presumption of appropriateness is, to some extent, already a "rule," as the Board recognized in the health care rulemaking. See Collective Bargaining Units in the Health Care Industry, Final Rule, 54 FR 16336, 16338 (1989), reprinted at 284 NLRB 1580, 1583 (1989), in which the Board noted, in support of those rules, that the Board has long made use of "rules" of general applicability to determine appropriate units, citing, inter alia, the single facility unit presumption.

Moreover, the Board has recognized that a single location unit furthers certain policy considerations with regard to Section 9(b). In *Haag Drug Co.*, 169 NLRB 877 (1968), the Board stated that Section 9(b) directs the Board to "assure employees the fullest freedom in exercising the rights guaranteed by this Act" and, absent sufficient evidence to destroy the separate identity of the single location, the employees' "fullest freedom" is maximized by treating the single location unit as normally constituting the appropriate unit.

We recognize, however, that the statutory goal of assuring employees their fullest freedom in exercising their rights is tempered by the Board's desire not to unduly fragment an employer's workforce. Although we continue to believe that a rule is desirable, in view of the concerns of some commentators about the potential for fragmentation of an employer's workforce, we solicit comments addressing any available empirical evidence regarding the feasibility of bargaining as reflected in the relative success (or lack thereof) of administering contracts, transfers, etc., in workforces which are partially or completely organized by location versus those workforces which are organized on a multi-location basis. We invite these comments as to each of the

Furniture Co., 825 F.2d 1167, 1169 (7th Cir. 1987); NLRB v. Child World, Inc., 817 F.2d 1251, 1253 (6th Cir. 1987); Beth Israel Hospital v. NLRB, 688 F.2d 697 (10th Cir. 1982), modifying and reaffirming en banc 655 F.2d 1028 (10th Cir. 1981); NLRB v. Living and Learning Centers, Inc., 652 F.2d 209, 212 (1st Cir. 1981); Spring City Knitting Co. v. NLRB, 647 F.2d 1011, 1014 (9th Cir. 1981); NLRB v. Western & Southern Life Ins. Co. v. NLRB, 391 F.2d 119, 123 (3d Cir. 1978), cert. denied, 393 U.S. 978 (1968). We note that the facilities in Cell were less than a mile apart and thus, the rule we propose would not have applied in that case in any event. In Electronic Data Systems, the court pointed out in that in a prior case arising in that Circuit, NLRB v. Purnell's Pride, 609 F.2d 1153, 1160-61 & nn.4 and 5 (1980), that court expressed the opinion that the presumption was confusing and useless in practice. Without agreeing with this court's view of the presumption, we believe our clear delineation as to which factors are critical to finding a single location unit appropriate will remove much of the confusion regarding the appropriateness of most requested single locations units, will be useful in practice, and to that extent may satisfy some of the court's concerns

specific elements of the rule outlined in Section III.B. of this proposed rule.

In sum, we believe the net effect on Board law of this proposed rule is that its results will largely be consistent with our current treatment of single location cases and, hence, not a significant departure from current law, although more rationally explained and more widely disseminated and understood. We believe, therefore, that the arguments for retention of the current adjudicatory approach appear to underestimate the benefits of the proposed rule, while overstating its practical impact on the substantive result in most routine single location cases.

B. Support for Rulemaking

All five unions which submitted comments reiterated the reasons mentioned in the ANPR supporting the decision to promulgate a rule or rules. The AFL (C-33) and ACTWU (C-8) also cited reasoning from the Board's health care rulemaking: that case by case analysis should be abandoned in favor of administrative rulemaking where an industry is susceptible to rules of general applicability; that courts and academics have long favored use of the Board's rulemaking powers because the current method is inefficient; that several state labor boards determine bargaining units by rules; and that by codifying its jurisprudence in this area, the Board can make its processes more understandable.

The AFL noted that the health care rulemaking has met with well deserved praise from commentators and the Administrative Conference of the United States. This praise should encourage the Board to continue to move away from "Talmudist" methods of adjudging the appropriateness of bargaining units and from making it difficult for the outside world to know which factors, if any, are crucial. The AFL contends that rulemaking on single location units is a particularly appropriate next step.

C. Conclusion

The Board believes that a rule will be of service to the public and the labor bar to set forth more clearly the decisive factors in most single location cases. Moreover, the public and the labor bar will know, in advance, which facts and factors are critical for most single location cases. Members of the labor bar will be better able to advise their clients about which issues should or should not be litigated. Parties will not have to engage in drawn out litigation to determine if a unit is appropriate; in

many cases, simple application of the rule will tell them.

Knowing in advance what facts are determinative will eliminate much of the confusion and uncertainty inherent in the current approach. We believe much of the current litigation is driven either by parties' attempts to persuade the Board that facts and factors exist in support of a particular result, or by the mistaken belief as to which facts or factors are critical for finding a single location unit appropriate. This litigation exists despite the fact that, in the majority of cases, requested single location units are found appropriate. Through this proposed rule, we intend to define those facts and factors which will be determinative. It no longer will be necessary in most cases to persuade the Board that certain facts exist and then for the parties to place their interpretation of those facts before the Board, not knowing which facts or factors will be deemed determinative.

We believe, therefore, that the proposed rule will cut litigation costs and the time currently and unnecessarily expended by the parties and the Board in most single location cases. The Board and its Regional Directors should have fewer and hopefully shorter transcripts to read and decisions to write. Knowing in advance which facts are necessary to support a single location finding, the parties can concentrate their resources on the election or collective bargaining if the unit is appropriate under the rule.

We also anticipate that the proposed rule may lead to more stipulated election agreements. Currently, parties seeking to reach a stipulated election agreement for a single facility unit must negotiate over a number of often unclear and little understood factors. The proposed rule, however, codifies what will in most cases establish the appropriateness of a single facility unit and uses only a few reasonably clear factors. Because the parties will be better able to understand this area of the law, they will be in a better position to negotiate a stipulated election agreement; they will no longer need to waste time and effort in disputing what we have determined are essentially immaterial factors.

The parameters of the proposed rule, however, are not designed to decide every case involving single location units, only the large percentage of cases that are neither close nor novel. When the parameters of the proposed rule are met and there are no novel issues, litigation will be unnecessary. When, however, the parameters are not met, the rule will not apply. Furthermore, even if the proposed parameters are met,