Wage and Hour Division, Labor

§ 779.231

together not just for the purchasing of merchandise, but also for providing numerous other services such as (1) central warehousing; (2) advertising; (3) sales promotions; (4) managerial advice; (5) store engineering; (6) accounting systems; (7) site locations; and (8) hospitalization and life insurance protection. (S. Rept. 145, 87th Cong., 1st Sess., p. 42.)

The report continues with the following observations:

Whether such arrangements bring the establishment within the franchisor’s, lessor’s, or grantor’s “enterprise” is a question to be determined on all the facts. The facts may show that the arrangements reserve the necessary right of control in the grantor or unify the operations among the separate “franchised” establishments so as to create an economic unity of related activities for a common business purpose. In that case, the “franchised” establishment will be considered a part of the same “enterprise.” For example, whether a franchise, lease, or other contractual arrangement between a distributor and a retail dealer has the effect of bringing the dealer’s establishments within the enterprise of the distributor will depend upon the terms of the agreements and the related facts concerning the relationship between the parties.

There may be a number of different types of arrangements established in such cases. The key in each case may be found in the answer to the question, “Who receives the profits, suffers the losses, sets the wages and working conditions of employees, or otherwise manages the business in those respects which are the common attributes of an independent businessman operating a business for profit?”

For instance, a bona fide independent automobile dealer will not be considered a part of the enterprise of the automobile manufacturer or of the distributor. Likewise, the same result will also obtain with respect to the independent components of a shopping center.

In all of these cases if it is found on the basis of all the facts and circumstances that the arrangements are so restrictive as to products, prices, profits, or management as to deny the “franchised” establishment the essential prerogatives of the ordinary independent businessman, the establishment, the dealer, or concessionaire will be considered an integral part of the related activities of the enterprise which grants the franchise, right, or concession. (S. Rept. 145, 87th Cong., 1st Sess., p. 42.)

Thus, there may be a number of different types of arrangements established in such cases, and the determination as to whether the arrangements create a larger “enterprise” will necessarily depend on all the facts. Some arrangements which do not create a larger enterprise and some which do are discussed in §§779.230 through 779.235.

§ 779.230 Franchise and other arrangements.

(a) There are many different and complex arrangements by which businesses may join to perform their activities for a common purpose. A general discussion will be found in part 776 of this chapter. The quotation in §779.229 from the Senate Report shows that Congress recognized that some franchise, lease, or other arrangements have the effect of creating a larger enterprise and whether they do or not depends on the facts. The facts may show that the arrangements are so restrictive as to deprive the individual establishment of those prerogatives which are the essential attributes of an independent business. (Compare Wirtz v. Lunsford, 404 F. 2d, 693 (C.A. 6).) An establishment through such arrangements may transfer sufficient “control” so that it becomes in effect a unit in a unified chain operation. In such cases the result of the arrangement will be to create a larger enterprise composed of the various segments, including the establishment which relinquishes its control.

(b) The term “franchise” is not susceptible of precise definition. The extent to which a businessman relinquishes the control of his business or the extent to which a franchise results in the performance of the activities through unified operation or common control depends upon the terms of the contract and the other relationships between the parties. Ultimately the determination of the precise scope of such arrangements which result in creating larger enterprises rests with the courts.

§ 779.231 Franchise arrangements which do not create a larger enterprise.

(a) While it is clear that in every franchise a businessman surrenders some rights, it equally is clear that every franchise does not create a larger