NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Appropriateness of Requested Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board (NLRB).

ACTION: Notice of proposed rulemaking.

SUMMARY: To set forth the decisive factors for the appropriateness of most single location units, the National Labor Relations Board (the Board) proposes to amend its rules to include a new provision specifying the appropriateness of requested single location bargaining units. This rule, as proposed, would be applicable to all Board cases in which the issue arises as to whether a unit of unrepresented employees at a single location is an appropriate unit in all industries currently under the Board's jurisdiction, excluding the utility industry, construction industry, and seagoing crews in the maritime industry. The Board is publishing this notice to seek timely comments and suggestions from the public, labor organizations, employer groups, and other interested organizations on how the Board may best fulfill its statutory obligation to determine an appropriate unit when a single location bargaining unit is requested. Although the Board has given the matter considerable thought, we emphasize that the rule we are proposing is just that—a proposal—and not a final decision on what the rule, if any, should be. In some sections of this document we are more tentative than others and have specifically invited commentary or empirical information. In other sections we have not expressly asked for comments but nonetheless welcome them.

DATES: All responses to this notice must be received on or before November 27, 1995.

ADDRESSES: All responses should be sent to: Office of the Executive Secretary, 1099 14th Street, NW, Room 11600, Washington, DC 20570, Telephone: (202) 273–1940. All documents shall be filed in eight copies, double spaced, on 8½ by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The following is an outline of the contents of this Notice:

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I. Background

On June 2, 1994, the Board published an Advanced Notice of Proposed Rulemaking (ANPR) in the Federal Register entitled "Appropriateness of Requested Single Location Bargaining Units in Representation Cases." 59 FR 28501 (June 2, 1994). The ANPR set forth several reasons why the Board was considering rulemaking to determine the appropriateness of single location units for initial organizing cases in the retail, manufacturing, and trucking industries. The Board specifically stated, however, that it had made no decision on the propriety of rulemaking in this area.

The Board sought comments on: (a) The wisdom of promulgating a rule or rules on the appropriateness of single location units in retail, manufacturing, and trucking industries; and (b) the appropriate content of such a rule or rules. The ANPR suggested that there

could be separate rules for each industry, or a single rule applicable to all three industries. To encourage discussion and comments on the scope and content of a possible rule, the ANPR suggested language for a rule. The suggested rule was a single rule which set forth factors which would be necessary for the rule to apply, i.e., to grant a requested single location unit. The rule also provided for "extraordinary circumstances" which would render the rule inapplicable and require the case be decided by adjudication. Interested parties also were invited to address what constitutes a "single facility." Member Cohen and former Member Stephens filed a separate joint statement in the ANPR. The comment period ended July 29, 1994.

The Board received 41 written comments. Five comments were received from unions: Amalgamated Clothing and Textile Workers (ACTWU, C–8¹); Retail, Wholesale and Department Store Union, AFL–CIO (RWDSU, C–14); International Brotherhood of Teamsters (IBT, C–21); International Federation of Professional and Technical Engineers (PTE, C–22); and the AFL–CIO (AFL, C–33).

Trucking industry employers submitted 17 comments. Retail industry employers submitted 2 comments.

Seven comments were received from trade associations: U.S. Chamber of Commerce (USCC, C-7); National Association of Manufacturers (NAM, C-12); American Trucking Associations (ATA, C-13); National Council of Chain Restaurants (NCCR, C-24); Ohio Grocers Association (OGA, C-29); National Retail Federation (NRF, C-32); and the International Mass Retail Association (IMRA, C-41).

Four responses were received from policy organizations: National Right to Work Legal Defense Foundation (NRW, C–16); Council on Labor Law Equality (COLLE, C–18); Labor Policy Association (LPA, C–19); and Society for Human Resource Management (HRM, C–38).

Six comments were submitted by individuals.

II. Validity and Continuing Desirability of Rulemaking

Commentators generally did not take issue with the Board's statutory authority to engage in rulemaking concerning bargaining units. The general validity of the Board's statutory power to engage in rulemaking under Section 6 of the National Labor Relations Act (Act) is set forth fully in

¹ C-8 denotes Comment Number 8, for example.