

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MEZONOS MAVEN BAKERY, INC.

and

Case No. 29-CA-25476

LatinoJustice PRLDEF<sup>1</sup>

**CHARGING PARTY’S MOTION FOR RECONSIDERATION**

Charging Party LatinoJustice PRLDEF moves for reconsideration of the Board’s Supplemental Decision and Order in this case pursuant to Section 102.48(d) of the NLRB Rules & Regulations. The Board should grant this motion for reconsideration because its holding in this case directly conflicts with the Board’s own precedent and is based on a legal theory that was not argued by any party. *See Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665-66 (1982) (where the Board reaches a decision on a ground “not raised during the proceedings before the Board,” the proper course is for a party to “object to the Board’s decision in a petition for reconsideration or rehearing”); *W&M Props. of Conn., Inc. v. NLRB*, 514 F.3d 1341, 1345 (D.C. Cir. 2008) (same); *NLRB v. Ferguson Elec. Co.*, 242 F.3d 426, 435 (2d Cir. 2001) (same).

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<sup>1</sup> On October 6, 2008, Charging Party Puerto Rican Legal Defense and Education Fund changed its name to LatinoJustice PRLDEF.

As LatinoJustice PRLDEF explains in the accompanying brief, the basis of the Board’s decision to deny backpay in this case – that the discriminatees were party to “an unlawful employment relationship,” *Mezonos Maven Bakery, Inc.*, 357 NLRB No. 47, p. 2 (Aug. 9, 2011) – directly conflicts with Board precedent holding that, notwithstanding the unlawful nature of the employment relationship, where an employer hires a worker *knowing* that the worker is not legally eligible for a position, the worker is not ineligible for backpay relief.

Although the Board relies on the Supreme Court’s decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), as the basis for its decision, in that case the Supreme Court did not consider the Board’s precedent concerning the availability of backpay for NLRA violations when an employer knowingly enters into an unlawful employment relationship. As a result, the Board is not foreclosed by *Hoffman Plastic* from considering its precedent on this issue in deciding this case.

The Board should, therefore, grant this petition for rehearing in order to evaluate the facts of this case in light of this controlling precedent regarding the availability of backpay for NLRA violations when an employer knowingly enters into an unlawful employment relationship.

WHEREFORE, Charging Party LatinoJustice PRLDEF respectfully requests that the Board grant this motion for reconsideration.

DATED: September 6, 2011

Respectfully submitted,

/s/ Matthew Ginsburg

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## CERTIFICATE OF SERVICE

I, Matthew J. Ginsburg, hereby certify that, on September 6, 2011, I caused to be served a copy of the foregoing Charging Party's Motion for Reconsideration by electronic mail on the following:

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/s/ Matthew J. Ginsburg