

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: Joe Truce

DATE: May 8, 2002

RE: U.S. SUPREME COURT DECISION PROHIBITING BACK
PAY TO UNDOCUMENTED ALIEN

On March 27, 2002 the United States Supreme Court issued its decision in **Hoffman Plastic Compounds, Inc. v. National Labor Relations Board**.

Although this case and resulting decision came about in the context of a decision by the National Labor Relations Board this decision may also apply to L.C. §132a cases in the state of California.

In this case the employer hired one Jose Castro on the basis of documents that appeared to verify his authorization to work in the United States.

However, the employer then laid Mr. Castro off as well as others "after they supported a Union-Organizing campaign at petitioner's plant . . ."

The National Labor Relations Board found that the lay-offs violated the National Labor Relations Act and ordered that the employer pay back pay to Jose Castro as well as the others that were laid off.

During this litigation it was determined that Castro had never been legally admitted to or authorized to work in the United States and that he only gained employment with the employer- after tendering a birth certificate belonging to a friend born in Texas.

Although the Administrative Law Judge found that Mr. Castro was not entitled to back pay the National Labor Relations Board reversed this decision and ordered that the employer provide Mr. Castro with back pay- even though he was an illegal alien.

The Court of Appeal denied review and enforced the decision of the National Labor Relations Board.

However, the United States Supreme Court reversed this decision and held that Federal immigration policy as expressed by Congress in the Immigration Reform and Control Act of 1986 "foreclosed the Board from awarding back pay to an undocumented alien who has never been legally authorized to work in the United States . . ."

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Page 2

This case may well be utilized to deny an applicant- who is an illegal alien and not authorized to work in the United States- from receiving an award of back pay.

WJT:wf

A handwritten signature in black ink, appearing to be the initials 'WJT' followed by a stylized flourish.