

Supreme Court Set to Decide Whether NLRA Preempts State Law Claims for Property Damage Caused During Strikes

Labor Relations Update on October 3, 2022

The U.S. Supreme Court's upcoming term will include review of whether the National Labor Relations Act (the "Act") preempts state court lawsuits for property damage caused during strikes, which could have significant implications for employers and unions.

Factual Background

The case – *Glacier Northwest Inc. v. International Brotherhood of Teamsters Local Union No. 174* – began over five years ago when the Union in Washington State representing the Employer's truck drivers went on strike. The Union timed their strike to coincide with the scheduled delivery of ready-mix concrete, and at least 16 drivers left trucks that were full of mixed concrete, forcing the Employer to rush to empty the trucks before it hardened and caused damage. The Employer was able to do so, but incurred considerable additional expenses and, because it dumped the concrete in order to avoid truck damage, lost its product.

Employer Brings State Law Suit for Property Damage

After the incident, the Employer sued the Union under Washington State law for intentional destruction of property. The Union argued that the suit was preempted by the Supreme Court's decision in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959) ("*Garmon*"). In *Garmon*, the Supreme Court held that, although the Act does not expressly preempt state law, it impliedly preempts claims based on conduct that is "arguably or actually protected by or prohibited by the Act." The Supreme Court held in *Garmon* that conduct is "arguably protected" when it is not "plainly contrary" to the Act or has not been rejected by the courts or the National Labor Relations Board (the "Board").

State Court Holdings

The Washington State trial court dismissed the Employer's suit for property damage because strikes are protected by the Act. The Washington Court of Appeals reversed, holding that intentional destruction of property during a strike was not activity protected by the Act, and thus, not preempted under *Garmon*.

Finally, the Washington Supreme Court reversed again, holding that the Act impliedly preempts the state law tort claim because the intentional destruction of property that occurred incidental to a work stoppage was at least arguably protected, and the Board would be better-suited to make an ultimate determination on this legal issue.

Question Before the Supreme Court

The Supreme Court will now determine whether the National Labor Relations Act bars state law tort claims against a union for intentionally destroying an employer's property in the course of a labor dispute.

Under *Garmon*, the Act does not preempt suits regarding unlawful conduct that is plainly contrary to the NLRA, and the Employer argues that the strike at issue here was plainly unprotected because of the intentional destruction of property. In other words, the conduct is not even *arguably* protected by the Act such that the Act would preempt – it was, rather, plainly unprotected conduct, and thus, the proper subject of a lawsuit. The Employer also cited the “local feeling” exception to *Garmon*, which creates an exception to preemption where the States may have a greater interest in acting, such as in the case of property damage or violence.

The Union argued in opposition to the Employer's *certiorari* petition that the Employer merely challenged the Washington Supreme Court's *conclusion* that the conduct was arguably protected by the Act, and not its reasoning. Moreover, whether or not the conduct was protected should be decided by the Board, which is better-suited to decide the matter.

Takeaway

Employers should gain much greater clarity into whether they can seek relief from such conduct via a damages lawsuit. If the Court finds that such conduct is not preempted and may be litigated in state court, such a ruling could go far in protecting employers' interests in contentious labor disputes and potentially shift the balance of power towards employers during these disputes.

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