Supreme Court Allows Company to Sue a Union for Damages Caused by a Work Stoppage

Labor & Employment Law Update

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On June 1, 2023, the Supreme Court of the United States (SCOTUS) held that federal law does not preempt the right of an employer to sue a striking union for damages in state court if the union failed to take reasonable precautions to protect the employer against foreseeable, aggravated, and imminent danger.

Glacier Northwest, Inc. v International Brotherhood of Teamsters Local Union No. 174 arose when, after the parties' labor agreement had expired, the union allegedly held a concerted, coordinated work stoppage on a morning when it knew Glacier was mixing a large amount of concrete and loading it into trucks for delivery. As the union was aware, concrete is highly perishable and even when in a rotating drum, will eventually harden, causing significant damage to the truck. Glacier claimed several drivers abandoned their loaded trucks. Glacier was able to offload the concrete and avoid damages to the trucks, but all the concrete mixed that day was lost.

Glacier sued the union for damages under state law, but the trial court dismissed the case, concluding that Glacier's claims were preempted by the National Labor Relations Act (NLRA). Generally, the doctrine of preemption holds that when state and federal laws conflict, the state laws are not enforceable. In a 1957 case, *San Diego Building Trades Council v. Garmon,* 359 U. S. 236, the SCOTUS created an even broader umbrella of preemption for union activity, holding the NLRA preempts state law when the two "arguably conflict." Unions argue that because the NLRA protects the rights of employees to organize, form, or assist labor organizations, including the right to engage in concerted activities for collective bargaining, mutual aid and protection, it conflicts with any state law that might otherwise hold those employees liable for the consequences of their concerted activities. This union preemption argument has been effective in the past, and in this case, it won the day at the Supreme Court of Washington, prompting Glacier's appeal to the SCOTUS.

The SCOTUS took a different direction in its analysis. Citing an NLRB decision, the Court pointed out that the NLRA does not shield strikers who fail to take "reasonable precautions" to protect their employer's property from "foreseeable,

aggravated, and imminent danger" due to the sudden cessation of work. Here, Glacier alleged that the union instructed the drivers not to deliver the concrete knowing that that doing so would likely damage the trucks and require the concrete to be dumped. Accepting these allegations as true (because the lower court dismissed the case on a motion to dismiss), the SCOTUS concluded that Glacier alleged the union did not take reasonable precautions to protect the employer's property from foreseeable harm and, if that were true, the Court held, the union could not demonstrate that the union conduct was protected by the NLRA. In other words, the NLRA cannot even "arguably" preempt state law when the NLRA is not applicable.

The Court took time to point out that workers do not forfeit the NLRA's protections simply by commencing a work stoppage when the loss of perishable products is foreseeable. The Court emphasized that in this case the workers reported to work, prompting the loading of the concrete, and only after the concrete had been loaded into the trucks, did they commence the work stoppage. In so doing the workers not only destroyed the concrete but put the trucks at risk.

The SCOTUS avoided overturning long held precedent that the NLRA preempts state law even when the two only arguably conflict by concentrating on what constitutes concerted activity protected by the NLRA. It also interpreted the "danger" from which employers are entitled to be protected by "reasonable precautions," to include foreseeable damage to an employer's property.

The *Glacier* decision favors management interests and was determined by an 8 to 1 majority, suggesting a move to a more management-friendly SCOTUS. Unions should now think twice before they coordinate some sort of destructive strike activity, lest they end up defending an action for damages in state court.