

such enterprise but for an entirely separate and unrelated business, they will be considered performed for a different business purpose and will not be a part of that enterprise. The application of these principles is considered in more detail in part 776 of this chapter.

§ 779.214 “Business” purpose.

The activities described in section 3(r) are included in an enterprise only when they are performed for a “business” purpose. Activities of eleemosynary, religious, or educational organization may be performed for a business purpose. Thus, where such organizations engage in ordinary commercial activities, such as operating a printing and publishing plant, the business activities will be treated under the Act the same as when they are performed by the ordinary business enterprise. (See *Mitchell v. Pilgrims Holiness Church Corp.*, 210 F. 2d 879 (CA-7); cert. den. 347 U.S. 1013.) However, the nonprofit educational, religious, and eleemosynary activities will not be included in the enterprise unless they are of the types which the last sentence of section 3(r), as amended in 1966, declares shall be deemed to be performed for a business purpose. Such activities were not regarded as performed for a business purpose under the prior Act and are not so considered under the Act as it was amended in 1966 except for those activities listed in the last sentence of amended section 3(r). (See § 779.21.)

UNIFIED OPERATION OR COMMON
CONTROL

§ 779.215 General scope of terms.

(a) Under the definition related activities performed for a common business purpose will be a part of the enterprise when they are performed either through “unified operation” or “common control.” It should be noted that these conditions are stated in the alternative. Thus if it is established that the described activities are performed through “common control,” it is unnecessary to show that they are also performed through “unified operation,” although frequently both conditions may exist.

(b) Under the definition the terms “unified operation” and “common con-

trol” refer to the performance of the “related activities.” They do not refer to the ownership of the activities. Although ownership may be a significant factor in determining control (see § 779.222), the related activities will be a part of the enterprise even if they are not under common ownership, so long as they are performed for a common business purpose through unified operation or common control. Further, under the definition the terms “unified operation” and “common control” refer to the performance only of the particular related activities and not to other activities which may be performed by the various persons, corporations, or other business organizations, comprising the enterprise. Thus where two or more individual or business organizations perform certain of their activities through unified operation or common control, these activities will be part of a single enterprise, assuming of course they are related activities performed for a common business purpose. Finally, the definition in section 3(r) makes clear that the described activities may be performed through unified operation or common control “in one or more establishments or by one or more corporate or other organizational units.” The Senate Report on the 1966 amendments makes the following comment with respect to this:

Also, the operations through substantial ownership or control of a number of firms engaged in similar types of business activities constitute, in the committee’s view, related activities performed through unified operation or common control within the meaning of the definition of enterprise. The fact the firms are independently incorporated or physically separate or under the immediate direction of local management, as in *Wirtz v. Hardin*, 16 Wage Hour Cases 722 (N.D. Ala.), is not determinative of this question. (Sen. Rept. No. 1487, 89th Congress, 2nd session, page 7.)

But where, as in the case of a retail store owned by a partnership and another store owned by one of the partners providing similar goods or services, it appears that the activities of the separate stores have no functional interdependence and that they are separately conducted to serve the business purpose of the partnership on the one hand and the business purpose of the