

# NLRB Holds that the Supreme Court's Decision in Hoffman Prevents Backpay for Undocumented Immigrant Workers

August 30, 2011

## Mezonos Maven Bakery, Inc. and Puerto Rican Legal Defense and Education Fund. Case No. 29–CA– 25476 (August 9, 2011)

On August 9, 2011 the National Labor Relations Board unanimously held that under the Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), the NLRB lacks remedial authority to award backpay to undocumented immigrant workers.

In *Hoffman*, the Supreme Court reversed the National Labor Relations Board decision to award backpay to an undocumented immigrant worker. The Court concluded, "such relief is foreclosed by federal immigration policy, as expressed by Congress in [the] Immigration Reform and Control Act of 1986 (IRCA)." Unlike *Hoffman*, however, in *Mezonos*, the employer – not the employee – was the IRCA violator.

This action was commenced by seven employees who worked at Mezonos Maven Bakery ("Mezonos") for periods ranging from five months to eight years. Upon hiring the employees, the employer, Mezonos, did not ask for work-authorization documents. On February 12, 2003, the Respondent discharged the seven employees. In response to their termination the employees filed unfair labor practice charges against the employer. The parties settled, and the Board issued an unpublished Decision and Order, which was ultimately upheld by the United States Court of Appeals for the Second Circuit.

Thereafter, the General Counsel issued a compliance specification, and Mezonos responded that it could not offer reinstatement or backpay because it was precluded by the *Hoffman* decision. On November 1, 2006, an Administrative Law Judge issued a supplemental decision distinguishing *Mezonos* from *Hoffman*, and the Respondent filed exceptions and a supporting brief. In reviewing the matter, a three panel board reversed the ALJ's decision and dismissed the compliance specification. In doing so, the Board reasoned that in *Hoffman*:

*The [Supreme Court] worded its holding in IRCA violator–neutral terms, it invoked IRCA violator–neutral policy grounds, and it otherwise made clear that which party violated IRCA was immaterial to its holding. The clear implication of the Court's decision is that awarding backpay to undocumented workers lies beyond the scope of our remedial authority, regardless of whether the employee or employer violated IRCA.*

In light of the fact that Mezonos violated IRCA, the Board concluded that the *Hoffman* decision compels the NLRB to conclude that Mezonos does not have to pay backpay or reinstatement the undocumented workers.

In a concurring opinion, two members of the Board agreed that under *Hoffman* backpay is precluded, but that such a result may have major policy implications: “In addition to the obvious failure to make employee-victims whole[,] the Act’s enforcement is undermined[;] employees are chilled in the exercise of their Section 7 rights[;] the workforce is fragmented[;] and a vital check on workplaces abuses is removed.”

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