

SUPREME COURT RULING MAKES IT EASIER FOR EMPLOYERS TO RECOVER DAMAGES CAUSED BY UNION STRIKE MISCONDUCT

Insights
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The Supreme Court delivered welcome news today to employers seeking to sue and recover economic damages from labor unions, ruling that federal labor law does not prevent them from filing state law claims for intentional damage when workers fail to take reasonable precautions and destroy company property during a strike. Although the National Labor Relations Act (NLRA) generally blocks state law claims when the two “arguably conflict,” SCOTUS noted in an 8-1 decision today that federal law does not shield strikers in every situation. In *Glacier Northwest v. International Brotherhood of Teamsters*, the union called for a driver strike in the midst of delivering highly perishable concrete that was destroyed in the process. Siding with the employer, the Court explained that the NLRA does not “arguably protect” the union’s actions if they posed a material risk of harm to company property. The Supreme Court’s decision paves the way for employers to hold unions accountable and recover damages in state court. Here’s what you need to know about the ruling and its potential impact on the workplace.

What Were the Key Issues in This Case?

Glacier Northwest is a company in Washington State that sells and delivers custom batches of concrete to area businesses. Glacier’s drivers are represented by Teamsters Local 174. In 2017, negotiations for a successor collective bargaining agreement broke down and the drivers suddenly went on strike.

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This was a problem because the company's vehicles had been loaded with concrete right before the walkout. The concrete hardens quickly, so Glacier must deliver it quickly after mixing. Because of the strike, the concrete began to harden inside the trucks, causing Glacier to dispose of several batches to avoid catastrophic truck damage. The company incurred significant costs in doing so, as all the disposed concrete was rendered unusable.

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Glacier sued Local 174 in Washington state court, alleging the union purposely coordinated its strike to maximize damage to 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 restricted to the (somewhat limited) relief available through the NLRA.

Before SCOTUS, Glacier chiefly argued its case should not be preempted and should have been allowed to proceed in state court because the strike was plainly unprotected by the NLRA, as drivers either knew or should have known the concrete would be damaged.

How Did SCOTUS Decide?

The Supreme Court agreed with Glacier and handed a victory to employers across the country by ruling that that state law claims are not blocked by the NLRA when it is alleged that the union failed to take "reasonable precautions" to avoid property damage. The Court reversed the Washington Supreme Court's ruling and sent the case back for further review.

"The Union's actions not only resulted in the destruction of all the concrete Glacier had prepared that day; they also posed a risk of foreseeable, aggravated, and imminent harm to Glacier's trucks," Justice Amy Coney Barrett wrote for the Court. "Because the Union took affirmative steps to endanger Glacier's property rather than reasonable precautions to mitigate that risk, the NLRA does not arguably protect its conduct." Surprisingly, this majority opinion was joined by liberal Justices Sonia Sotomayor and Elena Kagan, who joined with the Court's conservative bloc to create an unusual 8-1 majority.

Justice Ketanji Brown Jackson was the lone dissenter in the case. She emphasized “Congress’s decision to create an agency that is uniquely positioned to evaluate the facts and apply the law in cases such as this one.” As the majority noted, however, the union conceded that “the NLRA does not arguably protect its actions if they posed a material risk of harm to the trucks.”

What Should Employers Do as a Result of This Decision?

The NLRA expressly protects the rights of employees to engage in strikes and other concerted activities for “mutual aid or protection.” As a Constitutional principle, the NLRA also preempts state law claims based on “arguably protected” conduct. However, violence and deliberate efforts to damage property are not protected activity – and now this argument is bolstered when dealing with combative situations involving labor unions.

You should immediately connect with your Fisher Phillips Labor Relations Group counsel and coordinate regarding how this decision could benefit any existing conflicts you are working through – or any future labor conflict. You may decide to change your tactics and strategy given the new way such situations could be handled.

As a quick refresher, the NLRB must first review any case in which employees engage in activity arguably protected by the NLRA under SCOTUS’s established *Garmon* doctrine. 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 now clarifies the situations where employers can bypass NLRB review and file state lawsuits to seek redress for improper conduct during work stoppages. You should reframe your view of any labor conflicts with this important new standard in mind.

Furthermore, today's ruling allows you to protect your property interests by ensuring unions could be on the hook for the financial fallout from their tortious actions. If you find yourself in a situation where you incur property losses as a result of labor-related misconduct, be sure to capture and document the financial harm associated with all resulting damages, and work with your labor counsel to determine how this standard can otherwise be used to your benefit.

How Did We Do With Our Predictions?

After the Justices heard oral arguments in this case, [we correctly predicted that SCOTUS would send the case back to the Washington Supreme Court on remand](#). We were surprised, however, to see that a majority of the liberal Justices voted in favor of the employer. No outside observers or SCOTUS experts expected Justices Sotomayor and Kagan to join forces with Justices Clarence Thomas and Samuel Alito, among all of the other conservative members of the Court, to rule so strongly in favor of employers. We predicted a tighter 6-3 or even 5-4 ruling and did not foresee a comprehensive 8-1 victory.

Conclusion

We will continue to monitor developments in this area 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](#).