the notices of proposed rulemaking for units in the health care industry. See, Collective-Bargaining Units in the Health Care Industry, Notice of Proposed Rulemaking, 52 FR 25142, 25143-45 (July 2, 1987); Second Notice of Proposed Rulemaking, 53 FR 33900, 33901 (September 1, 1988) and Final Rule, 54 FR 16336, 16337-38 (April 21, 1989), reprinted at 284 NLRB 1516, 1519-20, 1528, 1529-30 and 1582-83. Moreover, in American Hospital. Association v. NLRB, 499 U.S. 606 (1991), the Supreme Court upheld the Board's authority under Section 9(b) of the Act to resolve disputes regarding appropriate bargaining units by using its rulemaking authority.

The ANPR set forth several reasons supporting the Board's desire to engage in rulemaking for single location units, including the historical likelihood in most cases that a single facility unit will be found appropriate, the extensive litigation currently involved, the unnecessary delays frequently caused by such litigation, the need for more certainty in such cases, and the fact that many of the factors considered in such cases have not affected the outcome of single location cases.

After carefully examining all the comments, the Board continues to believe its reasons for desiring to engage in this rulemaking are valid and appropriate to effectuate the purposes of the Act. This Notice of Proposed Rulemaking (NPR) clarifies the Board's principal purpose for engaging in this rulemaking. That purpose is to let the public and practitioners know what is required for a single location unit to be found appropriate. The Board will, however, continue to decide novel and unusual cases by adjudication under the extraordinary circumstances exception to the rule, and therefore does not foresee a major change in results of these cases but merely a more expeditious method of deciding them. The Board believes the major benefit of this rulemaking will be a reduction in litigation over this issue and more efficient use of Board resources as well as improved service to the parties. In addition, because the law in this area will be codified and clarified, we believe the rule will facilitate the negotiation of stipulated election agreements.

A. Opposition to Rulemaking

1. Adjudication Should Be Retained.

The major contention of the majority of the commentators opposing rulemaking was that the case-by-case adjudication approach should be retained. (USCC, C–7 ; SAIA MotorFreight, C–9; LPA, C–19; COLLE, C–18; and NCCR, C–24²). Commentators maintained that this approach is an invaluable tool to ensure that all facts and factors are considered in deciding a particular case. In their view, this approach has worked well over the many years that the Board has decided single location cases by adjudication.

Although it is true that the Board has previously decided these cases by adjudication, the Act also permits the Board to decide representation cases by rulemaking. As discussed in great detail in the health care rulemaking, the courts, commentators, and others have urged the Board to use its dormant rulemaking authority to decide representation cases. See Collective-Bargaining Units in the Health Care Industry, Notice of Proposed Rulemaking, 52 FR 25142, 25144-45 (1987), and Final Rule, 54 16336, 16337-39 (April 21, 1989), reprinted at 284 NLRB 1516, 1518-20, 1580, and 1583. We believe that a rule concerning the appropriateness of single location units would be a proper use of that authority.

The Board recognizes one of the most frequently made arguments favoring adjudication is that it allows the parties to put before the Board all the available evidence which may be relevant to this issue in each particular case. While adjudication affords the parties the opportunity to present voluminous evidence in the hope that some of it will be found critical, a rule tells the parties, in advance, which evidence the Board has decided is critical. By announcing an intention to decide these cases by rule over adjudication, the Board is tentatively choosing between two legitimate methods of deciding representation cases. The Board is exchanging what is sometimes thought of to be the enhanced individual justice of adjudication, with its vagaries and unpredictability as to which facts are important, for the clarity and predictability of a rule. This choice may not be appropriate for all representation cases, but for the many reasons outlined in the ANPR and this Notice, the Board believes it is appropriate for the majority of single location cases.

The arguments for retaining adjudication fail to address one of our major reasons for intending to use rulemaking in this area, most notably, our desire to reduce extensive litigation and use of Board and party resources to decide routine single location cases. Although the Board's only other bargaining unit rulemaking addressed a history of difficult and inconsistent health care precedent, rulemaking also is appropriate for other reasons, including the desire to use our limited and declining resources more efficiently.

A major reason for litigation of this issue is the attempt by the parties to prove the existence of certain factors and the "significance" of those factors. Were the Board to establish a rule specifying under which fact situations a single location unit will automatically be found appropriate, there would be considerably less litigation over the significance or lack of significance of these facts, and the factors to which they relate.

The desirability of reducing litigation is evident from the current approach. The Board currently considers a number of factors in single location cases to determine whether the presumptive appropriateness of a requested single location has been rebutted. Often, the parties seek to prove the existence or absence of various factors by introducing voluminous testimony and documentary evidence concerning a myriad of facts. The parties litigate the significance of each fact and factor, and then the Regional Director and, if a request for review is filed, the Board determines whether the various factors exist and are significant. The parties and the public are left to their own devices to deduce which facts and factors may or may not be deemed most significant in a particular case, although, as indicated, the result in the majority of cases is that the single facility unit requested is found appropriate.

We believe our decision to decide these cases under a rule will have little effect on the substantive results of most routine single location unit cases. Moreover, as described later in this document, the rule provides for an extraordinary circumstances exception to address those novel and difficult cases which should be decided by adjudication.

2. All Factors Should Be Retained

Most commentators also argued that the Board should retain all the factors historically considered in deciding single location cases by adjudication. (SAIA, C–9; NAM, C–12; LPA, C–19 and NRF, C–32.) These factors, they contend, should continue to be determinative in single location cases. Their comments, however, have not, to date, given reasons to support this contention. As discussed more fully below in Section III.B., it seems to us, based both on our experience and a

² Citation of a particular comment is intended to be illustrative of the comments made regarding a particular point. Such citation does not necessarily represent the entirety of the comments.