

Supreme Court Rules that Union May Be Liable for Damage Caused by Strike

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In a strikeout for organized labor, the United States Supreme Court recently held that an employer may pursue a lawsuit based on damage caused to its property by a strike.

Glacier Northwest, Inc., a company which delivers concrete to customers, sued the International Brotherhood of Teamsters Local Union No. 174 in Washington state court for intentional damage to its product after a strike where drivers walked off the job, leaving wet concrete in their trucks. The company alleged concrete in the process of being delivered was rendered useless after drivers returned trucks with loads of concrete on board, requiring the company to spend money disposing of the concrete. The state court dismissed the claims, holding that the claims arguably conflicted with the National Labor Relations Act (“NLRA”). The NLRA preempts state law even more broadly than traditional federal preemption, under which federal law preempts state law if the two conflict. With respect to the NLRA, state regulation or action is preempted if it covers activity even arguably protected or prohibited by the NLRA.

In an 8-1 decision authored by Amy Coney Barrett, the Supreme Court held the state court erred in dismissing the intentional tort claims at such an early stage in the proceedings based on its concerns of preemption. Justice Barrett explained the NLRA’s protection of the right to strike is not absolute and it does not protect workers who fail to take “reasonable precautions” to protect employer property from foreseeable, aggravated, and imminent danger due to the sudden cessation of work, citing *Bethany Medical Center*, 328 NLRB 1094 (1999). The Court concluded that because the union took affirmative steps to endanger Glacier’s property rather than reasonable precautions to mitigate that risk, the NLRA arguably does not protect its conduct. By reporting for duty and pretending as if they would deliver the concrete, the drivers prompted the creation of the perishable product. Then, they waited to walk off the job until the concrete was mixed and poured in the trucks.

The union initiated the strike during a workday and did not give Glacier specific notice. Although these actions independently do not make the conduct unprotected, the Supreme Court held these actions are relevant considerations in evaluating whether strikers took reasonable precautions, whether harm to property was imminent, and whether that danger was foreseeable. Taking these considerations together, the Court concluded the union did not take reasonable precautions to mitigate damage, rendering its conduct unprotected by the NLRA.

Practically, this decision gives employers the opportunity to sue in state court for property damage caused by a strike or work stoppage where a union fails to take reasonable precautions to protect employer property. Employers should note to take caution since prosecutors for the National Labor

Relations Board have alleged that Glacier's lawsuit was a retaliatory action against union members. A decision on that matter is pending before an administrative law judge.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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