reexamination of prior and recent cases, that only a few of the several factors historically considered in single location cases actually have made, or in the future should make, a material difference in the outcome of these cases.

Moreover, the current multi-factor approach is difficult for lay people and even for lawyers to understand. The current approach represents itself as a shifting, unpredictable mix of many facts and factors. No single fact or factor is said to be determinative. Board decisions weigh the evidence supporting the factors and decide, without setting forth any precise standards, that there is sufficient evidence supporting the existence of certain factors in one case, but not in another. The Board then pronounces that certain factors are "significant" or "substantial" to support a particular result. There are no announced, pre-set standards, however, for what is "significant" interchange, a "substantial" distance between locations, or local autonomy which is "severely circumscribed." These imprecise and vague litigationproducing factors are the very ambiguities which rulemaking appears well-suited to address.

We believe that for many cases this litigation is wasteful and that this area is ripe for consideration of the alternative approach of rulemaking. While there remain cases which will benefit from adjudication and a thorough consideration of all the facts and factors, our experience indicates that the results of most single location cases can be made more predictable.

## 3. Lack of Empirical Evidence

Several commentators challenged the rule because no supporting empirical evidence regarding the number of single location cases was cited in the ANPR. (USCC, C-7; NAM, C-12; and IMRA, C-41.) The comments argued, for example, that because 80 percent of Board elections are by stipulation and consent, few cases are litigated and still fewer are likely to involve single location issues. Representatives of the trucking industry in particular cited the paucity of recent published decisions in that industry. (SAIA MotorFreight, C-9; ATA, C-13; Viking Freight et al., C-30.) Commentators from the trucking industry also disputed that the single location unit is usually found appropriate, based on cases decided in the 1980's. (Viking Freight, et al., C-30.)

It is commonly recognized, however, that single location unit issues have arisen with some frequency since the inception of the Act. See P. Hardin, Developing Labor Law, 468–72 (3d ed.

1992). In any event, the Board's desire to engage in this rulemaking is not predicated solely on the number of cases involving this issue. This proposed rule merely recognizes that a group of cases which are periodically and repeatedly addressed by the Board are appropriate for rulemaking for the reasons stated in the ANPR and this Notice.

## 4. Rule Unnecessary

Several commentators argued that rulemaking is unnecessary because the circumstances here are unlike those which gave rise to the health care rules. (NAM, C-12; COLLE, C-18; LPA, C-19; and MotorFreight, C-35.) The ANPR, however, did not represent that the circumstances here are the same as those which resulted in the health care rulemaking. As we indicated above, we do not believe that the reasons supporting this rulemaking must mirror the circumstances or the reasons which supported the health care rulemaking. We believe the ANPR and this Notice set forth a number of legitimate reasons for this rule, particularly the Board's desire that, in a significant number of cases, the specific factors necessary for an appropriate single location unit be made clear and known in advance to all interested parties. There are, however, common goals and benefits between the two rulemakings. As with the health care rules, the Board is attempting to bring more clarity to the issue of appropriateness of bargaining units and to avoid lengthy litigation, possibly inconsistent results, and unnecessary expenditure of limited Board resources and the resources of the parties. See Collective-Bargaining Units in the Health Care Industry, Notice of Proposed Rulemaking, 52 FR 25142, 25144-45 (1987), reprinted at 284 NLRB 1516, 1518–20.

## 5. Other Concerns

Some commentators believe that a rule simply will add to the advantage they claim unions already have in these cases (NAM, C-12); that the result will be increased legal fees to conduct campaigns and to negotiate contracts, and impairment of an employer's efficiency and productivity (TNT Reddaway Truck, C-10; NCCR, C-24; and NAM, C-12; ); that it will be harder to administer contracts and transfer employees between union and nonunion locations (NCCR, C-24; NRF, C-32,); and that by representing splintered or fragmented units, unions may use whipsaw strikes to enforce their bargaining demands (NRF, C-32; NCCR, C-24.).

Most of these concerns, however, exist whenever single facility units are found appropriate, regardless of whether they would be decided by adjudication or rulemaking. The major fear of these commentators appears to be that a rule will exacerbate these perceived problems by increasing organizing activity. A major purpose of the Act, however, is to encourage collective bargaining; increased organizing is not, therefore, a proper basis for not engaging in rulemaking. Moreover, experience with the health care rules demonstrates that it cannot be presumed that increased organizing will materialize because of a rule. See Burda, Hospital Elections Continue to Decline, Modern Healthcare 26, May 2, 1994, in which it was reported, relying on Board statistics, that the Board's health care rules "haven't led to unbridled organizing efforts at hospitals, as many executives had feared." It has also been our experience that the health care rule has benefited the Board by reducing the delay in processing health care cases caused by litigation of unit scope questions. These previous delays were caused by lengthy hearings and the substantial time necessary to prepare decisions.

Hence, we do not believe that these concerns about unions' organizing efforts, which exist even outside of rulemaking, should preclude the Board's attempt to decide these cases more expeditiously. Moreover, where novel and unusual situations are presented, the rule provides for continued decision by adjudication.

## 6. Summary and Tentative Conclusions

Although the general tenor of many opposing comments was that a rule would be a radical departure from the Board's current treatment of these cases, we believe, to the contrary, that for routine cases there will be little substantive change in results. Thus, under adjudication the Board applies a presumption that single location units are appropriate. The presumption is based on Board decisions which note that Section 9(b) lists the "plant" unit as one of the units appropriate for bargaining. See *Dixie Belle Mills*, 139 NLRB 629, 631 (1962); Haag Drug Co., 169 NLRB 877 (1968).3 This

<sup>&</sup>lt;sup>3</sup>We recognize that two Courts of Appeals have questioned the presumption. See, *NLRB* v. *Cell Agricultural Manufacturing*, 41 F.3d 389 (8th Cir. 1994), denying enf. in relevant part of 311 NLRB 1228 (1993); *Electronic Data Systems Corp.* v. *NLRB*, 938 F.2d 570 n.3 (5th Cir. 1991), enfg. 297 NLRB No. 156 (1990) (not reported in printed Board volumes). On the other hand, at least seven circuits have recognized the validity of the presumption. *Staten Island University Hospital* v. *NLRB*, 24 F.3d 450, 456 (2nd Cir. 1994); *NLRB* v. *Aaron's Office*