

Supreme Court Attacks Right to Strike, Impact Remains Unclear

While the Supreme Court's ruling in *Glacier v. Teamsters* delivered a blow to worker power, how it will be weaponized by employers is still uncertain.

By: Deirdre Harrington

The Supreme Court's holding in *Glacier Northwest Inc. v. International Brotherhood of Teamsters* is an indication of the Court's belief that corporations and their bottom lines are more important than working people. In its opinion released on June 1, 2023, the Court looked exclusively at the alleged facts of the case, as presented by Glacier Northwest, in an attempt to chip away at the right to strike.

Glacier Northwest sells ready-mix concrete. Concrete is highly perishable, but ready-mix trucks preserve the concrete for a limited time. If left in the rotating drum too long, it begins to harden and can damage the trucks. The collective bargaining agreement between the Teamsters and Glacier Northwest expired in 2017. Negotiations did not go well. The Union signaled for a work stoppage, knowing the company was mixing and loading concrete and making deliveries. Glacier Northwest ordered drivers to complete their deliveries. The Union told drivers to ignore those orders. At least 16 drivers returned with fully loaded trucks. Seven parked their trucks, notified Glacier, and either asked for instructions or took protective measures. At least nine drivers did not say anything when they returned their trucks. Glacier's management scrambled to safely offload the mixed concrete, preventing any damage to the trucks. The concrete hardened and became useless.

Glacier Northwest sued the Union for damages in Washington state court, claiming it intentionally destroyed their concrete. The Union moved to dismiss the suit because the National Labor Relations Act (NLRA) preempted them. Federal law normally preempts state law when there is a conflict between the two. The NLRA's preemption of state law in labor disputes goes even further. The NLRA, under the *Garmon* doctrine, preempts state law even when there is only arguably a conflict and the Labor Board is thus the pathway in which labor disputes must be settled. If there is even an arguable case for preemption, then the courts must wait for the Board to settle the legal issues.

In its decision, the Court considered whether the strike was protected activity, which it was. And whether the driver's conduct, not making their deliveries of the concrete, was protected under the NLRA. While the Union passed the first part of the test, the Court found it failed the second. The right to strike is not absolute, and the NLRB has long held that the NLRA does not protect strikers who do not take "reasonable precautions" to protect employer property from "foreseeable, aggravated, and imminent danger due to the sudden cessation of work."¹

¹ *Bethany Medical Center*, 328 N.L.R.B. 1094 (1999).

The Court reasons that the reasonable precautions test does not dictate specific actions to be done by the Union or the workers prior to a strike, but states that the actions of the Union and the workers here did not meet the test. The reasons given are that some of the drivers abandoned the fully loaded truck without alerting anyone from Glacier and that the Union told drivers to ignore instructions from Glacier once back in the yard to offload the trucks. The Court also mentions initiating the work stoppage prior to loading the trucks as an option. The majority also rejects the argument from the Union that workers who deal with perishable goods will have no meaningful right to strike if the risk of spoiling of a product is enough to make a strike illegal. The Court states that this is not the same, as in the case at hand, the drivers, by reporting to work, actually prompted the creation of the perishable product. It was more than just a work stoppage involving perishable products, where the foreseeable consequence is simply the loss of that perishable product.

The Court, in an 8 to 1 decision, held that the state court erred in dismissing the lawsuit as preempted by the NLRA. Because the Union took affirmative steps to endanger Glacier's property rather than reasonable precautions to mitigate the risk, the NLRA does not arguably protect its conduct.

Contrary to the news headlines, there is nothing in this case that changes the way in which unions decide to start a work stoppage. The Court remanded the case back to the lower courts. The lower court could very well find in favor of the Union as the only facts considered until this point have been the facts presented by the company.

There is general frustration around this decision. The Court did not make it clear on what is or is not necessary with regards to reasonable precautions. While the Court states that this is a fact specific inquiry with regards to the reasonable precautions necessary to mitigate risk to property of the employer, this may have the impact of chilling strike actions by Unions as there is now a higher risk of Unions being held liable for tort claims in state courts. The Court does not give Unions specific guidance with regards to what might be reasonable precautions, just that the facts presented to the Court, from the employer's complaint, did not show those reasonable precautions. It's unclear whether the Court would have found reasonable precautions existed if all of the drivers had notified the company that they had left their trucks with concrete in them.

Deirdre Harrington is a 3L law student completing an externship with the Chicago Federation of Labor.