would outweigh any recent, but extinguished, bargaining history.

In a few situations, however, bargaining history may play a material role in determining the appropriateness of a single-facility unit. In Joseph E. Seagram & Sons, 83 NLRB 167 (1943), the Board stated that it would require one group of employees to organize on a multi-plant basis whenever other classifications of employees of the employer had organized themselves on that basis. The Board deemed controlling the overall bargaining pattern in these circumstances. In a later case, Seagram, 101 NLRB 101 (1952), the Board modified this holding and concluded that although the bargaining history of one group of employees was "persuasive," it would not necessarily control the bargaining pattern for every other group of unorganized employees. After considering the circumstances, the Board in the second Seagram case found the petitioned-for employees could constitute an appropriate unit. Accordingly, if an employer can demonstrate that other classifications of its employees currently are organized largely or exclusively on a multi-plant basis, we could arguably consider that as an extraordinary circumstance. The Board may wish to weigh the significance of that bargaining history, and hence, the appropriateness of the unit sought would be decided by adjudication and not under the rule. We solicit comments concerning these issues.

7. Conclusion. Our overall experience has been that these "non-material" factors have not been determinative in deciding single location cases, but, at best, have been used as secondary, bolstering rationale. Although these factors may be relevant to the extent that they show a requested broader unit to be appropriate, they will not, under the rule, be considered controlling to establish that a single location unit is or is not an appropriate unit.

c. Material factors. 1. Introduction. In setting forth the contents of the proposed rule, we reiterate that we have tried to formulate a clear and relatively straightforward rule for determining whether a single location unit is appropriate. Although prior Board decisions were used as guides for establishing material factors, the Board also was guided by which factors it believes are objective and easily ascertainable. We believe the factors chosen are consistent with these goals, but emphasize again that the rule is a proposal only.

The rule suggested in the ANPR incorporated the factors of interchange, geographic distance, local autonomy,

and number of employees in the unit. Below are described in greater detail the reasons the Board believes these factors are material and why the rule has been drafted in this manner. Virtually none of the industry, policy organization, or trade association commentators commented on the factors or the language that was proposed as part of the rule. The Board expects with the publication of this Notice, however, that more comments will be forthcoming on the contents. As stated at several points in this document, this is merely a proposed rule. Comments are invited as to what should and should not be in the rule, consistent with our goals for this rulemaking.

2. Temporary employee interchange. In our opinion, no other factor is more commonly determinative for or against the appropriateness of a requested single location unit than temporary employee interchange. Very few cases have been decided without an evaluation of this factor. See, Executive Resources Associates, 301 NLRB 400 (1991), in which the Board noted that the lack of significant interchange of the employees in the requested single facility is a "strong indicator" that the employees enjoy a separate community of interest; Spring City Knitting Mills v. NLRB, 647 F.2d 1011, 1015 (9th Cir. 1981), stating that interchange is a "critical factor" in determining if employees share a community of interest. The presence or absence of temporary interchange is one of the clearest reflections of whether there is likely to be common or separate identity between two or more locations. The more that employees from one facility work at a second facility and with its employees, the greater will be their common interests in the working conditions of both plants.

Because evidence regarding the level of interchange usually is in the possession of the employer, we have drafted the proposed rule so that this element need not be established for the rule to apply, but rather the employer must prove it, in effect, as an affirmative defense. Thus, if the level of interchange exceeded a particular level, it would be an extraordinary circumstance, the rule would be inapplicable, and the case would be decided by adjudication. As described more fully in the section describing extraordinary circumstances (Section IV), the employer would have to demonstrate affirmatively, first by an offer of proof and then by supporting evidence, that the level of interchange involves 10 percent or more of the employees at the requested location for 10 percent or more of the employees

time. It would be presumed to be below 10 percent unless the contrary is shown.

We propose measuring interchange by percentage so that the relative amount of interchange can be compared uniformly. Requiring that interchange be judged both as to the relative number of employees and the relative amount of time they spend at the second facility is, we think, a more precise measurement of interchange. In a slight modification of the rule suggested in the ANPR, we have added a time frame of the one preceding year for measuring the interchange, with the year running from the date the petition is filed for election cases, and from the date a bargaining obligation would arise for unfair labor practice proceedings.

Our use of the 10 percent threshold arises from our view that, for interchange to be an extraordinary circumstance, it must be at a level greater than de minimis. We propose 10 percent, but are open to suggestions of alternative levels or measurements. The IBT (C-21) contended that the 10 percent threshold was too low and should be increased to 25 percent to be more consistent with Board precedent, but cited no cases for this assertion. We encourage comments on this alternative as well as on the entire method of judging interchange in the proposed rule. For example, the time employees spend at another location could be measured as percentage of the overall number of work hours at the requested location. Or, there could be one measure for the relative number of employees transferring and another measure for the amount of time the employees spend away from the requested facility. The interchange also could be measured by the number and frequency of employees transferring into the requested facility.

We reiterate that a level of interchange which exceeds the proposed level would not necessarily mean that the unit is inappropriate but only means that the case be decided by adjudication. The Board has not set a standard percentage in prior cases.<sup>7</sup> If there is to be a rule, however, there must be a standard against which the amount of interchange is judged, and we specifically invite suggestions and comments on how best to set forth a reasonable, clear, and workable standard.

3. Geographical separation.We also propose that the rule take account of distance between facilities. As

<sup>&</sup>lt;sup>7</sup>The Ninth Circuit, however, has characterized levels of interchange of 10% and 8% as "relatively low" in cases enforcing Board orders to bargain in which the single facility was found appropriate. See, *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011 (1981) and cases cited therein.