FP SCOTUS Predictions: Will the Supreme Court Make it Easier to Hold Unions Liable for Strike Misconduct?

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The Supreme Court recently heard arguments in a case that could make it easier for employers to sue and recover damages from labor unions that damage an employer's property during a strike. The issue before SCOTUS in *Glacier Northwest v. International Brotherhood of Teamsters* is whether federal labor law prevents employers from filing a state law tort claim for intentional damage where workers failed to take reasonable precautions to protect company property. How will SCOTUS rule? Read on for a discussion of the case and our predictions in light of recent oral arguments.

What is This Case About?

Glacier Northwest, Inc. is a company in Washington State that sells and delivers custom batches of concrete to area businesses. In 2017, Glacier was negotiating a new collective bargaining agreement with Teamsters Local 174, the union representing the company's truck drivers, but the contract expired before the two sides could reach a deal. The parties continued talking to try to hammer out an agreement, but the truck drivers suddenly went on strike during these talks.

This was a problem because the company's vehicles had just been loaded with cement right before the walkout. The concrete hardens quickly, so Glacier has to deliver the concrete batches quickly after mixing instead of keeping them inside trucks for too long. Because of the strike, the cement hardened inside the trucks, causing Glacier to dispose of several batches to avoid catastrophic damage to their trucks. The company incurred significant costs doing so.

Glacier sued Local 174 in Washington state court, bringing several tort claims and alleging the union purposely coordinated its strike to damage company property. Ultimately, the Washington Supreme Court affirmed the lower court's dismissal, finding Glacier's claims were preempted (or blocked) by the federal National Labor Relations Act. In so holding, the court found the cement loss was incidental to a strike "arguably protected" by the federal law, which meant that an employer could not sue in court for these types of damages and instead was limited to the (somewhat limited) relief available through the NLRA.

Before SCOTUS, Glacier chiefly argued its case should not preempted and should have been allowed to proceed in state court because:

- the union's strike was plainly unprotected by the NLRA, as the truck drivers either knew or should have known the concrete would be damaged; and
- the intentional aspect of the workers' actions implicates the "local feeling exception" to preemption, by which state law claims in furtherance of the compelling interest in maintaining domestic peace can proceed in court.

How Could the SCOTUS Decision Impact Employers?

The NLRA protects concerted activities for "mutual aid or protection" and expressly preserves the right to strike. As a Constitutional principle, the NLRA preempts state law claims based on "arguably protected" conduct. However, violence and deliberate efforts to damage property are not protected activity.

Under SCOTUS's established *Garmon* doctrine, the NLRB must first review any case when employees engage in activity arguably protected by the NLRA. The rationale is that the agency, with its specialized knowledge and experience with labor-management disputes, is better equipped than the judiciary to determine whether activity is within the parameters of, or contrary to, the NLRA. If the Board finds the union's action is protected, state courts are left without jurisdiction over the matter. However, if the Board finds the NLRA does not protect the conduct, the employer may file a state lawsuit against the union to recover damages.

SCOTUS's decision in the *Glacier* case could clarify what constitutes protected conduct under the NLRA – and whether employers can bypass NLRB review and file state lawsuits to seek redress for improper conduct during work stoppages.

- A ruling that the NLRA does not preclude state tort claims in such instances would protect employers' property interests by ensuring unions could be on the hook for the financial fallout of their tortious actions.
- Conversely, a decision favoring unions could encourage them to claim that intentional destruction of property is lawful as long as it comes under the guise of a strike or other concerted action. Unions could try to use this interpretation to create leverage during labor disputes by strategically scheduling strikes to cause greater economic harm and property damage.

FP SCOTUS Prediction: Remand to the State Court

Based on the oral argument and our analysis, we predict SCOTUS will take a middle-ground approach and send the case back to the Washington Supreme Court on remand. This would follow the recommendation of the unusual "neutral" brief filed by the Biden administration.

The administration argued the state court erred in dismissing the lawsuit because it was required, at the motion to dismiss stage, to accept as true Glacier's version of the facts — i.e., that the union did not "take reasonable precautions to protect the employer's property from foreseeable, imminent

damage that would be caused by the sudden cessation of work. The Act does not protect (or arguably protect) such conduct." The White House's brief noted that the NLRB issued its own complaint stating that the workers had engaged in protected conduct and the state court lawsuit was an unfair labor practice after the Washington Supreme Court dismissed the case. The administration's position is that SCOTUS should remand the case back to the Washington Supreme Court to consider the effect of the NLRB's complaint since the NLRB complaint came *after* the state court decision.

During argument, conservative Justices Alito and Kavanaugh were conspicuously silent, while Justices Gorsuch and Thomas were also very quiet. This might indicate that much of the Court's conservative contingent has already made up their minds about the case. In general, we usually expect them to be sympathetic to businesses.

Justice Sotomayor was the most vocal justice. She expressed concern about placing too many limitations on striking, asking: "Could the state tell the union not to go on strike until the end of the day?" When Glacier's attorney answered in the negative, she asked: "Then what's the difference between that and telling workers not to strike while the truck has cement in it?" The other liberal justices, Justices Kagan and Jackson, also asked questions of both the union and Glacier to explore whether there was a deliberate scheme to destroy the cement, or whether that outcome was a natural result of ceasing work.

Our prediction is that a majority of the liberal Justices will vote in favor of the Biden administration's middle approach, which might also capture a couple of the conservative Justices while being less of a wholesale decision in favor of the employer.

FP Predictions: The Breakdown

- **Joshua Nadreau**: Justice Alito writes for a 6-3 majority concluding that the case falls outside of *Garmon* preemption and remands it to the Washington Supreme Court for further proceedings.
- **Deepa Desai**: 5-4 in favor of remanding, with Justice Sotomayor writing the majority opinion and Justice Thomas writing a dissenting opinion.

What Should You Do in the Meantime?

The Supreme Court heard oral argument on this case on January 10. A decision is expected sometime in the summer, before the end of the current SCOTUS term (which usually wraps up in late June). In the meantime, the *Garmon* preemption doctrine will normally prevent employers from filing state tort claims and seeking monetary damages for strike misconduct, unless the NLRB first finds that the conduct is not protected under the NLRA. If you find yourself in a situation where you incur financial losses as a result of labor-related conduct, work with your Labor Relations Group attorney to determine your options.

Conclusion

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We will continue to monitor this case and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Labor Relations Practice Group.

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