In the

Supreme Court of the United States

Local 3489, United Steelworkers Of America, AFL-CIO, et al.,

Petitioners,

v.

W. J. Usery, Jr., Secretary Of Labor,

Respondent.

No. 75-657

Washington, D. C.
November 30, 1976

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LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO, et al., Petitioners,	:	
v.	:	No. 75-657
W. J. USERY, JR., SECRETARY OF LABOR, Respondent.	:	

Washington, D. C.,

Tuesday, November 30, 1976.

The above-entitled matter came on for argument at 10:08 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

CARL B. FRANKEL, ESQ., Five Gateway Center, Pittsburgh, Pennsylvania 15222; on behalf of the Petitioners.

JOHN P. RUPP, ESQ., Office of the Solicitor General, Department of Justice, Washington, D. C. 20530; on behalf of the Respondent.

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C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in 75-657, United Steelworkers against Usery, Secretary of Labor.

Mr. Frankel, you may proceed whenever you're ready.

ORAL ARGUMENT OF CARL B. FRANKEL, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. FRANKEL: Mr. Chief Justice, and may it please the Court:

Beginning in 1964, and at each of the biennial conventions since then, the membership of United Steelworkers of America has voted to adopt, in its present form, a meeting attendance requirement applicable by constitution to all of the 5200 Local Unions, which comprise the Steelworkers International.

Under that rule, to be eligible for Local Union office in any of the 5200 Local Unions, a member must have attended one-half of the regular monthly meetings in the three-year period preceding the election -- the three-year period being the term, the prior term of office -- unless his work or union activities prevents attendance.

This case arises under Section 401(e) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. Section 481(e), which provides for the right of a member to run for Local Union office, and provides that that right is subject to

reasonable qualifications uniformly imposed.

This case began when one of two defeated candidates for president of Local 3489, in its 1970 election of officers, challenged the validity of the meeting attendance requirement, first internally within the Union, and then in a complaint filed with the Secretary of Labor.

The Secretary, within the time allotted by statute, then filed this lawsuit attacking the meeting attendance rule, as applied in the 1970 election of Local 3489.

The district court, following the lead of the Sixth Circuit and four other district courts, all of whom had passed on the validity of the Steelworkers' meeting attendance rule, held that our rule was indeed a reasonable qualification under the Act.

The Secretary appealed to the Seventh Circuit. The Seventh Circuit, departing from this line of authority, concluded on the contrary that the rule was unreasonable, and the conflict between the Seventh Circuit and the Sixth Circuit is what brings this case to this Court.

Your Honors, actually the issue in this case is a very, very narrow one, much narrower than I had initially thought. Upon reading the briefs, one gets to appreciate just how narrow it is. I want to emphasize that by starting with where we and the Secretary of Labor agree. The Secretary of Labor and the Steelworkers agree, even under the Secretary's

most recent regulation, that it is reasonable under the statute for Unions to have meeting attendance rules. Point No. 1, where we agree.

The second point on which we agree is that such rules serve valid Union purposes -- and now I am quoting the Secretary -- namely, to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization.

QUESTION: You're quoting the Secretary, and where did he say that? In the brief?

MR. FRANKEL: It's in the regulation and in the brief. It's in the Secretary's current regulation.

QUESTION: Current regulation. And it's also in the brief?

MR. FRANKEL: Yes. Page 15 of the Secretary's brief, where he paraphrases the regulation.

QUESTION: Right. Thank you.

QUESTION: When you say "regulation", do you mean it's part of the interpretative bulletin?

MR. FRANKEL: Well, he issues an interpretative regulation. It's published in the C.F.R. Prior to that, there was a manual which was distributed to Local Unions, where they could follow what the Secretary's interpretations were.

QUESTION: Is the Secretary given authority by Congress to issue regulations the way the SEC is, that it has

the force of law, or are these just interpretations?

MR. FRANKEL: They are interpretations, Your Honor.

QUESTION: I see.

QUESTION: What other sanctions, if any, are there for non-attendance at meetings?

MR. FRANKEL: There are no sanctions. All that non-attendance means is that the individual -- that the member would not be eligible to run for Local Union office if he didn't attend half the meetings. Or if his work precluded his attendance, he would not -- there would be no sanctions, of course, and he would still be eligible.

QUESTION: Mr. Frankel, I find some indecision or difference in the brief and records. How often did this Local have its meetings, its regular meetings, every month?

MR. FRANKEL: Every month, Your Honor.

But there were two meetings, so that -- it was a split meeting, which means that -- there were three shifts at this plant, so that meant that anybody could attend the meeting. There was one which was held, as I recall, on a Wednesday afternoon and the next was on a Thursday morning; so that everybody could attend.

QUESTION: Well, what's -- would the same --

MR. FRANKEL: But it was one meeting. It was considered one meeting.

QUESTION: But, would the same thing be duplicated

on Thursday morning as went on Wednesday?

MR. FRANKEL: Yes, the same business would occur -- would arise, and what they frequently do is cumulate the votes on any issue on which a vote has to be taken.

QUESTION: Well, I take it the people that came Thursday morning wouldn't get the benefit of the discussion, at any rate, that took place Wednesday afternoon.

MR. FRANKEL: They might not, that's correct.

But the reason for the split shift -- excuse me, for the split meetings is so that everybody can attend the meeting. And --

QUESTION: Now, you had some excuses here, didn't you, if --

MR. FRANKEL: Work and meeting -- and union activities.

QUESTION: How many people would have qualified who, -- by virtue of the excuses?

MR. FRANKEL: There's no way of knowing, Your Honor. No one made that check, neither -- the only way of telling work excuse is by looking at all of the employment records which are in the possession of the employer.

I think maybe I ought to explain the way the Steelworkers operate with respect to the work excuse. We have no reason to check work excuse, unless the members are nominated. If a member is nominated and falls short of the required number

of meetings, then and only then will we check to see if he had sufficient work excuse to qualify him for office.

QUESTION: Can you do that, nine months ago? I suppose you have annual elections, don't you?

MR. FRANKEL: Every three years.

QUESTION: Every three years.

MR. FRANKEL: Yes.

QUESTION: So that you have to go back 36 months to shore up your excuses?

MR. FRANKEL: To determine whether or not the member worked at the time there was a meeting, yes.

QUESTION: Well, I gather the -- the meeting roll shows, by name, who attended?

MR. FRANKEL: That's correct.

QUESTION: And so, if he's a nominee and you find his name on the meeting roll only 18 times out of 36 --

MR. FRANKEL: Then there's no reason to check.

QUESTION: That's right. If you find, however, it's only 12 times, --

MR. FRANKEL: Then there's reason to check.

QUESTION: -- then you have to find out the days that he was absent and why; is that it?

MR. FRANKEL: Well, what we have to find out is whether he worked on the day on which there was a meeting.

QUESTION: Well, there's something else, I gather.

You said he might have been on union business.

MR.FRANKEL: Oh, union business; right.

QUESTION: For example, he might have been a member of a grievance committee.

MR. FRANKEL: That's correct.

QUESTION: And a meeting on grievance with the employer might have coincided with a union meeting.

MR. FRANKEL: That's correct.

QUESTION: And that would be an adequate excuse.

MR. FRANKEL: Yes. Yes, sir.

QUESTION: But that's the kind of inquiry you have to make if he falls short; is that it?

MR. FRANKEL: That's correct.

QUESTION: Who has to bear that proof, the member?

MR. FRANKEL: No, Your Honor, the tellers would do that. The member could cooperate by saying, "I think I worked on such-and-such a day", but it would be the duty of the election tellers to make a check of those members who did not -- who were nominated, did not meet the meeting attendance requirement by virtue of meetings alone, then they would have a finite number, usually a small number, and --

QUESTION: I don't quite understand. If he were -- if his excuse was that he was working, I thought you said this was a split meeting, so that any worker would be able to attend one or the other sessions of the meeting.

MR. FRANKEL: Well, Your Honor, there is overtime.

QUESTION: Oh, I see.

MR. FRANKEL: And, indeed, in this particular case, there was one member who qualified by virtue of a combination, and he had an additional -- according to the Secretary's investigator, he had an additional nine credits over 16 meetings which he had attended.

Now, the problem is that the Secretary did not look for anyone -- his investigator did not look to see whether anybody else would have met it, knowing that nine -- that this one member received nine credits, and there were three members -- he was provided a list by the Union, the Union gave the Secretary a list and said, "Here's all the people who were eligible by virtue of meeting attendance, and here are three people who had between 15 and 18 meetings." And it was for those three people that the Secretary checked the employment work records, to see whether or not any of those three would qualify by virtue of the excuses.

He found that one did, and the testimony was he had nine conflicts. But he didn't check for anybody else. Now, if one man had nine conflicts, it's possible that people who were -- who had as many as nine meetings attended, other people may also qualify.

That's why I say we don't really know how many members in this Local were eligible.

QUESTION: Who appoints the tellers?

MR. FRANKEL: The tellers are either elected or they are appointed subject to ratification by the membership.

QUESTION: At a regular meeting?

MR. FRANKEL: At a regular meeting.

QUESTION: Is it a stated meeting, in which the purpose of the meeting is announced in advance?

MR. FRANKEL: It's a -- usually it's not a denomination meeting, but I don't recall the constitutional provision that said when it had to be done. I know, in practice, it's usually done at the nomination meeting, for which there is a notice.

QUESTION: And how long in advance of the election is the nomination meeting?

MR. FRANKEL: Usually a month, or it could be less, though, it varies. In 5200 Locals you have -- each has its own autonomy in this respect.

QUESTION: Yes. Because between the stated nomination and election, there's a very short period. How do you get all this investigating done? On the nominees as to whom there's any question.

MR. FRANKEL: Well, Your Honor, because usually there are only a few people as to whom there is a question, and it doesn't impose that much of a burden.

By the way, I'd like to contrast that with what would

happen under the Secretary's approach, which is, you have to determine, after all is said and done, how many people were eligible, to find out whether you can apply the rule.

Well, if that's what you're going to do -- and we have Locals from 1,000 to 20,000 members, where there are rotating shifts, steady night shifts, we would have to engage in an administrative nightmare to send our Local Union people -- camp them out in the employer's records department, if they will let us, and determine how many people are eligible, so that we can decide whether or not the rule is valid, given the test that the Secretary is urging before this Court.

QUESTION: By what process could the eligibility be made more stringent, that is, moving from half of the meetings to three-quarters of the meetings?

MR. FRANKEL: Some Unions have done that, and we would not -- it is our position that such a rule would not be valid because it imposes too heavy a burden on the member.

QUESTION: What about 60 percent?

MR. FRANKEL: I don't think 60 -- I don't think we should require more than half, Your Honor. I think half --

QUESTION: Then what's the basis -- how do you arrive at these --

MR. FRANKEL: Well, it's difficult to do, I agree, but I think, from the standpoint of our rule, that to ask a member to spend an hour and forty-five minutes or an hour and

a half, or two hours, every other month is not too difficult a burden. That adds up to roughly 32 hours in a three-year period.

QUESTION: Well, how many people -- how many people in this Local had qualified?

MR. FRANKEL: By virtue of meeting attendance alone? Twenty-two.

QUESTION: Out of how many?

MR. FRANKEL: Six hundred and sixty.

QUESTION: So, apparently, an enormous proportion of the membership do find it either difficult or, for some other reason, do not attend the meetings?

MR. FRANKEL: I think it's for some other reason, other than for it being difficult, Your Honor. I don't think you can just --

QUESTION: Maybe it's just because the meetings are so dull.

MR. FRANKEL: Or because they don't have the interest in attending.

For example, Your Honor, I would not say that it was difficult in the United States for a citizen to vote, but in the last election only 53 percent voted. And --

QUESTION: Well, this Union isn't doing nearly as well as the voters of this country, is it?

MR. FRANKEL: No; that's correct, Your Honor. But

my point is that I don't think you can measure the difficulty of the requirement by how many choose to fulfill it.

If the eligibility were increased, that is, to 60 or two-thirds or three-fourths, what is the process by which a Local Union would make that change?

MR. FRANKEL: A Local Union could not make that change in the Steelworkers, Your Honor.

QUESTION: Then how would it be made, if it were?

MR. FRANKEL: It would have to be made at Convention, at the Steelworkers Convention, which imposes these requirements nationwide for all Steelworker Locals. And from which Steelworker Locals are not -- cannot deviate. I think that -- by the way, Your Honor, I think it assures some fairness.

QUESTION: Well, at these National Conventions, you have the leadership of the Unions --

MR. FRANKEL: In some instances, yes, Your Honor; in other instances, the Delegates are elected, as anybody else, and it's --

QUESTION: But the non-attenders, the people with poor attendance records, aren't likely to show up at a National Convention, are they?

MR. FRANKEL: I would say, having attended five -- or four of them, that the dissidents do attend meetings, do get elected to become Delegates.

QUESTION: Well, may they be elected Delegates if they

don't attend, if they don't meet this attendance requirement?

MR. FRANKEL: Yes. Not this attendance requirement, there is another one.

QUESTION: What is the other one?

MR. FRANKEL: As I recall, it's half of the year, but I don't recall exactly; but there is an attendance requirement.

QUESTION: But the net of all that is that essentially the establishment is in control of the National Convention?

MR. FRANKEL: I --

QUESTION: Using the word "establishment" in quotation marks, of course.

MR. FRANKEL: Your Honor, my experience is that that is not true. I think that the Steelworkers --

QUESTION: Well, how could these 660 who didn't attend, or the non-attenders of the 660 get to a National Convention?

MR. FRANKEL: Well, the non-attenders --

QUESTION: They aren't eligible.

MR. FRANKEL: -- would not be -- would not be eligible, that's correct, from within their own Local Union; that's correct.

But that's only -- it's a much smaller, it is a smaller term; but there is a meeting -- as I say, I believe there is --

QUESTION: Well, in this Local there would be -- how many? Twenty-two people?

MR. FRANKEL: There's no way of knowing, because nobody did a check for a year.

QUESTION: But as of the time you gave me the figure, 22 members out of 660?

MR. FRANKEL: That was on a three-year basis.

QUESTION: Yes.

MR. FRANKEL: And it didn't include employees or members who were eligible by virtue of combination. I don't know how many of those members would be eligible. There may be many more. There's no way of knowing.

So I'm saying there were only 22 qualified by virtue of meeting attendance alone, but you can also qualify by the combination of meeting attendance and work excuse. And the same thing would be true for the Delegates.

QUESTION: Tell me, are there many other Internationals that have this attendance requirement of eligibility for office?

MR. FRANKEL: There are 12 International Unions representing approximately 25 percent of the membership, trade union membership, which have meeting attendance rules.

Now, if you use the approach that the Secretary uses, --

QUESTION: Well, that suggests that 75 percent --

MR. FRANKEL: Do not.

QUESTION: -- do not, of organized labor do not --

MR. FRANKEL: No, it doesn't suggest that because -- for this reason, Your Honor: I was giving you a figure which represents those Internationals which have constitutions which prescribe a meeting attendance rule. But there are -- the constitutions of other unions permit local unions to adopt meeting attendance rules, and again, there's no way of knowing how many of them do.

QUESTION: Do any have a rule, the counterpart of this?

MR. FRANKEL: Three-year rule? I believe there is one other union that has a three-year rule.

QUESTION: So that means the Steelworkers and the other union are farthest out?

MR. FRANKEL: Well, no, Your Honor. I wouldn't put it that way, I'm sorry, because if you take the approach the Secretary uses, which is that you measure the rule, the validity of the rule, by how many are eligible, it doesn't matter whether it's one, two or three years. We're in the same boat as all other unions, if that's the test. And that's the only test he is suggesting.

QUESTION: Let me emphasize the other factor. The 50 percent rule, plus the three years, is the most stringent of any International --

MR. FRANKEL: Well, there was a union that had a 75 --

QUESTION: Of course, somebody has to be out in front. Why don't you test that?

MR. FRANKEL: Well, usually we aren't bargaining, so I suppose we could --

QUESTION: I mean, why don't you admit that? There isn't anything nefarious about it. I just wanted to get it into focus.

MR. FRANKEL: There is a union that had a 75 percent rule, the Glass Bottle Blowers had a 75 percent requirement.

And there's another way of looking at stringency, Your Honor. Some unions require 50 percent attendance in each year. Now, that may be more stringent than 50 percent over a period of three years.

QUESTION: I suppose, from the point of view of the Union, if you averaged 80 or 90 percent attendance at the meeting, you could count on the members, when they cast their ballots at election, to realize that the -- one of the candidates had never come to meetings and wasn't a very good bet. But if you get 10 percent of the candidates -- 10 percent of the enrollment at the meetings, the typical man casting his ballot for a union officers doesn't really have any idea whether anyone else came to meetings, because he probably didn't come himself.

MR. FRANKEL: Well, that may be, Your Honor.

QUESTION: In fact, doesn't -- one of the purposes of the rule, as I remember it, was to encourage meeting attendance, is that right?

MR. FRANKEL: Not only to encourage meeting attendance, Your Honor, but to encourage those who oppose the leadership of the Union.

QUESTION: Well, I understand, but just confining it to encouraging meeting attendance, it really has not succeeded in that purpose at all, has it?

MR. FRANKEL: Well, Your Honor, that's hard to tell at what point there is success, and at what point there isn't. If you compare it percentagewise, the attendance at this Local Union, it was slightly better than it is at other Local Unions. But --

QUESTION: And I mean, at most of the Locals there is less than ten percent?

MR. FRANKEL: No, I have no way of knowing that. I'm talking about the Locals which we know about --

QUESTION: Through litigation.

MR. FRANKEL: -- because they were in litigated cases.

But I would say this, Your Honor, the important point from our standpoint is not only the number, but, one, how can you tell at what point you have achieved sufficient

attendance so that your rule is valid in the eyes of the Secretary, No. 1; and, No. 2, the most important feature, purpose of that rule is to get those people who are opposed to the leadership to come to the meetings and to do so over the term. And that --

QUESTION: But they must decide, under the rule, at least 18 months in advance of the election, they want to oppose the leadership, must they not?

MR. FRANKEL: No -- they must decide whether they wish to run for office --

QUESTION: At least 18 months in advance.

MR. FRANKEL: -- 18 months in advance. That's true.

QUESTION: Do you think -- just that 18-month time period is kind of unreasonable, isn't it?

MR. FRANKEL: Your Honor, I have this problem: The Secretary says 18 months is too long in advance. If we had a one-year rule, he would say that that requires -- that the member has to make his decision too late. In our rule, he says he has to make it too early.

QUESTION: Why would he have to make it too late? I don't understand.

MR. FRANKEL: Well, because the time would have gone by for him to qualify.

If you have, for example, a rule in which you had -- in the last year you had to attend half the meetings, that's

all. A member may have attended every meeting for two years -- and I can assure you the Secretary would say that if he had attended every meeting for two years, and now in the last year you require him to attend half the meetings, and he doesn't make it, that that would be an invalid rule.

Now, to continue that, we have a three-year --

QUESTION: Well, just -- the only thought that runs through my mind is the fact that you can hypothesize a whole host of invalid rules doesn't seem to me very persuasive as to whether this is the reason for the requirement.

MR. FRANKEL: Well, Your Honor, the problem I'm getting to is that the Secretary has also rescinded a three -- a two -- his original -- not his original, but a regulation which permitted a two-year rule. So we have --

QUESTION: But, counsel, we're not deciding what was reasonable or unreasonable that the Secretary has done in other situations. The question is whether this particular rule is reasonable. Isn't that the only issue we have?

MR. FRANKEL: That's correct, Your Honor. But, in order to determine what is reasonable, in order to determine what is reasonable -- given the fact that the Secretary says that a meeting attendance rule is, it self, reasonable, then there has to be some measuring period.

And what we're saying is the Secretary hasn't given us any way of knowing what that measuring -- what an appropriate

measuring period would be.

QUESTION: Well, let me put it this way: Without referring to the Secretary at all, it would be helpful if you could give me some persuasive reason why it's reasonable to say that unless a man makes up his mind 18 months in advance of an election that he wants to be a candidate in that election, he may not become a candidate.

MR. FRANKEL: The reason I would give, Your Honor, is that if we didn't do that, then we would remove the incentive for opponents of the leadership to attend early in the term, in the first 18 months.

That is the reason.

QUESTION: But what if he doesn't know, until within the 18-month period, that he disagrees with the leadership?

MR. FRANKEL: Well, --

QUESTION: I mean, persons aren't permanently opponents or supporters. Voters change their minds.

You have to become an opponent more than 18 months in advance under your approach, as I understand it.

MR. FRANKEL: That is correct, Your Honor.

QUESTION: No, that's not true if you've attended every meeting --

QUESTION: Unless you attend every meeting otherwise.

QUESTION: That's not true at all.

MR. FRANKEL: Unless you've attended all meetings in

the first 18 months --

QUESTION: Unless you're within the three percent or so that attend meetings regularly.

MR. FRANKEL: Or unless you have work excuse during the first 18 months.

QUESTION: Yes. May I ask you this question?

MR. FRANKEL: Yes, Your Honor.

QUESTION: Do you -- I suppose you would agree that my brother Stevens has correctly stated the question before us, but I had rather thought it wasn't whether or not this Union rule is reasonable, but, rather, whether or not the Secretary was justified under the statute in finding that it was reasonable. And there may be a difference. It's sort of like a jury verdict.

MR. FRANKEL: I don't think the Secretary, in this instance, --

QUESTION: Isn't that the question, rather than the one that's posed by my brother Stevens?

MR. FRANKEL: Your Honor, I think the test is whether the rule is reasonable under the statute; and in making that determination one must consider what the Secretary says, and give it a certain amount of weight. And that's why we have approached it, --

QUESTION: Yes. And the question, as posed by my brother Stevens, didn't ascribe any weight to the Secretary's

determination.

MR. FRANKEL: That's correct. Our --

QUESTION: And you would agree that some deference, at least some deference, must be given, which --

MR. FRANKEL: I would agree with that, had the Secretary come up with a standard. Our --

QUESTION: Didn't Dunlop suggest that maybe it's more than just a little deference?

MR. FRANKEL: Pardon?

QUESTION: Didn't Dunlop v. Bachowski suggest that there's more than a little deference has to be given to the Secretary's determination?

MR. FRANKEL: If the Secretary had issued a standard, which Unions could understand and determine whether their rule was valid, I would agree with that, Your Honor. The problem we have is the Secretary has never articulated a standard which tells any Union whether its meeting attendance rule will pass muster or won't. We have no way of knowing.

QUESTION: 401(e) says nothing about any authority of the Secretary to decide what's reasonable, does it?

MR. FRANKEL: No, it does not. It's all --

QUESTION: But he does administer the Act, doesn't he?

MR. FRANKEL: He administers the statute, and --

QUESTION: Surely something must flow from that. We

don't administer the Act.

MR. FRANKEL: That's correct. And I am not saying, you know, (that this regards) what the Secretary says; I'm not suggesting that. But I'm saying that the Secretary has to come up with a standard which tells labor unions -- given the fact that he says meeting attendance rules are all right -- which tells the labor union whether its rule is reasonable or not.

If you were drafting a meeting attendance rule, with the Secretary's current standard -- and we face that problem -- if you were a Delegate trying to decide whether a meeting attendance rule was reasonable under the Secretary's approach or not, how would you know?

QUESTION: Well, does the actual attendance record have a bearing in evaluating the reasonableness?

MR. FRANKEL: Not of this rule, Your Honor, because the member has it within his power to attend or not to attend and the burden is not an onerous one.

If the member didn't have it within his power, if, by some pre-ordained regulation or rule, the incumbents had control over who came and who didn't, or how many people were eligible and how many weren't, then I would agree that the number who meet the rule, or who choose to comply with it, that that would be relevant.

But if it's within the member's free choice, and if the requirement is not a burdensome one, then we don't think

you should be able to judge the rule on the basis of whether the members choose to comply or not. That's not a reason, that's not a basis for determining the validity of a rule, whether people comply with it. So long -- so long, I emphasize this very heavily -- as the meeting hall is accessible and the burden isn't asking too much of the member. That's all we're saying.

QUESTION: I take it this is a direct enforcement sort of statute, to enforce it the Secretary goes to court.

MR. FRANKEL: That's correct, Your Honor.

QUESTION: It's not an administrative proceeding.

MR. FRANKEL: No.

QUESTION: And so it's like the antitrust laws, the Department of Justice just files a lawsuit.

MR. FRANKEL: Upon the complaint of a member, yes.

QUESTION: And so the Secretary in this case, like the Attorney General, is asserting some construction of the law in court.

MR. FRANKEL: That's correct.

QUESTION: But there's no previous administrative determination he makes that is binding on you, in the absence of a court action. Right?

MR. FRANKEL: That's correct, Your Honor. He decides to sue, is what he does. And --

QUESTION: Well, then his administrative bulletin

is more in the nature of advice as to the kind of cases he will initiate, rather than an approval.

MR. FRANKEL: That's essentially it, Your Honor.

QUESTION: Like a speech of the Assistant Attorney General in charge of Antitrust Division.

MR. FRANKEL: Well, Your Honor, I hesitate to say anything about antitrust.

QUESTION: All right.

MR. FRANKEL: Your Honor, I would say one concluding point. If we're going to look at effects, why not look to see whether in fact the Steelworker rule entrenches Local Union officers?

The Secretary has never done that.

And the facts are that --

QUESTION: To see whether it entrenches what?

MR. FRANKEL: Entrenches incumbent officers, perpetuates incumbents in office.

QUESTION: Unh-hunh.

MR. FRANKEL: The facts are, within the Steelworkers, that there are always contests. In this case, the complainants who lost in -- was one of two losing candidates in 1970, defeated an incumbent in 1973.

And we have cited in our brief, there are wholesale changes in officers in this Local, where wholesale changes throughout the Steelworkers -- one case I tried, Local 1299,

an incumbent president had never won up until the date of that trial. And entire slates were -- to put it as the staff representatives put it -- were wiped out.

The point is that if there is any measure, any measure at all, of whether the rule is valid in terms of impact, that would be it, not whether the members choose to comply.

Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Mr. Rupp.

ORAL ARGUMENT OF JOHN P. RUPP, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. RUPP: Mr. Chief Justice, and may it please the Court:

Petitioners' burden has been to convince this Court that their meeting attendance rule is reasonable under Section 401(e) of the Labor Management Reporting and Disclosure Act.

Despite the fact that during the 1970 election it disqualified 96.5 percent of the members of Local 3489 from standing for office, and despite the fact that it requires dissident Union members to plan their candidacies as early as 18 months prior to the election.

QUESTION: Even that assumes, though, does it not, that they are going to attend all the meetings after that, but have attended none before?

MR. RUPP: Well, I say "as early as".

QUESTION: Yes.

MR. RUPP: And I'll return to that in a moment.

But so long as the person desiring to run for office has not attended a significant number of meetings in the early part of the term, the burden that can result from operation of the rule is a requirement to attend all 18 meetings preceding the election.

QUESTION: Isn't there a possibility that there is one Steelworker who is interested enough in the Union to go to the meetings without running for office?

MR. RUPP: Yes, Mr. Justice Marshall, there is.

QUESTION: Well, what does that do to your figures? You don't know how many -- how many workers there are like that, do we?

MR. RUPP: We don't know -- well, we do have some indication from the record --

QUESTION: You know, there's some joiners, they just like to go to meetings.

MR. RUPP: There are some people, of course, who are interested in attending union meetings, who see some use --

QUESTION: That's not included in your figure, is it?

MR. RUPP: Yes, it is.

QUESTION: Well, how many -- how many are there?

MR. RUPP: The register, the meeting attendance

register in this case, reflects the number of members who attended each and every meeting during the three-year period preceding the 1970 election. What the teller did in this case, and in other cases involving Steelworker Locals, is to compute from that attendance register the number of people who were qualified to stand for office by virtue of their attendance, actual attendance at meetings.

In this case, the results of those tabulations were that 22 members of this Local were eligible to stand for office in 1970.

So we do know that the top here, so far as meeting attendance, actual meeting attendance is concerned, was 22 members.

Now, some of those members obviously went to those meetings, not having any present or developed intention of running for office.

QUESTION: How many went to one less than the number of meetings?

MR. RUPP: We know that three members went to more than 15 meetings but fewer than 18.

QUESTION: Well, how many went to 12 meetings?

MR. RUPP: The record doesn't reflect that.

QUESTION: That's right. That's all I'm trying to say.

MR. RUPP: Yes, the record doesn't reflect that.

Petitioners have rested their defense of the rule on three related objectives which, in their view, the rule is designed to serve: Assurance that would-be office holders have an interest in the Union and Union affairs; assurance of capable Union leadership; and encouragement of attendance at meetings.

But at no time have petitioners attempted to demonstrate that these objectives cannot be met by methods or requirements that trench less severely on the goals of the Labor Management Reporting and Disclosure Act, and particularly the election provisions of Title IV, than does the rule involved in this case.

QUESTION: Didn't you, Mr. Rupp, have to have the burden of proof, and wasn't I mistaken a while ago when I said that Mr. Justice Stevens had perhaps not stated the issue correctly? I think he did state it correctly.

This is not an administrative proceeding, this is a lawsuit in which you had the burden of proof, isn't it?

MR. RUPP: I believe that the Secretary did have the burden of proof, that is right.

QUESTION: And the test is whether or not you proved that these were not reasonable?

MR. RUPP: That is correct.

Now, I am not prepared to say, though, that the Secretary's determination is not entitled to some weight.

Perhaps it is entitled to --

QUESTION: Why? Why? You're just the plaintiff in a lawsuit under the Act, aren't you?

MR. RUPP: In --

QUESTION: You have a burden of proving it. You don't have any presumption in your favor, do you? Under this statute -- or am I mistaken?

MR. RUPP: No. No. We are not -- the Secretary is not --

QUESTION: Is he a plaintiff in the ordinary sense, or is he a plaintiff in a representative sense?

MR. RUPP: That is a point that I want to make. He's a plaintiff in a representational sense.

The Secretary is not entitled to a presumption in his favor. He is not entitled --

QUESTION: Any more than the Justice Department is when it brings an antitrust suit; is that correct?

MR. RUPP: I think that he is entitled to somewhat greater weight --

QUESTION: Why?

MR. RUPP: Because the legislative history of this Act, as this Court found in the Hotel Employees case, and in the Glass Bottle Blowers case, the decision to entrust the administration of this statute to the Secretary of Labor --

QUESTION: As the administration of the antitrust

laws are entrusted to the Justice Department, too, aren't they?

MR. RUPP: Yes, they are, but not in quite the same sense.

This is an administrative official, in this case, partaking very largely of prosecutorial functions --

QUESTION: So does the Assistant Attorney General, the head of the Antitrust Division.

QUESTION: He sure is.

MR. RUPP: Well, that is correct. And I don't want to make a big point of this. We -- our position, our basic position is that the case has been made here that this rule is unreasonable.

QUESTION: And you do, then, concede that you would have the burden of proving that, as the plaintiff in a federal court?

MR. RUPP: And I do concede that the Secretary has the burden.

QUESTION: Isn't the purpose of committing the enforcement function to the Secretary, and denying the individual member the right to sue, wasn't that designed to screen out frivolous claims and protect the unions from having to defend too many claims of this kind? Which perhaps imposes an even harder -- a more severe burden on you.

MR. RUPP: Well, that may have been one of the motives.

Another is that centralized control by an administrative official, an official of the United States Government, having some expertise in this matter, was thought to be beneficient.

There was also a requirement in the Act, as you know, for the exhaustion of internal administrative remedies, within the union.

QUESTION: And the individual can't sue, himself?

MR. RUPP: He cannot.

QUESTION: No.

QUESTION: He cannot. And the Secretary is required to investigate and make a decision as to whether to sue or not.

MR. RUPP: That is correct.

QUESTION: And his decision not to sue is reviewable.

MR. RUPP: I believe that it is.

QUESTION: And, in that, it's different from the antitrust situation, where, in the antitrust, there may be complaints filed in the Antitrust Division, but nobody is about to review the Assistant Attorney General's decision not to file a lawsuit.

MR. RUPP: That is correct. It's also different than a situation --

QUESTION: Well, at any rate, you can sue under the antitrust laws.

MR. RUPP: An individual can sue.

QUESTION: Yes.

MR. RUPP: Yes. Yes.

QUESTION: That's the difference.

MR. RUPP: We submit -- our basic submission here is that the Secretary has shown, by overwhelming evidence, the unreasonableness of this rule.

QUESTION: What rule would be reasonable?

MR. RUPP: Well, let me say that the Secretary's regulation -- which were promulgated by the Secretary in an effort to provide some guidance to unions affected by the Labor Management Reporting and Disclosure Act, -- lists a number of factors that are to be taken into account in determining the reasonableness of a rule.

At one point the Secretary indulged in a presumption that a meeting attendance rule, extending over a two-year period of time and requiring no more than 50 percent attendance at the meetings that occurred during that period, would be reasonable absent extraordinary circumstances.

The Secretary's experience under this Act, since 1959, has led him to conclude that an inflexible approach of that sort is not warranted.

The factors that the Secretary presently considers are the relationship of the qualifications to the legitimate needs and interests of the Union, the relationship of the qualifications to the demands for Union office, the impact of

the qualification in percentage terms, and the burden that this particular qualification entails.

QUESTION: This is what the Secretary considered, why? As a predicate to whether or not he's going to bring a suit?

MR. RUPP: That's correct.

Now, that --

QUESTION: Is that the only reason why he considers these things?

MR. RUPP: He's providing -- what he is attempting to do is provide guidance to unions that are affected by the statute.

QUESTION: Yes, but when a particular case comes up, he goes through this process that you've described for us, only to determine whether or not he's going to file a lawsuit, does he?

MR. RUPP: Well, he goes through it in the first instance to decide whether to contact the International Union or the Local involved, to attempt to convince them to change the rule.

QUESTION: I see.

MR. RUPP: There is that kind of an administrative process, if I can call it that, that precedes the filing of a complaint. An effort is made in every case to try to resolve differences between the Secretary and the Union, short of

litigation. Only if those efforts have failed, and the Secretary concludes that the requirement is unreasonable, does the Secretary go to court.

And while the record here does not show the number of cases in which an amicable, or somewhat less than amicable, settlement is achieved, it is achieved in a number of cases.

QUESTION: Well, that's true. I've heard lots of litigation is settled before it gets to court.

Isn't it true that the legislative history of this 1959 legislation indicates that the purpose of this provision was to guard against the unfair or inequitable continuation in office of incumbent Union leadership?

MR. RUPP: That is one of the purposes.

QUESTION: Well, wasn't that the purpose?

MR. RUPP: It was not -- well, perhaps -- simply stated, perhaps that is the purpose, the overriding purpose. But Congress also had other kinds of things in mind that are related to avoiding the perpetuation in office of incumbent leadership, by incumbent leadership.

QUESTION: Yes.

MR. RUPP: Congress had in mind permitting Union members to have a free and democratic voice in Union affairs.

QUESTION: In order to accomplish that basic legislative purpose, in order to avoid the risk of unfairly or inequitably continuing incumbent leadership. Isn't that

right?

MR. RUPP: Yes.

QUESTION: That was the purpose, wasn't it?

MR. RUPP: Yes. Yes, that's the overriding purpose.

QUESTION: And shouldn't that, therefore, be the focus of the Secretary's inquiry as to any rule in determining whether or not it's reasonable, to find out whether it would tend to perpetuate,unfairly perpetuate incumbent Union leadership. And he could determine that by normal, rational predictive, intellectual processes, or -- to which would be contributed the past history, wouldn't that be true?

And not a word of what you read us of that bureaucratic gobbledy-gook mentioned anything about the tendency to perpetuate in office incumbent Union leadership; did it?

MR. RUPP: Well, it is the Secretary's position that if one or two percent of the membership are eligible to run for office, because of a candidacy restriction, that is prima facie evidence of a violation of the Act. I don't know what one --

QUESTION: What has that to do with respect to --

MR. RUPP: I don't know precisely how one would prove that there has been a kind of entrenchment.

QUESTION: By looking at the record, that's how you prove it. That there has been or hasn't been.

MR. RUPP: One would never know precisely whether

those people were maintained in office because they happen to be enlightened leadership and they were able to carry on the business --

QUESTION: Well, if they were not maintained in office, then you would know that, in any event, incumbent leadership had not been maintained in office.

MR. RUPP: Well, but Congress' purpose here was not to turn out Union officers; in fact, --

QUESTION: But if in fact the record showed they had not been, you wouldn't need to take Step Two, would you?

MR. RUPP: If the record showed that they had not been turned out, it would not --

QUESTION: Had not been retained. Then that would be the end of it.

MR. RUPP: No, I do not believe that is the case.

We may well have a situation in which there is a turnover -- in which there is a turnover in the principal Union offices among a relatively small coterie of people.

QUESTION: You mean just passing the office back and forth?

MR. RUPP: Yes, passing the office back and forth. We've seen that.

QUESTION: Yes.

MR. RUPP: That's not what Congress had in mind.

QUESTION: No.

MR. RUPP: Congress had in mind that everyone, every Union member in good standing should have the opportunity to run for office subject to reasonable qualifications uniformly imposed.

Now, the --

QUESTION: But my basic question was simply this, and I hope you will direct yourself to it: If I'm correct, and you tell me if I am, in my understanding of the -- what the legislative history shows to be the purpose of this legislation, i.e., to prevent the continuation in office of incumbent leadership by unfair means. Then why shouldn't the focus of the Secretary's inquiry in determining whether or not these are reasonable rules be whether or not they have the tendency to promote that purpose that Congress thought was undesirable?

MR. RUPP: Well, the focus of the Secretary's inquiry is on whether Union members have had an opportunity for a free and democratic election, which is perhaps another way of stating your point.

In the process of determining whether that has occurred in a particular case, the Secretary looks at a variety of factors, including whether there has been a continuation in office of the same people. But that can never be conclusive, because the -- those people may have been continued in office for entirely legitimate reasons.

But when the Secretary also sees, in addition to or perhaps even when the entrenchment is not clear, that only a very small number of people are eligible to run for office in any given election, that a particular candidacy qualification imposes substantial burdens on members desiring to run for office, and those burdens are not justified in the Secretary's view by the objectives of the particular qualification, the Secretary believes he has the duty to bring the lawsuit, and believes that the particular qualification is unreasonable.

QUESTION: Mr. Rupp, if I can get you back to my original question, how could a Union lawyer, looking at what you just read me about ten minutes ago, and draw up a rule that would be acceptable?

MR. RUPP: It is difficult, I will concede, to deal --

QUESTION: Would you admit it's impossible?

MR. RUPP: No, I will not.

QUESTION: No, I said one that is sure to pass muster.

MR. RUPP: No, I --

QUESTION: Sure I said.

That's impossible.

MR. RUPP: Well, if "sure" means 100 percent assurance, than it's impossible.

QUESTION: In this study you're working with it,

I'm not too sure you could draw one. Under those rules.

Because they don't say one month, two months, six years, eight years, one percent, eleven percent; it has nothing that you can put your finger on.

QUESTION: Would one way --

MR. RUPP: Well, we have to recall that --

QUESTION: Would one way to get at this be to look at the actual attendance records which, in this case, on this record, shows that only 22 out of 660 people were eligible for a number of union offices, and the Secretary might appropriately, to answer this inquiry, look to what figures would enable one-fourth, let us say, of the 660 to be eligible, and then fix the attendance requirements to fit that larger number?

MR. RUPP: Well, --

QUESTION: The only point is --

MR. RUPP: -- of course, it would be ideal if we -- if that kind of predictability were possible, and perhaps in some Unions it is.

QUESTION: And when you do that, would you also realize that this is an International Union -- with how many Locals?

MR. RUPP: With 5,200 Locals.

QUESTION: And you're going to get a rule that -- this Local, the 5,000 Locals all lose because of this one

Local?

MR. RUPP: No, that's not the case.

If you look at the cases cited in the government's brief, on page 25, I believe, the data cited on page 25 of the government's brief, you will find that the situation we have here, because of the operation of this three-year 50 percent meeting attendance requirement, has been about the same in all other Locals that the Secretary has brought suit.

We believe, in most other Locals, --

QUESTION: I'm not talking about that, I'm talking about -- not the ones where he brought suit, I'm talking about the other 5,000.

MR. RUPP: Well, --

QUESTION: Because, isn't your position that this entire provision goes out?

MR. RUPP: Our position is precisely that.

QUESTION: So that means all 5,000 Locals.

MR. RUPP: But the reason is not only because it happens to eliminate, to disqualify from seeking Union office, in most cases in which it is applied, 90, 95, 98 percent of the Union membership.

It is also because it places a very significant, unjustified burden on people desiring to run for Union office. The Steelworkers have a relatively easy task, we believe, so far as the first aspect of the decision, that they have to make.

That is, we believe that that a three-year 50 percent meeting attendance requirement is unreasonable. Unreasonable without more.

QUESTION: What is reasonable? In the Steelworkers.

MR. RUPP: Well, it's exceedingly difficult for me to stand here and say that the Secretary is going to say that a two-year 50 percent rule is okay, that a one-year 50 percent rule is okay; we don't have that experience in the Steelworkers Union.

QUESTION: Well, what is reasonable?

Isn't that important?

MR. RUPP: The reasonable rule --

QUESTION: Isn't that what we are to decide, whether it's reasonable or not?

MR. RUPP: Yes, that is correct.

QUESTION: Right. Isn't a part of that -- could be, very well, as to what is reasonable?

MR. RUPP: Yes, of course.

QUESTION: Well, what is?

MR. RUPP: I simply cannot give you a precise rule. The matter is more complicated than that. It requires more knowledge of the dynamics than I have.

QUESTION: Well, is it any more a requirement now to fix that figure than it was for the judge who was trying this case originally?

The judge trying this case originally was presented with the negative question: Is this unreasonable?

MR. RUPP: That is correct.

QUESTION: Not the affirmative: What is reasonable?

If you prevail in this lawsuit, then the Secretary has the burden of going forward, does he not?

MR. RUPP: The Steelworkers will then look at the situation that prevails, and they are now 5,200 Locals, there were 3700 Locals at the time this litigation began, will attempt to structure a rule, either a meeting attendance rule or some other rule, to serve the objectives that they believe ought to be served, encouragement of attendance at meetings. The Secretary will then look at the operation of that rule, in particular Locals, as many Locals as possible, and try to reach a determination concerning its reasonableness.

QUESTION: Well, that just leaves them at sea, it seems to me. If you --

MR. RUPP: Well, to some extent, --

QUESTION: If you look at it as a question of fact, the trial judge here found that it was reasonable, it's the kind of thing that you say is like a jury determination. Now, obviously, you don't mean that. And if it's not a fact question or a jury determination type of thing, it ought to be capable of some articulation, if these people are going to be guided.

MR. RUPP: Well, it certainly is not a fact question, there are factual disputes involved in this record, I think, that are minor; it is very largely a question of law.

Again, part of the difficulty here, I think, stems from the fact that what Congress did here was to say that any meeting, any qualification for candidacy has to be reasonable. That terms has content, but it has content -- it develops specific content in the process of administering the statute, in the process of the court's looking at the impact of particular rules, in the context of particular Locals.

Now, it seems quite unlikely to me that the Secretary is going to challenge a meeting attendance requirement that extends for a year and requires attendance at 50 percent of the meetings.

We know that a number of International Unions have such rules. The Secretary has not moved against such rules. There are some additional, a few additional unions that have two-year rules that require 50 percent attendance at those meetings.

Again, the Secretary has not thus far challenged those rules because, at this point, they appear to be operating reasonably. They appear to be administered reasonably. And they are responsive to bona fida union objectives.

If the Steelworkers are concerned about being caught

in the kind of whipsaw of the term "reasonableness", not knowing precisely where to turn, one suggestion that they might pursue is to look at what is occurring among unions elsewhere.

This rule is virtually unique in trade union practice; only one other International Union has a three-year 50 percent meeting attendance requirement. That Union requires attendance at two meetings during the first year, two meetings during the second year, and three meetings during the third year, for a total of seven meetings.

The Steelworkers require 18.

We know of no other case involving a rule that so uniformly and consistently disqualifies 90, 95, 98 percent of the membership from standing for office.

QUESTION: Mr. Rupp, what does -- does the record tell us what would happen in this case if there were less people who were eligible to run than there were vacant offices?

That could happen, I suppose.

MR. RUPP: Yes. Yes. We do know what happens in that circumstance, because it occurred here.

In the 1970 election, 23 people were found to be eligible to seek office. Thirteen of those people chose to run. The Union has ten offices. Because of the concentration of people for a couple of offices, trusteeship positions, and

the presidency, one office was left without a nominee who was eligible to run. Under the long-standing practice of this Union, if no one is eligible to seek the office, the Union permits an otherwise ineligible person to run unopposed for this particular office.

QUESTION: Does the record tell us whether that's a -- purely a Local practice or whether that's consistent with the International constitution?

MR. RUPP: I don't think the record tells us.

Now, let me also add a couple of figures that I think are illustrative and go to Mr. Justice Stewart's point about entrenchment. That is, of the 13 people who ran in this Local in 1970, six were incumbents. Most of those ran to fill offices, all but one or two, ran to fill offices and were unopposed in the election.

All incumbents prevailed in the election. Which means that incumbents retained control in this Union in 1970, of six of the ten offices. The only offices for which there was opposition were the offices of president and trustee. For president, there were three candidates; for trusteeships, of which there are three, there were four candidates. Of 660 members, 22 were found to be eligible by virtue of having attended -- by virtue of their having attended the requisite number of meetings. An additional member was found to be eligible by a combination of meeting attendance, credits, and

meeting attendance.

Now, the Steelworkers dispute the Court of Appeals' finding that there were only 23 eligible members here. It seems to us that that challenge comes much too late.

There is evidence in the record, there is testimony in the record involving the Labor Department's investigator, and the question is, "I believe this has been asked" -- it came at the end of government counsel's questions of the Labor Department's investigator -- "I believe this question has been asked. However, to be sure, based on your investigation of the attendance register and the work credits of Stran Steel, the employer, were there any other members of the defendant Local other than Mr. LaRue eligible by virtue of a combination of attendance credits and work credits?"

The answer was no.

QUESTION: Incidentally, how many of the 23 are incumbents?

MR. RUPP: Are incumbents? Nine or ten. So half of --

QUESTION: Almost half.

MR. RUPP: That's right.

Now, that means that of the non-incumbent officers of this Union in 1970, less than two percent of the membership were eligible to run for office.

Now, I might bring to the Court's attention a case

that was decided by the First Circuit a couple of days ago, a panel comprised of Mr. Justice Clark and Judges McEntee and Campbell, involving a rule of the Amalgamated Transit Union. This was a two-year rule, and it required attendance at six meetings for each of those years.

The court held that that rule was unreasonable. Its reasoning, inessence, was that that rule, like this rule, requires people desiring to run for office to plan their candidacies as early as 18 months prior to the election.

QUESTION: Is that decision cited?

MR. RUPP: We don't have a cite yet, but I have given copies to the Clerk of the Court.

QUESTION: What's the name of it?

MR. RUPP: The name of the case is Usery vs. Local Division 1205 --

QUESTION: Usery?

MR. RUPP: Usery, yes. -- of the Amalgamated Transit Union. And, as I say, --

QUESTION: You say you circulated copies of it?

MR. RUPP: I have provided copies to the Clerk, and he will circulate them, I believe.

So, again, it seems to me that the principal problems with this rule are two.

First, it disqualifies the vast majority of the members of Local Steelworkers Union from seeking standing for

office.

Secondly, it places an enormous burden on people desiring to run for office. That is, it requires them to plan their nominations, their candidacies as early as 18 months prior to the election.

The justifications that have been advanced by the Steelworkers for the rule are basically three: encouragement of attendance of meetings; assurance that would-be office holders have an interest in Union affairs; and assurance of capable Union leadership.

While the Secretary does not believe that meeting attendance rules are not responsive to any bona fide Union objectives, he does not believe that this meeting attendance rule is sufficiently related to those objectives to justify the burdens and the effects of the rule.

There is no showing here, for example, that a two-year 50 percent meeting attendance rule would not have been as efficacious in serving the goals that the Steelworkers say they are attempting to serve here as does their three-year 50 percent rule.

QUESTION: Isn't that putting the burden of proof on the wrong party, when you make that argument?

MR. RUPP: Well, the Secretary's position is that the rule is unreasonable because it disqualifies over 90 percent of the Union members from seeking office and requires them to

plan their candidacies 18 months in advance of the election.

QUESTION: And you had the burden of proving that.

MR. RUPP: We believe -- yes, and we believe we have proved that.

QUESTION: -- in a court.

MR. RUPP: Yes. And we believe we have proved that. We believe it is unreasonable without more.

At a minimum, however, we believe that it is unreasonable unless there are overwhelming justifications. We don't think that the Steelworkers have advanced any in this case.

QUESTION: Well, is it your position, the government's position that the Secretary in the first instance, and the district judge dealing with it in the case, is entitled to reach these conclusions on the basis of the tendency of this kind of an attendance rule to undermine democratic principles in the government of the Unions?

MR. RUPP: The goal is free and democratic elections. It seems to me incredible. This Court itself has analogized Section 401(e) to political elections generally. That is, that Congress had in mind, when it structured democratic elections for Unions, elections for the populace at large.

It seems inconceivable to me that this Court would long tolerate a qualification on candidacy that disqualified 96 to 98 percent of the eligible American voters for standing

for public office.

QUESTION: We've upheld a 15-year residency requirement.

MR. RUPP: Well, this Union has what is, in essence, a residency requirement. It's not 15 years, but there was not -- but this Court has never been confronted with data of this sort, evidence of this sort, --

QUESTION: What do you think a 15-year residency requirement would do to some place like Florida or Arizona?

How many people --

MR. RUPP: I do not believe that it would disqualify 96.5 percent or 98 percent of those people who do not presently hold office from seeking office in Florida. It's inconceivable that it would.

And it's difficult to believe that if it did it would be held to be constitutional.

It's difficult to conceive of a qualification -- I think impossible to conceive of a qualification in the political arena, generally, that would disqualify that kind of people and place a 18-month burden on their candidacies, and that this Court would still find that it was constitutional.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Rupp.

Do you have anything further, Mr. Frankel?

QUESTION: Well, just before you sit down, there's no

constitutional question involved in this case, is there?

MR. RUPP: No, there is no constitutional question.

QUESTION: I didn't think so.

MR. RUPP: The question is one of statute.

REBUTTAL ARGUMENT OF CARL B. FRANKEL, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. FRANKEL: Mr. Chief Justice, may it please the Court:

Just a couple of quick points.

One, the average attendance was 47 -- I didn't know whether I had said that at this meeting, and although only 22 met the eligibility requirement, the average attendance at meetings was 47.

Counsel for the Secretary has made a point which I have never heard the Secretary make in any of the meeting attendance cases until now, and that is, that our rule imposed a burden on members. He has never taken the position that the requiremant of attending one meeting every other month was a burdensome requirement on members.

QUESTION: I understood him to say it was a burden on those who wanted to be candidates.

MR. FRANKEL: Well, --

QUESTION: It is a burden on candidacies if only 22 are eligible, would you not agree?

MR. FRANKEL: Well, we get back to the other point,

Your Honor. I have difficulty trying to conclude, or concluding that a rule which is not difficult for a member to comply with is unreasonable because he chooses not to comply with it.

QUESTION: And you don't think that's affected by this enormous number who do not comply with that?

MR. FRANKEL: They chose not to, Your Honor. I mean that's a decision they had. So long as we don't make it difficult for them, they choose to stay away, that's a decision that they have made.

Now, the other point that the Secretary has made is that the regulation is to guide Unions, furnish guidance to Unions, and, as we pointed out, it doesn't furnish any guidance at all. No one could conceivably draft a rule after looking at that regulation that the Secretary has issued.

The other problem with the impact, that is, the members who are eligible, that would disqualify any meeting attendance rule, because you wouldn't know. It would be possible with the one-year rule, with a two-year rule, to have 96 percant. You could have the simplest requirement in the world --

MR. CHIEF JUSTICE BURGER: Your time has expired, --

MR. FRANKEL: Oh, I'm sorry.

MR. CHIEF JUSTICE BURGER: -- Mr. Frankel.

MR. FRANKEL: I thought I had reserved more.

Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 11:11 o'clock, a.m., the case in the above-entitled matter was submitted.]

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