

# U.S. Supreme Court: Federal Labor Law Does Not Bar State Torts for Intentional Destruction of Co. Property

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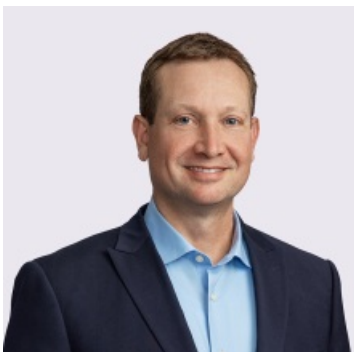


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The National Labor Relations Act does not preempt a company's state tort claims alleging a union's intentional destruction of company property during a labor dispute, the U.S. Supreme Court has held in an 8-1 decision. *Glacier Northwest, Inc. v. Int'l Brotherhood of Teamsters Local Union No. 174*, No. 21-1449 (June 1, 2023).

The Court determined the Act does not protect a union's failure to take reasonable precautions to protect company property from "foreseeable, aggravated, and imminent danger" resulting from a work stoppage. By not only failing to take reasonable precautions, but actively coordinating with workers to initiate the strike when the company was batching and delivering concrete to its customers, the union's actions in this case fell outside the protections of the Act. The Court's decision paves the way for state court-awarded damages against the union for its conduct.

## Background

Glacier Northwest is a company engaged in the sale and delivery of ready-mix concrete in Washington State. Concrete is a perishable product. Glacier employs truck drivers who deliver the concrete in "ready-mix trucks" with rotating drums to delay the concrete from hardening during transport. Once batched, the mixer drivers deliver the concrete to customers for immediate possession and use by the customers.

Glacier's mixer drivers are members of the International Brotherhood of Teamsters Local 174. After a collective bargaining agreement expired between the parties in 2017, the union authorized a work stoppage. The union timed the work stoppage to happen on a Friday morning when the concrete was being batched and loaded on the mixer trucks. Despite Glacier's instructions to the drivers to finish deliveries already in progress, the Teamsters ordered the drivers to return the trucks loaded with batched concrete. Glacier was forced to implement emergency measures to prevent damage to its trucks, but the batched concrete hardened and became useless.

Glacier subsequently filed claims against the Teamsters for damages in Washington State court alleging the union intentionally destroyed its property. The union argued that the state court lacked jurisdiction over Glacier's claims because the drivers' conduct was related to protected organizing activity and, therefore, the Act preempted state laws. The union cited the federal Garmon doctrine (named after *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959)), which holds that when state law and federal law arguably conflict, the Act preempts state law.

The Washington court agreed with the union. It dismissed Glacier's claims for damages, finding that the "loss was incidental to a strike arguably protected by federal law" and, thus, preempted.

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## Related Services

Labor Relations

Glacier appealed to the U.S. Supreme Court.

### The Decision; Dissent; Concurrence

In an opinion delivered by Justice Amy Coney Barrett, the Court held the Act does not preempt Glacier's state tort claims for intentional destruction of property.

The Court explained that the right to strike is not absolute and certain limitations exist. For example, workers are still required "to take reasonable precautions to protect their employer's property from foreseeable, aggravated, and imminent danger" during a strike, it said.

In analyzing the circumstances, the Court noted the union's decision to initiate a strike for a time when drivers had already allowed their trucks to be loaded with perishable expiring concrete "strongly suggests" the union failed to take reasonable precautions to avoid destroying Glacier's property. The Court also noted that the union could have taken steps to avoid destroying the concrete. For example, it said, the union could have directed the drivers to decline to have their trucks loaded with the perishable batched concrete, knowing the strike was imminent. Instead, the union took "affirmative steps," the Court pointed out, to maximize the threat both to the concrete and trucks.

The Court's analysis extended beyond the issues of foreseeability and reasonable precautions, reaching the matter of the union's intentional destruction of Glacier's property. The Court explained, "[B]y reporting for duty and pretending as if they would deliver the concrete, the drivers prompted the creation of the perishable product." The Court also focused on the union's intentional actions. The Court continued, "Indeed, far from taking reasonable precautions to mitigate foreseeable danger to Glacier's property, the union executed the strike in a manner designed to compromise the safety of Glacier's trucks and destroy its concrete. Such conduct is not 'arguably protected' by the [Act]."

Justice Ketanji Brown Jackson issued the lone dissent. Justice Jackson opined that, after the National Labor Relations Board regional office filed a complaint with the Board more than four years after the strike, the Court should pause its proceedings so the Board can consider the dispute.

Justice Samuel Alito's concurrence stated that the dissent's "argument represents a striking extension *Garmon* preemption" and if "the state courts on remand dismiss this case on that ground, the decision ... would be a good candidate for a quick return trip" to the U.S. Supreme Court.

### Implications

Employers that may need to seek damages in state court if company property is intentionally destroyed during a labor dispute can find assistance in the Court's decision. Unions must take steps during a strike to ensure reasonable precautions are taken to reduce the risk of foreseeable, aggravated, or imminent harm to property. Strike conduct that intentionally fails to take such steps, or that affirmatively endangers property, may not be protected by the Act.

If you have any questions, please contact a Jackson Lewis attorney.

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