The New Otani Hotel & Garden *and* Hotel Employees and Restaurant Employees, Local 11, Hotel Employees and Restaurant Employees International Union, AFL–CIO, Union. Cases 21–RM–2623 and 21–RM–2627

August 24, 2000

DECISION AND ORDER AFFIRMING DISMISSALS

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On August 26, 1997, the New Otani Hotel & Garden (the Employer) filed a petition for an election, based on the activities (detailed below) of Local 11 of the Hotel Employees and Restaurant Employees (the Union). On October 16, 1997, the Regional Director administratively dismissed the petition, finding that the Union had not exhibited a present demand for recognition. In accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a request for review with the Board on October 29, 1997. While this request for review was pending, the Employer filed a second petition for an election on April 24, 1998, based upon alleged new evidence in addition to that proffered in its original petition. The Regional Director dismissed that petition on June 8, 1998, and the Employer subsequently filed a request for review with the Board on June 17, 1998.

The Board has delegated its authority in this proceeding to a three-member panel.

For the reasons set forth below, the Board agrees with the Regional Director that the Union has not demonstrated a present demand for recognition, and therefore affirms the Regional Director's dismissal of the petitions.[1]

I. CASE 21–RM–2623

A. Facts

The Employer operates a hotel in downtown Los Angeles. The Employer asserts that the Union has been engaging in efforts to organize the employees at its hotel for 4 years, and that an election is therefore mandated due to the Union's present demand for recognition. The Employer relies primarily on the Union's picketing/boycott of the hotel and the Union's repeated requests that the Employer sign a neutrality/card check agreement. With regard to the Union's picketing, the Employer asserts that the Union's placards and leaflets evidence a recognitional object. The Union's placards read: "New Otani Hotel is non-union and does not have a contract with HERE Local 11. Please boycott." Similarly, the Employer refers to and provides copies of Union press releases and other documents, including a publicly disseminated document advising that the nonunion New Otani hotel "has substandard working conditions when compared with Union hotels in downtown L.A." and urging consumers not to patronize the hotel.[2] In further support of its contention that the Union's underlying objective is recognitional, the Employer asserts that the Union sought to "punish" the Employer with an economic boycott until it would have no choice but to recognize the Union.

B. Analysis

The Board has consistently construed Section 9(c)(1)(B) as requiring evidence of a *present* demand for recognition as the majority representative of an employer's employees before the employer's petition will be processed. The starting point is the language of the statute. Section 9(c)(1) provides in relevant part that where a petition is filed:

> (B) by an employer, alleging that one or more labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a) . . . the Board shall [process the petition].

Section 9(a) provides in relevant part:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Literally, the words of the statute dictate that "absent a claim by someone for recognition as the majority-supported representative of the employees, an employer is not entitled to an election under Section 9(c)(1)(B)." *Albuquerque Insulation Contractor*, 256 NLRB 61 (1981), reaffirmed in pertinent part in *PSM Steel Construction*, 309 NLRB 1302 (1992).

As discussed in full in *Windee's Metal Industries,* 309 NLRB 1074, 1074–1075 (1992), when Congress enacted Section 9(c)(1)(B) as part of the Taft-Hartley Act of 1947, it recognized that there was a potential for abuse in giving employers expanded rights to petition for an election, in that employers might file petitions early in organizational campaigns in an effort to obtain a vote rejecting the union before the union had a reasonable opportunity to organize. The legislative history shows that Congress therefore included the language limiting employer petitions to cases in which the union has presented a "claim to be recognized as the representative defined in section 9(a)," and that Congress understood this language to mean that employers could ask for an election only after

[1] The Board has consolidated these cases for purposes of decision-making.

[2] This document additionally alleges that after workers at the New Otani began an organizing effort, management responded with a "vicious and illegal anti-union campaign" and, as a consequence, the employees and Union were seeking a pledge from the Employer that it would not threaten the employees or interfere with their organizing campaign.

a union had sought recognition as the majority representative of the employees. Id. (citing legislative history). As the Board explained in *Albuquerque Insulation*, supra,

> The Section 9(c)(1)(B) requirement that an employer may secure an election *only if* a claim is made by a party that it is the majority representative of the employees was placed in the statute to prevent an employer from precipitating a premature vote before a union has the opportunity to organize. See S. Rept. 80–105 on S. 1126, 80th Cong. 1st Sess. 11 (1947); *Legislative History of the Labor Management Relations Act, 1947*, 417 (G.P.O. 1974). Thus, the Act contemplates that a union which is not presently majority representative may decide when or whether to test its strength in an election by its decision as to when or whether to request recognition or itself petition for an election. This is important because, under Section 9(c)(3) and Section 8(b)(7)(B), a Board-conducted election has the effect of barring any further election or recognitional picketing for a full year. Until the union makes such a move, it is free to organize without the imposition of an election . . . . [O]nce the union seeks recognition as majority representative, the election process—with its potential risks and rewards—may be invoked by either side. But, until that time, an employer may not attempt to short-circuit the process or immunize itself from recognitional picketing by obtaining a premature election.

Albuquerque Insulation, 256 NLRB at 63 (emphasis added).

The mere fact that the union is engaged in activities which it hopes will enable it *eventually* to obtain recognition by the employer is not evidence of a present demand for recognition such as would support the processing of an employer petition. As the Board has noted, all union organizational activity, including such common activities as soliciting authorization cards, meeting employees and appointing in-plant committees, has as its ultimate goal the union's recognition as majority representative. *Windee's Metal Industries*, supra at fn. 5.[3] But if such activities were considered sufficient to allow an employer's petition for an election to go forward, then employers could do precisely what Congress sought to prevent in enacting 9(c)(1)(B)—short-circuit the union's organizing campaign by precipitating a premature election. Thus, the Board has held, "it would be contrary to the Congressional intent underlying Section 9(c)(1)(B) to find that any conduct with a representational objective, which falls short of an actual, present demand for recognition, will support an election petition filed by an employer." Id. at 1075.

In accordance with that principle, the Board has consistently held that informational picketing as defined in the second proviso to Section 8(b)(7)(C) of the Act—that is, picketing that truthfully advises the public, including consumers, that an employer does not employ members of, or have a contract with, a union—does not, without more, establish that the union has made a "claim to be recognized" as required by Section 9(c)(1)(B), even assuming that the union is interested in organizing the employees and in ultimately representing them. Id.; *Martino's Complete Home Furnishings*, 145 NLRB 604, 607 (1963); *John's Valley Foods*, 237 NLRB 425, 426 (1978); *Autohaus-Brugger, Inc*., 173 NLRB 184 (1968); *Old Angus Restaurant*, 165 NLRB 675 (1967); and *Miratti's, Inc.*, 132 NLRB 699 (1961).[4] The Board has also made clear that picketing for the purpose of putting pressure on the employer to conform its wage and benefit practices with area standards does not constitute a demand for recognition that would support a petition under Section 9(c)(1)(B). *Old Angus Restaurant*, supra.[5] Only if informational or area standards picketing occurs in conjunction with other actions or statements establishing that the union's real object is to obtain immediate recognition as the employee's representative will the Board find that the union's conduct is tantamount to a present demand for recognition. *Capitol Market No. 1*, 145 NLRB 1430 (1964). Such other actions or statements might include a demand by the union for a contract or a statement by the union that picketing would cease if the employer would agree to negotiate and sign an agree-

[3] See also *Laborers Local 840 (C. A. Blinne Construction Co.)*, 135 NLRB 1153, 1168 fn. 29 (1962) (observing that "in the long view all union activity, including strikes and picketing, has the ultimate economic objective of organization and bargaining").

[4] As the Board explained in *Windee's*, supra, 309 NLRB at 1075–1076:

> [I]t would be inconsistent with the statutory scheme established by Sec.n 8(b)(7) of the Act to find that informational picketing alone is sufficient to warrant processing an election petition under Section 9(c)(1)(B). Thus, while Section 8(b)(7)(C) prohibits a union from engaging in recognitional picketing unless an election petition has been filed within a reasonable period of time not to exceed 30 days, and provides for an expedited election without regard to the provision of Section 9(c)(1) under those circumstances, the second proviso to Section 8(b)(7)(C) specifically exempts informational picketing from the above prohibition and expedited election process. If informational picketing were found to be equivalent to a claim for recognition under Section 9(c)(1)(B), then an employer could file an election petition under that provision of the Act as soon as the informational picketing commenced and, if the union lost the election, further recognitional picketing--including informational picketing--would be barred for 12 months pursuant to Section 8(b)(7)(B). This result would be inconsistent with the immunity granted such picketing under the second proviso to Section 8(b)(7)(C). [Footnotes omitted.]

[5] The Board has long recognized that a union "has a legitimate interest apart from organization or recognition that employers meet prevailing pay scales and employee benefits, for otherwise employers paying less than the prevailing wage scale would ultimately undermine the area standards." *Plumbers Local 741 (Keith Riggs Plumbing)*, 137 NLRB 1125, 1125–1126 (1962). As the Board explained in *Laborers Local 41 (Calumet Contractors Assn.)*, 133 NLRB 512 (1961), the objective of eliminating substandard working conditions can be achieved without the employer either bargaining with or recognizing the union. Thus, area standards picketing "is not tantamount to, nor does it have an objective of, recognition or bargaining." Id.

ment. See, e.g., *Roberts Tires*, 212 NLRB 405 (1974); *Holiday Inn of Providence*, 179 NLRB 337 (1969); *Rochelle's Restaurant,* 152 NLRB 1401, 1403 (1965).

Applying these principles to this case, we agree with the Regional Director that the Union has not engaged in any conduct which demonstrates a present demand for recognition as the majority representative of the Employer's employees. Dismissal of the Employer's election petition is therefore warranted.

It is, of course, undisputed that the Union's campaign has an overall organizational objective with the eventual goal of obtaining recognition as the employees' representative. As we have discussed, however, the law is clear that the existence of such objectives does not mean that the union is making an immediate "claim to be recognized" as the employees' representative within the meaning of Section 9(c)(1)(B). Here, there is no evidence to indicate that the Union at any time conveyed to the Employer any claim, written or oral, that it represented its employees or that it was seeking immediate recognition or a contract. Rather, in a letter from the Union's president to the Employer's general manager requesting that the Employer accept a neutrality agreement, the Union president specifically disclaimed any immediate recognitional objective, stating: "Please understand that I am not asking you to recognize Local 11 as your employees' bargaining representative, nor am I asking you to negotiate a collective bargaining agreement with our union." Although the Employer contends to the contrary, there is nothing in the record to indicate that the Union has engaged in conduct inconsistent with that disclaimer, or that the Union has otherwise conveyed to the Employer that it did not in fact mean what it said.

The only picketing engaged in by the Union was informational picketing as defined in the second proviso to Section 8(b)(7)(C). The statements made on the Union's placards, advising the public that the Employer does not have a contract with the Union and requesting a boycott, were limited to language that is expressly sanctioned under that proviso. As discussed above, under well-established precedent, such picketing does not constitute evidence of a present demand for recognition that would support the processing of a petition under Section 9(c)(1)(B).[6]

Neither is there anything in the content of the handbills distributed by the Union that would demonstrate an immediate recognitional object. The allegation in the handbills that working conditions at the hotel are substandard when compared with union hotels is not, as noted above, evidence of such an object, nor does the fact that the handbills accused the Employer of engaging in unlawful conduct in response to the union organizing campaign demonstrate such an object.

Finally, we reject the Employer's contention that the Union's repeated requests that it sign a neutrality/card check agreement evince a present demand for recognition. Under such an agreement, the Employer would pledge not to campaign against the Union during an organizing campaign and to recognize the Union upon proof that a majority of workers have signed authorization cards. The Employer provides numerous examples of such requests in the form of letters to Employer management from the Union, letters to Employer management from various third-party groups and community leaders,[7] and statements addressed to the public.[8] The Employer asserts that based on the Union's continuing organizing efforts, the economic boycott (and associated pressure from third-party community leaders), and the above documents, it is evident that the Union is requesting recognition through a card-check procedure. In its

[6] The decisions cited by the Employer in an effort to establish that the picketing in the instant case was covered by Sec. 8(b)(7) of the Act are not dispositive. As the Board noted in *Martino's Complete Home Furnishings*, supra at 607–608 and fn. 16, evidence that the union is engaged in informational picketing with an *ultimate* recognitional object may, in some circumstances, violate Sec. 8(b)(7) even though it does not seek immediate recognition and therefore would not provide a basis for processing an employer petition under Sec. 9(c)(1)(B). We note, moreover, that the limitations in Sec. 8(b)(7) apply not just to picketing with an object of forcing or requiring the employer to recognize or bargain with the union, but also to organizational picketing. Thus, the question of whether particular picketing violates 8(b)(7)—a question which is not before us in this case—is analytically distinct from the question of whether the picketing constitutes a "claim to be recognized" as the employees' representative under Sec. 9(c)(1)(B).

[7] Specifically, the Employer attaches letters from the Reverend Jesse Jackson and the Asian Pacific American Labor Alliance to the Employer's general manager, which urge the Employer to accept a neutrality agreement and card check, and offer to participate in discussions aimed at resolving the "dispute" between the Union and the Employer.

[8] Additionally, the Employer claims that one document addressed to hotel guests from the "New Otani Workers Organizing Committee" makes a direct request for a card check and, thus, constitutes a present demand for recognition. The document provides in part:

> Tell the management of this hotel to stop intimidating and harassing us for organizing and let us vote for a union by signing cards YES or NO in the privacy of our homes. The majority of cards submitted would democratically decide.

We note that this document was not authored by the Union, but rather by what appears to be an in-house organizing committee. As such, for the Employer to attribute the statements contained therein to the Union, it must be established that the committee was acting as an agent of the Union. The Board has established that members of an in-plant committee are not, simply by virtue of their membership, agents of the union. See *Cambridge Wire & Cloth Co.,* 256 NLRB 1135, 1139 (1981), enfd. 679 F.2d 885 (4th Cir. 1982). Generally, such employees will not be found to be agents of the union unless they serve as "conduits" for communication between the union and other employees, or are substantially involved in the election campaign in the absence of union representatives. See *S. Lichtenberg & Co*., 296 NLRB 1302 fn. 4 (1989); *United Builders Supply Co.*, 287 NLRB 1364, 1365 (1988); and see also *Advance Products Corp.*, 304 NLRB 436 (1991).

The Employer presented no evidence to suggest that any of the employees comprising the New Otani Workers Organizing Committee were acting as agents of the Union; furthermore, Local 11 has been quite vocal and appears responsible for the direction of the picketing, boycott, and dissemination of related documents. As such, we do not believe that the employee union supporters in this instance should be deemed agents of the Union.

opposition, the Union maintains that its attempts to secure a neutrality agreement are concerned with future campaign conduct, and that "[a] card-check as the hypothetical end of a neutral campaign does not support a present demand for recognition."

We agree with the Regional Director's conclusion that "the instant circumstances do not raise a claim by the Union that it represents a majority of the employees in the appropriate unit." The Union's repeated requests that the Employer sign a neutrality/card check agreement necessarily contemplate an organizing drive during which the Employer would pledge not to express any opinion on whether its employees should choose the Union as their bargaining representative or to interfere with employees' organizational activities.[9] As such, the Union's requests do not constitute a *present* demand for recognition. In all of the examples of such requests submitted by the Employer, the language utilized by the Union is conditional; for example, a Union press release provides that "[u]nder [the card check] process, which is endorsed by the NLRB, *if* a majority of the workers sign union cards, the hotel *would recognize* the union based on their signatures" (emphasis added). Our dissenting colleague mischaracterizes the Union's request for a neutrality/card check agreement as a straight demand for immediate recognition upon a card check. As we have indicated, the Union in this instance merely requested—in conjunction with its request for a neutrality agreement—that the Employer agree to a card check procedure, in lieu of a Board election, at some point *in the future*. Our colleague also fails to distinguish between an organizational objective (contemplating a future claim for recognition) and a recognitional objective (making a present claim for recognition). This, explained in *Albuquerque Insulation Contractor*, is a critical distinction, necessary to prevent an employer from precipitating a premature election and thus interrupting employee efforts to organize for at least the Section 9(c)(3) year.[10]

Moreover, as noted above, the letter from the union president to the Employer's general manager requesting that the Employer accept a neutrality agreement specifically contains a disclaimer stating that the Union is not asking the Employer to recognize or negotiate an agreement with the Union. Although the Employer correctly asserts that the Board will disregard self-serving union disclaimers, there is no evidence in this instance that the Union acted inconsistently with its position. Thus, we similarly are not convinced that the Union's requests for a neutrality/card check agreement, in conjunction with the Union's picketing and boycott, are sufficient to establish a present demand for recognition.

II. CASE 21–RM–2627

A. Facts

A similar analysis applies to the Employer's second petition for an election, in which the Employer alleged that all the facts and circumstances set forth in its initial petition—in conjunction with "new evidence"—reveal a present demand for recognition by the Union. In its request for review of the Regional Director's dismissal of the second petition, the Employer asseverates that the following statements contained in a union newsletter and a union flyer indicate that the clear objective of the Union's activities at the Employer's hotel is recognition: (1) the statement from an article in the Union's newsletter that the "campaign to organize the non-union New Otani Hotel in Los Angeles entered its fifth year in 1997;" (2) the statement, "Will we get these standards without organizing? Of course not, that's the road to take-aways and give-backs" in a union newsletter article discussing poor work standards and the missive of Local 11 to unionize employees in its jurisdiction; and (3) a flyer that sets forth the salaries of employees at several unionized hotels in Los Angeles, asks New Otani employees the amount of their compensation, and urges employees to "join the union."

B. Analysis

We note initially that the second piece of evidence proffered by the Employer is not particularly pertinent and is somewhat speculative, in that the union article makes a broad reference to organizing employees at facilities in the Los Angeles area, without any specific reference to the Employer. Moreover, the statement, as well as the other two examples,[11] simply indicates that the Union is engaging in efforts to organize the Employer's employees. For the reasons set forth above, however, we do not believe that they embody a present demand for recognition. As stated by the Board in *Windee's Metal Industries*,

> [i]t would be inconsistent with the language and legislative intent of Sec. 9(c)(1)(B) to find that such [common organizational tools as soliciting authorization cards, meeting with employees, and appointing in-plant committees], or informational picketing, are sufficient to allow an employer to petition for an elec-

[9] Such agreements have been held to be enforceable under Sec. 301 of the Act. *Hotel & Restaurant Employees Local 217 v. J. P. Morgan Hotel*, 996 F.2d 561 (2d Cir. 1993); *Hotel Employees Local 2 v. Marriott Corp.*, 961 F.2d 1464 (9th Cir. 1992).

[10] The only decision cited by the Employer in support of the contention that a direct request for a card check (as distinguished from a neutrality/card check agreement) constitutes a present demand for recognition is inapposite to the instant case. In *Rockwell International Corp.*, 220 NLRB 1262 (1975), the union, following an organizing campaign, notified the employer that it represented a majority of its employees and requested recognition, and the two parties subsequently agreed to a card check process to determine majority status.

[11] With regard to the flyer urging employees to "join the union," we proceed on the *assumption* that it was produced by Local 11 within the period of time following the dismissal of the Employer's first petition but preceding the second petition, as the document contains no date nor any evidence as to authorship.

> tion merely because an objective of the activity may be to obtain eventual recognition.

[309 NLRB 1074, 1075 fn. 5 (1992) (citation omitted).]

Finally, the Employer's argument analogizing neutrality agreements to prehire agreements is misguided. A prehire agreement, a convention permitted in the construction industry, enables a union and an employer to execute a contract—which establishes wages and other terms of employment—without the union first having to establish majority status. As such, a prehire agreement is a collective-bargaining agreement upon its execution. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. *Iron Workers, Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). Consequently, the Board has indicated that when a union pickets to obtain a prehire agreement beyond the time limitations set forth in Section 8(b)(7), it engages in unlawful recognitional picketing. See *Laborers Local 1184 (NVE Constructors)*, 296 NLRB 1325 (1989).

In contrast, a neutrality agreement merely establishes that an employer will remain neutral in the face of a union organizational campaign. Its execution—even if coupled with a card check agreement—does not create a collective-bargaining agreement, not even one conditioned on the union's obtaining majority status. *HERE Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1469 (9th Cir. 1992) ("Enforcement of the neutrality clause raises no representational issues."). As such, picketing to obtain a neutrality agreement—unlike picketing to obtain a prehire agreement—does not seek the adoption of a collective-bargaining agreement or constitute a present demand for recognition. As the two situations are not comparable, we believe the Employer's argument lacks merit.

For all the foregoing reasons, we deny review of the Regional Director's decisions and affirm the dismissal of the election petitions.

MEMBER HURTGEN, dissenting.

I would grant the Employer's requests for review. There are substantial issues that warrant full consideration by the Board.

The Employer has filed two RM petitions. The Employer contends that the Union has demanded recognition as the representative of its employees. The Regional Director, concluding that the Union had not made a present demand for recognition, administratively dismissed both Employer petitions. My colleagues deny review. I would grant review. I think that it is at least arguable that the Union is claiming recognition, and thus the petitions are processable under Section 9(c)(1)(B).

In the first place, I note that the Union picketed with signs protesting the fact that the Employer was nonunion, i.e., that the Employer was not recognizing the Union. Such picketing is indicative of a recognitional objective.[1] I recognize that such recognitional picketing may not be *unlawful* under Section 8(b)(7)(C). But that is because of the "publicity" proviso to that Section. However, that does not mean that the picketing is not recognitional. It merely means that the law will not condemn, as unlawful, recognitional picketing carried out in a certain way.[2]

Similarly, I recognize that such picketing means that the Union is seeking recognition through the stratagem, at least in part, of enlisting the support of the public. However, that does not mean that the picketing is not for a recognitional object.[3]

Concededly, there are cases which are contrary to the position set forth above.[4] For the reasons set forth above, I believe that the Board needs to reexamine these cases. However, even if the aforementioned picketing, without more, does not show a present recognitional objective, the fact is that there is something more in this case. The Union demanded a card check, and recognition if the card check showed majority status. My colleagues are of the view that this is not a demand for recognition.

The majority view appears to be that the card-check agreement would only operate "*in the future*" (majority's emphasis). Of course a card check agreement, by its very nature, only operates in the future. That is, it is an agreement *to have* a card check. More importantly, in the instant case, the Union was engaged in an ongoing organizational campaign, and was seeking an agreement for a card check in connection with that campaign. Thus, we are not here presented with an issue concerning a card check agreement for some future hypothetical campaign. A card check resulting in recognition is no less imminent than recognition following an election. Why should a request for a card check be treated as less recognitional than a petition for an election?

My colleagues also appear to argue that recognition would follow only if the card check showed majority status. In my view, this distinction may be too fine. In the case of a petition, it only results in recognition based on the results of the election. The Union sought recognition. It, of course, realized that neither the Employer (nor the law) would permit recognition without a demonstration of majority status. Thus, it sought a card check. But, surely, this does not gainsay a recognitional objective.

Contrary to the suggestion of my colleagues, I am not relying on the "neutrality" aspects of the Union's demand. The Union's quest to have employer neutrality

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[1] *Crown Cafeteria*, 135 NLRB 1183 (1962). The very language on the sign belies a contention that the Union sought only to raise the Employer's employment standards.

[2] Contrary to the suggestion of my colleagues, I am not relying on any *organizational* aspects of the Union's picketing. Rather, I am relying on the *recognitional* aspects of that picketing.

[3] *Crown Cafeteria*, supra.

[4] *Windee's Metal Industries*, 309 NLRB 1074 (1992); *Martino's Complete Home Furnishings*, 145 NLRB 604 (1963).

with respect to an organizational campaign is not the same as a demand for recognition. Under a "neutrality" agreement, the employer simply agrees not to oppose a union's organizational effort. Under a "card-check recognition" agreement, the employer agrees to waive its right to a Board election. In the instant case, the Union *is* seeking recognition upon the acquisition of card-majority status.

My colleagues apparently distinguish between a present demand for recognition and an ultimate demand for recognition. However, Section 9(c)(1)(B) contains no such distinction. And, even if it did, it is at least arguable that, as shown above, the Union is presently seeking recognition in these cases.

My colleagues cite the language of Section 9(c)(1)(B), and they argue that an employer petition (RM) must be supported by a claim for recognition. The argument misses the mark. No one is contending that an employer can force an election on a union that has not made a claim for recognition. Rather, the issue in this case is *whether* the Union has made a claim for recognition so as to warrant the processing of the RM petitions.

For the reasons set forth above, I believe that the circumstances of this case raise a genuine issue as to whether the Union was seeking recognition. These circumstances include (1) picketing for a recognitional object; (2) engaging in an organizational campaign; (3) seeking an employer agreement to recognize the Union upon acquisition of card majority status. I concede that any one of these, by itself, may be insufficient to support a finding that the Union was seeking recognition. However, in my view, the totality of circumstances raises a genuine issue concerning the question of whether the Union was seeking recognition. Those objective circumstances, rather than the Union's self-serving declarations, suggest a present recognitional objective.

Albuquerque Insulation Contractor, 256 NLRB 61 (1981), is quite distinguishable. The union there made no claim to be the Section 9 majority representative. The union sought only an 8(f) relationship. Since there was no claim of majority status under Section 9, there was obviously no warrant for an election. By contrast, as noted above, the Union here sought Section 9, i.e., majority-based recognition.

My colleagues also cite the need "to prevent an employer from precipitating a premature vote before a union has an opportunity to organize," thereby interrupting employees' efforts to organize for at least the 9(c)(3) year. They also express concern that an employer may seek an election "early in organizational campaigns in an effort to obtain a vote rejecting the union before the union had a reasonable opportunity to organize." Those statements have no relevance to the instant case. The Employer contends, and the Union does not dispute, that the Union's efforts to organize have continued for *over 4 years*. Thus, this is not a case about a "premature" vote to be held "early" in an organizational campaign.

For all of the above reasons, I believe that the Employer's request for review raises substantial issues. I would therefore grant the request.