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DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Meeting

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Van Nuys State Office Building
6150 Van Nuys Boulevard - Auditorium
Van Nuys, California
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Industrial Welfare Commission

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Executive, Administrative and Professional Exemption

Licensed Pharmacists

Adjournment

Certification of Transcriber
COMMISSIONER DOMBROWSKI: I’ll call to order this meeting of the Industrial Welfare Commission. Let’s take the roll attendance. For the record, note Commissioners Broad, Coleman, and Dombrowski are in attendance.

AUDIENCE MEMBER: (Not using microphone) (Inaudible)?

COMMISSIONER DOMBROWSKI: I’m sorry.

AUDIENCE MEMBER: (Not using microphone) Are there microphones?

COMMISSIONER DOMBROWSKI: We don’t have a very good sound system here today, so -- those are for recording. The room does not have a sound system, and we would apologize. So, I would advise you to sit up close if you want to hear.

The other point I would make is we’ve been informed there is a fire drill in the building at eleven o’clock.

(Laughter)

COMMISSIONER DOMBROWSKI: You can choose to participate or not participate, depending on how the
meeting’s going at that time.

The first item on the agenda is the ski industry. And we don’t really have that many speakers. I guess we’ll bring up two panels: first, Bob Roberts, Glenn Kreis, Kevin Johnston, Brian Cochrane, Don Wolcott, and Tim Badheim (sic).

Just grab the seats.

For the court recorder’s -- to facilitate him, could you please identify yourself first, just to make sure we get it on the record for the transcripts?

Mr. Roberts, do you want to start it?

MR. ROBERTS: Yes. Good morning, chairman, commissioners, the staff. I am Bob Roberts, the executive director of the California Ski Industry Association. And with me today I have a number of gentlemen from our industry. And I’ll let them introduce themselves as we do it. I just want to make a couple of brief overview remarks.

I did include in my letter to you the fact that we are a very small and unique industry. We operate principally in rural areas and exclusively above 6,000 feet, so that we do operate in a very different environment.

Our weather conditions are our lives, and we are
very, very dependent upon snow, windows of too much snow, too little snow. We also have conditions -- a lot of our resorts have snow-making, but those are even, as you will hear, conditioned upon weather and temperature.

One of our real concerns is that we are an industry that, frankly, is very small and is very economically difficult to comprehend. We have -- year in and year out, we do, in California, somewhere between 5.7 and 7.4 million skier visits, depending upon how many -- how the snow flies, quite honestly.

And this year is a very good example. Last year was a record year. We did 7.4 million visitors. 80 percent of our visitors come from California. They come, they drive. If they see the weather -- if they know the weather’s going to be favorable, they come up. If the weather’s not good, they don’t come up. And this year was absolutely the reverse. We had a very, very poor start. We lost Christmas, for all practical purposes, and we lost the first part of January, as you’ll hear. And that had a tremendous impact because we can’t, in any large way, count on a destination business the way that Colorado does. We’re trying to build it, but our market is Californians. And if Californians have other things to do or the weather isn’t right, they don’t come. So we
have a -- we are conditioned by weather very dramatically.

The economics are fairly simple. We average about $300 million a year in sales. That’s the average, year in and year out, good years and bad. Our labor portion of that is roughly a third, or a million (sic) dollars is our annual payroll.

The statistics that the National Ski Areas Association and a number of research associations have put out indicate that our profitability here in California averages between 3 and 5 percent of sales, depending upon the winter. Some winters it’s worse, some winters it’s a little better. But 3 to 5 percent is our norm. So, it’s a very low-margin business. You have to love it to be in it.

If we were to have to conform to all of the conditions in AB 60, we estimate that we’d have at least about a 15 percent increase. Well, if we’ve got $300 million in sales and we’ve got 5 percent, which is about $15 million, as an industry-wide profitability, a 15 percent increase of $100 million of payroll basically takes out the profitability for the industry.

And we have operated, since we -- as an industry, since the beginning, under first the federal
Fair Labor Standards Act, and then legislation that was
passed during the Brown administration which exempted us
from the daily overtime requirements and allowed us to
continue with the 56-hour week. And this has been, not
only for our industry, but our industry nationally.
Colorado did put in a minimum wage and they put hours
within their minimum wage laws -- and they are our most
direct competitors -- but they too, their legislature,
suspended them from the overtime requirements, because we
really have to make snow while the snow flies, or move it
or manage it. And we are very tied to these weather
patterns.

What we had asked for and proposed in our
discussions was to move from a 56-hour week to a 48-hour
week. We feel that that’s fair. And certainly, in
today’s labor climate, that’s a reality. We are in a --
we have a very hot, as we all know, economy in the state,
and it’s very competitive. So, we are prepared to move
back.

In further discussions, however, with both staff
and counsel, it appears that what we would like to do, as
I proposed in the letter, to have a 48-hour year-round,
simply doesn’t work because of the nuances and the legal
nuances that were pointed out to us of the federal Fair
Labor Standards. There’s a difference between resorts that are on federal land and that are on private land, and different standards apply. And so, we are -- we are asking, and we are going to give you a follow-up letter, asking you to take those legal considerations into account, and we would like to see a 48-hour week in the winter and a 40-hour week in the summer.

The summer -- it’s important, however, to note that the summer for us has traditionally been four 10’s. It’s a lifestyle issue. People want to go camping, fishing, get into the back country. So, we would like to have four 10’s.

The law provides that you can do all of these things if you have a vote. And therein lies, really, one of the hardest parts we have. We have 16,000 employees in our industry. 14,500 of them are seasonal. And of those, about half are gone. They come within a period of time, and some don’t even last a season in some resorts. So, we end up with a tremendously seasonal, volatile turnover at our seasonal level. And for our core year-round people, they would be somewhat at the mercy -- and then there’s the question of when do you have the vote. A year like this, when many of the resorts didn’t get started until even into January, it becomes a very
difficult thing for us to comprehend. And in many ways, we feel it’s unfair to the year-round employees, the hourly year-round employees, as well.

So, with me today, I have, as I say, a number of individuals from the resorts in different walks, and I think I’d just like to let -- let’s start with Kevin here, because -- from Dodge Ridge -- because they are, I think, emblematic of the kind of year we’ve had.

MR. JOHNSTON: I’m Kevin. I’m the lift maintenance manager for Dodge Ridge, in charge of the -- keeping the lifts -- getting the lifts fired up in the mornings and making sure that they’re safe and staying all day. And it’s part of my job. It’s about a 10-hour day during the winter months. We probably work six, seven days a week. You know, it’s our busy season. And I know a lot of us kind of count on that extra money. That’s kind of like -- that’s our little window to make -- make the extra cash to get through the summer and stuff like that, so we do put a lot of hours in.

This year my ski area had a bad year. We opened the 27th. We don’t have snow-making. We opened the 27th of January and closed April 9th. So, we’re -- you know, this year, we’re -- we’re down about half from what our annual profit is, this year.
So, just speaking with Bob, I mean, that 56-hour deal and all that overtime does make a big dent in the profits, especially for a small area like ours.

MR. ROBERTS: Okay. Glenn, do you want to --

MR. KREIS: Yeah. My name is Glenn Kreis, with Mammoth Mountain. I'm staff supervisor on cats group. I've worked for Mammoth Mountain for 28 years -- 28 seasons, not all year round.

And I went through this before the 56-hour law and when we had no overtime at all. I mean, you could work all the hours you wanted, when I was at the low end, beginning. I started out as a lift operator, worked on ski patrol, I was a fry cook, and I've been 18 years working snow cats.

And in my experience, the low-end employee got hurt at 40 hours, especially the people that were in services like cafeteria, ticket sales, hotel reservations. They did not get 40 hours. You went home. You got maybe 38 hours a week. And it really hurt, when you're at the bottom end of the pay scale. They want those extra hours, and it really, really tore them up.

My job, it doesn't really affect. I'm at the top end of my pay scale. It doesn't bother me at all, where I'm at. And in my department, we will get the
overtime because of the snow factor. I mean, we have a mountain open, and we have to groom it all.

But in my experience, that’s what happened. We -- it just -- I was a bottom-end kid working in the ski industry, and we wanted -- I went there working 100 hours every two weeks. All of a sudden, I’m working 78. And rents were $250 a month for a two-bedroom place, and the salary was $3.00 an hour, and it just killed you. Now the salary’s at $8.00 an hour, and a one-bedroom apartment like I live in is $550 a month. These kids get buried. They just get nailed. And they stack them six, seven, eight in apartments now, even with what they’re making. And they need those hours.

And granted, a lot of them don’t want it. They want to go snowboarding and skiing.

But that’s just a fact of what happened, you know. It went to 40 hours, they cut our hours. Then it went to the 56 law, and we got that extra 10 hours we could work. And that’s what’s happened in our industry back in the ‘70’s. And I remember it well.

So, I -- that’s just my opinion of it. I like time and a half over 40, but I know what happens on the bottom end with those kids. So, that’s all I have to say.
MR. COCHRANE: My name’s Brian Cochrane. I’m assistant snow-making supervisor at Snow Summit.

Just to reiterate what Mr. Roberts said, we’re kind of at the mercy of the weather. It isn’t -- you know, it’s up and down each season, fluctuates.

Like Glenn, myself, I’ve been in the business for quite a few years. And as assistant supervisor, I’m going to get the hours anyway. A typical snow-making shift usually lasts minimum of 10 hours, if not more.

And when the weather’s cold, we’re racking up the hours. And when it’s not, they usually find something else for us to do, parking lots. Myself, I go to lift maintenance or the cat crew, grooming. But if, you know, this deal where, if they’re going to cut back our hours because of the overtime, then they’re probably not going to find work for us in the -- in other departments because, you know, they have only so much that they can spend.

It’s -- most California ski businesses aren’t usually owned by a big corporation or something, you know, like -- like Vail or US Ski, US. It’s mostly the area you work at, like Snow Summit is just Snow Summit.

You don’t have a corporation that we can dig into for extra funds or something.

But if -- if they have to go back home, say,
after 8 hours and they want to cut back on the overtime –
- typically, we have two shift changes if we’re making
snow around the clock, usually five at night till five in
the morning or vice versa -- if it has to go to like
three or four shift changes, it would be, personnel-wise,
a logistical nightmare, because the guy’s 8 hours are up,
“Okay, you have to go home,” and his replacement’s not
there. It’s just, you know, too bad. Then your -- the
size of your crew is going to fluctuate, and you’d kind
of like to keep it even so we can stay on top of things.

Snow-making, especially in a year like this
year, we’re very dependent on it, geographically
speaking. And the estimated cost is like $2,000 to
$3,000 an hour to make snow. That’s equipment rentals,
diesel fuel, and salaries and so forth.

So, the business we’re in, we’re kind of like
farmers and such now, agriculture. We’re at the mercy of
the weather. Some years are better than others.

MR. ROBERTS: Don, do you want to --

COMMISSIONER BROAD: Can I ask you a couple
questions?

MR. COCHRANE: Yeah, sure.

COMMISSIONER BROAD: And I’m going to have some
more questions specifically for you, sir.
Tell me about the wage rates where you work for the various occupations.

MR. COCHRANE: I would -- say like what would be the entry wage for a brand-new snow-maker?

COMMISSIONER BROAD: Yeah.

MR. COCHRANE: $7.50 to $8.00 an hour is usually what we start them off at.

COMMISSIONER BROAD: And to what?

MR. COCHRANE: Myself, right now, I’m up to $12.25. The ceiling in my position is $14.00 an hour.

COMMISSIONER BROAD: Do you get any benefits?

MR. COCHRANE: As far as insurance or anything?

COMMISSIONER BROAD: Yeah.

MR. COCHRANE: No. I’m, right now, just seasonal.

COMMISSIONER BROAD: So nobody gets health insurance?

MR. COCHRANE: No, sir. Oh, we do have -- we do have an accident insurance, you know, like if you’re out free skiing on your own or something. It’ll -- it’ll cover emergency costs and such like that. We do have a package for that.

COMMISSIONER BROAD: And do you get anything like vacations, paid vacation or holidays off?
MR. COCHRANE: No, sir. I’m on -- still on seasonal status. Those people that do get those benefits would be like Don, which is classified as a full-time, year-round regular.

COMMISSIONER BROAD: So that’s the -- maybe the 2,000 out of the 16,000?

MR. COCHRANE: Yeah.

COMMISSIONER BROAD: Now, so what about like someone who’s a fry cook? Do they get -- are they minimum wage employees?

MR. COCHRANE: I’m sure that they start them off at something more than minimum wage. I really couldn’t tell you about, you know, the pay scale for other departments.

COMMISSIONER BROAD: Well, okay. Well, I’ll ask somebody else.

Okay. I’m done.

MR. ROBERTS: Don?

MR. WOLCOTT: I’m Don Wolcott. I’m in charge of the snow cats at Snow Summit.

I really can’t add a whole lot to what Brian has mentioned, except like we’re at the mercy of the weather. We had a bad season this year.

Usually, in my department, I can bring in three
seasonals to help with the snow cats. These three are --
they’re locals who live in the valley. This year I could
only bring in one. And for twelve snow cats, trying to
keep them going constantly, it was a little overwhelming,
us putting in 10-, 12-hour days six days a week.
Sometimes I’ve worked two weeks straight.

I really -- that’s just kind of the impact the
weather has on us. We can’t afford to bring these people
in. And they want us to do more. Usually I can keep one
or two, even during the summer. And this year, they’re --
- they’re gone.

COMMISSIONER BROAD: Well, how is it that you’ve
determined that you can’t afford to bring those people
on?

MR. WOLCOTT: That’s just the way it comes down
with the budget. In fact, our budget disappeared when we
went through a December without any storms. We had a
budget, and the next thing you know, we didn’t have a
budget. We were trying to -- we couldn’t buy any parts
for the snow cats. We couldn’t afford the extra labor.

I’m not upstairs. I don’t know who makes these
decisions, but I just know that we didn’t have a budget.
I couldn’t afford these parts, I couldn’t do this, I
couldn’t do that, I couldn’t bring these people in that I
was hoping to bring in. And that’s the bottom line. It
was a bad year.

MR. ROBERTS: Okay. Glenn, did you want to add
something to that or --

MR. KREIS: What -- what you were saying on the
snow cat, these things aren’t cheap machines. They’re a
quarter-million-dollar machines. Parts -- we have Piston
Bullys -- they’re from Germany -- Piston Bullys. Fuel
caps are $20, just for a fuel cap, plastic, shipped over
from -- and this is how we groom. We’ve got Bombardiers
-- they’re in Canada -- and we’ve got Piston Bullys and
Leitners and Pernoths. They’re from Europe, and they are
not cheap machines. The only other thing -- I think
Tucker’s still in business in Oregon, but that’s mainly a
transport vehicle, not a grooming machine.

And so, no budget, no parts. And they’re
hydraulic nightmares. I mean they are --

MR. WOLCOTT: They’re all hydraulics.

MR. KREIS: -- very expensive to drive. So,
it’s expensive to keep each machine running.

We have a fleet -- I don’t know any more -- are
on-line groomers are -- we have twelve, we’ve got four or
five to the snowboard park, we’ve got transfer -- we
probably have forty machines there, sitting around.
MR. WOLCOTT: Yeah. We were putting them down. I mean, no parts, just -- they were just red-tagged for the season. And towards the end, we lost two cats.

MR. ROBERTS: Tim, do you want to --

MR. BROADHAM: My name’s Tim Broadham. I work at Mammoth in the personnel function.

I came to the industry five years ago from a retail background, distribution background, here in southern California. And I’d never heard of exemptions from the overtime law prior to coming to the ski industry. I worked in retail warehouses, where we routinely sent people home at seven and a half hours or 39-hour weeks and things like that, because we just couldn’t afford to pay time and a half or double time for people to stay on the clock.

And now that I’m in the ski industry -- I started out as a lift operator and worked as a snow maker, worked in our bicycle park building bike trails and such in the summer. And I’m very aware of how, in my first couple seasons, the management was very alert to the budget these guys are talking about, because it’s a -- it’s a pretty thin-margin business, and a lot thinner than other businesses that I’ve been in, anyway. And I wasn’t aware of that my first couple years.
And in the past couple seasons, I’ve been working in the personnel function for Mammoth, and I’m very aware of the issues associated with seasonal workforce. It’s difficult to recruit, at Mammoth, for instance, 1,800 seasonal people every year we bring in. And to be able to go through the kind of season that we just went through, where we basically didn’t open the resort for 45 days to the extent that we normally would, we have to take some pretty drastic measures to keep people around.

As an example, we had about 410 people in employee housing this year because housing’s an issue in mountain communities. It’s a major -- major issue. We served employee dinners for 44 nights straight, all through December and January, for free for employees, and we served almost 19,000 dinners for our employees, just to have them stay on, because they were getting limited hours. There just weren’t -- if the revenues aren’t there, the guests aren’t coming. Los Angeles, San Diego, Santa Barbara people look at the weather report, and if there’s no snow at Mammoth, they don’t drive five hours, six hours, seven hours to Mammoth to go skiing because there isn’t any skiing. They don’t come to town. There isn’t any business in the town, so all of our employees
don’t work. And as a result, they’re still having to incur costs for housing and kind of hanging in there hoping that -- that, you know, the snow will come any day and they’re going to be able to get to work and -- and have the experience they came -- came to our resort to have.

So, we did some pretty drastic things, like the employee dinners that I was mentioning, as an example. And we just think -- at least, there are a number of us who’ve talked about this in terms of the budget management -- that -- that overtime at 40 hours could be a really significant change for our resort, similar to what Glenn was talking about. And I don’t have the experience he did, you know, ten years ago. But I’m pretty convinced that the management of Mammoth will -- will see 40 hours as a limiting factor, and they will send people home at 40 hours as opposed to paying time and a half, because the budgets just aren’t there. And labor is a huge piece of our -- of our operation.

MR. ROBERTS: Okay. I’d just like to say one last thing, sort of globally. We -- we are -- for many -- most of these communities, Mount Shasta, all the way down through Lake Tahoe, Mammoth, Sonora, Big Bear Lake, Wrightwood, we’re kind of the economic engines for these
communities. And so, it’s a struggle. It’s a -- it’s a very challenging business. I think all of us are in this because of the lifestyle. We got into it because we like the -- we like the industry, we like the people.

No one’s getting filthy rich. Wall Street’s turned its back. For one company that went public at 18 is now between $1.50 and $2.00 a share. And so, you get some idea that over the last two years, while the rest of the world has taken off, the good old ski industry has kind of languished.

So, for us, it’s an economic issue, and we’re trying to find that balance and make it right. And that’s why what we are proposing at the 48-hour and the 40 in the -- in the summer, we think, is both a fair and a correct approach.

COMMISSIONER BROAD: Mr. Roberts, you mentioned that you had $300 million in sales. Is that including year-round activities or just seasonal?

MR. ROBERTS: No, that’s -- that’s year-round, from the ski resort, because some of them have a few small ancillary activities. But that doesn’t -- most of the resorts don’t own their own hotels or -- they have restaurants in the lodges, but it varies from place to
place. But it’s primarily the operations from the
running of the resort, not real estate or other kinds of
things.

COMMISSIONER BROAD: Okay. Well, let me ask you
this question. Let’s get into some of these issues here.
We have lots of seasonal industries in California, like
canneries, that have shorter seasons than you, that are
dependent on the weather and on crops and agriculture in
a way equally as dependent as you are, where we pay daily
overtime and have always paid daily overtime. And they
are the major employers in the communities in which they
operate in the Central Valley. And those employees
depend on that overtime to get them through the rest of
the year. And it’s understood that that’s what’s
important about overtime, particularly for those seasonal
industries.

What’s so different about the ski industry?

MR. ROBERTS: Well, for one thing, in most of
those industries you’ve mentioned, commissioner, they
don’t have the public showing up at nine o’clock in the
morning. One of the great concerns that we have is
safely preparing our mountains so that when people show
up -- it may have stormed all night or for three days or
whatever -- we have to -- we have a -- we have a
tremendous safety requirement to make our facilities safe for the public.

If I’m a farmer, I don’t have -- unless I’ve got people coming in to pick -- pick and buy my crops, I don’t have to deal with the public every morning on an ongoing basis. And that’s one of the big differences in our industry, is the fact that we have to be ready for the public on a daily basis. And most people in weather-driven industries, they’re kind of removed from the final consumer a step or two.

COMMISSIONER BROAD: This Commission has received, I would say, an unprecedented amount of communication from just regular old employees in your industry, and the Legislature received a lot of letters. And these were not these canned letters generated by some group or other; these were heartfelt personal letters sent by hundreds of people in your industry, saying -- begging us to cover -- to cover employees under the daily overtime rule, that conditions are oppressive, that employees are made to work at or near minimum wage, under $7, $8, $9 an hour, whatever, to work weeks at a time straight for 10, 12, 14 hours, sometimes without breaks and meal periods, which you’re not exempted from -- so I’d like to have you address that question. And
probably, we’ve received more mail of that sort, where it’s clear that it was not orchestrated and that people very much felt this than in any other of the mounds of communication we’ve received since AB 60.

Do you have any comments on that?

MR. ROBERTS: Well, having not seen any of the record, it’s hard for me to react specifically to that, but the conditions are unique.

And again, part of it is, with this tremendous body of seasonal work -- and are these coming from seasonal temporary workers, the seasonal people, or are these coming from the year-round? There’s a real difference, I believe, between these two different elements. But they’re all necessary to work together to make it work.

And we have, right now, the employment in our industry, not just in California, but everywhere -- it’s almost globalized -- the fact that we have probably this year about 1,000 young people coming in under these J-1 visas and working for 90 days, for the experience, for the language, or whatever. And so, we have this tremendous turnover within the resorts.

And so, I think there might be one -- it’s hard for me to react specifically without kind of generically
knowing where they are coming from, commissioner.

COMMISSIONER BROAD: Well, tell me about breaks.

Gentlemen, do you get breaks?

COMMISSIONER DOMBROWSKI: Give your names.

MR. WOLCOTT: Don Wolcott, Snow Summit. We get two 15-minute breaks a day.

COMMISSIONER BROAD: Two 50-minute breaks?

MR. WOLCOTT: 15-minute breaks.

COMMISSIONER BROAD: 15-minute breaks?

MR. WOLCOTT: Yes. And we get a 30-minute lunch period.

COMMISSIONER BROAD: In a 10-hour day, a 12-hour day?

MR. WOLCOTT: This is just a regular 8-hour day. You get more breaks. It depends on if we’re working really hard, we get more breaks. We get longer lunches if we’re working longer periods of time. I mean, there’s no one there cracking the whip. It’s -- it’s -- all my employees, including myself, are happy where we are, in our part of Snow Summit, in the shop. It’s -- really, it’s a nice place to work. We get breaks. We get plenty of time. There’s no pressure, except other than getting the machines running, obviously.

But we -- we take our breaks. I have never
heard of a complaint.

COMMISSIONER BROAD: Do the rest of you want to comment?

MR. JOHNSTON: Kevin Johnston, Dodge Ridge. We get breaks on a regular basis, one, you know, 15-minute break in the morning and afternoon, and lunch. The only time we wouldn’t get a break, say, if a lift was down and you had 200 or 300 people hanging out on a lift and it was snowing. And, you know, our priority is to get that lift going. So, that would be the only case where we -- you know, we might work through our break period, for the safety of the public.

COMMISSIONER BROAD: Okay. Let me ask this question about the safety of the public and hours. You folks are operating some pretty heavy equipment. I have a concern with this, again, since -- especially given some of the correspondence we received -- people operating heavy equipment that the public’s dependent on getting very tired, working very long hours. I’m concerned that fatigue could compromise safety.

We received letters from people on the ski patrol, who, obviously, have a very significant safety function, who seem to be working very long hours at straight time.
And I’m wondering what your thoughts are about whether you, for example, would think if some of these hours were reduced. Let’s assume that you didn’t lose any compensation, but that some of these hours were reduced. It might make you less tired, more alert on the job.

MR. JOHNSTON: Well, in a way, I think it -- of course, it might, but since, in our area, there’s me and one other person, actually, that knows all the little things that goes on the lifts, the little idiosyncrasies, it’s kind of -- you know, one of us has to be there, no matter what, because there’s nobody else. And you can’t just train somebody overnight to know all these little things on the lift.

So, you know, there’s times when you do have to put a lot of hours in, and maybe you’re not -- you’re not as sharp as you would be if you had less hours. But in the long run, it’s better that you’re there than not there. You’d best have someone there that knows -- knows what’s going on.

COMMISSIONER BROAD: Okay. Thank you.

COMMISSIONER DOMBROWSKI: No questions?

Thank you.

MR. ROBERTS: Thank you.
COMMISSIONER DOMBROWSKI: Pam Mitchell.

AUDIENCE MEMBER: (Not using microphone) She’ll be right back.

COMMISSIONER DOMBROWSKI: Marcie Berman, and Tom Rankin.

Is there anybody else who wanted to talk about the ski industry?

COMMISSIONER DOMBROWSKI: You’ve got to identify yourself for the recorder.

MS. MITCHELL: I’m Pam Mitchell. I’m a Mammoth Mountain seasonal ski area employee, and I’m also an employee of Von’s in Mammoth Lakes -- that’s my second job -- although I’m temporarily on disability because of an injury at Von’s, not at the ski area.

And I’m here today because of my concerns about California Mammoth ski resort exemptions which allow them to work us 56 hours a week before they pay overtime. And I feel that this is a very unjust exemption, a very unjust law.

I hope you’ve all had a chance to read these. These are letters from employees stating how they feel about this exemption and how it’s affected them over the last twenty years and how it’s impacted them directly.
And I think one of the important things, in reading all these letters from these employees, is to realize that these are individuals. These are people who’ve lived and worked in Mammoth Lakes for ten, twenty, thirty years, and these people have made a career out of the ski industry, whether they are on cat crews, ski patrol, ski instructing, housekeeping individuals, people in the restaurants and bars, people working in the summer activities that go on. But these are people who live and work in Mammoth Lakes on a year-round basis. These letters are representative of over 200 people that I’ve spoken with directly and personally and on a regular basis. They’re representative of last year and this year.

They’re -- the seasonality, the snow falling and the snow not falling, does affect our business. But the conditions remain the same every year in Mammoth. Last year the complaints about working long hours many days in a row without being paid overtime was the exact same thing last year. And last year we had snow at a reasonable time. It does fluctuate.

The overtime, whether -- we work overtime whenever we work. And we’re not asking for something special when we’re not working. What we’re asking for is
overtime when we do work these long hours. If there’s no
snow, we’re not asking for anything. If there’s no work,
we’re not asking for anything. We’re asking that we be
treated the same as the rest of the California employees,
and that when we work these long hours and many days in a
row, that we are compensated for our efforts.

At one time, maybe the perspective was, back
when this exemption came in -- I don’t know why it came
in -- but twenty years ago when this exemption came in,
maybe the perspective was that we were all a bunch of ski
bums, a bunch of ski kids, or we were just college
students out on a break, you know, having a fling for the
winter. But I’m asking you to look at what the situation
is now and how, over these years, how this exemption has
affected us economically and socially.

It’s always been difficult to make a living, at
least in Mammoth Lakes. I don’t know about the other ski
resorts. We’re isolated. There’s not a lot of employers
to choose from. And our jobs are real important to us.
People involved in this type of work do love what they’re
doing. There are many, many dedicated employees. They
love the mountains and the skiing and braving the
elements. And they have been very willing to do with
very little in order to work at the ski area and in order
to keep this lifestyle going.

It’s been -- in the last couple years, Mammoth Mountain ski area has formed some type of -- they’ve combined in some way with InterWest, which is a major ski developer in the country. And as a result of that, the rents and property values have gone up so drastically. And where we were having a hard time making it before, we’re having -- we’re not surviving there now. Many of us, if we -- depending -- this overtime could make a difference for us in how we’re able to maintain.

I think it’s important for us employees for you to realize that these are careers. There are seasonal people who come in every season. I don’t know the exact number, but my estimate is that there’s 800 -- minimally 800, to 1,000 people who work at the ski resort year after year and live in the town of Mammoth Lakes.

The ski industry is a booming business. The ski industry is a booming business all over the country and in other countries. Since the merger with InterWest and looking at the development of resorts, it’s a growing, huge business, and it employs -- can’t even imagine how many people it employs, people who are dependent on that. And our employees, some of these employees, have been here ten, twenty, thirty years, have come to depend on
Mammoth Mountain ski area for their living. There is -- there are not other places to go if you are not making wages there. You don’t just leave your job, you have to leave your town and the community that you’ve been living in. It’s real small and isolated.

Things are going up at an incredible rate. It’s just appalling, on how much the rents are going up and how everything is rising. Our wages haven’t risen, and we have not been receiving overtime. It’s created a very low-income group of people for a large part of our population.

Our permanent population is approximately 5,000 people a year, and it goes up in the winter. And, of course, I guess, on a weekend it goes up to 30,000, the temporary people that come in. And when business is booming and we have this income and these people come in, we’re just asking that we be paid overtime for these long hours.

I think that -- to finish up -- and what we’re asking is that we be treated like the rest of California employees and be paid overtime and be rewarded for when we do put in long hours.

And I think, last, I want to point out -- I mean, maybe this is a known, but we work without a
contract. We have no contract. And in our employee
manual, it states, of course, that we’re -- you know,
we’re at-will, we can be terminated at any time, with or
without reason. But -- and maybe this is in all
contracts, but I want to point it out to you, that in our
employee manual, that it states that the company reserves
full discretion to modify, add, or delete any provisions
and policies of this manual, at any time, without notice,
and that we are always living on -- on an edge, partly
because of weather, but this is not all due to weather.
This is due to other things besides this weather.

And probably you may be hearing from more
people. It’s a very courageous thing for people to stand
up or write letters because for years we have been
threatened with having our hours cut, for various
reasons. And this is just one -- one of those reasons.

COMMISSIONER BROAD: Excuse me. I think you can
rest assured that anybody who communicates to this
Commission and is retaliated against will be protected.
And I’m sure that the industry will never do a thing like
that.

MS. MITCHELL: Thank you.

COMMISSIONER DOMBROWSKI: I have a question.

What is -- in your correspondence, one of the articles
has you listed of the “Mammoth employees organization.”

What is that?

MS. MITCHELL: I started a Mammoth employee organization a couple years ago and was having a really hard time making it in Mammoth, making a financial living in Mammoth. I have a couple children I’m raising there. No matter how many hours I worked, it didn’t seem like I was making a living.

And in talking and listening with other people, I realized that I wasn’t unique, that this was -- this was what was going on with all employees. And through that and through discussions, we decided -- a few people decided to try to get some kind of organization started and going so that we might be able to do something to change our conditions there, because, if we don’t, a lot of us aren’t going to be living there any more.

COMMISSIONER DOMBROWSKI: How many people are in this organization?

MS. MITCHELL: A little over 200.

MR. RANKIN: Tom Rankin, California Labor Federation.

As you look at this issue, I think the most important thing to remember is the Legislature’s words that they put in the statute regarding their intent. And
they are very clear that they think an 8-hour day is a basic labor right in California. And I would submit that a much better case has to be made for keeping any kind of exception for the ski industry than was made. It’s very clear that the employees in the industry want daily overtime. They need it to make ends meet. And they feel very strongly that they shouldn’t have different conditions from other workers. What’s the difference between a housekeeper who works in a ski lodge and a housekeeper who works in a hotel, in terms of their duties? A cook? A store clerk? It’s simply not just, for those folks.

The wages are low in this industry. Overtime is not going to break the industry.

There are safety problems with people working long hours, and some of these letters talk to that.

There are tremendous -- if these letters are correct, from the employees -- there are a tremendous number of wage and hour law violations. And in many cases, people weren’t even being paid overtime when they worked over 56 hours a week. They were put off the clock.

Other industries are able to plan for overtime that are seasonal industries. My understanding is that
most of the overtime actually in this industry occurs
around Christmas break. That’s certainly foreseeable
every year, and that can be planned for. Agriculture, as
was mentioned, is an industry that’s dependent on the
weather and has seasonal fluctuations. They’ve lived
with overtime for years.

In terms of another point -- and this actually
differentiates this industry from agriculture --
agriculture, there’s always been sort of a state policy
that agriculture has been taken care of, subsidized, and
the idea is that people need inexpensive food. This
industry is a luxury, and most of the people who take
part in the activities are affluent people. If there’s a
real problem, I am sure that lift tickets could go up a
buck, or whatever, to pay for the overtime.

And finally, our neighboring state, one of the
few other states that has daily overtime, Nevada, which
has a ski industry, does not make any exemption for the
ski industry. They pay overtime after 8 hours a day.

One other point in terms of the comment on the
10-hour, the vote. Certainly regulations can be crafted
here
-- they will have to be in the construction industry --
to deal with the nature of employment and when the vote
takes place and who gets to vote. So, I don’t see that
as a major problem that this industry would have, if the
employees indeed are put in the same position as all
other employees, in terms of being able to vote for
different alternative workweeks under 10 hours a day, 10
or under. They should -- election procedures should be
able to be worked out to deal with that.

Thank you.

MS. BERMAN: My name is Marcie Berman, and I’m
here as a representative of the California Employment
Lawyers Association, which is an organization of about
250 attorneys in California that represent employees in
various types of employment matters, including wage and
hour disputes.

I would like to just say that CELA supports
providing the same level of overtime protection to these
employees as to other employees covered under the law
after AB 60. I didn’t hear anything from the industry
that convinced me that there’s a distinction there that
would justify giving these employees less protection.
And I would agree with what the other two witnesses said.

A couple other things I -- additional things I
wanted to say are that it’s my understanding, from
talking to employees in this industry, that the employers
1. don’t retain them on a fixed schedule week in and week out, regardless of the workload, but instead, that they call people in only when they’re needed. And therefore, they don’t have any down side risk for their payroll overhead. And it seems to me that they want to have their cake and eat it here. They want to maintain the situation where they have no down side risk, but then, when it’s busy and they’re bringing in money, they don’t want to have to then pay people overtime during those periods. That doesn’t make any sense to me.

2. The other thing I wanted to point out is that the industry may be seasonal in the respect that there’s only snow during part of the year, but it’s been my experience that at least some of the ski resorts are fully functioning and very active, with a lot of people there paying them money, during the summer months. For example, Squaw Valley is a, you know, Four Season resort. North -- what’s it called?

3. COMMISSIONER DOMBROWSKI: Northstar?

4. MS. BERMAN: Northstar is filled with hundreds of people during the summer. They have big tennis programs, swimming pools, mountain biking. Homewood has a laser tag program operating all summer, so that it’s got its lifts going all day.
So I think it’s a bit of a misnomer to treat it as a seasonal industry, even though there may be different activities going on throughout the year.

That’s all.

COMMISSIONER BROAD: I’d actually like to ask Mr. Roberts a question about that, if you could come back up.

MR. ROBERTS: Sure.

COMMISSIONER BROAD: How many ski resorts are there in the state?

MR. ROBERTS: Yes. I’m Bob Roberts. There are 38 resorts, alpine and cross-country, because they all have very similar kinds. But they’re primarily downhill, or alpine, as we would say in ski resorts.

COMMISSIONER BROAD: And breaking out between alpine and cross-country, how many?

MR. ROBERTS: We have -- cross-country is a little -- I mean, a year like this year, a cross-country resort may not function at all. It may change ownership. So, we have essentially 10 of those resorts are cross-country, and the other 18 -- the other 28 are downhill.

COMMISSIONER BROAD: Of those 28, because I assume that’s what we’d be talking about --

MR. ROBERTS: Um-hmm.
COMMISSIONER BROAD: -- how many are open all year round in some form?

MR. ROBERTS: In some form, probably 14 or 15.

COMMISSIONER BROAD: And of the ones that are closed, how many months of the year are they closed?

MR. ROBERTS: They are generally -- and, again, a normal season is between four and five months. Five months is what we really aim for. Mid-November through April would be -- would be a normal operating season. And an operating -- again, like Dodge Ridge this year opened in late January and closed in either late March or early April. So, it's a very skewed thing.

Of our larger resorts, the larger resorts, clearly, because they carry larger year-round staffs, try and engage in some kind of summer activity to justify the overhead. They've got -- they've got a much larger overhead. So -- but to my records and my understanding, all of those would still qualify as seasonal recreational businesses under the Fair Labor Standards, which means that in a six-month period, no more -- you earn no more than a third of your income in that six-month period, so that two-thirds of your income or your revenues are done during your, quote, winter season or your busy season.

COMMISSIONER BROAD: Okay. Now, let me ask
this, because I’m not a skier, so I really -- I’ve been to some of these places, but not for very long. Anyway --

(Laughter)

MR. ROBERTS: We could certainly help you out there.

COMMISSIONER BROAD: If you get me on skis --

COMMISSIONER DOMBROWSKI: Not if it costs more than ten dollars.

(Laughter)

COMMISSIONER BROAD: Anyway, of these 38, I assume a number of them have no hotel facilities or anything like that.

MR. ROBERTS: Absolutely.

COMMISSIONER BROAD: Right?

MR. ROBERTS: Correct.

COMMISSIONER BROAD: So they’re a little bit more -- almost like outdoor recreation, camping, you know, that sort of environment, rather than a destination resort.

MR. ROBERTS: Yes, that’s true. In fact, I think our critics in the environmental community consider them industrial-grade recreation centers, for some of our
COMMISSIONER BROAD: Well, they’re not here.

MR. ROBERTS: Yes.

COMMISSIONER DOMBROWSKI: Oh, you don’t know!

COMMISSIONER BROAD: Well, at least they’ll be here next time.

MR. ROBERTS: Yeah.

(Laughter)

MR. ROBERTS: No, it varies. For example, resorts up in this -- in southern California here traditionally do not have hotels. They are -- they have a day market. People drive up for the day. A lot of our resorts are day market -- Dodge Ridge, Boreal -- are day resorts, where people simply come for the day.

COMMISSIONER BROAD: Thank you.

MR. ROBERTS: Okay.

COMMISSIONER DOMBROWSKI: Any other speakers on the ski industry?

Okay.

(Pause)

COMMISSIONER DOMBROWSKI: I’m sorry. We’ll go on to the next issue, with the meal periods break.

Make sure you identify yourself.

MS. PATACK: Sure. Chairman Dombrowski and members of the IWC, my name is Melissa Patak, on behalf
of the Motion Picture Association of America, California Group, and our member companies, which include the Walt Disney Company, 20th Century Fox, MGM, Paramount Pictures, Sony Pictures Entertainment, Universal Studios, Warner Brothers, and CBS. I’m accompanied today by Carol Lombardini, senior vice president of the Alliance of Motion Picture and Television Producers, our sister trade association to the MPAA. And Carol handles collective bargaining for our member companies.

First of all, thank you very much for convening this public meeting to address the issue of meal periods, among other subjects, under AB 60 and the new interim wage order. We appreciate the opportunity to bring to your attention an unusual result, a requirement that motion picture employers provide two distinct meal periods for employees, caused by the application of the new law. And we welcome the chance to request that you take appropriate action to remedy this situation.

Let me first speak to the issue of your authority to remedy the double meal periods now required. AB 60 itself recognizes your authority to take appropriate action in this situation. Section 516 of the Labor Code, which was Section 10 of the bill, states that, quote,
“Notwithstanding any other provision of law, the Industrial Welfare Commission may adopt or amend working conditions -- work condition orders with respect to break periods, meal periods, and days of rest for any workers in California, consistent with the health and safety of those workers.”

The Legislature clearly authorized the IWC to have the final say on appropriate working conditions, so long as the IWC’s orders are consistent with the health and safety of California employees. Our request to you falls within the parameters of Section 516.

I will briefly outline the problem. Under Section 11 of Wage Order 12-80 -- that’s the wage order that affects our industry, which has been in effect since 1979 -- all motion picture employees are entitled to a meal period after six hours of work. In addition, our collective bargaining contracts, which number thirty and cover over 200,000 employees, also provide for a meal period after six hours of work. Because Section 11 of the wage order applies to all employees within our industry, regardless of whether they are covered by a collective bargaining contract, motion picture employers are able to provide a uniform and consistent meal period.
to all employees on a production.

Section 512 of the Labor Code, which was Section 6 of the bill, of AB 60, now requires a meal period after five hours of work. However, Labor Code Section 514 provides for an exemption from the meal period requirement, as well as other provisions of the law, for employees covered by a qualifying collective bargaining agreement. Your interim wage order tracks the statute by requiring a meal period after five hours, Section 9 of the interim wage order, and provides for an exemption for those covered by a qualified collective bargaining contract, Section 7 of your wage order.

This new provision in the law requires motion picture employers to provide two different meal periods where employees covered by a collective bargaining contract are working side by side with employees not under a contract’s provisions. And let me, if I can, illustrate how this situation arises.

If the motion picture calls for a large assembly of actors to fill an auditorium or a stadium, the production will, pursuant to an applicable -- the relevant and applicable collective bargaining contracts, hire extras, that is, people unaffiliated with the union and not covered by a collective bargaining agreement. In
these circumstances, the employer must provide a meal
period after five hours for these extras, and an
additional meal period for the rest of the crew covered
by the contract after six hours. This dual meal period
disrupts the production schedule, adding delay and
accompanying cost increases.

The production may not be able to continue with
part of the crew stopped for a lunch break. The dual
meal period may effectively shut down a production for a
part of the working day. In addition, the requirement of
a second meal period will arise sooner for those
employees entitled to a meal period after five hours,
further delaying the production schedule.

Moreover, motion picture companies provide lunch
at no cost to employees by hiring a catering company.
Clearly, the requirement of a dual meal period will add
to the cost of catering, creating further expense to
movies made in California.

Our request to you is for uniformity,
consistency, and the ability to adhere to our collective
bargaining contracts, all of which we had prior to the
enactment of AB 60 and the implementing wage order.

We believe you have the authority under Labor
Code Section 516 to amend the interim wage order and
affirm Section 11 of our existing wage order, 12-80.
This would enable motion picture employers to provide a
single meal period after six hours, an industry practice
and standard for more than twenty years.

AB 60 was intended for the purpose of restoring
daily overtime for California employees. In the motion
picture industry, we never ended the practice of daily
overtime in 1998 when the IWC repealed the daily overtime
requirement. And so, therefore, AB 60 really was never
aimed at our industry. However, the collateral provision
on meal periods contained in AB 60 is a hardship on the
motion picture employers by increasing costs of
production and causing disruption to production
schedules.

In the last year, there’s been much attention to
the issue of runaway production, which refers to
productions moving out of California to other states and
countries which now aggressively compete for this
business. There are several bills pending in the
Legislature to address ways California can stay
competitive, and Governor Davis is considering programs
to combat runaway production. We would urge the IWC to
help keep California film-friendly by correcting this
anomaly in the overtime law and affirm a single meal
period after six hours, consistent with Wage Order 12-80
and our industry collective bargaining contracts.

Thank you, and Carol and I would be happy to
answer any questions you might have.

COMMISSIONER BROAD: Thank you. I have -- I’ve
had a number of discussions with Jim Neff over this
because I have, for many years, dealt with
representatives in Sacramento, because I represent the
Teamsters, who have a jurisdiction in the movie industry,
and we talk a lot.

And I’m not as convinced as you are that we can
change the statutory requirement. However, I do believe
that in this unique situation, that your industry might
consider applying for the exemption that the Division can
give in Section 17 of the wage order.

MS. PATACK: Of our existing wage order?

COMMISSIONER BROAD: Of your existing wage
order. And it’s in all the wage orders, and no one is
suggesting it be removed, which -- if I can read it to
you, it says,

“If, in the opinion of the Division after due
investigation, it is found that the enforcement
of any provision contained in Section 7,
reference 11, ‘Meal Periods’; 12, ‘Rest Periods’
would not materially affect the welfare or comfort of employees or would work an undue hardship on the employees, exemption may be made at the discretion of the Division."

It seems to me that your case is a prime candidate for that sort of situation. One, you’re -- it’s an hour’s difference. It’s based on the unique situation in which you are following a collective bargaining agreement, which you are bound to follow, and which spills over into employees not covered by collective bargaining. You are paying for the meal period. As I understand it, in my experience, limited experience, to actually be in one movie -- it’s available --

COMMISSIONER DOMBROWSKI: I won’t even ask!

(Laughter)

COMMISSIONER BROAD: I could show it to you. It’s a very bad movie.

(Laughter)

COMMISSIONER COLEMAN: That wasn’t your fault.

COMMISSIONER BROAD: Anyway, it’s available
on video. My wife and I are Amish people at a
wedding, for one second in the movie.
Anyway --
COMMISSIONER DOMBROWSKI: But we digress.
All right. All right.
COMMISSIONER BROAD: That could come up
before my confirmation.
(Laughter)
COMMISSIONER BROAD: Anyway --
COMMISSIONER DOMBROWSKI: Okay.
COMMISSIONER BROAD: But I think that
you’re a prime candidate for that, and it might
solve the problem rather expeditiously, rather than
raising what might be a legal problem for the
Commission, taking a statutory requirement saying
that meals happen after five hours, and changing it
to six hours, and possibly creating a challenge.
And I -- my sense -- and I talked to Jim
Neff about this -- is I would encourage you to
pursue that.
MS. PATACK: So, that would be a letter to
--
COMMISSIONER BROAD: To the Division of
Labor -- the Labor Commissioner.
MS. PATACK: -- to the Labor Commissioner.

COMMISSIONER BROAD: Under Section 17.

MS. PATACK: Yeah, I had -- right. I know. I read that, and I just wasn’t sure. It seemed to me that it might be over a particular violation. I didn’t know if you would do it on a policy basis or sort of an across-the-board basis. But if --

COMMISSIONER BROAD: Well, I don’t think it’s -- I don’t -- I mean, Mr. Locker is here, and you can talk to him about it, you know, how the application -- my understanding is that it’s not intended after a violation has occurred, but for --

MS. PATACK: Okay.

COMMISSIONER BROAD: -- specifically for the type of situation you’re talking about, an employer comes in -- where there’s something unique here. And we’re not talking about getting rid of this, we’re just -- we have some unique circumstance, and you want to kind of do it this way, and that it would not materially harm the employees in any way or deny them any benefit. And that’s clearly what you’re suggesting here. It’s an hour’s difference between an existing -- the statutory meal period and the meal period you’re
providing.

MS. PATACK: Okay.

COMMISSIONER BROAD: And so, I would encourage you to do that. I don’t know how the rest of the Commission feels, but that would be my reaction.

MS. PATACK: Thank you.

COMMISSIONER COLEMAN: I was just going to see if our legal counsel had a comment on that.

MS. STRICKLIN: I’m not sure about that particular provision of the wage order. I was just wondering about your concern under 516, why it could not be done that way. What do you foresee as the legal challenge?

COMMISSIONER BROAD: Well, I think the bill establishes a pretty clear standard.

MS. STRICKLIN: 516 of the Labor Code --

COMMISSIONER DOMBROWSKI: My understanding is there’s a law the Industrial Welfare Commission may adopt and then working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare.

COMMISSIONER BROAD: Well, my -- I think if
you read the two sections together, I’m not sure
that that’s suggesting that you can diminish the
statutory standard. That would suggest that we
could eliminate all meal periods if we decided it
was in the health and welfare of employees, or
breaks, when you have a statutory requirement that
there must be a meal period.

And so, I think you have to read those two
sections together. I think, read together, it’s
suggesting that California could increase its
protections for workers, but couldn’t go beneath the
statutory standard set forth in the Labor Code.
Otherwise, that section would have no meaning
whatsoever.

And it is the more specific section, rather
than the more general section, and would have to be
given some meaning and judicial interpretation.

That would be my argument for why I think
it would not -- would not necessarily be the most
prudent course, from a legal perspective.

MS. PATACK: Okay. I understand that

there’s -- you don’t take any decisional --

COMMISSIONER DOMBROWSKI: Right.

MS. STRICKLIN: No.
MS. PATACK: -- action today.

COMMISSIONER DOMBROWSKI: What Commissioner Broad is suggesting doesn’t preempt anything else we could do. So, it’s -- I think it’s in your interest to pursue that as well as --

MS. PATACK: Wait for a decision from you.

Okay.

Thank you very much.

COMMISSIONER COLEMAN: Thank you.

COMMISSIONER DOMBROWSKI: Thank you.

Marcie Berman.

MS. BERMAN: My name is Marcie Berman, as I said before, and I’m here once again representing the California Employment Lawyers Association on the issue of rest periods and meal periods.

In general, I would like to advocate that the IWC seriously consider requiring break periods longer than the ones that have been in the wage orders to date. I have a copy of Wage Order 4, from 1998, and it requires rest periods at the rate of every ten minutes net rest time for four hours or a major fraction thereof, and also says that insofar as practicable, shall be in the middle of each work period.
And I wanted to make a point about certain types of employees in particular who I think need longer breaks than the net ten minutes that’s specified here every four hours. One type are employees who are working in safety-sensitive jobs where their concentration may be affected by working continuously without breaks. And especially since the on-site construction industries are henceforth going to be covered by the wage orders, I can envision that there would be real serious safety hazards with ironworkers, you know, standing up there without having any kind of breaks, or even just a ten-minute break in four hours doesn’t seem like a lot to me.

The second type of workers that we’re particular concerned about are workers whose jobs entail repetitive movements, including factory workers, food processing workers, and all variety of office workers who are working at the ubiquitous computer terminals. I think we’re all familiar with the news that’s been very widely disseminated in the past ten years about repetitive stress injuries. These injuries are permanent. Once they occur, they’re permanent, there’s nothing you can do about
them. You can certainly do a lot to prevent them, but once they’re that, that human being’s body is ruined. And I’ve met factory workers who are grandmothers in their fifties and can never lift their grandchildren because of these injuries that they’ve got. So it’s a serious matter.

I brought some news articles from some very prominent, well respected newspapers, and I’ll leave a copy with the Commission, talking about this problem and including recommendations from medical experts that people who are involved in these repetitive type of jobs have breaks of fifteen minutes every few hours. In some of these articles, they talk about having a five-minute break every hour or two.

So, I think it’s incumbent upon the IWC to seriously consider increasing the rest periods that you require of employees -- of employers.

The other issue I wanted to point out is this word “net” that’s in Section 12 of the wage orders. I did some legislative regulatory history research and, unfortunately, forgot to bring what I found. But what I found were some minutes or findings from a past IWC, where there had been labor
proposals to increase the rest period to twenty
minutes based on their concerns that by the time
somebody actually gets out the door, in order to be
able to get some fresh air or walk around and
stretch, they may use up their whole ten minutes.
You know, in an office building, just waiting for
the elevator to go up and down before you can get
outside may take ten minutes, or in a factory, just
going out or taking off your gear.

So the concern was that the time period
needed to be longer. And what the IWC did was to
say, “Well, we’ll call this a ‘net’ ten minutes,”
“net” implicitly to mean that -- it means, by the
time you’re outside of your workplace, you get the
ten minutes. So maybe something the IWC could do is
to, you know, work with that language. I don’t
think anybody knows what that means. It’s certainly
not clear on its face. You might want to -- excuse
me.

MS. STRICKLIN: What order are you
referring to? Is it 4?

MS. BERMAN: Right now I’m talking about in
general, but I’ve got in front of me Wage Order 4–
98.
MS. STRICKLIN: And so, it’s 12? Is it Section 12?

MS. BERMAN: Yeah, Section 12, yes.

MS. STRICKLIN: Okay.

MS. BERMAN: So you might want to think about defining that word more specifically so people know what it means, and also definitely increasing the time period.

Also, what it says in this Section 12 is -- “insofar as practicable, shall be in the middle of each work period” sort of implies to me that the employer only needs to allow the person one break somewhere in the middle of the period. And from what I’m reading from these various health experts, it may be better for these people with repetitive injuries to have several breaks. And I wouldn’t want employers to think that they can restrict employees and only allow one break when, in fact, several breaks may be better.

I think this is something that helps everybody. Obviously, it’s better for employers if employees are productive. And some of these studies show that if you give people breaks and let them just stretch and exercise, that they will be more
productive. And obviously, injuries hurt everybody, although they hurt most the people who are injured, obviously.

The only other point I want to make about the rest periods is that I believe that employers don’t necessarily take this very seriously. And it’s been my experience that it’s sort of routinely ignored. And I don’t know what the enforcement is like at the Labor Commissioner, but I would expect that it’s a problem because there’s no sanction, there’s no disincentive to employers to ignore it. So, that’s something that you might want to take into account.

I don’t know what the scope of your authority is to do something about that, but maybe one thing that you could do is to penalize an employer who doesn’t require these rest periods by having to pay the employees, you know, double time or some increased amount of hourly rate for those rest periods that they don’t get.

With respect to the meal periods, the half-hour meal periods, the only thing that I wanted to say about that is that there’s language in this Wage Order 4-98, Section 11(A), that says that an on-duty
meal period shall be permitted only when the nature of the work prevents an employee from being relieved from all duty, and when by written agreement between the parties.

That seems to me to be a pretty loose standard and could be an exception that swallows the rule. I bet a lot of employers who are busy feel that circumstances justify requiring the employee to skip their lunch. But that’s -- that doesn’t seem to me to be the right balance to end up with. And I would recommend that you -- that you establish some higher threshold for that type of arrangement.

(Fire alarm sounds)

COMMISSIONER DOMBROWSKI: There we go, eleven o’clock.

MS. BERMAN: Oh. Let me just -- I just wanted to finish by putting on the record three newspaper articles. I have a January 23rd, 1997, article from the Chicago Tribune; a February 28th, 1996, article from the New York Times; and a June 9th, 1999, article from the Sacramento Bee.

MR. RANKIN: Tom Rankin, California Labor Federation.

Ms. Berman has basically covered our
concerns. Just a couple other comments maybe.

In terms of meal periods and breaks, we might need to look at things sort of order by order, because there are particular situations. The farm workers have expressed problems, not necessarily with the length of breaks, but with the availability of hand-washing facilities, because oftentimes they eat a breakfast, a meal, at their first break. And if they don’t have nearby hand-washing facilities, given the fact that they are often working in dirty conditions and sometimes pesticides are around, it makes it very difficult to do what they need to do within a break, period.

I think also that it’s important that you look at maybe defining a break period more explicitly so it’s clear, you know, that a worker’s not just getting ten minutes to sit at the desk, or fifteen minutes. And a lot of union contracts, by the way, have longer rest periods than the IWC orders; I think probably most of them do. I think it’s important to consider lengthening, and also, in certain cases where there’s work involving repetitive stress, as Ms. Berman stated, to consider perhaps more -- shorter, spread out break periods,
because I think the evidence that break periods are necessary in those jobs to prevent repetitive stress injuries is pretty convincing.

Finally, I think the biggest problem we have had with meal periods and break periods is the problem of enforcement. And I know that your abilities here are limited. There’s no good remedy. But I think you could create a remedy in terms of your -- within your authority by looking at, as I think Ms. Berman suggested, double pay or time and a half pay for -- in cases where these meal periods are violated.

And finally, I would like to -- although we do have a bill in the Legislature, which maybe you want to take a look at, actually, which would deal with the problem of the lack of penalties for these periods -- and that’s AB 2509, by Darrell Steinberg.

Finally, Pam Mitchell would like to say a couple more words in terms of what the real situation is with break periods in her industry, where she works, at least.

MS. MITCHELL: Hi. Again, I’m Pam Mitchell, Mammoth Mountain ski area employee.

And in my industry, and from some of my
employees, cat crew employees have reported to me
that they -- when they’re rearranging snow, they
drive cats -- do their whole shift with no breaks.
Frequently they are eating their lunches while
they’re driving these cat machines. And by the way,
these are $7.50-an-hour employees driving $250-
millon cats, that when, every time it snows, they
minimally work two to four hours overtime and
without breaks.

On our ski patrol, ski patrol doesn’t take
breaks. They take lunches at usually designated
times, of course, if there’s not some type of
emergency going on. Ski patrol can sometimes start
at 4:30 in the morning because they have to blast
and prepare the slopes prior to the lifts opening
up. And they don’t
-- they don’t have breaks. They also have to wear
their uniforms and be in the cafeteria and be on
duty during the lunch period to be available in case
there’s any type of emergency.

Our ski instructors have very erratic
breaks. Frequently after a lesson, especially if
they’re working with children, they end up
babysitting and taking care of the children for
fifteen minutes, half an hour, forty-five minutes, once they’re through with a lesson. And they don’t have breaks.

And our lift maintenance operators, many of them do not have restroom facilities at the tops of lifts. And they don’t have breaks. They literally pee behind a tree, between -- between tourists. The ones that do have restroom facilities -- we just received a memo which I’m sorry I don’t have a copy -- that hantavirus is a thing that we’re aware of up in the mountains where I live, and that their -- their lift facilities, their restroom facilities, have been so dirty -- not -- not dirt dirty, but from not being cleaned for so many years, that there’s been memos issued on warnings on hantavirus, where the lift operators themselves are going to be cleaning them out in order to get them ready.

Ski patrol is not allowed to use many of the lift operators’ restroom facilities, who do have restroom facilities, because they fill up too quickly -- quote, “they fill up too quickly,” and we don’t have the facilities to go pump them out.

And in my industry, the breaks are erratic.
In the cafeteria at Canyon Lodge, which is where I was, many of the employees who were working worked straight through without breaks, or the breaks are erratic. And in working with these long hours and the erratic break times, it causes immense tiredness.

Thank you for your time.

COMMISSIONER DOMBROWSKI: Juli Broyles.

MS. BROYLES: Hi. I believe it’s still good morning, Mr. Chairman, members of the Industrial Welfare Commission. I’m Juliane Broyles, from the California Chamber of Commerce.

First of all, I’d like, if it’s possible, have distributed to the Commission an article that was published on April 13th -- that’s the High Desert paper -- talking about how the rules put out by the Industrial Welfare Commission have specifically cost, in this one community’s instance, 800 jobs from coming to that High Desert town, specifically because of the Industrial Welfare Commission rules and the state law changing to such an extent 8-hour overtime applications in the State of California.

And I knew that Mr. Broad has asked on a
number of occasions for additional information.

We’re starting to put together quite a book, but this one was particularly telling that they had lost a very specific -- most companies will not come forward and say, “Well, it was just the overtime rules,” but many employers have come to the California Chamber and said that they are either considering moving or will not be moving here to the State of California. And we have been documenting that for an overall submission to the Industrial Welfare Commission.

One large food processor down in Fresno County literally has promised us that they’re doing the same thing, that they’re moving to Texas, taking their entire processing facility away and the 1,200 jobs that that particular facility has in the Fresno area.

One of the items I did also want to address today, and it’s really more in response to some of the comments that were made on the meal breaks and rest break period, it’s interesting to have issues that are more appropriate for the Cal OSHA Standards Board here than to have here in this Commission’s purview, particularly the issue of repetitive motion
industries. On this issue, I’ve had a lot of experience. I chair a very large employer coalition on cumulative injuries, on repetitive motion injuries and ergonomics, and spent several weeks last month in Washington, D.C., testifying on this issue to fed OSHA on ergonomics and the need for breaks and that issue. But it is not appropriate for it to be addressed by this Commission. There is another statutory body appointed by the Governor to deal with this issue, and it is not appropriate for this Commission to take it on.

And so, for those reasons, I do want to make sure that you know that we have very strong problems with that even being brought up here as an issue for you to take up.

Do you have any questions?

We did submit substantial comments, both in January and in March, regarding a number of issues that were on the table today, including the managerial issue and the meal break issue. And if we can answer any questions on those now, we’d be happy to.

COMMISSIONER BROAD: Yeah, I have a question. And I’ve read the article, and I’m glad
to know that they’re getting a casino, so --

MS. BROYLES: It’s such a -- it’s so good to know.

COMMISSIONER BROAD: They have a casino, because, you know, the gamblers won’t go to Texas.

MS. BROYLES: No, they won’t go to Texas. But it’s only 300 jobs in place of 800. So, it’s really not the -- not the type of revenue source in the sense, you know, from the business community.

It is both good news and bad news when you have the casinos come in, because until some of the compacts are completed, there are legitimate issues on both the employee side and the employer side in terms of competitiveness, fair wages, how workers’ compensation is handled, and how OSHA is handled.

So, certainly, we find ourselves on the same side on that issue.

COMMISSIONER BROAD: Let me ask you this question about breaks.

MS. BROYLES: Sure.

COMMISSIONER BROAD: Marcie Berman and Tom Rankin mentioned this. The breaks are ten minutes net rest time. Obviously, that means you have sort of travel time to the break. It’s sort of included
in that. And -- but I’m not sure -- and I’d
actually like Miles to come up here in a minute.

COMMISSIONER DOMBROWSKI: No, I won’t put
Miles in a position of having to --

COMMISSIONER BROAD: No, no. I want to ask
him about enforcement questions anyway.

But here’s my question. Are you guys
averse to, say, changing this thing from ten minutes
to fifteen minutes, but maybe clarifying what this
“net” thing means. And I don’t know; it may be
observed and breached, or not observed at all.

MS. BROYLES: At this point, I would
probably have to see what was proposed. And
certainly, we’ll be more than willing to discuss it,
but I cannot give any indication that we agree to a
change where you’re adding the time on, to an
overall fifteen-minute -- as you were pointing out --
an undefined term of “net” -- away from the place
of work. In some cases, that would be totally
unrealistic because you’re walking 15 feet out to go
outside the door to be away from it, versus someone
who might be in a different type of job.

COMMISSIONER BROAD: So, is it your sense
that -- just -- and obviously, I don’t know what the
answer is, at all, but I have the impression that in
lots of workplaces in California, really the
standard is two fifteen-minute breaks in an 8-hour
period, not two ten-minute breaks.

MS. BROYLES: The standard that I’m aware
of is two ten-minute breaks. But normally, if -- it
depends, again, on the culture in that workplace,
almost always. There are some employers that have
one fifteen-minute break in the morning and a ten-
minute break in the afternoon, depending on customer
flow. There are some that have a number of five-
minute breaks, two five-minute breaks every hour, if
they are doing a different type of issue. But
again, it’s what fits that company’s culture, what
that employer feels free to do with the
productivity.

Sometimes, you know, you have the
differences between lunch hours. You have people
that have half-hour lunch hours, you have people who
have hour lunch hours. And the employers that
supply the one-hour lunch hour feel that that gives
the -- does not then constitute a need to extend a
ten-minute break in the morning and in the afternoon
in any way.
So, I mean, you have a lot of different factors that come in there.

COMMISSIONER DOMBROWSKI: Okay. Does anyone else want to speak about the meal periods?

COMMISSIONER BROAD: I’d just like to ask Miles some questions about enforcement in this area.

COMMISSIONER DOMBROWSKI: If Miles is comfortable with it. I don’t want to put him on the spot.

COMMISSIONER BROAD: Miles, don’t answer any question that you feel uncomfortable with.

MR. LOCKER: Thank you. Okay. Thank you.

COMMISSIONER BROAD: This issue was raised about what is the remedy when an employer doesn’t give workers meal periods of rest breaks. I’d just like to ask you what enforcement issues there are in this area.

MR. LOCKER: It’s -- yeah, I do feel comfortable answering that one because it’s an issue that’s come up quite a bit with us.

And the problem is, although the law or the IWC orders are quite clear in terms of the right
that workers would have to a meal period or rest periods, as a practical matter, the only means that we would have for enforcing either of those would be -- and once we do an investigation and determine that workers are not being given the proper meal period or rest period -- we could then go to court. We could file an action for injunctive relief and get a court order ordering an employer to provide the workers with -- the employees with the appropriate meal and rest periods.

In all honesty, I have to tell you that as a basic enforcement matter, that presents a huge difficulty. It’s simply a situation where -- I think, truthfully, unless we were doing a civil action involving other matters, in terms of compensation or so, minimum wages, overtime, and the like, then if we are aware there’s a problem with meal periods and rest periods, we would put that into that civil action. But to expend the kind of resources, the staff time and the attorney time, court time, to actually file a civil action for injunctive relief to enforce this right, we -- you know, that’s something that we just don’t have the staffing to be able to do that. It’s not a good way
to enforce something. It’s a problem.

COMMISSIONER BROAD: Now, I was surprised to learn -- and I’d like you to confirm this -- that there is no Fair Labor Standards Act enforcement in this area, there’s nothing in the Fair Labor Standards Act governing breaks or meal periods.

MR. LOCKER: That’s my understanding, that under the FLSA there are no requirements as to meal periods or rest periods.

COMMISSIONER BROAD: So, we have a situation, then, where this may be a statute that, when it’s breached, there’s no real effective remedy or regulation when it’s breached. There’s no effective remedy.

MR. LOCKER: The remedy, as I say, would be -- it’s an expensive thing to bring about that remedy. And then, of course, the remedy, if we were to get the injunctive relief, the remedy would be basically a court order telling the employer, “You can’t do this ever again.” It’s prospective.

COMMISSIONER BROAD: Well, I guess what we could do -- I’m not asking you to comment on this -- but as a general comment to my fellow commissioners, I guess what we could do is require the payment of
premium pay for the time that was not given, or
require that any employer that doesn’t give rest
periods or a meal period in accordance with our
rules would have to, say, pay the employee one hour
at their regular rate of pay, in addition to all
hours worked on that day, or something so that there
would be an economic disincentive to violate the
rule, and that it would be more self-enforced.

MR. LOCKER: That’s -- you know, I mean, I
-- I don’t want to comment much on that, other than
to say that given our -- given our limited
enforcement, we like self-enforcement. We do like
self-enforcement.

(Laughter)

MR. LOCKER: We do like.

COMMISSIONER DOMBROWSKI: All right.

It’s the end of the day.

The next item on the agenda is the duties
which meet the test for an exemption for executive,
administrative and professional employees.

Laura Ho.

MS. HO: Yeah. I don’t have anything to
present. I just wanted to respond to if there are
any other --
COMMISSIONER DOMBROWSKI: Does anyone else want to talk about it?

(No response)

COMMISSIONER DOMBROWSKI: This is going to be a first.

AUDIENCE MEMBER: (Not using microphone)
We’re waiting for the next meeting.

COMMISSIONER DOMBROWSKI: Okay. The next item is the licensed pharmacists. Again, the only person I have is Laura Ho.

MS. HO: Again, I have the same --

COMMISSIONER DOMBROWSKI: Okay.

Anyone have any other business they want to bring before the Commission?

(No response)

COMMISSIONER DOMBROWSKI: Do I have a motion to adjourn?

COMMISSIONER BROAD: So moved.

COMMISSIONER DOMBROWSKI: Second?

COMMISSIONER COLEMAN: Second.

COMMISSIONER DOMBROWSKI: All in favor, say “aye.”

(Chorus of “ayes”)

(Thereupon, at 11:45 a.m., the public meeting...
was adjourned.

--o0o--
I, Cynthia M. Judy, a duly designated transcriber, do hereby declare and certify under penalty of perjury under the laws of the State of California that I transcribed the two tapes recorded at the Public Meeting of the Industrial Welfare Commission, held on May 5, 2000, in Van Nuys, California, and that the foregoing pages constitute a true, accurate, and complete transcription of the aforementioned tapes, to the best of my ability.

Dated: May 12, 2000

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CYNTHIA M. JUDY, Transcriber