

§ 779.222

§ 779.222 Ownership as factor.

As pointed out in § 779.215 “unified operation” and “common control” do not refer to the ownership of the described activities but only to their performance. It is clear, however, that ownership may be an important factor in determining whether the activities are performed through “unified operation or common control.” Thus common control may exist where there is common ownership. Where the right to control, one of the prerogatives of ownership, exists, there may be sufficient “control” to meet the requirements of the statute. Ownership, or sufficient ownership to exercise control, will be regarded as sufficient to meet the requirement of “common control.” Where there is such ownership, it is immaterial that some segments of the related activities may operate on a semi-autonomous basis, superficially free of actual control, so long as the power to exercise control exists through such ownership. (See *Wirtz v. Barnes Grocer Co.*, 398 F. 2d 718 (C.A. 8).) For example, a parent corporation may operate a chain of retail or service establishments which, for business reasons, may be divided into several geographic units. These units may have certain autonomy as to purchasing, marketing, labor relations, and other matters. They may be separately incorporated, and each unit may maintain its own records, including records of its profits or losses. All the units together, in such a case, will constitute a single enterprise with the parent corporation. They would constitute a single business organization under the “common control” of the parent corporation so long as they are related activities performed for a common business purpose. The common ownership in such cases provides the power to exercise the “control” referred to in the definition. It is clear from the Act and the legislative history that the Congress did not intend that such a chain organization should escape the effects of the law with respect to any segment of its business merely by separately incorporating or otherwise dividing the related activities performed for a common business purpose.

29 CFR Ch. V (7-1-10 Edition)

§ 779.223 Control where ownership vested in individual or single organization.

Ownership, sufficient to exercise “control,” of course, exists where total ownership is vested in a single person, family unit, partnership, corporation, or other single business organization. Ownership sufficient to exercise “control” exist also where there is more than 50 percent ownership of voting stock. (See *West v. Wal-Mart*, 264 F. Supp. 168 (W.D. Ark.)) But “control” may exist with much more limited ownership, and, in certain cases exists in the absence of any ownership. The mere ownership of stock in a corporation does not by itself establish the existence of the “control” referred to in the definition. The question whether the ownership in a particular case includes the right to exercise the requisite “control” will necessarily depend upon all the facts in the light of the statutory provisions.

§ 779.224 Common control in other cases.

(a) As stated in § 779.215 “common control” may exist with or without ownership. The actual control of the performance of the related activities is sufficient to establish the “control” referred to in the definition. In some cases an owner may actually relinquish his control to another, or by agreement or other arrangement, he may so restrict his right to exercise control as to abandon the control or to share the control of his business activities with other persons or corporations. In such a case, the activities may be performed under “common control.” In other cases, the power to control may be reserved through agreement or arrangement between the parties so as to vest the control of the activities of one business in the hands of another.

(b) Activities are considered to be performed under “common control” even if, because of the particular methods of operation, the power to control is only seldom used, as where the business has been in operation for a long time without change in methods of operation and practically no actual direction is necessary; also common control may exist where the control, although rarely visibly exercised, is evidenced