

In the Matter of ADVANCE PATTERN COMPANY, EMPLOYER *and* PRINTING SPECIALTIES AND PAPER CONVERTERS UNION No. 362, AFL, PETITIONER

Case No. 20-RC-116

SUPPLEMENTAL DECISION
ORDER
AND
DIRECTION OF ELECTION

October 28, 1948

On August 27, 1948, the Board issued a Decision and Order¹ dismissing the petition in the above-entitled case. Upon its own motion, the Board has reconsidered the entire record in this case, and now finds as follows:

1. The Employer, a New York corporation, is engaged in the manufacture, distribution, and sale of paper dress patterns. All patterns are manufactured in its New York City establishment. Stockrooms are maintained in San Francisco and Chicago. Only the San Francisco stockroom is involved in this proceeding. Patterns shipped from the New York office to San Francisco have an annual value in excess of \$65,000. The value of patterns shipped by the San Francisco office to points outside the State of California is in excess of \$15,000 annually.

The Employer admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization involved claims to represent employees of the Employer.

3. The petition filed in this case disclosed that the Petitioner had answered in the negative question 12, which read as follows: "Has the petitioner notified the employer of claim that a question concerning representation has arisen?" and "Has the employer failed to recognize petitioner?" After the customary investigation the Regional Office set the case down for hearing. The Employer entered a special appearance and moved to dismiss the petition, on the ground that the Petitioner had not requested recognition and the Employer had not declined to grant recognition *before* the petition was filed. The

¹ 79 N. L. R. B. 209.

Employer contended that the requirements of Section 9 (c) (1) of the amended Act² made mandatory such a demand and declination prior to the filing of petition, and in effect constituted jurisdictional prerequisites which the statute required be met before the Board could proceed to a decision on the merits in any representation case of this character. We granted the Employer's motion. Upon careful re-examination of our decision, however, we are now persuaded that the motion should have been denied and the case decided on its merits.

Section 9 (c) of the original Act³ made no provision for the filing of petitions. By its terms, the Board was granted broad power to investigate representation controversies and to certify representatives for collective bargaining. Early in its history, the Board adopted a practice of requiring parties seeking resolution of representation issues to file petitions with the Board. These were considered as aids in the investigatory function conferred on the Board by Section 9 (c); and, indeed, we have held them to constitute a part of the investigation. The petition forms call primarily for information of a routine character, enabling quick collection of fundamental facts such as the name and location of the employer, name of the labor organization, number of employees involved, and like matter. In order that an appraisal might be made of the position of the employer with respect to union recognition, the form also contained a question similar to Question 12.

² Section 9 (c) (1) provides:

"Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in Section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in Section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in Section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

³ Section 9 (c) of the original Act, in effect from 1935 to 1947, provides:

"Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives."

Although it is possible that occasions have arisen when regional officials refused to proceed with an investigation of the merits of a controversy in the absence of complete or correct answers to this question we had little or no experience of that sort. The questions on the petition forms, and the answers sought, together with an almost invariable use of informal conferences, were viewed as investigatory techniques designed to implement our statutory function to determine the existence of real representation issues. They never assumed the ominous attributes of jurisdictional qualifications, so as to compel the Board to stand idly by even though the whole controversy pointedly demonstrated a need for us to resolve it. We were sensitive to the non-adversarial characteristics of this aspect of our statutory duty, and never permitted defects of inaccuracy or incompleteness to frustrate the Act's effectiveness. Consequently, we adhered faithfully to the practice of deciding on its merits any case in which it appeared that a real question concerning representation *existed*, despite the fortuity that a petition might have disclosed faulty, incomplete, inaccurate, or otherwise imperfect information. We found that the Board could only achieve a fair measure of success in performing its obligations by following that policy.

In the present case there is no indication that the practice was abused or carelessly followed, or that there was other laxness in performance of duty by the Board's regional staff. Apart, then, from the impact of the amendments to Section 9 (c), we would doubtless originally have proceeded to a disposition of this case on its merits. We are asked to change ancient practice by discarding it, because Section 9 (c), as amended, says that a petition filed on behalf of employees for certification shall contain an allegation that the employer "declines" (*not* "has declined") to recognize their representative. It is contended that the plain language of the amendment creates a *jurisdictional* condition where none existed before, and that therefore we are powerless to proceed in this case because the petition did not allege its existence. We are now persuaded, however, that neither the language of the amendment taken in context, nor any broad purpose of the present Act viewed as a whole, dictates such a conclusion. The latter, indeed, dictates the opposite.

In the earlier decision, we gave a strictly literal interpretation to the new language in Section 9 (c) (1), as our colleagues do today. The effect was to impose a jurisdictional requirement, rigid compliance with which was necessary before the Board could proceed with the case on its merits. We agree that such a disposition was justified upon the technical basis we then thought appropriate. We have since

been impressed, however, with the unreasonableness of such a construction.

The amendments to the original Act created a number of new rights and established new procedures to secure such rights. Section 9 (c) (1), taken as a whole, provides for a number of proceedings unknown to the original Act. For example, employers are given the right to petition for representation elections,⁴ and employees are given an opportunity to unseat, by way of a decertification proceeding, an incumbent representative. It was necessary to spell out in some detail the differentiating features of these proceedings. We believe that the amended section was intended merely to describe these differences.

This interpretation is strengthened by a reading of other sections of the new legislation which are unequivocally proscriptive, and are calculated to abolish or to change decisional and administrative concepts hitherto prevailing. Such proscriptions in the jurisdictional sense appear, for example, in those provisions of the present Section 9 by which the Board is prohibited from finding certain units to be appropriate for collective bargaining, and by which the Board is enjoined from initiating investigations in the absence of compliance by applicants with certain filing requirements. If like proscriptions were meant to be achieved in Section 9 (c) (1), these contrasting instances of explicitness impel the belief that Congress would have treated similarly the provision before us here. By a repeated use of the present tense throughout the amended Section, Congress gave recognition to the primary function of the Board in representation cases—that we should resolve, on their merits, representation issues if, *at any time*, a question concerning representation was shown to exist. We cannot accept the idea that Congress was completely unaware of our practice which, as we have said, was designed and developed precisely to achieve that objective.⁵

The foregoing reasons, in their combined significance, persuade us that the amendments to Section 9 (c) cannot be viewed as creating jurisdictional limitations. But even if we were inclined to adhere with the rigidity disclosed by our dissenting colleagues to literal meanings, we find an overriding consideration in the statute itself which impels us to adopt the more reasonable interpretation we find both

⁴ Employer petitions should and will, as our dissenting colleagues suggest, be governed by the same regulations and rules of decision as union petitions. An employer petition, like a union petition, will be processed when a question of representation actually exists.

⁵ It is more than coincidental, moreover, that the language used by Congress here is a faithful reflection of that which the Board had previously used in its petition forms. We believe that the choice of language was not unrelated to knowledge of Board practice under the original Act.

Moreover, there is absolutely nothing in the Reports of Congressional Committees or in the debates on the floor that suggests a desire to change or criticize existing Board practice. This contrasts sharply with the legislative history on all other procedural matters.

permissible and preferable. Section 8 (b) (4) (c) of the new legislation provides that it shall be an unfair labor practice for a labor organization, or its agents:

“to engage in, or to induce or encourage the employees of any employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is:

Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been *certified* as the representative of such employees under the provisions of Section 9.” [Italics added.]

By this provision, Congress attributed to certification under Section 9 a special importance. Our certificate was protected thereby from challenge by any labor organization or its agents so long as it remains vital. Congress, by this provision, expressed a firm intention that strikes or other concerted activity directed to accomplish the overthrow of an established certified representative should be curbed. It is, in effect, a prohibition against “raiding;” as such, its value to established collective bargaining relations is immediately apparent. Its incorporation in Section 8 (b) (4) discloses the seriousness with which Congress viewed the evil it sought to prevent. This is so because Congress, as a concomitant to the effectuation of that purpose, provided in Section 10 (1) that mandatory injunctive relief should be available to prevent with dispatch any violation of this character. Consequently, we must consider this objective of Congress as one of fundamental importance.

But it would appear that if we attributed to the new language in Section 9 (c) (1) the jurisdictional quality which our dissenting colleagues have insisted it must have, we would effectively abort any hope of effectuating the Congressional purpose disclosed by Section 8 (b) (4) (c). Our colleagues’ construction of the new language in Section 9 (c) would make it impossible for a labor organization which is currently recognized by an employer to obtain certification under Section 9, because such a union could in no case honestly allege in its petition for certification that its employer declines to recognize it. We would not destroy a basic guarantee of the new legislation by rigid insistence on literalness. We believe that our duty as administrators of the new legislation does not authorize so casual a disregard of one of its paramount purposes.

There is substantial legal precedent to confirm our view. In *Camminetti v. U. S.*, 242 U. S. 470, cited by our dissenting colleagues, the Supreme Court recognized that although statutory language may be plain, should it lead to absurd or wholly impractical consequences, it may be interpreted so as to produce a result in harmony with fundamental objectives of the *entire* statute in which it appears. So here, where a literal construction would lead to the practical destruction of a purpose of such importance to the Congress, as Section 8 (b) (4) (c), we would be something less than practical if we continued to close our eyes to the larger issue. In *Ozawa v. U. S.*, 260 U. S. 194, the Supreme Court in stating the proper rule of statutory construction said:

“It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. *Holy Trinity Church v. U. S.*, 143 U. S. 457; *Heydenfeldt v. Daney Gold Mining Co.*, 93 U. S. 634, 638.”

We feel this language is so patently apposite that a reluctance to apply its import could not be condoned. The *Ozawa* case was cited with approval by the Supreme Court in *U. S. v. American Trucking Associations*, 310 U. S. 534, in which the Court again speaking of the proper rule of statutory construction, said:

“There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases, we have followed their plain meaning. When that meaning had led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the Act. Frequently, however, when the plain meaning did not produce absurd results but merely an unreasonable one, ‘plainly at variance with the policy of the legislation as a whole,’ this Court has followed that purpose, rather than the literal words.”

We think that the construction we are placing on the new language in Section 9 (c) is thoroughly consonant with a policy to encourage voluntary relationships between employers and labor organizations. The past record of 12 years confirms our belief that employers

who desire to recognize labor organizations without recourse to the procedures of the Board have in no way been prevented from doing so by omissions or other defects of the type disclosed by this petition. Ample opportunity is afforded under our practice for parties to execute agreements during informal conferences, at which they are encouraged by the Board to solve their own problems. Abrupt departure from what has proved salutary for so many years can produce only the atmosphere of a tensely litigated law suit in which all sides will be quick to seize upon technical defects in pleadings to gain substantive victories. Such a step can hardly lead to fruitful collective bargaining.

We are disturbed by our dissenting colleagues' conviction that our practice has produced "chaos and confusion." Apparently, however, what has disturbed the minority is a possible lack of uniformity in the application of investigatory techniques. We are concerned, as they are, over any unreasonable diversity which may exist. We doubt, however, that—if there have been substantial differences in investigatory methods—they have ever contributed to produce either chaos or confusion. Statistics compiled by the Board over the last 12 years disclose an increasing use of peaceful procedures to resolve representation issues, with the positive consequence that in this area industrial warfare has largely disappeared. We are fully prepared, however, in view of the vigor with which our dissenting colleagues have expressed their concern, to correct administratively whatever laxness has developed in the use of customary procedures.

Turning to the merits of the case at hand, the existence of a real question concerning representation was made fully apparent at the hearing. After filing its petition, the Petitioner requested recognition of the manager of the San Francisco office of the Employer, the only office involved. The manager, at that time and again at the hearing, claimed lack of authority to recognize the Petitioner, stating that all her orders came from the New York office of the Employer. It does not appear that any effort was made by the manager, after the first request, to obtain authority either to recognize or deny recognition to the Union. The Employer's attorney at the hearing also maintained that he had no authority to recognize the Union. It is clear from the Employer's position, both prior to and at the hearing, that a question concerning representation now exists which can best be resolved by holding an election. Accordingly, we hereby, on reconsideration, deny the Employer's motion to dismiss; we shall set aside our original Decision and Order and direct that an election be held.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees at the San Francisco office of the Employer, including part-time employees but excluding supervisors.⁶

ORDER

IT IS HEREBY ORDERED that the Decision and Order in the above-entitled matter, issued by the Board on August 27, 1948, be, and it hereby is, vacated and set aside.

DIRECTION OF ELECTION ⁷

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for the purposes of collective bargaining, by Printing Specialties and Paper Converters Union No. 362, AFL.

⁶ The petition requested the exclusion of office and clerical employees, professional employees, and guards, in addition to supervisors. The record shows, however, that the Employer has no personnel in these categories in its San Francisco office, and that it was the intention of the Petitioner to include all the employees except the manager in its bargaining unit.

⁷ Although the Petitioner had complied with the filing requirements of the Act on the date of the hearing, its compliance with Section 9 (g) has since lapsed. For that reason, the election hereby directed is made contingent upon the Petitioner's fully complying with Section 9 (g) of the Act within 10 days from the date of this Decision and Direction of Election.

CHAIRMAN HERZOG, concurring:

Because the Board is reconsidering and reversing its decision in this matter entirely on its own motion, I should have thought it better practice and fairer to the Employer to have begun by issuing an order to show cause, thereby affording the parties notice and an opportunity to tell us why the original decision should not be permitted to stand. All my colleagues having held otherwise, however, I am constrained to reconsider the merits on the present state of the record. I therefore join in the opinion of Mr. Houston and Mr. Reynolds, believing that their construction of Section 9 (c) (1) is consistent with its terms and is far more likely to effectuate the amended statute's basic purposes than is the stricter construction still thought necessary by our dissenting colleagues.

MEMBERS MURDOCK and GRAY, dissenting:

On August 27, 1948, without a single dissenting vote, this Board dismissed the petition in this case because, in answer to questions 12 (a) and (b), it did not allege (but on the contrary denied) that Petitioner had requested recognition and that the Employer had *declined*, "as required by Section 9 (c) (1) of the Act, as amended." (Emphasis supplied.)⁸ We believe that the original considered judgment of the Board that Section 9 (c) (1) of the Act requires that a petition must allege (and truthfully so) that the Employer has declined to recognize Petitioner *before* filing the petition, is no less correct today than it was when the first Decision issued. We find nothing in the majority opinion in this Supplemental Decision which justifies or warrants a different interpretation of the Act and a reversal of the Board's earlier action dismissing the petition.

In our opinion, our colleagues on the majority completely fail to attach the proper significance to the change which Congress made in the amended Act with respect to the conduct of investigations of questions of representation. Section 9 of the Wagner Act simply provided that the Board "may" investigate questions of representation; it neither imposed any mandate on the Board to proceed nor any procedural prerequisites in the way of specified allegations, nor even of a petition. Nevertheless, under the Wagner Act the Board by rule provided for petitions, and the form of such petitions required the petitioner to answer whether he had notified the employer of a claim of representation and to explain any failure to do so. As the majority opinion points out, however, the Board's *practice* under the Wagner

⁸ The Board acted on the motion of the Employer, appearing specially to dismiss the petition on the ground that Petitioner had not requested recognition before filing the petition.

Act was to proceed to determine the question of representation if it appeared at the hearing that the employer did not then recognize the petitioner, regardless of the absence of any prior request for recognition. In contrast to Section 9 of the Wagner Act, however, in Section 9 (c) (1) of the amended Act, Congress not only laid down the mandate that the Board "shall" investigate questions concerning representation, but also provided in detail the circumstances under which the Board must proceed, including the filing of a petition, and specified allegations which the petition must contain. The Act now directs the Board to initiate an investigation in the instant type of proceeding when "a *petition* shall have been filed . . . *alleging*," inter alia, that the "employer *declines* to recognize their representative." (Emphasis supplied.) Plainly it cannot be truthfully alleged that the employer "declines" to recognize a representative unless he has in fact already refused when the allegation is made; and there is no warrant to conclude that Congress contemplated anything other than truthful allegations in the petition.

The Board's new Rules and Regulations—Series 5, effective August 22, 1947 (and actually promulgated by our majority colleagues) properly reflect the new requirement of Section 9 (c) (1). Sec. 203.53 of the Rules provides that

"A *petition* for certification, when filed by an employee or group of employees or an individual or labor organization acting in their behalf, *shall contain the following*:

* * * * *

(7) A statement that the employer *declines* to recognize the petitioner as the representative within the meaning of Section 9 (a) of the Act." [Italics supplied.]

We have been under the impression that requirements imposed by the Board's Rules, themselves based upon the requirements of the statute, were to be taken seriously; we question whether it is either good administrative practice or good law for the Board in effect to say to petitioners as the majority now does—"it doesn't really matter if you comply with requirements of the Rules and the statute or not; so long as you file *something* we will process it." If the Board is to be so lax in applying such requirements to petitions filed by labor organizations, to be consistent with at least the spirit of Sec. 9 (c) (2) (which calls for equal treatment "irrespective of the identity of the persons filing the petition") the Board must be similarly lax with respect to employer petitions. Accordingly, despite the statutory requirement that an employer must allege that someone has "presented to him a claim to be recognized," consistency would demand that our Regional

Offices process a petition filed by an employer who merely anticipated such a claim and who did not allege that he had in fact been presented with one, a result which the majority does not deny.

Our colleagues on the majority do not deny, but on the contrary expressly admit, that a literal interpretation of the language of Section 9 (c) (1) requires the result reached in the Board's first decision. They now seek to justify their departure from that interpretation on the ground of the "unreasonableness" of such construction. They assert that "neither the language of the amendment *taken in context*, nor any broad purpose of the Act viewed as a whole, dictates such [former] conclusion;" and that the latter consideration "dictates the opposite." [Emphasis supplied.]⁹

We submit that there is nothing in the context of the clear language requiring that the petition "allege" that the employer "declines to recognize," which in any way alters the ordinary meaning of these words, or raises any doubt as to their intended effect. The majority's "context" argument in substance is, that the new amended Section 9 in subdivisions (c) (1) provides for employer petitions and decertification petitions in addition to the ordinary representation petition; that it was, of course, necessary to detail the differentiating features of these proceedings; *ergo*, "the amended section was intended *merely* to describe these differences." [Emphasis supplied.] Such an argument strikes us as a complete *non sequitur*. Moreover, it results in rendering meaningless and actually reading out of the statute the provision requiring that the petition "allege" the employer's declination. This is, of course, contrary to the elementary principle of statutory interpretation that effect must be given if possible to every word and clause used, so that no part will be "inoperative or superfluous, void or insignificant."¹⁰

The refusal of the majority to give effect to the plain language of Section 9 (c) (1) likewise violates the well established rule of statutory construction which was aptly stated in *Camminetti vs. U. S.*, 242 U. S. 470, 490, where the Supreme Court said:

. . . it has been so often affirmed as to become a recognized rule, *when words are free from doubt they must be taken as the final expression of the legislative intent*, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction or from any extraneous source. In other words, the *language being plain*,

⁹ It is also urged that "there is absolutely nothing in the Reports of Congressional Committees or in the debates on the floor that suggests a desire to change or criticize existing Board practice."

¹⁰ Sutherland, *Statutory Construction* (3rd Ed.), sec. 4705.

and not leading to absurd or wholly impracticable consequences, *it is the sole evidence of the ultimate legislative intent.* [Emphasis supplied.]

As previously noted, the majority relies in part on the fact that there is nothing in the Congressional reports or debates showing that Congress intended to change the Board's old practice in this respect, as justification for refusing to give effect to the plain language of Section 9 (c) (1). Such reliance substitutes for the rule of the *Camminetti* case, a novel and startling doctrine of statutory interpretation—that the plain words of a statutory provision will not be given effect unless there exists in the legislative history *additional* evidence to convince the Board that Congress really meant what it said.

The majority apparently argue also that this case falls within the exception to the general rule of the *Camminetti* case which requires that the plain language of the statute shall be given effect, the exception being where such a course would lead to “absurd or wholly impracticable consequences.”¹¹ But how can it be argued that it is absurd or wholly impracticable or at variance with the purposes of the Act, merely to require a labor organization first to ask and be refused recognition by an employer before running to the Board with a petition? Is the making of a telephone call or the posting of a letter too arduous a step to be required of a labor organization? To our mind such a requirement is a salutary one, wholly consistent with the purpose of the Act to encourage collective bargaining. There are thousands of employers who have voluntarily recognized and bargained with the representatives of their employees. The Act does not contemplate that collective bargaining under voluntary recognition shall not take place; that intervention by the Government is necessary for good collective bargaining. If an employer is willing to recognize a union, both may be happy to proceed to collective bargaining, as has happened in thousands of instances, without adding unnecessary cases to the Board's already heavy case load. But, unless a request for recognition is made of the employer prior to filing a petition, he has not been given a reasonable opportunity to acquiesce in bargaining on a voluntary basis. Filing a petition and causing the employer to be served with a notice to appear at a hearing in a legal proceeding as a first step, is not a procedure best calculated to produce voluntary recognition; it is more likely to result in the proceeding running its full course.

¹¹ Or, as the exception is phrased in the other cases cited by the majority, where the general rule leads to “absurd or futile results” or to “an unreasonable result, plainly at variance with the policy of the legislation as a whole.”

Our majority colleagues finally urge in justification of their new interpretation of Section 9 (c) (1) that "even if [they] were inclined to adhere" to the literal words of the section, there is an overriding consideration in view of the presence of Section 8 (b) (4) (c) in the Act. They argue that a literal interpretation of Section 9 (c) (1) would make it impossible for a union which is currently recognized, to obtain the added benefits which accrue to a certification by reason of Section 8 (b) (4) (c), because the union could not honestly allege in its petition that the employer "declines" to recognize it. In order to avoid that result, they argue that we must not give the literal interpretation of the statute effect in the instant case. To our mind, that argument is also a *non-sequitur*. *If that kind of a case were before us*, it might well be argued that Section 9 (c) (1) of the Act should not be literally applied to make it impossible for a currently recognized union to obtain the benefit attaching to a Board certification; that to do so would lead to an "absurd" result which could not have been intended by Congress, thus giving rise to the situation where the exception to the general rule of the *Camminetti* case is applicable instead of the general rule. But the mere fact that the Board would refuse to apply Section 9 (c) (1) literally in order to avoid an "absurd" result in the relatively few cases of currently recognized unions seeking certification,¹² neither compels nor licenses the Board to ignore the plain language of the statute in the instant type of case where it cannot possibly be said that the application of such language will lead to absurd or wholly impracticable results at variance with the purpose of the Act.

Finally, if we were to consider not the words of the statute alone, but also considerations as to the desirability of adhering to the new statutory requirements as against our former practice, as the majority appears to do, we need look no further than the 20 or 30 cases now at the Board level involving some aspect of this issue, for a demonstration of the wisdom of adhering to the statutory requirement. These cases disclose a welter of variety, chaos and confusion in the observance and administration of this requirement. Some petitioners do not bother to answer either question 12 (a) or (b); some answer one but not the other; some answer affirmatively and some negatively; some answer truthfully and some falsely; some make requests for recognition *after* filing the petition and some never make requests for recognition. Yet, despite our new Rules, some of our Regional Offices obviously process such petitions regardless of *whether* or *how* these questions are answered, a practice which our colleagues

¹² That case is not here before us, and we therefore find it unnecessary to decide it.

on the majority necessarily sanction by their decision. In our view, the best way to meet this condition of sloppy observance of our Rules and statutory requirements which has been permitted to develop, is not to sanction it, but to serve notice on all petitioners, as the Board's original decision did, that the requirements must be observed. This would, of course, require the filing of new petitions in some of these cases, and greater vigilance in the Regional Offices to see that the requirements were followed in the future. Regional Office personnel should promptly call to the attention of petitioners a failure to follow the requirements so that the defects may be promptly remedied at the outset. In a very short time petitioners would be educated in the necessity of fulfilling this extremely simple and reasonable requirement and the present problem would be solved in a manner comporting with sound, orderly administrative practice, and even more importantly, in accordance with the terms of the statute.

If, however, the majority decision is correct, then obviously the Board should rescind that part of Section 203.53 of its Rules which states that a petition for certification "shall contain" an allegation that the employer "declines" to recognize, and the form of petition should be changed to eliminate Question 12. Plainly, there should be no inconsistency between our Rules and our practice; and we should not clutter up our petition form with questions, the answers to which are deemed meaningless. But paradoxically, the majority conclude their argument on an entirely different note. They state that in view of the dissenters' "concern" over the condition of confusion and chaos which exists among current petitions on answers to Question 12, that they "are fully prepared . . . to correct *administratively* whatever laxness has developed in the use of customary procedures." [Emphasis supplied.] Apparently this means that they are prepared to direct Regional Directors as an *administrative practice* in the future to see that Question 12 is properly answered when petitions are filed, and to refuse to accept petitions which are not properly answered. If that procedure is reasonable as an administrative expedient, it cannot be *unreasonable* as a statutory requirement; yet the basis of the majority's argument in justification of their refusal to accept the literal interpretation of Section 9 (c) (1) in this case is, essentially, the "unreasonableness" of the requirement. We believe no more need be said.