The Burger Court Opinion Writing Database

Sure-Tan, Inc. v. NLRB

467 U.S. 883 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 6, 1984

Re: 82-945 - Sure-Tan, Inc. v. National Labor Relations Board

Dear Sandra:

I may volunteer a thought or two later on this case, but I am prepared to join.

I join.

Regards,

Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1984

MEMORANDUM TO THE CONFERENCE:

RE: 82-945 - Sure-Tan, Inc., et al. v. National Labor Relations Board

Problems on this case lead to striking it from the announcement list for Tuesday.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 3, 1984

Sure-Tan, Inc. v. NLRB
No. 82-945

Dear Sandra:

I fully agree with Parts I, II, and III of your opinion in this case. However, like Byron and John, I have some reservations concerning Part IV. In the hope that we can all be brought together on the remedy question, I offer the following comments.

You are certainly right to hold that the Court of Appeals overstepped its authority when it fashioned a revised backpay and reinstatement order rather than remanding the case to the Board. At the same time, I am concerned that we may be guilty of a similar usurpation of the role Congress has assigned to the Board if we attempt, at this point, to define precisely the remedies that the Board may order in this case. In my view, we might be better off if we simply vacate the judgment of the Court of Appeals with instructions to remand to the Board.

It is undisputed that absent petitioners' unfair labor practice, the employees involved here would certainly have continued working for and receiving wages from petitioners for some period of time. Under normal circumstances, therefore, the Board could be expected to fashion some form of "make whole" remedy under §10(c) for these illegally discharged employees, including reinstatement and backpay. Such an order would serve the dual purposes of making whole those employees who were injured by petitioners' unfair labor practice and of vindicating the public purposes of the NLRA. In this case, of course, the Court of Appeals did not simply enforce the Board's backpay and reinstatement order, but instead fashioned its own specific remedial order.

You have identified two significant problems with that order: first, the Court of Appeals' decision to impose a 6-month backpay award appears to have been based solely on conjecture and speculation, and, second, these employees may have been considered "unavailable" for work by the Board and therefore not entitled to receive backpay. As to the first consideration, I agree with you that the Court of Appeals lacked any authority to calculate an appropriate backpay figure. For this reason, its judgment should be vacated. On remand, however, the Board could certainly develop evidence during compliance proceedings that would enable it to determine with a fair degree of precision the approximate time that these employees would have continued working absent petitioners' unfair labor practice. An award of backpay under such circumstances would be no more speculative

than in other situations commonly confronted by the Board in which it is not clear how long an employment relationship would have continued in the absence of an unfair labor practice. And the Board would have the benefit of its own expertise and information-gathering capacity to tailor the remedy so that the discharged employees receive compensation only for the lost income that they would have reasonably expected to earn in the absence of the illegal discharge.

With respect to the second problem, I am doubtful that we are entitled to say that these employees were "unavailable" for work, as a matter of law, following their deportation. In the first place, such a holding overlooks the Board's long-standing practice of forgiving periods of unavailability that are due to the employer's illegal conduct. See, e.g., Graves Trucking Inc., 246 N.L.R.B. 344, 345 (1979). In this case, as the Board explains in its brief, it would not have found that these employees were unavailable, because their absence from the country was plainly due to petitioners' illegal conduct. See Brief for NLRB at 45-46, and n. 44. Moreover, it seems anomalous to hold, in Parts II and III, that undocumented aliens are "employees" within the meaning of the Act and are thereby entitled to all of the protections that come with that status, but then to find, in Part IV, that despite a clear violation of the Act, these "employees" are not entitled to any remedy. We have already held in Part II that these aliens are employees protected under the Act, notwithstanding the fact that they were not lawfully entitled to be present in the United States at the time of their illegal discharge. That holding would seem to be inconsistent with your assertion in Part IV that these same alien employees are "unavailable" for work during any period when they were not lawfully entitled to be present in the United States. Furthermore, by permitting backpay awards in these circumstances, I do not think we will create any risk of undermining the policies of the INA. This is so because, as you properly observe, as long as the offers of reinstatement are conditioned on the employee's legal reentry, any incentive to return to the United States illegally that a Board remedy might otherwise create is effectively removed.

Finally, I am concerned that the opinion, as it presently stands, subjects the Board's remedial powers to a more exacting degree of judicial scrutiny than our prior decisions in this area have permitted. As your opinion properly notes, we have repeatedly interpreted §10(c) as "vesting in the Board the primary responsibility and broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review." Slip op., at 13. You then go on, however, to scrutinize the Board's remedial powers by considering whether a proposed remedy would be "closely tailored" to the unfair labor practice at issue. Id., at 15. I may be mistaken, but it seems to me that we have never before required the Board to meet such a heavy burden and that your analysis suggests a more searching

examination of the Board's remedial powers than our prior decisions have contemplated.

In sum, I would suggest that the appropriate disposition would be to vacate the Court of Appeals' judgment, and then remand with instructions to remand the case back to the Board, leaving open the possibility that the Board may adopt an appropriately limited backpay and reinstatement order. Can you see your way clear to adopting these suggestions so that I may join?

Sincerely,

WJB by ME

W.J.B., Jr.

Justice O'Connor

Copies to Justice Stevens
and Justice White

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: 5/24/84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ——, 1984]

JUSTICE BRENNAN, concurring in part and dissenting in part.

I fully agree with the Court to the extent it holds, first, that undocumented aliens are "employees" within the meaning of § 2(3) of the National Labor Relations Act (NLRA), 29 U. S. C. § 152(3), and, second, that petitioners plainly violated § 8(a)(3) of the Act, 29 U. S. C. § 158(a)(3), when they reported their undocumented alien employees to the Immigration and Naturalization Service (INS) in retaliation for participating in union activities. Accordingly, I join Parts I, II, and III of the Court's opinion. However, because the Court's treatment of the appropriate remedy departs so completely from our prior cases, I dissent from Part IV of the opinion.

The Court's first mistake is to ignore the fact that the Board, rather than seeking a remand, has expressly urged that we affirm the six-month backpay and reinstatement remedy provided in the Court of Appeals' enforcement order, because it is fully satisfied that the court's order "effectuates the purposes of the NLRA." Brief for the NLRB 11. Of course, it is generally true, as the Court observes, *ante*, at 14, n. 8, that the proper course for a reviewing court that finds a Board remedy inadequate is to remand to the Board, rather than attempting in the first instance to fashion its own

p. 1, 2, 5-7

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: 6/4/84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ——, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, concurring in part and dissenting in part.

I fully agree with the Court to the extent it holds, first, that undocumented aliens are "employees" within the meaning of § 2(3) of the National Labor Relations Act (NLRA), 29 U. S. C. § 152(3), and, second, that petitioners plainly violated § 8(a)(3) of the Act, 29 U. S. C. § 158(a)(3), when they reported their undocumented alien employees to the Immigration and Naturalization Service (INS) in retaliation for participating in union activities. Accordingly, I join Parts I, II, and III of the Court's opinion. However, because the Court's treatment of the appropriate remedy departs so completely from our prior cases, I dissent from Part IV of the opinion.

The Court's first mistake is to ignore the fact that the Board, rather than seeking a remand, has expressly urged that we affirm the six-month backpay and reinstatement remedy provided in the Court of Appeals' enforcement order, because it is fully satisfied that the court's order "effectuates the purposes of the NLRA." Brief for the NLRB 11. Of course, it is generally true, as the Court observes, *ante*, at 14, n. 8, that the proper course for a reviewing court that finds a Board remedy inadequate is to remand to the Board,

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 5

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: 6/15/84

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June 19, 1984]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, concurring in part and dissenting in part.

I fully agree with the Court to the extent it holds, first, that undocumented aliens are "employees" within the meaning of § 2(3) of the National Labor Relations Act (NLRA), 29 U. S. C. § 152(3), and, second, that petitioners plainly violated § 8(a)(3) of the Act, 29 U. S. C. § 158(a)(3), when they reported their undocumented alien employees to the Immigration and Naturalization Service (INS) in retaliation for participating in union activities. Accordingly, I join Parts I, II, and III of the Court's opinion. However, because the Court's treatment of the appropriate remedy departs so completely from our prior cases, I dissent from Part IV of the opinion.

The Court's first mistake is to ignore the fact that the Board, rather than seeking a remand, has expressly urged that we affirm the six-month backpay and reinstatement remedy provided in the Court of Appeals' enforcement order, because it is fully satisfied that the court's order "effectuates the purposes of the NLRA." Brief for the NLRB 11. Of course, it is generally true, as the Court observes, *ante*, at 15, n. 11, that the proper course for a reviewing court that finds a Board remedy inadequate is to remand to the Board,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 22, 1984

Re: 82-945 -

Sure-Tan, Inc. and Surak
Leather Co. v. NLRB

Dear Sandra,

Although I had reservations about some aspects of the remedy issue, I shall go along with your draft pending further writing in the case.

Sincerely,

Byron

Justice O'Connor

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 11, 1984

Re: 82-945 - Sure-Tan, Inc., and
Surak Leather Co. v. NLRB

Dear Sandra,

Having given this case another look over the weekend, I am content to stay hitched to your draft and will not hold it up any longer.

Sincerely yours,

Justice O'Connor
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 24, 1984

Re: No. 82-945 - Sure-Tan, Inc. v. NLRB

Dear Bill:

Please join me in your opinion concurring in part and dissenting in part.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

'84 ABR -9 A9:56

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 9, 1984

Re: No. 82-945 - Sure-Tan, Inc. v. NLRB

Dear Sandra:

I am about where Byron is in this case. I shall go along with your draft pending further writing.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1984

Re: No. 82-945, Sure-Tan, Inc. v. NLRB

Dear Bill:

Please join me in your opinion concurring in part and dissenting in part.

Sincerely,

H.A.B.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1984

SUPREME COURT
JUSTICE

Re: 82-945 Sure-Tan Inc., et al. 84 MAR -2 P3:16

Dear Sandra:

As I see it, there is little difference, from the standpoint of justice and common sense, between reporting to appropriate authority that illegal aliens are in your employ and similiarly reporting employees wanted for committing other crimes. In both cases, individuals whom the Government is duty bound to arrest for criminal conduct are reported.

I understand, of course, that the N.L.R.A. is "blind" to the crime of illegal entry into the United States. There is perhaps some justification for its position in the fact that Congress has declined to make it a crime knowingly to employ illegals. Nor am I unaware that many employers -- particularly ranchers -- simply can't find bonafide residents who are willing to do the hard work that illegal aliens gladly accept.

In view of these conflicting considerations, I am not sure what I will do in this case. In any event, it is unlikely that I will join your opinion. I do mention one specific reservation. I am not enthusiastic about ordering the payment of any back wages to persons who were unlawfully in our Country. This merely encourages others to enter illegally. I would agree that if they return lawfully, and seek reemployment, they must be rehired.

Sincerely,

L. F. P.

Justice O'Connor

cc: The Conference

lfp/cvh

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 27, 1984

82-945 Sure-Tan, Inc. v. NLRB

Dear Sandra:

I am embarrassed to find, upon checking my file, that it has been two months since your opinion for the Court was circulated, and I have not circulated what I propose to write.

I will get on to this promptly, and hope not to hold you up much longer.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

05/14

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

MAY 15 1984

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ——, 1984]

JUSTICE POWELL, dissenting.

The Court's decision today unnecessarily widens the gap between the conflicting policies of the federal government with respect to citizens of other countries who illegally enter the United States to seek employment. In this case where illegal aliens were identified by their employers (petitioners) under circumstances found to be an unfair labor practice and the aliens were returned to Mexico, the Court authorizes reemployment and backpay if the aliens return lawfully to the United States during the reinstatement period. Thus, the Court potentially rewards aliens who violated our laws at a time when the number of illegal aliens employed in the United States may well approach or exceed the number of lawful Americans who are unemployed.[1]

[1] Compare House Select Committee on Population, 95th Cong., 2d Sess., Legal and Illegal Immigration to the United States 2 (Comm. Print 1978), with U. S. Dept. of Labor, Bureau of Labor Statistics, News (May 4, 1984). Although I think the Court misconstrues the National Labor Relations Act, and errs in approving backpay and reemployment, the Court is not responsible for the fundamental cause of this irrationality. The laws of the United States do not make employment of illegal aliens a crime. In effect, we invite persons from other countries to enter our country unlawfully.

P. 4

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: MAY 31 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ——, 1984]

JUSTICE POWELL, dissenting.

The Court's decision today unnecessarily widens the gap between the conflicting policies of the federal government with respect to citizens of other countries who illegally enter the United States to seek employment. In this case where illegal aliens were identified by their employers (petitioners) under circumstances found to be an unfair labor practice and the aliens were returned to Mexico, the Court authorizes reemployment and backpay if the aliens return lawfully to the United States during the reinstatement period. Thus, the Court potentially rewards aliens who violated our laws at a time when the number of illegal aliens employed in the United States may well approach or exceed the number of lawful Americans who are unemployed.[1]

[1] Compare House Select Committee on Population, 95th Cong., 2d Sess., Legal and Illegal Immigration to the United States 2 (Comm. Print 1978), with U. S. Dept. of Labor, Bureau of Labor Statistics, News (May 4, 1984). Although I think the Court misconstrues the National Labor Relations Act, and errs in approving backpay and reemployment, the Court is not responsible for the fundamental cause of this irrationality. The laws of the United States do not make employment of illegal aliens a crime. In effect, we invite persons from other countries to enter our country unlawfully.

pp. 1, 7

From: **Justice Powell**

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ——, 1984]

JUSTICE POWELL, concurring in part and dissenting in part.

I dissent from Parts II and III of the Court's opinion. The Court's decision today unnecessarily widens the gap between the conflicting policies of the federal government with respect to citizens of other countries who illegally enter the United States to seek employment. In this case where illegal aliens were identified by their employers (petitioners) under circumstances found to be an unfair labor practice and the aliens were returned to Mexico, the Court authorizes reemployment and backpay if the aliens return lawfully to the United States during the reinstatement period. Thus, the Court potentially rewards aliens who violated our laws at a time when the number of illegal aliens employed in the United States may well approach or exceed the number of lawful Americans who are unemployed.[1]

[1] Compare House Select Committee on Population, 95th Cong., 2d Sess., Legal and Illegal Immigration to the United States 2 (Comm. Print 1978), with U. S. Dept. of Labor, Bureau of Labor Statistics, News (May 4, 1984). Although I think the Court misconstrues the National Labor Relations Act, the Court is not responsible for the fundamental cause of the irrationality of our laws. By failing to make employment of illegal aliens a crime, we encourage persons from other countries to enter our country unlawfully to seek employment.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1984

82-945 Sure-tan v. Surak Leather Company

Dear Chief:

In view of the legislation with respect to illegal aliens being debated in the Congress, I have become increasingly concerned that my concurring and dissenting opinion in this case may be viewed as an improper attempt to influence the outcome.

Sandra graciously has said she is willing to have this case carried over a week. I enclose a draft of what I propose to say in lieu of my present opinion.

Roland Goldstraw has advised that it would be impossible for the print shop to make this change at this late date. Accordingly, I request that the case be carried over.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference

lfp/ss 06/18/84 SURE SALLY-POW

82-945 SURE-TAN V. SURAK LEATHER COMPANY

Justice Powell, concurring in part and dissenting in part.

I dissent from the Court's finding that the illegal aliens involved in this case are "employees" within the meaning of that term in the National Labor Relations Act. It is unlikely that Congress intended the term "employee" to include - for purposes of being accorded the benefits of that protective statute - persons wanted by the United States for the violation of our laws. I therefore would hold that the deported workers are not entitled to any remedy. Given the Court's holding, however, that they are entitled to the protections of the NLRA, I join Part VI of the Court's opinion.*

*Although the difference in the remedy approved by the Court and that urged in the dissenting opinion is essentially one of degree, the former provides less incentive for aliens to enter and reenter the United States.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: _____

Recirculated: JUN 2 1 1984

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ——, 1984]

JUSTICE POWELL, concurring in part and dissenting in part.

I dissent from the Court's finding that the illegal aliens involved in this case are "employees" within the meaning of that term in the National Labor Relations Act. It is unlikely that Congress intended the term "employee" to include—for purposes of being accorded the benefits of that protective statute—persons wanted by the United States for the violation of our criminal laws. I therefore would hold that the deported workers are not entitled to any remedy. Given the Court's holding, however, that they are entitled to the protections of the NLRA, I join Part IV of the Court's opinion.*

*Although the difference in the remedy approved by the Court and that urged in the dissenting opinion is essentially one of degree, the former provides less incentive for aliens to enter and reenter the United States.

6th Draft

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June 25, 1984]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins, concurring in part and dissenting in part.

I dissent from the Court's finding that the illegal aliens involved in this case are "employees" within the meaning of that term in the National Labor Relations Act. It is unlikely that Congress intended the term "employee" to include—for purposes of being accorded the benefits of that protective statute—persons wanted by the United States for the violation of our criminal laws. I therefore would hold that the deported workers are not entitled to any remedy. Given the Court's holding, however, that they are entitled to the protections of the NLRA, I join Part IV of the Court's opinion.*

*Although the difference in the remedy approved by the Court and that urged in the dissenting opinion is essentially one of degree, the former provides less incentive for aliens to enter and reenter the United States illegally.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ——, 1984]

JUSTICE REHNQUIST, dissenting and concurring.

For many of the reasons stated by Justice Powell in his dissenting opinion, I disagree with parts I, II, and III of the Court's opinion and would reverse the judgment of the Court of Appeals *in toto*. Because a majority of the Court has concluded that the National Labor Relations Board properly found that petitioner's conduct in this case amounted to an unfair labor practice, however, I address myself to the remedial issue discussed in part IV of the Court's opinion and join that part of the Court's opinion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 21, 1984

Re: No. 82-945 Sure-Tan, Inc. v. NLRB

Dear Lewis:

I join your revised concurring opinion and withdraw my separate concurrence.

Sincerely,

WM

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 1, 1984

Re: 82-945 - Sure-Tan and Surak Leather Co. v. National Labor Relations Board

Dear Sandra:

Your analysis of the unfair labor practice issue is most persuasive. I therefore have no hesitation in joining Parts I, II, and III of your opinion. I remain concerned about the remedial issue, however, and will therefore wait to see what else may be written on that subject.

Respectfully,

Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 9, 1984

Re: 82-945 - Sure-Tan and Surak Leather Co. v. National Labor Relations Board

Dear Sandra:

Even though the order that the Labor Board now defends is different from the one it entered before the case was reviewed by the Court of Appeals, I believe the agency's views are entitled to our deference. The remedial problem presented by this case is, after all, unique. Moreover, I believe the agency's task in fashioning an effective remedy may properly give some consideration to the public interest in deterring similar violations in the future, as well as to the interest in undoing the harm to the victims of the unfair labor practices. Accordingly, although I probably would have reached a different conclusion if the Board had challenged the Court of Appeals' analysis, I am inclined to agree with the Solicitor General that the judgment should be affirmed in its entirety.

I do not entirely foreclose the possibility that Bill Brennan's suggestion might be feasible, depending on how it is written, but I'm not sure that I will be able to go along with it. Like him, however, I will not be able to join Part IV as it is presently written.

Respectfully,

Justice O'Connor

cc: Justice Brennan
Justice White

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1984

Re: 82-945 - Sure-Tan, Inc. v. NLRB

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[February ——, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

At issue in this case are several questions arising from the application of the National Labor Relations Act (NLRA or Act) to an employer's treatment of its undocumented alien employees. We first determine whether the National Labor Relations Board (NLRB or Board) may properly find that an employer engages in an unfair labor practice by reporting to the Immigration and Naturalization Service (INS) certain employees known to be undocumented aliens in retaliation for their engaging in union activity, thereby causing their immediate departure from the United States. We then address the validity of the Board's remedial order as modified by the Court of Appeals.

I

Petitioners are two small leather processing firms located in Chicago that, for purposes of the Act, constitute a single integrated employer. In July 1976, a union organization drive was begun. Eight employees signed cards authorizing the Chicago Leather Workers Union, Local 431, Amalgamated Meatcutters and Butcher Workmen of North America (Union), to act as their collective bargaining representative. Of the eleven employees then employed by petitioners, most were Mexican nationals present illegally in the United States without visas or immigration papers authorizing them to

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 4, 1984

Re: No. 82-945 Sure-Tan, Inc. v. NLRB

Dear Bill,

Thank you for your letter. It has been some time now since my draft opinion in this case circulated and thus far it has attracted only one vote. I still believe the views expressed in Part IV are correct, but if I am unable to attract at least two more votes to reach a judgment, if not a Court, I will have to consider simply vacating the judgment of the Court of Appeals and remanding for the Board to consider whether back pay is appropriate and whether the employees were unavailable for work after their deportation.

For the present, I will wait to see what others on the Court plan to do or what changes they want made.

Sincerely,

Sandra

Justice Brennan

cc: Justice White
Justice Stevens

Revisions at: 8, 9, 11, 15, 16, 17, 18, 19 & 20

Stylistic changes.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAY 25 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[May ——, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

At issue in this case are several questions arising from the application of the National Labor Relations Act (NLRA or Act) to an employer's treatment of its undocumented alien employees. We first determine whether the National Labor Relations Board (NLRB or Board) may properly find that an employer engages in an unfair labor practice by reporting to the Immigration and Naturalization Service (INS) certain employees known to be undocumented aliens in retaliation for their engaging in union activity, thereby causing their immediate departure from the United States. We then address the validity of the Board's remedial order as modified by the Court of Appeals.

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Petitioners are two small leather processing firms located in Chicago that, for purposes of the Act, constitute a single integrated employer. In July 1976, a union organization drive was begun. Eight employees signed cards authorizing the Chicago Leather Workers Union, Local 431, Amalgamated Meatcutters and Butcher Workmen of North America (Union), to act as their collective-bargaining representative. Of the 11 employees then employed by petitioners, most were Mexican nationals present illegally in the United States without visas or immigration papers authorizing them to

Stylistic Changes Throughout

pp. 19

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-945

SURE-TAN, INC. AND SURAK LEATHER COMPANY, PETITIONERS *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[June ——, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

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P. 9 - footnote omitted

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Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

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4th DRAFT

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