

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The top bulb is dark blue, and the bottom bulb is light blue. The hourglass is light gray. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*Hoffman Plastic Compounds v. NLRB and Backpay Awards  
to Undocumented Aliens*

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**Abstract.** This report discusses the U.S. Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB*, a case involving whether backpay may be awarded to an undocumented alien because his employer violated the National Labor Relations Act. The report reviews the relevant facts of the case and discusses both the majority and dissenting opinions. The Court's conclusion that federal immigration policy restricts the NLRB from awarding backpay to an undocumented alien could result in legislation.

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# CRS Report for Congress

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## ***Hoffman Plastic Compounds v. NLRB* and Backpay Awards to Undocumented Aliens**

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### **Summary**

This report discusses the U.S. Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB*, a case involving whether backpay may be awarded to an undocumented alien because his employer violated the National Labor Relations Act. The report reviews the relevant facts of the case and discusses both the majority and dissenting opinions. The Court's conclusion that federal immigration policy restricts the National Labor Relations Board from awarding backpay to an undocumented alien could result in legislation. This report will be updated in accordance with such legislative activity.

The question of whether backpay may be awarded to an undocumented alien because his employer violated the National Labor Relations Act (NLRA) has been considered by the U.S. Supreme Court. In *Hoffman Plastic Compounds v. NLRB*, the Court concluded that federal immigration policy restricts the National Labor Relations Board (NLRB or "the Board"), the federal agency that administers the NLRA, from awarding backpay to an undocumented alien who has never been legally authorized to work in the United States.<sup>1</sup> This report will review the relevant facts of the case and discuss the Court's analysis.

### **Background**

Jose Castro was terminated by Hoffman after he and several other employees distributed union authorization cards to co-workers. The NLRB concluded that Hoffman violated the NLRA by discharging known union supporters.<sup>2</sup> Hoffman was ordered to

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<sup>1</sup> *Hoffman Plastic Compounds v. NLRB*, No. 00-1595, 2002 WL 459438 (U.S. Mar. 27, 2002). The majority opinion was written by Chief Justice Rehnquist and joined by Justices O'Connor, Scalia, Kennedy, and Thomas.

<sup>2</sup> Section 8(a)(3) of the NLRA, 29 U.S.C. § 158(a)(3), prohibits discrimination "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage (continued...)"

cease and desist from further violations of the NLRA, to post a detailed notice to its employees regarding the order, and to offer reinstatement and backpay to the terminated employees.<sup>3</sup>

During a subsequent compliance hearing before an administrative law judge (ALJ) to determine the amount of backpay owed to each employee, Castro admitted to using a friend's birth certificate to obtain employment with Hoffman. Castro was born in Mexico and had never been legally admitted to the United States. Based on Castro's testimony, the ALJ concluded that the NLRB was precluded from awarding reinstatement or backpay to Castro. The ALJ maintained that such relief would be contrary to the Court's holding in *Sure-Tan v. NLRB*, a prior case involving undocumented workers, and the Immigration Reform and Control Act of 1986 (IRCA).<sup>4</sup> The IRCA makes it unlawful for employers to knowingly hire undocumented workers or for employees to use fraudulent documents to establish employment eligibility.

Although the NLRB supported the ALJ's determination that reinstatement was inappropriate, it disagreed with the ALJ's conclusion about the availability of backpay.<sup>5</sup> The NLRB maintained that "the most effective way to accommodate and further immigration policies embodied in [the IRCA] is to provide the protections and remedies of the [NLRA] to undocumented workers in the same manner as to other employees."<sup>6</sup> The NLRB determined that Castro was entitled to \$66,951 of backpay, including interest. The backpay amount was calculated from the date of Castro's termination to the date Hoffman first learned of Castro's undocumented status.

Hoffman filed a petition for review of the NLRB's order with the U.S. Court of Appeals for the D.C. Circuit. A panel of the court denied the petition. After rehearing the case en banc, the D.C. Circuit again denied the petition for review and enforced the Board's order. Certiorari was granted by the Supreme Court on September 25, 2001.<sup>7</sup>

## **NLRB Discretion to Fashion Remedies for Violations of the NLRA**

Although the Court has recognized the NLRB's broad discretion to select and fashion remedies for violations of the NLRA, it has set aside awards of reinstatement or backpay to employees found guilty of serious illegal conduct in connection with their employment.<sup>8</sup> For example, in *Southern S.S. Co. v. NLRB*, the Court set aside an award of reinstatement and backpay to employees whose strike on a ship amounted to a mutiny in violation of

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<sup>2</sup> (...continued)  
membership in any labor organization."

<sup>3</sup> *Hoffman*, 2002 WL at \*3.

<sup>4</sup> *Id.*

<sup>5</sup> *Hoffman*, 2002 WL at \*3. See also *Hoffman Plastic Compounds v. NLRB*, 237 F.3d 639, 641 (D.C. Cir. 2001).

<sup>6</sup> *Hoffman Plastic Compounds*, 326 N.L.R.B. 1060 (1998).

<sup>7</sup> 122 S.Ct. 23 (2001).

<sup>8</sup> *Hoffman*, 2002 WL at \*4.

federal law.<sup>9</sup> The *Southern S.S.* Court concluded that the NLRB “has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important [c]ongressional objectives.”<sup>10</sup> In *Hoffman*, the Court noted that “[s]ince *Southern S.S. Co.*, we have accordingly never deferred to the Board’s remedial preferences where such preferences potentially trench upon federal statutes and policies unrelated to the NLRA.”<sup>11</sup>

Following *Southern S.S.*, the Court maintained that allowing the NLRB to award backpay to undocumented aliens would “unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in [the] IRCA.”<sup>12</sup> Under the IRCA, an undocumented alien cannot obtain employment in the United States without the employer or the employee contravening explicit congressional policies. The Court observed:

The Board asks that we overlook this fact and allow it to award backpay to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud. We find, however, that awarding backpay to illegal aliens runs counter to policies underlying [the] IRCA, policies the Board has no authority to enforce or administer.<sup>13</sup>

Moreover, the Court noted that an award of backpay to undocumented aliens would condone prior violations of the immigration laws and encourage future violations.<sup>14</sup>

The NLRB argued that an award of backpay to Castro is permissible because it “reasonably accommodates” the IRCA and is not inconsistent with it.<sup>15</sup> The NLRB contended that because the backpay period ended on the date Hoffman learned of Castro’s illegal status, Hoffman could have theoretically employed Castro during the backpay period without violating the IRCA.<sup>16</sup> Further, the NLRB argued that the IRCA does not explicitly render violators ineligible for backpay awards flowing from employment secured by the misuse of documents.

The Court rejected the NLRB’s arguments. The Court recognized the IRCA as reflecting Congress’ interest in making it criminally punishable for an alien to obtain employment with false documents. An award of backpay would suggest a contrary interest; that Congress intended for an alien to remain in the United States illegally and to continue to work illegally. The Court concluded that the NLRB’s position subverted

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<sup>9</sup> 316 U.S. 31 (1942).

<sup>10</sup> *Southern S.S. Co.*, 316 U.S. at 47.

<sup>11</sup> *Hoffman*, 2002 WL at \*5.

<sup>12</sup> *Hoffman*, 2002 WL at \*9.

<sup>13</sup> *Hoffman*, 2002 WL at \*8.

<sup>14</sup> *Hoffman*, 2002 WL at \*9.

<sup>15</sup> *Hoffman*, 2002 WL at \*8.

<sup>16</sup> *Id.*

rather than accommodated the IRCA by recognizing employer misconduct, but discounting the misconduct of illegal alien employees.<sup>17</sup>

## Dissent

The dissenting justices concluded that the NLRB's limited backpay order did not interfere with the implementation of immigration policy.<sup>18</sup> The dissent maintained that the general purpose of the IRCA's employment prohibition is "to diminish the attractive force of employment, which . . . pulls illegal immigrants towards the United States."<sup>19</sup> By restricting the availability of backpay to an undocumented alien, the Court was actually increasing the force of employment. The dissent reasoned that because the cost of initial labor law violations involving undocumented aliens was low, an employer's incentive to find and hire such individuals increased. The dissent observed: "in the absence of the backpay weapon, employers could conclude that they can violate the labor laws at least once with impunity."<sup>20</sup>

The dissent also suggested that the Court improperly substituted its own independent view of the matter for that of the NLRB. Because the NLRB's position appeared to be a reasonable one, the dissent maintained that the Court was required to respect and uphold it.<sup>21</sup>

## Legislation

Legislation that would allow undocumented aliens to receive backpay awards could be forthcoming. Following the Court's decision, Senator Edward M. Kennedy is reported to have expressed an interest in pursuing legislation to undue the holding.<sup>22</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Hoffman*, 2002 WL at \*10. The dissenting opinion was written by Justice Breyer and joined by Justices Stevens, Souter, and Ginsburg.

<sup>19</sup> *Hoffman*, 2002 WL at \*11.

<sup>20</sup> *Hoffman*, 2002 WL at \*10.

<sup>21</sup> *Hoffman*, 2002 WL at \*14 (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)). The dissent noted that the NLRB reached its conclusion after careful consideration of both labor and immigration law.

<sup>22</sup> See Charles Lane, *Court Denies Back Pay to Fired Illegal Immigrants*, Wash. Post, Mar. 28, 2002, at A13.