Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Supreme Court Considers Preemption Under the National Labor Relations Act

February 7, 2023

On January 10, 2023, the U.S. Supreme Court heard oral argument in *Glacier Northwest v. International Brotherhood of Teamsters Local Union No. 174*, a case involving the National Labor Relations Act (NLRA) and the preemption of state tort claims. Glacier, a Washington company that mixes and delivers concrete, sued International Brotherhood of Teamsters Local Union No. 174 (Local 174), a labor union that represents Glacier's truck drivers, for intentional property destruction after the union engaged in a work stoppage that resulted in the loss of some of the company's concrete. Glacier alleged that the union coordinated the work stoppage to occur when the company's trucks were fully loaded with concrete for delivery. Glacier further alleged that Local 174 and Glacier's drivers were aware that the concrete was perishable and that the work stoppage "was deliberately timed and intended to destroy the company's property."

Before a Washington trial court, Glacier sued Local 174 for, among other things, intentional destruction of property, and the union moved to dismiss the company's tort claims. The trial court agreed with Local 174 and dismissed the destruction of property claim, but the state appellate court reversed, finding that "there was a 'clear determination' ... that the destruction of concrete was unprotected conduct" under the NLRA. In 2021, the Washington Supreme Court, sitting en banc, disagreed with the state appellate court and held that the federal labor statute preempted Glacier's claim because the concrete damage occurred incidental to a strike and was arguably protected under the NLRA. The question presented on appeal to the U.S. Supreme Court is whether the NLRA impliedly preempts state tort claims involving the intentional destruction of an employer's property during a labor dispute. This Legal Sidebar reviews the preemption doctrines that have developed under the NLRA and examines the parties' arguments in *Glacier Northwest*.

Preemption and the NLRA

When state law is in conflict with federal law, Article VI, clause 2, of the U.S. Constitution (known as the Supremacy Clause) generally renders the state law invalid or preempted. The Supremacy Clause states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

Congressional Research Service
https://crsreports.congress.gov
LSB10912

Under the Supremacy Clause, which "invalidates state laws that interfere with, or are contrary to, federal law," a federal law may "supersede state law in several different ways." Known as preemption, this principle allows Congress to enact federal laws that supersede state law using explicit language in a statute. Even when explicit language is not used, however, state law may be preempted because it is in conflict with federal law or because federal law in a given area is so comprehensive that no room remains for supplemental state regulation. The Supreme Court has indicated that "[t]he constitutional principles of preemption, in whatever particular field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter."

The NLRA contains no express statutory preemption provision. Nevertheless, in accordance with settled preemption principles, the Supreme Court has developed two preemption doctrines with regard to this statute. These doctrines reflect the Court's recognition of the National Labor Relations Board's (NLRB's) primary jurisdiction over labor-management relations, as well as an understanding that Congress intended for some conduct to remain unregulated. The first doctrine, "*Garmon* preemption," is from the Supreme Court's decision in *San Diego Building Trades Council v. Garmon*, a 1959 case involving preemption and a state court's ability to award damages arising out of peaceful picketing. In *Garmon*, the Court indicated that "[w]hen an activity is arguably subject to § 7 or § 8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board.... " Section 7 of the NLRA recognizes for most private sector employees a right to engage in collective bargaining and other concerted activities. Section 8 proscribes specified unfair labor practices for employers and unions.

In *Garmon*, the Court explained that to allow states to control conduct that is the subject of national regulation would "create potential frustration of national purposes." Despite the seeming breadth of the *Garmon* preemption doctrine, the Court recognized an exception where a state's power to regulate would not be preempted when an activity is merely a peripheral concern of the NLRA or the relevant conduct touches interests "so deeply rooted in local feeling and responsibility that, absent compelling congressional direction," preemption should not be inferred.

The second preemption doctrine considers whether Congress intended the conduct at issue to be unregulated and "controlled by the free play of economic forces" rather than subject to a state's regulation. Known as "*Machinists* preemption," this doctrine is derived, in part, from *Machinists v. Wisconsin Employment Relations Commission*, a 1976 case in which the Court considered whether a state labor relations board could enjoin a union and its members from refusing to work overtime as a way to put economic pressure on an employer during negotiations over a renewal agreement. In *Machinists*, the Court concluded that the state could not regulate the refusal to work overtime. The Court maintained that such self-help economic activities are "part and parcel" of the collective bargaining process and that the "state action in this case is not filling 'a regulatory void which Congress plainly assumed would not exist.'" The Court explained that regulation by the state in this instance was an obstacle to the purposes and objectives of Congress, which understood that the negotiating parties would engage in self-help to achieve their bargaining goals.

Preemption and Glacier Northwest

In *Glacier Northwest*, the Washington Supreme Court evaluated Local 174's preemption argument in accordance with *Garmon* after the union characterized the drivers' work stoppage as a strike subject to Section 7 of the NLRA. The strike occurred while Glacier and Local 174 were negotiating a new collective bargaining agreement, and the union maintained that Section 7 protects this kind of strike in support of collective bargaining demands.

Glacier contended, however, that the NLRA should not protect strike-related conduct that involves the intentional destruction of property. The company further argued that even if the concrete loss was

arguably subject to Section 7, its claim should not be preempted because it falls within the "local interest" or "local feeling" exception to *Garmon* preemption.

While the Washington Supreme Court acknowledged that some tort claims involving property loss have avoided *Garmon* preemption because they were found to be rooted in local feeling, it maintained that the relevant conduct in these instances was "marked by violence and imminent threats to the public order." Discussing *Garmon*, for example, the court noted that the decision's reference to the destruction of property "was articulated primarily in terms of the violence of the labor conduct, which in turn implicated the State's interest in the domestic peace." Viewing the concrete loss in *Glacier Northwest* as the incidental destruction of a product during a strike rather than conduct marked by violence, the court concluded that it did not fall clearly within *Garmon*'s local feeling exception.

The Washington Supreme Court also observed that under NLRB precedent a strike could be protected by Section 7 of the NLRA even if incidental product damage occurs. Under the NLRB's decisions, however, the agency emphasized that Section 7 does not protect conduct involving such damage if the employees do not take reasonable precautions to protect the employer's plant, equipment, or products from foreseeable imminent danger caused by the work stoppage. In *Glacier Northwest*, the Washington Supreme Court indicated that it was not clear whether Local 174 took such precautions. Moreover, the court maintained that a determination about Section 7 requires the NLRB's full factual analysis and should not be decided by a state court: "*Garmon* makes clear that this kind of fact-specific determination is a function of the NLRB in the interest of the uniform development of labor policy. State court adjudication would potentially interfere with important federal interests." Finding Local 174's work stoppage to be at least arguably subject to Section 7, the court concluded that the NLRA preempted Glacier's intentional property destruction claim.

In its appeal to the U.S. Supreme Court, Glacier again contended that the NLRA should not protect strikes that involve the intentional destruction of property. When a company seeks damages for this kind of property loss, Glacier argued that a state court should evaluate the claim, effectively denying the NLRB the opportunity to consider whether employees took reasonable precautions to protect the property. At oral argument before the Court, Glacier contended that this approach, when there is the intentional destruction of property, is "more specific, concrete, and clear ... ."

Local 174 argued, however, that the NLRB's practice of considering whether employees took reasonable precautions to protect property during a strike is the appropriate approach. The union contended that its actions during the strike, such as telling drivers to keep their trucks' drums running to prevent the concrete from hardening, provided enough evidence "to allow the Board lawfully to ... rule in [their] favor."

Considerations for Congress

If the Supreme Court were to conclude that the NLRA does not preempt state tort claims involving the intentional destruction of an employer's property, unions are likely to think more carefully about when they will strike and their strike tactics. The possibility of state court lawsuits might not only deter or alter some strikes but could lead to varying decisions about liability, a result that might arguably be viewed as contrary to national labor policy. Congress could consider amending the NLRA to include an express preemption provision that clarifies whether tort claims such as the one at issue in *Glacier Northwest* are preempted. Although bills that would have limited the preemption of some state laws have been introduced in the past, such as the Freedom from Union Stalking Act, it appears that similar legislation to specifically address tort claims involving the intentional destruction of property has not been introduced to date.

Author Information

Jon O. Shimabukuro
Legislative Attorney

Disclaimer