extraordinary circumstances may be shown to exist, and cases will be adjudicated. It is only these unusual close cases which will benefit from and, absent stipulation, receive adjudication.

III. The Proposed Rule

A. Scope

1. Generally

The ANPR stated that the Board proposed promulgating a rule, or rules, to govern single location units in the retail, manufacturing, and trucking industries. The rationale for these three industries was that "large groups of cases have centered" on them, that factors considered in these cases are well-settled, and that the outcomes of single facility cases are reasonably predictable.

Many commentators opposed grouping all employers of a single industry under one rule, and others, particularly the trucking industry, objected to grouping their industry with retail and manufacturing. (ATA, C-13; NAM, C-12; NRF, C-32; SAIA, C-9; Con-Way Southern Express, C–26; Viking Freight System, et al., C–30). These comments generally asserted that industries and employers are too diverse to be covered by a single rule. They also contended that it would be difficult to define coverage of employers under a rule or rules, presumably because of the common and overlapping functions and services of employers. None of the commentators opposing a single rule, however, offered thoughts on how the Board could structure separate rules covering separate industries.

The AFL (C–33) and IBT (C–21), on the other hand, contended that a single rule is preferable to three separate rules for the three industries mentioned in the ANPR. The AFL contended that if the justification for the rule in the three industries is the large number of cases centered on them, there would seem to be no reason to distinguish among them for purposes of a rule. Moreover, the AFL contended that there was no reason to exclude non-trucking portions of the transportation industry from the rule.

2. Industries Covered

a. Reasons. The Board's original intention for this rulemaking was to limit the coverage to these three industries because it was our belief that the bulk of the single location cases fell into these categories. Although we approached the coverage issue from a quasi-statistical point of view, commentators representing unions, industry, and policy organizations approached this as a practical issue. While industry, policy organization, and trade association commentators generally thought any rulemaking was inappropriate, and union commentators thought rulemaking was appropriate, each discussed the problem of covering so many diverse employers under rules. All pointed to the difficulty of classifying industries and then determining which employers fall under a particular industrial category. All emphasized that many industries, particularly the transportation industry, are becoming difficult to categorize as they provide an array of services beyond their nominal industrial classification.⁴

The AFL suggested that the solution to these questions of categorization was to broaden coverage of the rules, while the industry, policy organization, and trade association commentators generally offered no specific suggestions on how to classify industries and employers. The LPA (C-19), however, although opposed to rulemaking in this area, suggested that if the Board does decide to adopt rules, "[i]t would not be wise to formulate rules specifically tailored to each industry." The LPA apparently was concerned that industryspecific rules might lead to "ever more narrow rules," presumably in other areas. The LPA thought any rule adopted should be as broad as possible.

The commentators' responses regarding the practical difficulty of attempting to narrow the scope of coverage reminded us that the Board's current approach generally does not provide for separate standards, or 'rules,'' for separate industries. With the few exceptions discussed below, the Board treats all industries the same with regard to single location units and applies the same standards. The Board applies the single location presumption to analyze the appropriateness of requested single location units, and considers the same factors relevant in determining whether the presumption has been rebutted. When the standard has been cited in trucking cases, the Board has cited and applied the same

standard applied in retail cases. See Bowie Hall Trucking, 290 NLRB 41 (1988), citing Sol's, 272 NLRB 621 (1984). When the standard has been cited in retail cases, the Board has cited and applied the same standard applied in trucking industry cases. Globe Furniture Rentals, 298 NLRB 288 (1990), citing Dayton Transport Corp., 270 NLRB 1114 (1984). The standard cited, therefore, is the same regardless of the industry. See Esco Corp., 298 NLRB 837 (1990), in which the Board relied on cases from the manufacturing, retail drug store, retail apparel shop, and trucking industries; Haag Drug Co., supra 169 NLRB at 878, in which the Board applied the presumption to retail chains, noting that the single location factors are no different from those applied to manufacturing or insurance industries.

Because the Board currently applies the same single location standards to most industries, we have concluded it does not make sense to change that practice and have different rules for different industries. We, therefore, in response to the comments, propose that the scope of the rule apply to all industries to which the Board currently applies the single location presumption. Besides conforming to the current practice, this coverage will be, practically speaking, simpler and easier to administer. Even were we to attempt to define industrial classifications of employers, the comments concerning the changing functions and services of employers indicate to us that in many instances we would still encounter difficulty, and parties may well have to resort to litigation to determine which set of rules apply. We also believe that a broad based rule will avoid the possibility of inconsistent findings based on different rules. Finally, even for cases that do not involve single location units, as for example cases involving unit placement or composition, the Board generally has applied the same community of interest standards without regard to the industries involved. Having a single rule for all industries for single location issues would be consistent with that approach as well.

b. Excepted industries. As indicated, we propose a few narrow exceptions to coverage under the rule, although as discussed below, we specifically invite comments on other exemptions from the rule and supporting reasons. The proposed exceptions involve industries or segments thereof as to which the single facility presumption has not been applied. Thus, public utilities would be excluded from coverage because in that industry the Board has traditionally

⁴This was vividly illustrated by the responses of some trucking industry commentators who persuasively contended that "there is no such thing as the trucking industry," stating that the so-called trucking industry, stating into the so-called trucking industry is evolving into much broader areas such as the "delivery" or "transportation" industry. (MotorFreight, C–35 at 3; Emery Air Freight, C–36 at 3.). The Board itself has addressed this same problem in recent cases involving segments of the package handling industry. See United Parcel Services, 318 NLRB No. 97 (Aug. 25, 1995), and Federal Express, 317 NLRB No. 175 (July 17, 1995); see also, International Longshoremen's Association, 266 NLRB 230 (1983), where in a similar vein the Board, inter alia, struggled with the appropriate characterization of containerization in the shipping industry (whether more like trucking or more like shipping) with regard to the lawfulness of the alleged work preservation objectives of the International Longshoremen's Association.