



Spring 4-1-2003

**HOFFMAN PLASTIC COMPOUNDS, INC. V. NLRB, 535 U.S. 137
(2002)**

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/crsj>

Recommended Citation

HOFFMAN PLASTIC COMPOUNDS, INC. V. NLRB, 535 U.S. 137 (2002), 9 Wash. & Lee Race & Ethnic Anc. L. J. 163 (2003).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol9/iss1/14>

This Comment is brought to you for free and open access by the Washington and Lee Journal of Civil Rights and Social Justice at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Civil Rights and Social Justice by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

HOFFMAN PLASTIC COMPOUNDS, INC. v. NLRB,
535 U.S. 137 (2002)

FACTS

In May 1988, Petitioner, Hoffman Plastic Compounds, Inc. (Hoffman), hired Jose Castro (Castro) unaware that Castro was an undocumented illegal immigrant.¹ Using a friend's birth certificate, Castro fraudulently acquired a California driver's license and a Social Security card.² In December 1988, the United Rubber, Cork, Linoleum, and Plastic Workers of America, AFL-CIO, campaigned for unionization at Hoffman.³ Castro and others participated in the campaign by distributing authorization cards to co-workers.⁴ In January 1989, after learning about their union activities, Hoffman fired all participants, including Castro.⁵

In January 1992, the National Labor Relations Board (NLRB) found that Hoffman violated the National Labor Relations Act⁶ (NLRA) for unlawfully terminating Castro and others for their union participation.⁷ The NLRB ordered Hoffman to adhere to NLRA, to post the NLRB order, and to offer reinstatement and backpay to the fired employees.⁸

In June 1993, the NLRB held a compliance hearing to determine the amount of backpay owed to Castro and other Hoffman employees.⁹ At the hearing, Castro testified that he was an illegal alien.¹⁰ Applying the Supreme Court's reasoning in *Sure-Tan v. NLRB*¹¹ and the Immigration Reform and Control Act of 1986 (IRCA),¹² the administrative law judge prohibited the NLRB from awarding Castro backpay.¹³ In September 1998, however, relying on *A.P.R.A. Fuel Oil Buyers Group, Inc.*,¹⁴ the NLRB reversed the decision and reinstated Castro's backpay.¹⁵ Hoffman appealed the NLRB's award of backpay to Castro.¹⁶ The appeal eventually reached the Supreme Court.

¹ Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137, 140 (2002).

² *Id.* at 140-41.

³ *Id.* at 140.

⁴ *Id.*

⁵ *Id.*

⁶ National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (2002).

⁷ Hoffman Plastic Compounds, Inc. v. NLRB, 537 U.S. 137, 140 (2002).

⁸ *Id.* at 140-41.

⁹ *Id.* at 141.

¹⁰ *Id.*

¹¹ *Sure-Tan v. NLRB*, 467 U.S. 883 (1984) (prohibiting the award of backpay to illegal alien employees).

¹² Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324, *et seq.* (2002).

¹³ Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137, 141 (2002).

¹⁴ *A.P.R.A. Fuel Oil Buyers Group, Inc.*, 320 N.L.R.B. 408 (1995) (determining that to further the goals of IRCA it is best to apply the remedies that apply to workers equally to illegal aliens).

¹⁵ *Hoffman*, 535 U.S. at 141-42.

¹⁶ *Id.* at 142.

HOLDING

The Supreme Court held that IRCA precludes awarding backpay to illegal aliens who actively subvert IRCA by forging documents and working illegally in the United States.¹⁷

ANALYSIS

The Court established a new rule to determine whether to award backpay to illegal aliens, and thus superceded *Sure-Tan*.¹⁸ In *Sure-Tan*, two companies reported illegal immigrants because they engaged in unionizing activity.¹⁹ The employees left the country and the Court held that the NLRB could not award backpay to those individuals not legally approved to reenter the United States.²⁰ The remaining question, however, was whether *Sure-Tan*'s application was limited only to those who could not legally re-enter the country, or included all those whose entry was illegal.²¹

In this case, the Court used a wider scope of analysis than in *Sure-Tan* because Congress altered the legal landscape of immigration law by enacting IRCA in the intervening years between *Sure-Tan* and this decision.²² Under IRCA, the Court found that Congress intended to combat forcefully the immigration and employment of illegal aliens.²³ IRCA implemented an employment verification system denying employment to illegal aliens or those attempting to illegally obtain work.²⁴ The Court concluded that this verification system was critical to IRCA because IRCA requires an employer to fire an employee upon learning that the employee is illegal and also criminalizes the forging of work documents.²⁵

The Court found that the NLRB, by awarding backpay to Castro, had ignored IRCA because Castro could have worked only by violating IRCA.²⁶ The Court stated that despite Castro's violation of IRCA, the NLRB sought to award backpay for work not performed in a job illegally obtained.²⁷ The

¹⁷ *Id.*

¹⁸ *Id.* at 147.

¹⁹ *Id.* at 144.

²⁰ *Id.*

²¹ *Id.* at 145.

²² *Id.* at 147.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 147-48.

²⁶ *Id.* at 149.

²⁷ *Id.*

Court noted that it had consistently held in such circumstances that the award of backpay was beyond the scope of the NLRB's discretion.²⁸

The NLRB argued that awarding backpay to Castro "reasonably accommodated" IRCA because the backpay extended only from the time he was terminated to the point when the employer found out he was illegal.²⁹ The NLRB further argued that under IRCA, the forging of documents did not make violators ineligible for backpay.³⁰ The Court made it clear that Castro's subversion of IRCA by forging documents is punishable.³¹ Congress had indicated no intent to award backpay to those evading immigration authorities or to award backpay where, but for an employer's illegal labor practices, aliens would remain working in the United States illegally.³² The Court found that the NLRB's award of backpay trivialized IRCA by increasing the incentive to work in the United States illegally.³³ Further, Castro could not mitigate damages, which would have prompted the need to offer backpay, without triggering new IRCA violations either by falsifying documents or by finding employers who would illegally hire him.³⁴

DISSENTING OPINION

The dissent found that public policy choices wrongly influenced the Court, arguing that the majority opinion failed to diminish the United States' appeal to illegal aliens.³⁵ According to the dissent, withholding backpay would not deter illegal entrance into the United States because it would not realistically influence the decision of an alien contemplating illegal entrance.³⁶ The court noted that the NLRB held that without applying backpay as a weapon against unfair labor practices, employers could continue to violate labor laws with impunity.³⁷

The dissent acknowledged Supreme Court precedent recognizing that awarding backpay as a deterrent prevents illegal employer practices.³⁸ Contrary to the majority's opinion, the dissent believed that not awarding

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 151.

³² *Id.* at 149.

³³ *Id.* at 151.

³⁴ *Id.* at 150-51.

³⁵ *Id.* at 153-54 (Breyer, J., dissenting).

³⁶ *Id.* at 155 (Breyer, J., dissenting).

³⁷ *Id.* at 154 (Breyer, J., dissenting).

³⁸ *Id.* (Breyer, J., dissenting).

backpay actually increases the incentive for employers to hire illegal aliens.³⁹ The dissent said that employers will search for inexpensive undocumented workers, increasing employment opportunities for illegal aliens in the United States.⁴⁰ The dissent stated that *Sure-Tan* firmly supported this notion and stated that labor laws should be applied equally to all employees to ensure there is no advantage under NLRA that may encourage hiring illegal aliens.⁴¹

The dissent also argued for the protection of all workers' labor rights.⁴² Awarding backpay would require the employer, who believed Castro could legally work, to pay him "(1) for years of work that he would have performed, (2) for a portion of wages that he would have earned, and (3) for a job that the employee would have held—had the employer [not illegally fired him]."⁴³ *Fuel Oil Buyers* held that immigration laws support backpay to prevent starvation wages.⁴⁴ In support of those rights, the Supreme Court in *ABF Freight System, Inc. v. NLRB*⁴⁵ awarded backpay, holding that the NLRB had broad discretion in fashioning such an award.⁴⁶ The dissent argued that even the Attorney General supported the award.⁴⁷ The Attorney General was not concerned enough that Castro illegally entered and obtained work in the United States to file criminal charges.⁴⁸ The dissent believed that the NLRB should have the discretion to award backpay.⁴⁹

CONCLUSION

Both the majority and the dissent shared concern about illegal aliens entering the United States that cannot be addressed adequately by current law. The Court, however, made no attempt to solve the problem. IRCA and NLRA do not give the courts enough ammunition to properly counter illegal immigration within the context of a labor violation. This results in an unbalanced application of both laws by the Court.

Prohibiting backpay discourages illegal aliens from entering the country.⁵⁰ The Court placed more importance on IRCA than on NLRA by

³⁹ *Id.* at 156 (Breyer J., dissenting).

⁴⁰ *Id.* at 155 (Breyer, J., dissenting).

⁴¹ *Id.* at 156 (Breyer, J., dissenting).

⁴² *Id.* at 160 (Breyer, J., dissenting).

⁴³ *Id.* (Breyer, J., dissenting).

⁴⁴ *Id.* at 1287.

⁴⁵ *ABF Freight Sys., Inc. v. NLRB*, 510 U.S. 317 (1994) (holding that the NLRB need not deny backpay due to false testimony at a compliance hearing).

⁴⁶ *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 157 (2002) (Breyer, J., dissenting).

⁴⁷ *Id.* at 158. (Breyer, J., dissenting).

⁴⁸ *Id.* (Breyer, J., dissenting).

⁴⁹ *Id.* (Breyer, J., dissenting).

⁵⁰ *See id.* at 150 (citing *INS v. Nat'l Ctr. for Immigrants' Rights*, 502 U.S. 183 (1991)).

focusing on countering the influx of illegal aliens.⁵¹ Prohibiting backpay handicaps NLRA from adequately protecting against employers committing unfair labor practices. The dissent emphasized the role of NLRA by stressing the need to prevent companies from violating labor laws.⁵² The dissent's solution would undermine IRCA and would not dissuade illegal entry and employment in the United States.

IRCA and NLRA must be applied equally to ensure that immigration laws and labor laws are preserved. It is not necessary for a court to rank one law more important than the other, as both the majority and dissent did. Backpay rewards aliens who violated IRCA, but not providing backpay benefits employers who have violated IRCA and NLRA. Applying the acts unequally gives a benefit to a bad actor, allowing either illegal aliens to violate immigration laws or employers to escape NLRA with impunity. To solve this disparity, neither Congress nor the Court should approve of a heavy-handed maneuver to close the border, which would be ineffective and unwarranted. There is, however, a simple and reasonable solution to this problem.

Congress must allow the NLRB to fine employers the cost of the disallowed backpay. This would create a disincentive for illegal aliens and punish companies for violating labor laws.⁵³ This solution would allow Congress to clarify its priority and discourage illegal entry and work in the United States by aliens. It would also maintain the integrity of NLRA by disallowing companies any hiring exception for illegal aliens. As a result, the Court would not have to disagree over which act it thought was more important. Without taking this cautionary measure and equipping courts and administrative agencies with the authority they need, cases involving similar facts will remain vulnerable to conflicting, and often inappropriate, results.

Summary and Analysis Prepared By:
Michael Kvistad

⁵¹ See *id.*

⁵² See *id.* at 154.

⁵³ See *id.*

