

representatives. The rule would not apply to decertification petitions.

We believe that we have excluded all those industries to which the Board does not apply the single facility presumption or that are not appropriate for this rule. As indicated above, however, the Board invites comments from other industries or employers which seek to justify exclusion from the rule. Moreover, as indicated, while the scope of this rule is broad and covers most industries under the Board's jurisdiction, if novel issues arise with regard to a particular industry, and extraordinary circumstances are established, the rule will not apply and the case will be litigated by adjudication.

B. Content of the Proposed Rule

1. Factors Recited in Prior Single Location Cases

a. Introduction. The Board's recent decision *J&L Plate*, 310 NLRB 429 (1993), set forth a large number of factors ostensibly applied in single location cases:

A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Dixie Belle Mills*, 139 NLRB 629, 631 (1962). To determine if the presumption has been rebutted, the Board looks to such factors such as central control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990).

The suggested rule in the ANPR would find a requested single location unit an appropriate unit where: (a) A given number of employees were employed; (b) no other facility of the employer was located within a specified distance; and (c) a supervisor under the Act was located on the site, presumably to oversee the operation of the facility requested. A showing of extraordinary circumstances would render the rule inapplicable, and refer the case to adjudication, such as where a set percentage of the employees in the unit sought performed work at another location for a set percentage of the time.

In proposing the content of the rule, we have set forth those factors which in our experience have significantly affected the outcome of single location cases under adjudication. The Board noted in the ANPR that several factors, while cited and theoretically considered in single location cases, seldom have made a difference in the outcome. It would be difficult to prove which

factors cited in hundreds of cases were, in fact, determinative. Nonetheless, part of rulemaking involves an effort to simplify, codify, and predetermine results by attempting to isolate the more significant factors. Discussed below are our reasons for selecting those factors which we believe should be (and for the most part, have been) most material to deciding single location cases, and an explanation of the evidence necessary to support the existence of those factors under the proposed rule.

Many commentators argued that the Board should retain all the factors historically said to be considered under adjudication. In the ANPR, we stated that most of these factors, while cited and "considered," usually are not determinative and that only a handful of factors have had an important impact and effect on the outcome of single location cases. In our view, the factors of geographic distance, temporary employee interchange, and local autonomy as measured by a statutory supervisor on the site for a regular and substantial period are almost always material in single location cases. Factors such as functional integration, centralized control, common skills, permanent transfers, and bargaining history, while frequently mentioned, have for the most part not been material factors in deciding single location cases. Although not a current factor in single location cases, we propose that for the reasons stated below, the units granted under the rule should be limited to locations with a minimum number of employees. At this time we propose to adhere to 15 employees provided in the ANPR as the minimum size of a unit but are undecided whether this number of employees is too large or too small and request comments on the appropriate number.

b. Non-material factors.

1. Introduction. The factors which we have decided are not substantially material to requested single location units are generally relevant and material to community of interest issues and to other unit scope issues; they are particularly relevant and material to requested multi-facility units. We believe it is largely because of this relevancy to unit scope issues that the Board has traditionally, but nominally, included these factors in analyzing the appropriateness of single facility units. It does not, however, necessarily follow that because these factors are material to finding multi-facility units appropriate that they are also material to finding single facility units inappropriate. Any reasonably complex business enterprise has a multitude of potentially appropriate units. And a union is not

required to seek the most appropriate unit but only an appropriate unit. *P. Ballentine & Sons*, 141 NLRB 1103 (1963). Although these factors may be material to deciding other unit scope issues, we find for the reasons discussed below that they are largely not material to deciding whether a requested single location unit is an appropriate unit.

2. Functional integration. The general standard for single location cases states that a single plant is presumptively appropriate "unless it has so effectively merged into a comprehensive unit, or is so functionally integrated that it has lost its separate identity." *J&L Plate*, supra. Functional integration, therefore, is generally stated to be relevant to any unit scope issue, including the appropriateness of a single location unit. When applied, however, functional integration has been largely subsumed by the specific factors upon which the rule we now propose relies—geographic separation, lack of significant temporary interchange, and local autonomy. To the extent that other aspects of functional integration exist, we believe they are largely immaterial to determining the appropriateness of single location cases.

There have been Board decisions which have purported to rely, in part, on specific evidence of "plant integration," citing the use of similar machinery, the transfer of machinery and materials between plants, and in general, collaboration of two or more plants to produce a common product. See, e.g., *Beaverite Products*, 229 NLRB 369 (1977); *Kent Plastics Corp.*, 183 NLRB 612 (1970); and *Kendall Co.*, 181 NLRB 1130 (1970). Other cases have recited evidence of the "continuous flow" of production or the "single order flow process" to find that there is integration. See, *Unelco Electronics*, 199 NLRB 1254 (1972); *Neodata Product Distribution*, 312 NLRB 987 (1993). In virtually all these cases, however, integration was supported by evidence of significant employee interchange, limited distance between plants, or limited local autonomy. Moreover, in many instances the Board has found that evidence of "plant integration" or the coordinated processing of orders was insufficient to rebut the single facility presumption in the absence of the critical factors of significant interchange, close geographic proximity, or too limited local autonomy. See *Courier Dispatch Group*, 311 NLRB 728, 731 (1993); *J&L Plate*, supra; *Hegins Corporation*, 255 NLRB 1236 (1981); *Penn Color*, 249 NLRB 1117 (1980); *Black & Decker Manufacturing*, 147 NLRB 825, 828 (1964).