

# U.S. Supreme Court Gives Green Light to Employer to Sue Union in State Court

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On June 1, 2023, the United States Supreme Court issued an 8-1 decision wherein it concluded that federal labor law—that is, the National Labor Relations Act (NLRA)—did not preclude an employer from suing a union for damages in state court in Washington.

The case—*Glacier Northwest, Inc. v. International Brotherhood of Teamsters*—centered around a work stoppage organized by a union. The employer—a ready-mix concrete company—sued the union for property damage and waste that resulted from the work stoppage.

Production of ready-mix concrete requires timely mixture and delivery of concrete in accordance with job- or order-specific requirements of customers; if it is not timely made, loaded, and delivered, it will harden in a truck and cause substantial damage.

Nonetheless, the union called a work stoppage when it knew the employer had been in the process of mixing substantial amounts of concrete to be loaded and delivered to customers. The employer instructed the drivers to finish deliveries in progress, but the union instructed them to ignore the employer. Some, but not all, drivers returned the trucks and took action to prevent damage to the trucks loaded with concrete. But at least nine drivers did not.

The employer then had to scramble to unload the loaded trucks of concrete in a safe and appropriate fashion, to avoid damage to the trucks and the environment. After hours of effort, the employer unloaded all the trucks, but all the concrete mixed that day became waste.

The employer then sued the union in state court, claiming the union intentionally destroyed its concrete, threatened to cause it other property damage, and caused it monetary damages. The union moved to dismiss, claiming the NLRA preempted the employer's state law claims for damages. The trial court granted the motion.

The appellate court in Washington reversed the trial court, but then Washington Supreme Court reinstated the trial court's decision. The employer then sought review by the United States Supreme Court.

The U.S. Supreme Court used the case to revisit the doctrine of preemption under the NLRA. The NLRA has long been interpreted by courts to have a uniquely broad preemption provision, one which is designed to keep most, if not all, labor disputes before the administrative judges of the NLRB (and thus outside of state or federal courts). Consistent with this interpretation, many courts have dismissed cases at their outset when they pertain to conduct that is “arguably” protected by the NLRA (keep in mind: the definition of “protected activity” under the NLRA is generally broadly construed).

Before the U.S. Supreme Court, however, the employer argued NLRA preemption did not apply because the NLRA did not even “arguably” protect the union drivers’ conduct under the circumstances. And the Court agreed, concluding the union did not take reasonable precautions to prevent the employer’s property from foreseeable, aggravated, and imminent danger.

In fact, the high court criticized the union’s conduct under the circumstances as going “well beyond the NLRA’s protections.” In this regard, the Court emphasized the union did not start the work stoppage until substantial customer-specific concrete mixing began, it did not provide advance notice of the stoppage, and it knew such stoppage would result in substantial property damage and/or waste.

The Court further addressed and rejected a series of arguments by the union that its conduct during the work stoppage was protected by the NLRA. In particular, the union attempted to analogize the case to cases where union conduct was “arguably” protected under the NLRA where it was foreseeable that an employer’s perishable product would spoil due to a work stoppage. The Court dismissed such analogies, noting “the Union is swinging at a straw man” and emphasizing the union’s conduct here *prompted the creation* of the perishable product, not just its waste.

The decision is significant in that it clarifies that the broad preemption provisions of the NLRA will not always apply to keep labor-related disputes out of court (*i.e.*, before the NLRB)). And, while the result of this case was fact-driven, the overarching message sent by the Supreme Court should give employers a sigh of relief: not everything and anything a union does or orchestrates will or should be rubber-stamped by a factfinder as simply “protected activity” and not all disputes over such conduct will or should be decided by the NLRB.

Stay tuned for further developments in this space.