



NLRB Finds that Unauthorized Workers Cannot Receive Backpay for Labor Law Violations, Regardless of Whether the Employer or Employees Violated Immigration Laws

August 22, 2011

By Mark S. Wilkinson

In *Mezonos Maven Bakery Inc.*, the National Labor Relations Board held that it cannot order backpay to individuals unauthorized to work in the United States, regardless of whether the employer or the employees caused the violation of the immigration laws.

As background, the Immigration Reform and Control Act (IRCA) makes it illegal for employers to knowingly hire unauthorized workers; and it also makes it illegal for employees to present fraudulent documents to obtain or retain their employment. In 2002, the Supreme Court determined that the IRCA prohibited the Board from awarding backpay to individuals who had presented fraudulent work-authorization documents to obtain employment and thus were never lawfully authorized to work in the United States. *Hoffman Plastics Compounds Inc. v. NLRB*.

In the *Mezonos* case, however, the employees did not present any phony documents. The employer knew the employees were unauthorized to work in the United States, but the employer hired them anyway in violation of immigration law. The employees therefore argued that the holding of *Hoffman* did not prevent them from recovering backpay because they did not cause the immigration violation. The Board disagreed.

The Board concluded that the Supreme Court's decision in *Hoffman* "broadly preclude[d] backpay awards to undocumented workers regardless of whether it is they or their employer who has violated" the immigration laws. The Board reasoned that an employer cannot enter into a lawful employment relationship with an undocumented worker, and if an employer ends an unlawful employment relationship in a way that violates the labor laws, a backpay award would legitimize that relationship and replace wages that could not have been lawfully earned in the first place. "Such a remedy is beyond the limits of the Board's remedial discretion."

Related Practices

Labor & Employment

Copyright © Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This is a publication of Franczek Radelet P.C. This publication is intended for general informational purposes only and should not be construed as legal advice