought about it, in light of all of the testimony, it seemed to be extremely difficult to draw a distinction on an agri-

cultural field between a working area and a non-working area.

What I have in mind here is that we are not giving the organizer a free rein to wander about premises wherever they go. Now, that may not be a problem on a large farm, but we have heard from some small farmers who live on the farm and with their families and I think it is reasonable to expect that the organizers confine themselves to areas where the workers are.

Now, if you can think of other language to accomplish that end, maybe that would be all right, but I have no ideas on that.

BOARD MEMBER ORTEGA: Let me suggest, Mr. Grodin, the phrase you have in your rule it says, "The organizers may enter the property to meet and talk with employees," and I think that is a limiting phrase. Obviously, if they are going to meet and talk with employees, they are not going to go to the employer's house or some other place.

Now, I would think that they could go on the property only for the purpose of meeting and talking with employees and for that reason only going on the employer's property.

BOARD MEMBER GRODIN: I would defer on this to someone who knows more about the factual situation than I do.

CHAIRMAN MAHONY: Mr. Johnsen.

BOARD MEMBER JOHNSEN: Well, Mr. Chairman, I think if you take Mr. Ortega's amendment in that area, you are just opening it up for completely free access, because that then gives the organizer thirty minutes before and after which he can go on the property, under that language as you have drafted it here. He can go out to the field and get a tomato picker, for example, and meet and talk with employees, thereby, disrupting the work patterns and likely later on in this proposal, the same thing that we do not want to do.

BOARD MEMBER GRODIN: This is before work?

BOARD MEMBER JOHNSEN: Yes, before or after work. But, what constitutes work? So we have three crews out there and one crew is starting to work. Now, if he comes thirty minutes before and after and one crew is working and he comes out there and goes out to the other crew and disrupts them, I think, that the testimony from yesterday was very definitely along the line that there are certain areas in which the workers come to get ready to start work and certain areas in which they return in order to get ready to go home.

When they come by bus or auto or walk or whatever they do, and I think from some of the testimony that we heard from some of the grower's groups, that there wasn't too much objection if organizers were in that area at that

particular time. I think if we give them free access to wander anywhere or walk with the worker, if he is not on a machine, walk around the field or something like that, I think we create all kinds of additional problems which could be very difficult to cope with.

As far as the word "customarily" is concerned, I don't think that is necessarily a problem.

BOARD MEMBER GRODIN: Well, I am prepared to strike the word "customarily," but I am inclined to leave the rest of it with this observation. Can I just finish this up.

I recognize there are problems from a union organizer's point of view with respect to this language, or for that matter, any language that I think we might reasonably devise to deal with this issue. A bus may arrive one minute before starting time and employees get off and on to the fields and the organizer doesn't have an opportunity to talk with them. The bus might come up and pick the workers up and take them away at the end of the work period, the union has no chance to talk with them again. It is for that reason and reasons like that dealing with the problems surrounding before and after, that I was persuaded to include a limited right of access during the lunch period, as a kind of set-off that may be confronted there.

Again, we have to realize where we are. Our ob-

jective here is not to provide the union with the most effective method of organizing, but rather to assure that the union has an effective method of communicating with employees under these circumstances in which reasonable alternative affective method of communications do not exist. And, therefore, I am inclined to stay with a somewhat restrictive rule with respect to that aspect with the understanding, if parties come to us and say, "Look, employers are playing games and this really doesn't provide any opportunity to talk with employees at all, because employers are deliberately keeping away or whatever," we have to deal with that perhaps by a modification; just as we would have to deal with the situation where employers came to us and said, "Look, the organizers were coming on at lunch break and wandering all about or disrupting the employees from their work and so forth." We have to rethink where we are under those circumstances too.

CHAIRMAN MAHONY: Mr. Chatfield.

BOARD MEMBER CHATFIELD: The problem I have with this and it is brought up time and time again, you are suggesting about the designated location, you know, like you draw a circle in the dirt and that is where you have got to go.

BOARD MEMBER GRODIN: That is why the concept of designated areas is rejected here in favor of an area in

which employees in fact congregate.

BOARD MEMBER CHATFIELD: In other words, it's where they are.

BOARD MEMBER GRODIN: It's where they are.

BOARD MEMBER CHATFIELD: As opposed to where the employer says they should be?

BOARD MEMBER GRODIN: Yes.

CHAIRMAN MAHONY: I would be in favor of dropping "customarily," but I would like to leave the clause. I think it is essential to the kind of direction this whole proposal is making.

BOARD MEMBER JOHNSEN: Mr. Chairman, may I defer a question to Mr. Grodin?

CHAIRMAN MAHONY: Yes.

BOARD MEMBER JOHNSEN: If this was in addition to the areas in which they congregate before and after work and you had a bus, for example, dropping off forty workers who then walked, we will say, three hundred yards into a work area where they are going to start picking or whatever they are going to do, would this allow an organizer to walk with them if they were walking as a group, so to speak?

BOARD MEMBER GRODIN: Yes, I would see nothing to the rule that would prevent that.

BOARD MEMBER JOHNSEN: But, once they started to work, they would not be allowed, right?

BOARD MEMBER GRODIN: Yes.

CHAIRMAN MAHONY: Would you be willing to have the word "customarily" taken out of your motion?

BOARD MEMBER GRODIN: Yes, I would agree to that.

CHAIRMAN MAHONY: The word "customarily" from Section A of the motion has been withdrawn.

BOARD MEMBER ORTEGA: I have one other amendment, one concern that I see I would like to address myself to Mr. Grodin.

The amendment is to change Section A for the period of time from thirty minutes to one hour. Would Mr. Grodin accept that amendment?

If you want me to clarify the point, let us say that they have the same one hour lunch break and the farm is so large that it takes an organizer from the time he enters the private property, twenty or twenty-five minutes to find the area, and he is not going to have thirty minutes to talk to these workers. So that last item could be eliminated and just have the before and after work. That would be more appropriate.

BOARD MEMBER GRODIN: Well, factually, how long a period is that, that employees are likely to be at or about the premises before beginning work? I am asking that generally.

BOARD MEMBER ORTEGA: We need an expert; I expect

not very long.

BOARD MEMBER JOHNSEN: I would imagine the thirty minute period would be more than adequate for most workers unless they wanted, voluntarily, to listen to the union organizer. Then, I assume they would stay later after work and things of that sort. One hour would be academic. I don't think you would find many workers there on the extra thirty minute time period.

BOARD MEMBER GRODIN: Okay, but Mr. Ortega is evoking the reasons I gave in support of the one hour I mentioned and it seems to me there is some error in that we are talking about a period of time in which the union organizer is going to have to spend trying to talk with employees. Then, there may be a period before that which he is entering upon the premises and trying to locate them. And what I would like to have is a rule which describes a period of time from the point that the organizer comes on the premises until he leaves.

Maybe a thirty minute period is not adequate for that.

BOARD MEMBER JOHNSEN: May I suggest an alternative to what you are talking about. If we adopt in this area, that you allow the organizer -- would you accept an amendment to allow the organizer on the property of the employer for a period of one hour either before or after

completion of work? Let the organizer choose when he wants the hour to be on the property.

BOARD MEMBER CHATFIELD: What about lunch time?

BOARD MEMBER JOHNSEN: That is different.

CHAIRMAN MAHONY: Mr. Grodin, do you wish to respond to that?

BOARD MEMBER GRODIN: Before I respond, I am trying to get a feel of what the practical consequences are.

BOARD MEMBER JOHNSEN: Let me explain my thinking. If thirty minutes is adequate before and after, fine. He can take thirty minutes, split up that thirty minutes both times or, if it is not because of some extenuating circumstances, he can decide when was the most advantageous time, morning or afternoon.

BOARD MEMBER CHATFIELD: Your idea is that he would have a choice?

BOARD MEMBER JOHNSEN: One hour.

BOARD MEMBER CHATFIELD: Could he spend ten minutes and then fifteen minutes?

BOARD MEMBER JOHNSEN: I would think so; I see some enforcement problems with that.

CHAIRMAN MAHONY: I ask a question about that too, especially where there is an area where there is maybe ten or fifteen growers located in a very small area, geographical area and the organizer may not remember if he was

on ranch X, Y, or Z in the morning or in the afternoon. I think it would be very difficult to say, "I can't go there this afternoon because I was there this morning; but this one, I was there yesterday afternoon so I can go there this morning." I can just see some very practical problems of keeping it straight.

BOARD MEMBER GRODIN: I don't like the idea of having an accumulative time. I think that gets us into problems of the organizer punching time clocks.

BOARD MEMBER CHATFIELD: Right, if you are counting time from when you cross the public or private property and if it takes, you know, I don't know what, ten or fifteen minutes maybe, to find where the workers are going to park that day, where they are going to congregate that day, so to speak.

BOARD MEMBER GRODIN: Is there a problem with the organizer arriving one hour before starting time and it's dark? By the way, excuse me, I did not say this before and there is no provision in this rule and there should be, it was intended to apply only to daytime shifts. And it is not intended to apply to those situations where there is a nighttime shift. I don't think we are in a position to provide access to organizers during the kind of circumstances that were described to us 11:00 o'clock last night.

BOARD MEMBER CHATFIELD: But, the workers work at

night. Don't they have a right to have organizers?

BOARD MEMBER GRODIN: Oh, I understand that. My advisor calls my attention to the fact that the day shift starts after or just before daybreak and I recognize that. But, the rule is not intended to apply to a night shift such as described in the tomato crops where it exists exclusively at nighttime.

MS. GUTIERREZ: For your information, are you aware that in Imperial county all tomatoes are picked at night because of the heat?

BOARD MEMBER CHATFIELD: What time do they start?

MS. GUTIERREZ: They start at 5:00 o'clock.

BOARD MEMBER CHATFIELD: They start about 5:00 o'clock.

CHAIRMAN MAHONY: Mr. Grodin, I personally have no trouble with the rule the way it is in reference to shifts. Simply because I can think of several other crops where this is happening and I think it's a regular shift for the employer. The organizer, it is his problem to find out when the shift starts and adjust his time accordingly.

BOARD MEMBER GRODIN: All right. Where are we with respect to the amount of time that he be there?

BOARD MEMBER ORTEGA: Mr. Johnsen offered the one hour.

BOARD MEMBER GRODIN: Is that one hour before or

after?

BOARD MEMBER CHATFIELD: Or a combination?

BOARD MEMBER ORTEGA: Or a combination thereafter.

BOARD MEMBER GRODIN: "Combination" bothers me. "Combination" bothers me because it just adds to the complexity of the situation in terms of keeping track of when the organizer was there and when he leaves and accumulating of time. I would prefer to see a clean-cut situation, either so many minutes before and after or so many minutes before or after.

And I guess I am sort of deferring to those of you who know the practicality of this than I do to suggest which of those alternatives might be appropriate.

BOARD MEMBER ORTEGA: My suggestion would be one hour before and one hour after. Perhaps the other members would comment.

CHAIRMAN MAHONY: How do the other members feel?

BOARD MEMBER CHATFIELD: I would be in favor of one hour before and one hour after.

BOARD MEMBER JOHNSEN: I am in favor of no hours before and no hours after.

BOARD MEMBER GRODIN: How does forty-five minutes sound?

CHAIRMAN MAHONY: Well, I think practical, it really doesn't make that much difference because I don't

think that any employer or any supervisor or any organizer should be out there with a stop watch trying to see whether it is thirty minutes or thirty-nine minutes or twenty-eight minutes. I just think the reality of workers coming together in a staged area during the harvest crop, that is not the reality of what happens.

And personally, I don't think anyone is going to be there prior to thirty minutes and certainly, if it is a long, hot day, you have got to offer an awfully good pitch to get people to stay beyond thirty minutes in the afternoon. But, if the members wish to put in sixty minutes, I am open to that.

BOARD MEMBER GRODIN: All right, I will buy that.

CHAIRMAN MAHONY: The wording has been changed to read a period of thirty minutes.

BOARD MEMBER GRODIN: The total period to conform to the previous language. Make it clear we are talking about total elapsed time on the premises.

CHAIRMAN MAHONY: "Organizers," it reads now, "Organizers may enter the property of an employer for a total period of sixty minutes before the start of work and sixty minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after work." Is that clear?

BOARD MEMBER ORTEGA: Right now I have no amend-

ments. I have just one item, I want clear whether it was in the motion or not.

You indicated a trial, thirty day trial for this rule. It seems to me unnecessary, because they are temporary rules at any rate and we have a date set when we will adopt regular rules and also we have the option of changing these rules at any time before that date. So that thirty days only adds even more to the uncertainty to what we already have.

BOARD MEMBER GRODIN: Let me make clear what I meant by that. I mean that the rules disappear at the end of thirty days.

If we adopt these rules and emergency regulations, they would continue in effect until at such time as we adopt permanent regulations. But what I meant was to say something more than, "Let us try it out." What I mean to say is let us have a definite period within which we expect our regional directors to report to us on how this is operating in the fields and let us plan to take a look at it at the end of thirty days. I am not saying the rule expires at the end of thirty days, but that we schedule specifically a meeting on, at or near the thirty day period and take a look at it and see that report.

CHAIRMAN MAHONY: I understand that too. You had to try to work out the language Mr. Grodin had used.

You said that rule would be effective upon publication subject to review after thirty days. Is that true? Is that the language as I interpret that sentence that you just explained?

BOARD MEMBER ORTEGA: Subject to review in any case. But I understand it does not mean, if it is not reviewed that day.

BOARD MEMBER GRODIN: It is clear and I will try to explain. In the legal effect there will be no -- it will remain on the books until we take some action to resind or modify its effect.

BOARD MEMBER ORTEGA: Until we specifically modify it.

CHAIRMAN MAHONY: This rule would have to be followed and unless we file a change or amendment, it remains.

Yes, I am just reminded we only have forty-seven minutes to do all of that.

BOARD MEMBER CHATFIELD: Just one clarification. In the normal course of affairs, when will our permanent rules -- normally, how many days or months are we talking about for permanent rules?

CHAIRMAN MAHONY: Permanent rules must be adopted by December 28, 1975. I am going to have to find out from legal counsel exactly what are our official noticing and hearing schedule is to determine that.

BOARD MEMBER CHATFIELD: So the effective trial period of this rule then would be against that date certain?

CHAIRMAN MAHONY: That is right. Except that this Board is still under the authority of the emergency rules provision to meet within two weeks or two months and say we are still alternating.

BOARD MEMBER CHATFIELD: All right. But there is nothing written here that says we have a thirty day time period?

CHAIRMAN MAHONY: No, administrative requests to our Federal Directors, Regional Directors to give us reports on how this is actually working.

BOARD MEMBER JOHNSEN: Mr. Chairman, Mr. Grodin in proposing this so-called compromise kind of access rule here, he suggested, as I heard him, it would be for a trial period in which time we would hopefully be able to gather some specific information through our regional directors and also through various kinds of industry input and so we would be in better position to decide whether or not we should continue in this area and so forth.

And as I heard you, Mr. Grodin, it is a specific trial period in that sense. December 28th, is a pretty long trial period and I was wondering whether you would agree, as part of your motion, that the first we have on permanent regulations, which, if I understand correctly

would be probably thirty days from now. I think it would require thirty days notice, around the first of October or around there. At the first time we could have a hearing on permanent regulations, that this be the first order of business and that we have a report from the staff and any other interested party as to how effective or not how effective they are operating. Would you accept that?

BOARD MEMBER GRODIN: I agree with the substance of that. I am a little reluctant to say it should be the first order of business.

BOARD MEMBER JOHNSEN: But it should be on the agenda?

BOARD MEMBER GRODIN: Yes, be on the agenda for consideration and certainly one of the first items of business when we begin considering the permanent rules. As far as it should be the first item of business, I suppose it depends on what degree of urgency exists with respect to the proposal of modification.

BOARD MEMBER JOHNSEN: Excuse me, Mr. Grodin, this is, as I understand, if we did run into a serious situation in the next thirty days, ten days or tomorrow for that matter, we would still have the power through emergency regulations procedures to make the necessary changes?

BOARD MEMBER GRODIN: That is correct.

CHAIRMAN MAHONY: I have a question, Mr. Grodin. Do I understand that this access would then be allowed every day, every working day, from today until the day we do something different?

BOARD MEMBER GRODIN: I raised the question at the outset whether there should be -- well, the access rule would remain in effect. Now, I raised the question at the outset whether there should be any limitation on the number of days, consecutive days or total number of days, in which an organizer could go on the premises.

A. For the purpose of talking to employees during lunch hour. B. For the purpose of before and after discussions. I would be prepared to defer -- my inclination is that we should adopt the limitation. But I am not sure what the limitation should be. I would be prepared to defer the adopting of a limitation until such time as we reexamine the rules for the purpose of considering whether there have been what we regard as abuses by leading organizers, harassment of employers, the needless prolonging of organizing efforts beyond the point in which it is clear that the union has had a fair crack.

I don't know that it makes any difference between now and thirty days from now. If anyone has a specific thought of limitation, I would be happy to entertain it.

CHAIRMAN MAHONY: Mr. Chatfield.

BOARD MEMBER CHATFIELD: Trying to set a period is sort of academic because starting Tuesday, the petition will be filed, presumably for elections, and so if access means anything, it certainly means for the purpose of having elections. And the way you structered it, so that it is going to be subject to some review in a relatively short period of time.

BOARD MEMBER GRODIN: What you say is true. In those cases where there are going to be elections; it may not be true in those cases where there are no elections and where organizing is taking place.

And I can conceive an employer and/or his employees being concerned about the length of time between which the union organizers, on during the lunch period.

BOARD MEMBER CHATFIELD: Right, but even in those cases for rules to be any way meaningful, would have to have rounded-up working days to make access to workers meaningful prior to the filing of the petition and then you are talking about another seven days until the election. So it would probably be pretty much, in a case like that, pretty close to the --

BOARD MEMBER GRODIN: Okay, what you suggested is a distinction which is meaningful to me. Once an election petition is filed, then it seems to me the right of access should exist until the election is held and until

certified.

I am concerned about the period prior to an election, where the union is on the premises for the purpose of organizing and where there should be some limitation on the duration of access, under those circumstances.

BOARD MEMBER CHATFIELD: You mean where a petition does not end up being filed?

BOARD MEMBER GRODIN: Well, when they are on there, we don't know whether a petition is going to be filed or not.

BOARD MEMBER CHATFIELD: That is right.

BOARD MEMBER GRODIN: So, we have to have a rule which -- if they go on and gather signatures and they file a petition for election the next day or five days later, no problem. The problem arises if they go on and they stay on over a long period of time and there isn't any petition for election filed. That is the problem I am addressing myself to.

And I would be prepared to establish a limitation as to the time with respect to that situation.

BOARD MEMBER CHATFIELD: You mean something like twenty-one working days?

BOARD MEMBER GRODIN: I think twenty-one working days is probably too long.

CHAIRMAN MAHONY: That is my concern too. I think

that maybe with the harvest until the middle of October of this year, in effect under this regulation, we are talking, without any limitation, a union representative should be there for six weeks, every day.

I am wondering whether or not that is necessary. That is my first question.

BOARD MEMBER CHATFIELD: I don't understand your question.

CHAIRMAN MAHONY: You are talking about cases where petitions would be filed for elections reasonably soon.

BOARD MEMBER CHATFIELD: Right.

CHAIRMAN MAHONY: I am talking about the situation where they won't be filed for six or eight weeks from now. And whether or not it isn't going to become -- some type of interference every single day for six or eight weeks talking to the workers, either before work, during lunch --

BOARD MEMBER CHATFIELD: Yes, you know, it is really self defeating. My position is that it is self defeating organizing, but it is also, if you are not allowing access on for -- I consider these rules pretty strict and stringent. If you are not allowing workers on for enough working days to make access meaningful.

BOARD MEMBER ORTEGA: I understood Mr. Grodin to say he prefered to defer that question until the next time we discussed it. I think that made sense, because even if

we arrive at a date, twenty-one days or five days or whatever, there are a lot of other problems about the date.

One of the problems I see, for example, say is five days, an organizer is there for five days and then over the whole year again and again and that could be a problem. It is a serious question and I think we all agree there should be some limitation.

Perhaps we should adopt this rule and defer that question until another time.

CHAIRMAN MAHONY: Well, gentlemen, our time is such that we do not have any alternative. Either move on this or to let it go until next week, if you wish to move on this kind of motion. Any further discussion?

To review the motion before us, moved by Mr. Grodin, seconded by myself, and it is Sections A through F of the work sheets with the amendments that were made and since we have no way of receiving typed copies before you vote on it, because it must go post-haste if this is going to get to the Secretary of State.

BOARD MEMBER JOHNSEN: Mr. Chairman, before the role is called, I would like to make a brief statement to the Board.

As I expressed in my first motion to the Board, and was defeated, I feel the rights of the property owners should be protected and that the access by persons for

organizing efforts should not be allowed. This so-called compromise proposal, by Mr. Grodin, provides a considerable amount of access and violates many of the conditions that I think should prevail in the fields.

It is not certainly, as bad a proposal as Mr. Chatfield proposed. You can always say something good about everything, I guess. Since Mr. Grodin was willing to accept a thirty day, in effect, a thirty day mandatory review period, and since we need experience in this area to really develop or not develop an access rule that will be meaningful as far as reducing the disturbances in the field, I am willing to go along on a compromise with the firm understanding that we will definitely review it at our first hearing and at that time take action and that we reserve, I certainly reserve the right to change my mind and at that time to propose an entirely opposite proposal.

CHAIRMAN MAHONY: If there are no further comments, the secretary will call the roll.

MS. GUTIERREZ: Mr. Grodin?

BOARD MEMBER GRODIN: Aye.

MS. GUTIERREZ: Chairman Mahony?

CHAIRMAN MAHONY: Aye.

MS. GUTIERREZ: Mr. Ortega?

BOARD MEMBER ORTEGA: Aye.

MS. GUTIERREZ: Mr. Chatfield?

BOARD MEMBER CHATFIELD: Aye.

MS. GUTIERREZ: Mr. Johnsen?

BOARD MEMBER JOHNSEN: Aye.

CHAIRMAN MAHONY: The motion is passed and I ask the secretary to run with this to the appropriate typewriter.

BOARD MEMBER GRODIN: May I be excused to consult with my secretary?

CHAIRMAN MAHONY: Yes.

We do have the symbol language which needs the same kind of treatment, although it is not -- we do not have to have the symbol language today to the Secretary of State. That will be filed Tuesday because there can be no ballots in use before September 9.

However, we do have the material before us.

Thank you, Ms. Lake, for reminding me that September 9 is Admission Day, which is a state holiday. So I must start referring to September 10th for these kinds of matters. I kept saying we have to do things by September 9th. We can't count that for these kinds of purposes.

BOARD MEMBER JOHNSEN: Mr. Chairman, I would see only one problem with the first paragraph. I would say that the "filing of a symbol by the executive secretary of Sacramento, a picture thereof, which is not in excess of

a one inch square," that is a pretty small picture in which to file.

CHAIRMAN MAHONY: Excuse me, ladies and gentlemen, for us to continue, we need to have silence in here. If you wish to have a discussion, will you please step out in the hallway. Our court reporter can't hear which conversation is the official one.

Mr. Johnsen, maybe I can read the whole thing so we can get an idea about what you are talking about. As you recall this morning, a motion was made and passed by unaminous vote for this Board to allow the use of symbols on the ballots. We do have now a draft copy of the regulations which we asked for and reads as follows:

> "If any labor organization has a distinctive symbol or emblem it desires to have appear on ballots during elections as a supplement to its name identification, it may record such symbol or emblem by filing with the executive secretary in Sacramento a picture thereof, which is not in excess of a one inch square.
>
> The symbol or emblem designating a choice of "No Labor Organization" should be a circle with a diagonal slash

from upper left to lower right through it, as a supplement to the words "No Union" on the ballot.

If for mechanical reasons, the Board cannot place the picture on the ballot, it will attempt to trace the outline of the picture on the ballot.

Each Labor Organization will be permitted to register only one such symbol or emblem for all its constituent locals, divisions or subdivisions."

MS. GUTIERREZ: I might add that paragraph that reads, "For mechanical reasons," it is simply because the ballots are intended to be Xeroxed at some point and mainly to be mimeographed at another point. So this is so the mechanical process of mimeographing can take place.

BOARD MEMBER CHATFIELD: Of course, with the use of electric stencil --

MS. GUTIERREZ: Well, we don't know what we have in appeal and we didn't want to have some challenge because it wasn't exact.

CHAIRMAN MAHONY: Mr. Johnsen is recognized.

BOARD MEMBER JOHNSEN: Mr. Chairman, the only thing I feel, is that in the first paragraph we put a period after the word "picture" in the next to the last line and

and strike out "thereof," strike out the word, "which is not in excess of one inch square." The filing of a picture could be a larger one that can be reduced.

Then, I would add at the beginning of the third paragraph, the "If for mechanical reasons" paragraph, a sentence that says, "The picture of the emblem on the ballot shall not be in excess of one inch square."

That means that on the ballot it will be one inch, but they can file a great big one if that is necessary.

CHAIRMAN MAHONY: Mr. Johnsen, I could raise an objection to that. In fact, I would like to make a little different point and a different language change. I would like to leave and have it, "In Sacramento a black and white picture, thereof, which is not in excess of a one inch square."

I think that the parties who are submitting symbols should submit it exactly the way they know it is going to be on the ballot. I am afraid that they may submit an 8 x 10 or 11 x 14 black and white and if we reduce it to a one inch square, they are going to be furious if they don't know what it is going to look like.

I think they should know what appears on the ballot will be no larger than a one inch square and if they submit the black and white copy of that one inch square, they know exactly what is going to be on the ballot. Otherwise, it is going to be a surprise.

BOARD MEMBER JOHNSEN: Mr. Chairman, the problem is, and I agree with your basis for objection, but in most printing kinds of operations, and I am assuming our ballots are going to be printed in some manner, shape or form, either something larger for clarity sake which they can reduce, but if you want to file a one inch square picture --

CHAIRMAN MAHONY: I just feel strongly they should submit exactly what is going to be printed. And if they submit an 8 x 10, that is not what is going to be printed. It may look differently and they should know exactly how this is going to look.

BOARD MEMBER JOHNSEN: Of course, we are dealing with a couple of major unions who will know exactly what it is going to look like.

CHAIRMAN MAHONY: Except, the teamsters, for example, may take some spokes out of the wheels if it looks funny with that many spokes in a one inch square. And I don't want to be in the position of saying we changed something.

I do know that these are responsible labor organizations we are dealing with and they should have professionally made a one inch drawing and give us professional copies in glossy black and white without any trouble.

BOARD MEMBER ORTEGA: Mr. Chairman, I think,

however, you don't want to mislead people. I know that exactly the way they give it to us is not necessarily so. I think Mr. Johnsen is correct.

If we take the one inch and we reduce it, it is not going to be exact. If we get something 8 x 10 and reduce it, it is more likely to be similar to what the original was intended. Perhaps we ought to have both.

And the other concept I had, and I am not asking for an opinion, maybe we don't want a picture, but rather a drawing, which are much easier to reproduce in that small size. If you limit it to pictures, that sounds like a photograph to me.

CHAIRMAN MAHONY: May I suggest we put in a different phrase entirely.

> "By filing with the executive secretary in Sacramento a black and white camera-ready rendering thereof, which is not in excess of a one inch square."

Maybe some of the press there can help us out. I am not really tied up -- I just want to be very clear the parties don't give us something which looks great large and shows up looking very differently in a one inch square.

BOARD MEMBER CHATFIELD: Well, let us get both

of them.

BOARD MEMBER GRODIN: Mr. Chairman, may I interrupt you?

CHAIRMAN MAHONY: Yes.

BOARD MEMBER GRODIN: At the tail end of this regulation, if you will look at your Page 2, Paragraph F, in accordance with our discussion, I propose that that subsection be as follows:

"Pending further regulation by this Board, this regulation shall not apply after the results of an election held pursuant to this Act have been certified."

MS. GUTIERREZ: May the record show that he is talking about the earlier motion.

BOARD MEMBER GRODIN: Yes, the motion on A through F.

CHAIRMAN MAHONY: Referring to Paragraph F on Page 1.

BOARD MEMBER CHATFIELD: What is it?

BOARD MEMBER GRODIN: "Pending further regulation by this Board, this regulation shall not apply after the results of an election held pursuant to this Act have been certified."

The original language, "no access shall be per-

mitted," which sounded as if we were prohibiting access, whereas, what we mean to say is that our regulation doesn't apply if they have access on the basis of contract or constitutionality principles or whatever.

CHAIRMAN MAHONY: Does anyone have any objection?

(No response.)

CHAIRMAN MAHONY: Back to our one inch square. I personally would be very pleased to leave the dimentions and the size out and just leave it "a rendering thereof." And let our technical staff worry about the size and shape and color and everything else.

MS. GUTIERREZ: There should be somewhere limiting the size on the ballot.

CHAIRMAN MAHONY: Yes, I think the intent is to limit the size on the ballot itself.

BOARD MEMBER JOHNSEN: That could be in Paragraph 3 in the first sentence perhaps.

CHAIRMAN MAHONY: I would be very open, if the members have any suggestions on this, for us to just take a moment and let one or two of us get that in shape so we can -- let us take a five minute break and talk about this one inch square.

(Thereupon a recess was taken.)

CHAIRMAN MAHONY: Ladies and gentlemen, the meeting will come to order.

In the interim we have come up with the language on the symbol / emblem question. And I would like to propose this language now to the members of the Board.

"If any labor organization has a distinctive symbol or emblem which it desires to have appear on ballots during elections as a supplement to its name identification, it may record such symbol or emblem by filing appropriate copies with the executive secretary in Sacramento.

The symbol or emblem designating a choice of "No Labor Organization" should be a circle with a diagonal slash from upper left to lower right through it, as a supplement to the words "No Union" on the ballot. The reproduction of the symbol or emblem on the ballot shall not be in excess of one inch square.

If for mechanical reasons, the Board cannot place the picture" -- excuse me, I am going to take the prerogative of changing that right now to, "symbol or emblem." Start that paragraph over.

"If for mechanical reasons, the Board cannot place the symbol or emblem on the ballot, it will attempt to trace the outline

of the symbol or emblem on the ballot.

Each Labor Organization will be permitted to register only one such symbol or emblem for all its constituent locals, divisions or subdivisions."

Any member wish to comment?

BOARD MEMBER GRODIN: I heard and discussed, during the noon hour, and I was paying attention over here to the prior discussion of the idea of having the slash line with the "no" under it. That is, to have a box with a slash line plus the letters "NO" not in the same area, but immediately underneath.

Was any consideration given to that idea?

MS. GUTIERREZ: In the drafting, consideration was given to that. However, it was also considered that the other etchings in the boxes would not have initials. All of them would have their wording out on the left and "No Union" will appear to the left of the symbol.

However, if you want to put "No" under the box, there should be no reason why that shouldn't be.

BOARD MEMBER GRODIN: Is there enough space to do that?

MS. GUTIERREZ: I imagine you could put a circle with a slash on each side of the square with "No" under it. I don't see a problem with that.

It seems redundant in the drafting to put "No Union" on it also.

BOARD MEMBER GRODIN: Well, except if the argument -- running down the column of the symbols and we are assuming someone who is unable to read and may just look at the symbols, perhaps, the words, the letters, "No" would add to the clarity and the meaning of that slash. It would reduce the possibility that someone would not be aware of what that slash line meant.

BOARD MEMBER JOHNSEN: May I suggest that maybe we add on the word "No" superimposed to the circle and slash?

MS. GUTIERREZ: We considered that way, but it would be a double negative. It would be "No" and "No."

BOARD MEMBER JOHNSEN: It would be the symbol.

MS. GUTIERREZ: It would be crossing out the "No." The cross is what in international sign language is called as a "No," a cross or a slash. And if you put in a slash over the "No," we thought that might be more confusing.

BOARD MEMBER CHATFIELD: I don't have any objection to the "No," but if we are going to limit it to a one inch square, then it seems to me it should all be the same and if you are going to add the words, add the letters "No" then it would be smaller.

The symbol would look small in order to fit the one inch square.

BOARD MEMBER GRODIN: Just very quickly, I wonder whether anyone here representing employees has any opinion one way or another about that. We don't have any time for lengthy arguments, but is anyone interested in commenting on that issue?

BOARD MEMBER JOHNSEN: While they are thinking about whether they want to comment, in coming up, I may add something.

It seems to me that the discussion we had was that to add the two letters "No," is the most recognizable by most people. And perhaps, our language there should be that the letters "No" shall be the symbol.

Now, comment if you want to, I was just talking while you were coming up.

JORDAN L. BLOOM: Without implying concurrence in the concept of symbols, assuming that is a foregone conclusion at this point, I would contend or urge the Board to give serious consideration to Mr. Grodin's suggestion. And as far as double negatives are concerned, I don't really think that would be a realistic concern among my clients.

We are getting extremely sophisticated now and the two letters "No" and that sign, the so-called universal

sign, I think there are going to be a great many people who don't know what that universal sign is.

BOARD MEMBER GRODIN: So you are suggesting the word "No" superimposed on the slash and underneath?

JORDAN L. BLOOM: I don't have any preference on that one way or the other.

BOARD MEMBER CHATFIELD: But, Mr. Grodin, you raised another point that -- excuse me, that was Mr. Johnsen.

That instead of the universal symbol, just "No." Do you have any comment about that?

JORDAN L. BLOOM: The theory being that the universal symbol might be confusing?

BOARD MEMBER JOHNSEN: Not known.

JORDAN L. BLOOM: Not known?

BOARD MEMBER GRODIN: It probably would not be known, but the question is either or both, do you have any thoughts about that?

JORDAN L. BLOOM: I think in order to balance things out, I think that the universal symbol is not going to be as confusing as possibly the harmful effect of having symbols on everything except the choice of "No Labor Organization."

BOARD MEMBER GRODIN: And therefore, what?

JORDAN L. BLOOM: Therefore, I suggest that you have the "No" and the circle with the slash.

BOARD MEMBER GRODIN: Superimposed on the symbol?

JORDAN L. BLOOM: Superimposed or written right underneath the box.

BOARD MEMBER GRODIN: I think that would be less confusing.

BOARD MEMBER ORTEGA: Looking at the D.M.V. booklet, it uses those international symbols and they have the words "No" underneath each symbol, as you will see.

BOARD MEMBER CHATFIELD: But, are we still talking about within the one inch square?

BOARD MEMBER GRODIN: Yes.

WILLIAM MAARS: I was just wondering if the international symbol of slash "No," isn't that always superimposed so that it tells somebody not to do something? It doesn't just sit by itself, does it?

BOARD MEMBER ORTEGA: That is right, superimposed --

WILLIAM MAARS: Like a lefthand turn, sitting over that; just sitting by itself, means nothing.

CHAIRMAN MAHONY: Usually by a bicycle, no left turn --

WILLIAM MAARS: So, if it is by itself, it is not going to mean anything to anybody. It is just like "No" what?

BOARD MEMBER CHATFIELD: So, do you think "No" on top or underneath it is plus or minus?

WILLIAM MAARS: Well, it is better than by itself, but it is unacceptable.

CHAIRMAN MAHONY: Mr. Maars, do you think it would be better in the circle with the symbol or underneath by itself?

BOARD MEMBER JOHNSEN: Or just the letters?

WILLIAM MAARS: Well, I am not an expert in international signs, but if you have the prohibitive object, which you are not supposed to do, and then you have this symbol, and hopefully, it is not going to make people say, "Don't vote." That is what I would be afraid of. It is very confusing.

Here it is at 4:30 in the afternoon and you are trying to adopt something very complex. I think it is going to cause many more problems.

CHAIRMAN MAHONY: I would be in favor of getting some draft copies made so we could look at them early in the week.

We could pass the resolution on the rest of the regulation and go ahead and get the authority to go ahead and then see if we could get someone to draw professionally some options to look at Tuesday.

BOARD MEMBER GRODIN: All right, it isn't necessary for us to adopt the regulation in its final form today anyway, is it?

CHAIRMAN MAHONY: No, this doesn't require us to have the final form, it just requires us to do it. That is the authority we need.

We could refer to the "No Union" symbol as the Maars-Bloom symbol.

Okay, what we need to do is pass the authorizing regulation, that is what we need to do. And we do not need at this point to designate that resolution.

BOARD MEMBER GRODIN: Mr. Chairman, I move the adoption of the proposed regulation subject to the approval on Tuesday of the precise symbol to be used for the "No" vote.

BOARD MEMBER ORTEGA: I second the motion.

CHAIRMAN MAHONY: It has been moved by Mr. Grodin and seconded by Mr. Ortega that we approve the regulation subject to approval on or about Tuesday, September 2nd, in the final form of the "No" union portion.

MS. GUTIERREZ: Chairman Mahony?

CHAIRMAN MAHONY: Aye.

MS. GUTIERREZ: Mr. Ortega?

BOARD MEMBER ORTEGA: Aye.

MS. GUTIERREZ: Mr. Chatfield?

BOARD MEMBER CHATFIELD: Aye.

MS. GUTIERREZ: Mr. Johnsen?

BOARD MEMBER JOHNSEN: Aye.

MS. GUTIERREZ: Mr. Grodin?

BOARD MEMBER GRODIN: Aye.

CHAIRMAN MAHONY: So moved.

We are now at 4:30. As I stated earlier, our access here expires at 5:00 o'clock. And I was informed by the marshal a few moments ago, that it might be that that access to any other room in this building is included in that same access rule. So we must, by 5:00 o'clock, decide what we are going to do.

Mr. Grodin made a good suggestion just before we reconvenied and I thought I might offer this for your suggestion, members of the audience.

We should determine whether or not there is anybody here at this moment or anyone who really feels that it is possible, certainly within a short period of time it probably would not be, possible to adopt a firm, fast rule on economic strikers. A rule that would take into account every conceivable situation that might arise. And, is that the gist of what you suggested?

BOARD MEMBER GRODIN: Well, yes, to answer that just a bit. I see somebody back there who obviously thinks that we can.

The issue which brought us to public hearing on this question, was the language of the statute which speaks of the rights subject to the regulation adopted by the

Board of economic strikers, both in the situation where strikes began within three years prior to the effective date of the statute.

And it is my own feeling, going into this discussion, that it would be extremely difficult to adopt a regulation in this area. That there must be a variety of facts which would be difficult for us to foresee at this time.

If somebody has some thoughts on what we ought to consider, I would like to hear from the group.

GEORGE PREONAS: I do have some thoughts. I think the only way for the Board to proceed is to do the same thing as the National Labor Relations Board does. You are faced with the same issue and that is determining what is a quote "economic striker," which is the same issue that has been faced for many, many years by the National Labor Relations Act.

The National Labor Relations Board has a very simple procedure. I don't say it is always simple to decide an issue, but it is a simple procedure, and that is to permit economic strikers to vote only a challenged ballot. And if those challenges are sufficient to affect the outcome of the election, only then is it necessary to get into an inquiry as to whether a particular individual is an economic striker or was an economic striker or con-

tinues to be an economic striker and so forth.

So, my suggestion would be to -- that the Board really need not adopt any particular rule, as the rules which currently exist, do not permit the economic striker to be shown on the eligibility list. I think that is proper; I think the employer has no way of knowing who claims to be an economic striker and I think that they simply vote, subject to challenge. That is all that is needed.

BOARD MEMBER GRODIN: I am inclined to agree so far as the determination as to whether an individual is an economic striker. As to the challenge procedure, I approve.

The question is, do all economic strikers who are participating in a strike which began within three years prior to the effective date of the statute, plus all those who were on the employer's payroll at the time of expiration of completing bargaining agreements, but not subsequently, when the strike began, are all such persons eligible to vote?

GEORGE PREONAS: Only economic strikers are eligible to vote, potentially eligible.

BOARD MEMBER GRODIN: The statute says something about people who are on the payroll at the time.

GEORGE PREONAS: Economic strikers who are on the

payroll.

BOARD MEMBER GRODIN: Okay. Is this your thought that all economic strikers would be eligible to vote under that section, provided that they do not obtain permanent employment elsewhere and et cetera?

GEORGE PREONAS: I think that those -- some of those factors that you just mentioned, go into the question of who is and who is not an economic striker and I think it is necessary, because there are so many factors that have to be considered, really by an individual, by individual basis, that there is only one solution. That is, necessarily to resolve as does the N.L.R.B. on a challenge procedure.

CHAIRMAN MAHONY: Any others? Mr. Smith.

The reason we do want to continue this, this is the time and place notice hearing on this subject and we would like to get some ideas.

WILLIAM SMITH: Yes, I think the problems are a little more complex than stated by the precious speaker. I think one of the difficulties we have here is that we have an industry that is highly seasonal in nature, and a guy might have struck at one employer, taken off, to go to a second employer in the same area, struck him.

I think we are going to have to examine the possibility that an employee may not have worked for a reasonable period of time. We may have some professional strikers

who went around striking from one place to another. He may, therefore, be eligible to vote at practically all the places in a particular area.

I think we are going to have to place some parameters on eligibility within a particular area, with a particular season; designate how many employers a guy, for instance, may be able to vote for. And I am not at this point, taking a position with respect to what kind of rules should be adopted.

But, I think those are some very serious considerations. We think a guy should be able to vote in one place, within a designated area, rather than voting on a number of times. If he is taking like or equivalent employment, that action is commensurate with resignation of his previous employment whether or not he was at the time he was initially struck, economic striker.

Perhaps, we even have to go so far as to define in our own terms what constitutes an economic striker as opposed to an unfair labor practice striker, because we don't have the -- or we may not have -- I think that is another question. The privilege of going back past the time or the date of the enactment of this law. That is another question which we may have to consider.

What is an unfair labor practice striker as opposed to an economic striker as defined under this act

rather than strike under the National Labor Relations Act. If, at all possible, a party to the proceeding who is aware of an economic striker, should present or make known the identity of an economic striker at the pre-election conference, I think that would facilitate matters for all concerned.

And it would make it much more -- easier to identify a striker if at the time of the pre-election conference, the party who knew that this striker was going to come and cast a ballot, made his name and any other pertinent data known to the other parties in the proceeding. That is really about all I have to say at this time.

CHAIRMAN MAHONY: Thank you, Mr. Smith.

BOARD MEMBER CHATFIELD: Mr. Smith, wouldn't the net results of what you say is variable that you raise, wouldn't it still be voting a challenged ballot and then if the ballots redetermine -- if the challenged ballots determining the outcome of the election, then we can go into each and every one of these kinds of things that you are talking about?

WILLIAM SMITH: Well, I don't know how you are going to determine upon challenge, a particular employer whether or not some guy has voted at several locations or several different employers.

BOARD MEMBER CHATFIELD: No, that is true. But,

still at that location, if he claims to be an economic striker, I presume his vote will be challenged.

WILLIAM SMITH: Yes, if he ends up being on the list, I suppose that is logical.

BOARD MEMBER CHATFIELD: I think the rules and regulations call for -- deemed to be challenged rule, needs to be challenged.

WILLIAM SMITH: The Board is going to be challenging him, yes.

BOARD MEMBER CHATFIELD: Right.

BOARD MEMBER GRODIN: To follow up on Mr. Chatfield's question then, do you see any rules that you are recommending that the Board consider adopting prior to the decision on challenged ballots completed the case and if so, what are they?

WILLIAM SMITH: Well, quite honestly, I think there should be a rule or determination by the Board as to the number of places that an employee, who is on strike, may be classified as an economic striker.

I foresee some difficulty in having the professional type strikers eligible at a number of places, in the absence of at least some kind of guidance from the Board.

BOARD MEMBER GRODIN: Could you submit any ideas along that line with respect to any other questions that you

raise in terms of your position as to what our rules should be?

WILLIAM SMITH: Well, as I stated earlier, I don't have any definite ideas. These are just some things that I thought of at the last minute. I really didn't even know what the discussion with respect to economic strikers was going to entail.

I was more or less coming in here blind and these are some things that occurred to us, more or less, in the last few minutes regarding these matters.

BOARD MEMBER GRODIN: Your mystification or confusion is widely shared. We address ourselves to this question because, do you have any thoughts about adopting regulations, but under similar language of N.L.R.B., and it is deferred to a case-by-case decision or at least adopted its rule on economic strikers by case law, rather by rule.

I was wondering if we should do the same or try to solve some of these problems in advance. And, if so, how do you propose to go about solving them. Maybe now is not the time to ask you to do that, but, when you have a chance to think about it and if you have any thoughts about what rules we ought to adopt in this area, we would appreciate having your thoughts.

WILLIAM SMITH: All right, thank you.

JORDAN L. BLOOM: I find it somewhat puzzling that

the Board is reluctant to consider rules on an area as clear-cut as this. How many times a person voted and was he an employee for a certain amount of time. And it has finished enacting a rule on access that we talked about for twelve hours yesterday.

I would submit to the Board that it is much easier and practical in this area to draft a standard rule and forget the case-by-case basis with respect to the real concerns that Mr. Smith just raised. As a matter of fact, many clients that I represent, it is conceivable that one employee, one employee could vote in as many as fourteen elections, assuming the filing a petition in a concentrated area. Because, we have crews of employees going from one employer to another every single day of the week.

Now, I don't think the legislature would have intended that. And I believe, Governor Brown so much as made a statement in one of his late, night meetings, that this couldn't possibly be what the legislature intended. So I would submit that this Board ought to give very serious thought to clarifying some of these areas at the beginning. The definition of an economic striker. That might require a little touchy handling as far as the N.L.R.B.

But there are very clear things you could do. You could say, for example, that if a person had a second employment elsewhere, whatever permanent employment may be

in the agricultural sector, that that person should not be eligible to vote not only where he is now permanently employed, but in as many as fourteen elections. Maybe two payroll periods during the week preceding the election of a contract and a week preceding the commencement of a strike where he might have been employed somewhere else.

He is accepted for employment elsewhere, he should not be eligible to vote where he might have been classified as an economic striker. If he has voted in an election during the preceding twelve month period, he should not be eligible to vote, provided that when he voted in that other election, he voted as an economic striker and not as a person who is permanently employed.

Because, we do realize that people shift around, but as an economic striker voting privilege, he should only be cleared once, because, after all, this particular portion of the law, against which there was much testimony, is designed for one obvious purpose. Now, if you don't agree with it, certainly it can be implemented in a way so as to not to stack the deck even further.

Now, other areas that you should consider is one that Mr. Smith brought up. That is, professional strikers. Let us not be naive, there are a lot of them on both sides. And my opinion, that kind -- you are without the regulation outlawing this issue or providing for a situation. Before a

person can be deemed an economic striker, under 1157, he has to be employed for a certain, requisite period of time.

Suggesting a figure, say, thirty days, seven days, depending upon what the crop might be in the peak period of employment. Because in essence, if you don't do that, what you are going to have is the reverse of the section in the act that says, "An employer may not hire people for the express purpose of voting in an election."

But yet, the union may very well be able to transport people from throughout the state to vote in an election who may have alleged to be an economic striker as much as three years ago. Now, there is no difference in those two concepts, no difference at all in what the Board is trying to accomplish. So, there ought to be some minimum period of employment that this person be employed.

And as far as the reverse itself concept, I think that is a good idea. Mainly that we know who our employees are, but we don't know who the unions intended and economic strikers are. And if two economic strikers are going to come to the polls and vote, that is fine. But if a couple of hundred of them are going to come to the polls, I think the Board agent is going to have to know that too in order to make a realistic judgment as to how long to keep the polls open.

So all these challenged people consider the challenge

table and give their affidavits. Realistically speaking, if we don't do it that way, the union is going to claim that X per cent of its voting populous was disenfranchised because the polls closed too soon. And we claim, well, we didn't know they were going to be there.

So, I think this area lends itself to direct, specific, clear-cut regulations. Much more so than the one that you just passed. I think that, as someone up there indicated, Mr. Grodin, it would be to shirk your responsibility under this act not to draft regulations that set up these specific guidelines because it is going to be chaos if you don't.

BOARD MEMBER GRODIN: Mr. Bloom, I think your point is well taken. I think there is a distinction between the subject matter of our last action and there is a kind of immediate urgency to the last subject matter, which perhaps does not exist to the same extent in terms of governing people's behavior.

I do think some of the suggestions you have made are well taken and perhaps ought to be taken into account prior to the first elections which are conducted.

Would you be willing to submit your thoughts as to what our proposed rules should be in those areas?

JORDAN L. BLOOM: Within limitation of time, I would be happy to, yes.

CHAIRMAN MAHONY: Thank you very much, Mr. Bloom.

Mr. Cohen.

JEROME COHEN: I think there is a further distinction between the motion of a general rule on access and a motion on a general rule for economic strikers. As I see it, one of the purposes of that access rule is to save judicial time and energy and to create some certainty.

I am not sure that we are not just wasting our time if we consider various rules in anticipation of the elections. I think there is a rule; I think it is a pretty stringent rule, it is your eligibility rule. Economic strikers, as I understand it, are already automatically challenged. They are automatically challenged, which means that in those situations in which those challenged ballots do not make a difference in the election, it doesn't make any difference, so why legislate now when you may not have a problem.

Now, as to some of the specific problems, if a work pattern in an area is so chaotic, the crews go from grower to grower, well, then workers do get to vote with every grower with whom they work. They made a contract with every grower with whom they worked -- they made a contract with every grower that they worked. It is not the worker's fault that agra business doesn't have its economic act together and coordinate itself and have coordinated work

in a given area, so if people work for more than one grower, they have the right to vote for more than one grower.

Mr. Smith well knows, that there were workers that struck in the Coachella Valley. 3,589 workers were arrested for violating the injunction for protesting the "sweetheart teamster's contracts," that were signed right here. Two people died in the course of that strike, those strikers in their efforts, part of the reason that bill was passed. We don't want to be disenfranchised, so that when they vote in Coachella, because they struck in Coachella and they vote in Arvin Lamont because they were working in Arvin Lamont, and they worked for more than one grower in Delano, I don't think Mr. Smith should be very readily characterizing them as professional strikers.

They are farm workers and they intend to work for more than one grower. That is the migratory pattern. So, I think it should be left to a challenge process.

You are already challenged automatically. We have to round them up, we might not have all of them by the time of the pre-election conference, by the way, some of the people may vote at Bruce Church or D'Arrigo in Salinas. In most cases, in Salinas, there won't be any economic strikers that are relevant to this section. But there may be a few ranches where they are.

They are in Mexicali; they are in Calexico. I

think if the Board is considering any rule, they should consider the rule of setting up polling places in Calexico in coordination with a polling place in Salinas so we could conduct the elections simultaneously in both places, so people don't have to travel at their own expense to Salinas. That is the only rule I can think of to be adopted.

Now, all these people might not be available at the time of the pre-election conference, but we are basically trying to organize the workers out there in the fields. Actually, we are trying to coordinate strikers and they are coming. They are going to vote.

I don't see that there is any way to disenfranchise and I don't think there is any way you can develop a rule right now that will apply even to the contracted ranches. Because there may be a lot of ranches where it doesn't make any difference anyway.

BOARD MEMBER GRODIN: Mr. Cohen, one of the ideas that came out of early staff thinking in this area, was the idea of registering of economic strikers. That is to say, as a requirement, whether it be a requirement or request. That insofar as information is available, those people who claim to be or claimed to be economic strikers eligible to vote, registered with the Board so that there can be some advanced screening, not necessarily by decision, but for the purpose at least to determine what the size of the problem is

with respect to any particular election and what kinds of problems are going to be confronted.

Do you have any reaction to that?

JEROME COHEN: I tell you, I think the more encumberances that you put on the right of the economic striker to vote, the less people you are going to have vote. Because the harder you make it, the more you tend to disenfranchise.

You are supposed to pass rules which are fair and equitable and appropriate, which effectuate the policy of this act. Which gives as many workers the right to vote as possible.

I think pre-registering would apply in the face of that mandate. I think you have already told us, the Board is going to challenge every striker that appears and I think that is stringent enough.

CHAIRMAN MAHONY: Thank you, Mr. Cohen.

Anyone else wish to offer any viewpoints on this? Anyone else present wish to make any presentations, oral or written on the question of economic strikers?

I think our time constraints are such that this Board wishes to leave the matter open so that we would be in a position to try out certain criteria that we may wish to apply so that even though our time runs out, we aren't closing the matter at all, but we just didn't have the time to seek out the various other sources of information.

Any other comment on the point of economic strikers?

MS. MARTINEZ: I just wanted to ask a question. I just wanted to know if you are going to be taking further testimony at another date?

CHAIRMAN MAHONY: I don't know. That will have to be decided among the Board members and see which approach we want to use.

In the meantime, as Mr. Grodin said, we would be very interested in receiving any written information we could on viewpoints from members of the industry, the unions or the public, rather interest, who may be present here.

This is a very, very important question and we have spent a lot of staff time in trying to get a hold of it. But every time we think we have it nailed down it alludes us with other factors and considerations.

BOARD MEMBER CHATFIELD: Mr. Chairman.

CHAIRMAN MAHONY: Yes, Mr. Chatfield.

BOARD MEMBER CHATFIELD: I have a written statement.

CHAIRMAN MAHONY: Mr. Chatfield has a written statement which is being presented to the secretary.

ALAN MILLS: I assume there will be a notice if there are further hearings on this issue?

CHAIRMAN MAHONY: Yes. As I said yesterday, we

have given notice for the entire month of September on other matters, regular matters, but if we do set another hearing soon, we would advise all the parties as quickly as possible.

ALAN MILLS: And secondly, on the rules which were adopted today, when will those be available?

CHAIRMAN MAHONY: I was hoping -- when is Rose coming back down?

(Off the record conference with Ms. Bosetti.)

CHAIRMAN MAHONY: We are going to have to leave here. She is typing them. The reason for the delay, is she had to type all the other material that goes with the submission of this rule. And she is doing that at this moment.

I am not sure whether the parties would be interested in adjourning down to our headquarters to await this.

BOARD MEMBER JOHNSEN: Mr. Chairman, I would like at this time to make a suggestion and a motion.

Since the rules on access become effective at the time they are filed with the Secretary of State, and we have run into some difficulty as far as getting them effective this evening, and as far as all parties are concerned, if we try to make them effective this evening and no one had anything in writing and wouldn't have anything in writing until Tuesday morning. Therefore, I would like to move that the Board file the access regulation Tuesday

morning, September 2nd and make it effective at that time.

CHAIRMAN MAHONY: If I could offer just a clarification before I ask for a second on that, and that is this, the people of the office of the Secretary of State are aware of our time problem; they are aware of the rule we are going to file in regulations and they are prepared to accept it as of this day. So that is not a problem with them.

What I am afraid of is that the news media, tonight and tomorrow appear with all this information. I am afraid, and they are all gone and they do not know that we are going to change this until a new effective date, could cause tremendous problems for us personally. The whole world, as far as we know now, believes that it has been adopted and is in effect.

I see great difficulties at this point of saying, "Well, wait a minute, we really meant Tuesday." I am afraid the confusion would be worse than the problem.

BOARD MEMBER JOHNSEN: Mr. Chairman, I think the press very accurately left here with the impression that we passed the regulation. I do not recall that we really specifically said that they become effective at 4:30.

You said they had to be in to the Secretary of State's Office by 4:30. I don't think you made the statement that they would be effective at that time.

And I am thinking about the confusion in the field

on behalf of both organizers and growers and police and everybody else.

BOARD MEMBER GRODIN: Is there a serious problem on that, given that we are over a Labor Day holiday now?

WILLIAM SMITH: There will be a lot of organizing over the Labor Day holiday.

CHAIRMAN MAHONY: I would think, Mr. Johnsen, that since the petition will be accepted on Tuesday morning, the people are going to read the newspapers and hear the news reports and act accordingly on Saturday, Sunday and Monday. I don't really see what we can do at this point to change that reality.

Anyone wish to second his motion?

(No response.)

CHAIRMAN MAHONY: There being no second to the motion, we will not be able to pursue that at this time.

The difficulty with the time problem and the Secretary of State understands this, they require us to retype the whole finding of energency thing that we read yesterday to each one of these and that has to be done again. Even though we had that filed.

JORDAN L. BLOOM: It is just a bookeeping matter after all of these hearings and your statements about when you are going to have meetings, you are going to have further hearings on various rules and the like. Do you have any

procedure on the Board of notifying parties that have expressed an interest in what you are doing, aside from having to gather it second, third or fourth-hand from someone who happened to receive a notice?

CHAIRMAN MAHONY: Two things. First of all, we finally got our public information officer designated today. So he can help us in setting up a GSA, a formal system of plates. At this time we have received several people who have advised us that they wish to be placed on our regular notification mailing list and we are going to send the word out wide and broad and anyone who wishes to be placed on that list will automatically receive a set of materials. Will you please notify us --

MS. GUTIERREZ: We have a list set up right now and you can leave your name.

CHAIRMAN MAHONY: Yes. If you will please leave your card right now, anybody who is here, simply leave your card right now, may be certain that you get on the list.

Up to this moment, with the time constraint, we have not had the time to develop that. We have been using other people's lists, in which I know is not accurate for us, the State of Industrial Relations, for example.

ALAN MILLS: I believe you mentioned that you have regional offices. Will these regulations be available at your regional offices tomorrow morning or how soon will

they be available?

CHAIRMAN MAHONY: These regulations will be printed by the State, in a printed form rather than just the multilith form. They will be made available just as quickly as possible.

Ms. Bosetti has now an earlier number of copies of everything passed up until today and I think she still has a number available here. Anyone who wishes to get a copy of everything that was done up to this moment, she just went downstairs to find out how we are doing on this thing passed today.

ALAN MILLS: But you will have all the regulations available at your regional offices. How soon after they are adopted?

CHAIRMAN MAHONY: Well, of course, they are all adopted, at least the emergency ones at this point. Just as soon as the GSA printing press gets them ready.

I can't predict on them, I really can't.

BOARD MEMBER GRODIN: Are those the only copies that we will have is the GSA printed copies or will there be other copies available?

CHAIRMAN MAHONY: Well, right now we will, of course, have Xeroxed copies.

BOARD MEMBER GRODIN: Perhaps we can make some Xeroxed copies available for the regional office Tuesday. I don't think the regional offices are opened on Saturdays.

MS. GUTIERREZ: On Tuesday morning they are sending 1200 copies of everything that has been passed up to date to people we have already on our mailing list. If you received anything up until now, you will receive a copy.

ALAN MILLS: Thank you.

CHAIRMAN MAHONY: This is one of the additional problems we have with the time constraints.

Is there any further business to come before this Board? Is there a motion to adjourn?

BOARD MEMBER JOHNSEN: I move we adjourn.

BOARD MEMBER GRODIN: I second the motion.

CHAIRMAN MAHONY: Those opposed; so carried.

(Thereupon the hearing of the Agricultural Labor Relations Board was concluded at 5:00 P.M.)

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State of California)
) ss.
County of California)

I, VIRGINIA AMICK, a Notary Public in and for the County of Sacramento, State of California, duly appointed and commissioned to administer oaths, do hereby certify:

That I am a disinterested person herein; that the foregoing Agricultural Labor Relations Board Meeting was reported in shorthand by me, Virginia Amick, a shorthand reporter of the State of California, and thereafter transcribed into typewriting, pages 1 through 100 inclusive.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 1st day of September, 1975.

Virginia Amick

Virginia Amick
Notary Public in and for the
County of Sacramento, State of
California

OFFICIAL SEAL
VIRGINIA F. AMICK
NOTARY PUBLIC - CALIFORNIA
COUNTY OF SACRAMENTO
My Commission Expires May 21, 1978

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