No. 21-1449

In The
Supreme Court of the United States

GLACIER NORTHWEST, INC.,
D/B/A CALPORTLAND,

Petitioner,

v.

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL UNION NO. 174,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Washington

BRIEF OF *AMICUS CURIAE* LANDMARK LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Landmark Legal Foundation ("Landmark") is a national public-interest law firm committed to preserving the principles of limited government, separation of powers, federalism, originalist construction of the Constitution, and individual rights. Landmark has a unique perspective on this case because of its expertise in matters related to unions and labor law.

Landmark urges this Court to reverse the ruling of the Washington Supreme Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

The National Labor Relations Act, 29 U.S.C. § 151 *et seq*. ("NLRA"), which protects the right to strike, does not shield violence or the intentional destruction of property from state tort claims, as held in longstanding precedent. The Washington Supreme Court's opinion below conflicts with this precedent. Their interpretation of *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), the seminal labor preemption case, turns the NLRA on its head, conflicts

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Counsel for *Amicus Curiae* received consent from all parties.

with decades of case law, and is against the public interest.

The Washington Supreme Court found that the Teamsters' work stoppage, intentionally timed to damage Glacier Northwest's trucks, was arguably protected by *Garmon*. Under their reading of *Garmon*, employers' state tort claims for union workers' destruction of employer property should be preempted by the NLRA and thus effectively shielded from consequences. The Washington Supreme Court's errant reading of the statute and *Garmon* would ensure that a law passed to prevent industrial strife would increase it, placing workers and the public at risk.

ARGUMENT

I. The NLRA, enacted to prevent industrial strife, does not protect intentional destruction of private property during a strike.

The Washington Supreme Court held that the NLRA preempts the Petitioner's property destruction claims because the damage occurred "incidental to a work stoppage" and was thus "at least arguably protected under the NLRA." This alleged protection comes from a broad reading of *Garmon*, the seminal labor preemption case. *Garmon* itself asserts a broad theory of implied preemption of state regulation. Yet the state supreme court's interpretation is not supported by the statute, *Garmon* itself, or subsequent case law.

The National Labor Relations Act of 1935 (Wagner Act), 29 U.S.C. §§ 151-169, granted workers the right to strike and engage in collective bargaining. See NLRA §§ 7 (granting right to form or join unions and engage in "concerted activities" for collective bargaining), 13 (granting right to strike), 29 U.S.C. §§ 157, 163. The Act acknowledges that the right to strike is limited in § 13: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." 29 U.S.C. § 163. According to the National Labor Relations Board ("NLRB"), "the law not only guarantees the right of employees to strike, but also places limitations and qualifications on the exercise of that right." *The Right to Strike*, National Labor Relations Board, https://www.nlrb.gov/strikes (last visited Nov. 2, 2022). See, e.g., § 8(g), 29 U.S.C. § 158(g) (prohibiting unions from striking at health care institutions without ten days' notice).

To protect these rights, the Wagner Act created an independent agency to mediate labor disputes, the NLRB. Under § 10(a), the NLRB was given the power "to prevent any person from engaging in any unfair labor practice [listed in § 8] affecting commerce." 29 U.S.C. § 160(a). After the issuance of a complaint, the Board is empowered "to determine whether unfair practices have been committed, what remedy would best effectuate the policies of the Act, and whether to seek enforcement of its order in the courts." *Haleston Drug Stores, Inc. v. NLRB*, 187 F.2d 418, 422 (9th Cir.

1951). Furthermore, "[t]he Act is essentially remedial. It does not carry a penal program declaring the described unfair labor practices to be crimes. [It] does not prescribe penalties or fines in vindication of public rights or provide indemnity against community losses as distinguished from the protection and compensation of employees." *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 10 (1940).

A federal statute's purpose and policy goals are sometimes used to justify implied preemption of state regulation improperly, see *Wyeth v. Levine*, 555 U.S. 555, 583 (2009) (Thomas, J., concurring), but the NLRA's background and purpose to stop violence and strife forestall such efforts. The NLRA arose from an era of industrial strife. In the early 20th century, "[r]ecurrency of strikes affected our whole industrial economy." Earle K. Shawe, *The Role of the Wagner Act in Preventing Industrial Strife*, 32 Va. L. Rev. 95, 98 (1945). The right to organize for collective bargaining was the major issue in many of these strikes. *Id.* They were often violent.

For instance, the Railway Shopcraft strike of 1922, instrumental to the passage of the Railway Labor Act (RLA) in 1926, "involved 400,000 strikers, 1,500 cases of violent assault to kill, 51 cases of dynamiting and burning railroad bridges, 65 reported kidnappings, many other incidents of destruction." Morgan O. Reynolds and D. Eric Schansberg, "*At Age 65, Retire the Railway Labor Act*," Regulation, Vol. 14, No. 3 (Summer 1991), https://www.cato.org/sites/cato.org/files/serials/files/regulation/1991/7/v14n3-8.pdf (last visited June

8, 2022). The RLA granted collective-bargaining rights to railway workers and was a precursor to "a national labor policy." *Pre-Wagner Act labor relations*, National Labor Relations Board, https://www.nlrb.gov/about-nlrb/who-we-are/our-history/pre-wagner-act-labor-relations (last visited Nov. 2, 2022). A wave of strikes raged in the years just before the NLRA's passage. Shawe, at 98. "These strikes had an immediate and devastating impact on the nation's whole economy which affected entire industries." *Id.*

Congressional regulation of the national economy was still considered constitutionally dubious in the 1930s. See *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 549-50 (1935). The Wagner Act included a lengthy explanation of the statute's policy goals and their link to interstate commerce to explain the source of congressional authority. The Act's "findings and declaration of policy" provide that the failure to recognize the right to unionize or engage in collective bargaining will "lead to strikes and other forms of industrial strife or unrest." 29 U.S.C. § 151. Industrial strife, according to the statute, in turn burdens or obstructs commerce. *Id.* One observer noted:

> Industrial strife and unrest at the time of the passage of the Wagner Act meant more than the inconvenient strikes that we sometimes experience today. Instead, it meant violent strikes that paralyzed the national economy and frequently required the deployment of the National Guard or federal troops to restore order.

Michael L. Wachter, *The striking success of the National Labor Relations Act in* Research Handbook on the Economics of Labor and Employment Law 427 (Cynthia L. Estlund & Michael L. Wachter eds., 2012).

The Act's purpose and policy goals thus do not support violence or the destruction of property. One of the early courts interpreting the NLRA stated, "The primary purpose of the act of Congress is to obviate appeals to brute force which are too often the accompaniment of labor disputes." *NLRB v. Del.-New Jersey Ferry Co.*, 90 F.2d 520, 520 (3d Cir. 1937). "[T]he Wagner Act provided for a legal strike mechanism which channeled concerted activity into a peaceful form: employees were given the right to strike, but that right was required to be exercised in a peaceful fashion." Wachter, *supra*, at 440. The argument that the Act allowed striking workers to use violence without consequences does not make sense. Instead, "[i]t was assumed that violence would render strike activity unprotected and subject to existing state criminal and civil laws." Wachter, *supra*, at 440. This assumption is confirmed in *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (1939), a case holding that not just criminal conduct, but tortious conversion of property, was outside the NLRA's protection.

In *Fansteel*, workers at a manufacturing plant engaged in an unlawful "sit-down" strike where they refused to leave the employer's buildings. Unlike a lawful strike involving a stoppage of work and statement of grievances, "[i]t was an illegal seizure of the buildings in order to prevent their use by the employer in a

lawful manner and thus by acts of force and violence to compel the employer to submit." *Id.* at 256. The Court referenced the NLRA's purpose and noted: "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land." *Id.* at 257-58.

The Court's use of the terms "force" and "violence" to describe the seizure of the building and property destruction shows a broad understanding of unlawful conduct that is unprotected by the NLRA. Legally, "the ousting of the owner from lawful possession is not essentially different from an assault upon the officers of an employing company, or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands." *Id.* at 253. These acts could not be justified because of an underlying labor dispute or unfair labor practice. To do so "would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society." *Id.*

Like *Fansteel*, in *Allen-Bradley v. Wis. Emp't Relations Bd.*, 315 U.S. 740 (1942) the Court discussed the lack of a statutory intent for the displacement of traditional state police powers against violence and property destruction. In a case arising out of a union violation of state labor law, a union had been "threatening employees desiring to work with physical injury or property damage," along with mass picketing, picketing at employees' homes, obstructing access to the

company's factory, and obstructing the streets and public roads around the factory. *Id.* at 748. The Court held that "the [NLRA] was not designed to preclude a State from enacting legislation limited to the prohibition or regulation of this type of employee or union activity." *Id.* Instead, it continued, "this Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested.'" *Id.* at 749 (citations omitted). Although the opinion refers to the police power, the police power's "philosophical basis lies at the very foundation of English common law," David A. Thomas, *Finding More Pieces for the Takings Puzzle: How Correcting History Can Clarify Doctrine*, 75 U. Colo. L. Rev. 497, 501 (Spring 2004) (discussing common law origins of the police power), so the *Allen-Bradley* Court's objections to wholesale preemption are relevant here.

This Court's early interpretation of the Wagner Act in *Fansteel* and *Allen-Bradley* refused to find in the statute what is not there. And the Act's major amendment added nothing that condones violence or property destruction. After W.W.II., Congress amended the NRLA through the Labor Management Relations Act, 1947 (Taft-Hartley), 29 U.S.C. §§ 141-197. Taft-Hartley expanded the scope of prohibited unfair labor activity in NLRA's § 8 to include union misconduct. 29 U.S.C. § 158. Taft-Hartley also included a declaration of policy that further promotes peace and seeks to uphold public safety. This declaration states that industrial strife is lessened if employers, employees and unions "recognize under law that neither party has any right in

its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest." 29 U.S.C. § 141(b). It also states that the purpose and policy of the Act is to: "provide orderly and peaceful procedures for preventing the interference by either" with the other's legitimate rights, "define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare," and "protect the rights of the public in connection with labor disputes affecting commerce." *Id*.

The NLRA is also silent on whether employers are barred from recovering damages from all intentional torts destructive to their persons and property committed during a strike simply because of § 7 protections. As stated in *Garmon*, state tort claims for damages from conduct "marked by violence and imminent threats to the public order" have been allowed because "the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction." *Garmon*, 359 U.S. at 247. In short, the statute does not support a reading that tort claims over violence or property destruction are displaced.

II. The Petitioner's state tort claims fit squarely within the local interest exception to *Garmon* preemption.

Turning to *Garmon*, Justice Frankfurter's majority opinion established the general rules for labor

preemption. *Garmon* held that labor activity that is either protected by § 7 of the NLRA or prohibited by § 8 (conduct by employer or labor organization constituting "unfair labor practices") preempts state regulation. *Garmon*, 359 U.S. at 244. But *Garmon* also tipped the scale in federal jurisdiction's favor. "When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *Id.* at 245. "This is a departure from the preemption rules applied with respect to other federal statutes." Michael H. Gottesman, *Rethinking Labor Law Preemption: State Laws Facilitating Unionization*, 7 Yale J. on Reg. 355, 378 (1990).

It is important to emphasize at the outset that *Garmon*'s facts are very different from this case. *Garmon* involved state claims for purely economic damages resulting from peaceful, not violent, picketing. *Garmon v. San Diego Bldg. Trades Council*, 45 Cal. 2d 657 (1955). The Garmons had a lumber and building material business. As a result of peaceful picketing, they incurred expenses from additional man hours and trucking facilities to transfer goods at other locations. *Id.* at 667. They also lost profits when at least one prospective buyer went elsewhere. *Id.* The workers did not jump out of Garmon's running trucks and begin to strike, thereby causing damage to the trucks and the truckloads of lumber.

The workers' peaceful conduct in *Garmon* is protected by the NLRA because, logically, any strike, even

a lawful one, is likely to cause incidental economic damages of some kind to employers. But damages from the intentional destruction of property are not inherent to the act of striking. "Conduct tortious under state law, in that it is destructive of property or personally injurious, and conduct traditionally criminal are outside the ambit of section 7." Harry H. Wellington, *Labor and the Federal System*, 26 U. Chi. L. Rev. 542, 546-47 (1959). This suggests why Justice Frankfurter created the local interest exception to carve out unlawful or improper conduct from the federal statute's protection. To do otherwise would be like claiming that the terroristic threats made by a lawyer in negotiations against opposing counsel were protected as confidential communications during a settlement agreement.

Garmon created two notable exceptions. First, where the regulated activity "was a merely peripheral concern of the Labor Management Relations Act." *Id.* at 243-44 (citing *International Assn. of Machinists v. Gonzales*, 356 U.S. 617 (1958)). In *Gonzales*, a union member's contract claim in state court over his expulsion from the union was based on the union's constitution and bylaws was not preempted. Thus, the boundaries of what is arguably preempted were tightened.

Second, "where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act." *Garmon*, 359

U.S. at 244 (citing *United Auto. Workers v. Russell*, 356 U.S. 634 (1958); *Youngdahl v. Rainfair*, 355 U.S. 131 (1957); *United Auto. Workers v. Wisconsin Emp. Rel. Board*, 351 U.S. 266 (1956) (*Kohler*); *United Constr. Workers, Affiliated with United Mine Workers of Am.v. Laburnum Constr. Corp.*, 347 U.S. 656 (1954)). On its face, Justice Frankfurter's phrase suggests that, unlike the states' relatively new labor regulations, the state criminal laws and common law tort system would not be displaced. The exception's language echoes *Allen-Bradley*. While discussing preemption in *Allen-Bradley*, the Court distinguished "a field that touched international relations" with "those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways." 315 U.S. at 749.

This case fits squarely within the local interest exception. First, the torts of conversion and trespass to chattels are deeply rooted in Washington. Washington adopted the common law while it was still a territory and it remains in effect today. Wash. Rev. Code § 4.04.010 ("The common law . . . shall be the rule of decision in all the courts of this state.") (corresponds to prior Wash. Laws: 1891 ch. 17 § 1; Wash. Code of 1881, ch. 1, § 1; 1877 p. 3 § 1; 1862 p. 83 § 1). Cases involving conversion appear in decisions from the territory era to statehood. See, e.g., *McCoy v. Ayers*, 2 Wash. Terr. 307, 5 P. 843 (1884); *Meeker v. Gardella*, 1 Wash. 139, 23 P. 837 (1890); *McGraw v. Franklin*, 2 Wash. 17, 25 P. 911 (1891).

The cases cited by Justice Frankfurter in support of the local interest exception also show why it applies here. In *Laburnum*, the Court affirmed the state's award for damages arising from unfair labor practices. The workers had "threatened and intimidated respondent's officers and employees with violence to such a degree that respondent was compelled to abandon all its projects in that area," causing lost profits. *Laburnum*, 347 U.S. at 658. The Court observed that before the Labor Management Relations Act, there had been no prohibitions of unfair labor practices against unions. "Yet there is no doubt that if agents of such organizations at that time had damaged property through their tortious conduct, the persons responsible would have been liable to a tort action in state courts for the damage done." *United Constr. Workers v. Laburnum Constr. Corp.*, 347 U.S. 656, 666, 74 S. Ct. 833, 839 (1954). This suggests that a state tort claim would have been appropriate even in the *Allen-Bradley* case.

In *Russell*, the Court "extended the Laburnum rationale to permit a state to redress a tort comprising an unfair labor practice for which the NLRB was assumed to have a parallel remedy." *State Jurisdiction over Torts Arising from Federally Cognizable Labor Disputes*, 68 Yale L.J. 308, 313 (1958). In this case, a worker was denied access to his job site because of a union picket line. The union strikers made "threats of bodily harm to Russell and of damage to his property, prevented him from reaching the plant gates" and "one striker took hold of Russell's automobile." *Russell*, 356 U.S. at 636. The Court held that the state court's

jurisdiction to award compensatory and punitive damages was not preempted by the NLRA. *Laburnum* and *Russell* explicitly allow state tort claims for conduct that included unfair labor practices.

The two other supporting cases for the local interest exception allow states to use injunctive power to prevent violence. In *Kohler*, the conduct at issue included mass picketing which blocked access to the plant; interfering with the use of public roads; preventing jobseekers from entering the plant; and coercing employees who desired to work and threatening them and their families with physical injury. *Kohler*, 351 U.S. at 268-69. The Court reasoned that the Taft-Hartley amendments to the NLRA did not preclude state jurisdiction over violence and, furthermore, that jurisdiction was not limited to criminal statutes. *Kohler*, 351 U.S. at 274. Generally, the state could not enjoin conduct that was an unfair labor practice under federal law, but that did not preclude state power over mass picketing, violence, and threats of violence. *Id.*

Kohler emphasized the role of the states with language much like Justice Frankfurter's. "The dominant interest of the State in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern." *Id.* In the Court's view, "The States are the natural guardians of the public against violence." *Id.* In *Youngdahl*, the final exception cited, a state injunction was upheld to prevent not just threatening violence, but abusive language likely to provoke violence. That the incidents at issue in *Kohler* and *Youngdahl* were violent enough to warrant their

inclusion in the local interest exception discredits the Washington Supreme Court's attempt to minimize the violence involved in the instant case. See Joint App. at 157-60.

Since *Garmon*, the Supreme Court found in *Linn v. United Plant Guard Workers*, 383 U.S. 53 (1962) that "a State's concern with redressing malicious libel is 'so deeply rooted in local feeling and responsibility' that it fits within the exception specifically carved out by *Garmon*." *Linn*, 383 U.S. at 62. A remedy for malicious libel was necessary because the "Board can award no damages, impose no penalty, or give any other relief to the defamed individual." *Id.* at 63. The *Linn* decision "certainly broadens the concept of 'compelling state interests.'" William J. Dunaj, *Labor Law: The "Compelling State Interest" Exception to the Federal Preemption Doctrine*, 51 Marq. L. Rev. 89, 95 (1967). And the Court later upheld a state action for intentional infliction of emotional distress. *Farmer v. United Brotherhood of Carpenters & Joiners*, 430 U.S. 290 (1977). This shows that outrageous conduct and not physical injury alone is necessary to meet the local interest exception. Even so, the Petitioner's claim for tortious conversion of property meets even the original standards of the local interest exception.

Even Professor Archibald Cox, one of the strongest proponents of broad federal preemption, argued that "preemption should extend to, but should also *be confined to*, those cases in which the relief sought under state law is based upon a judgment that focuses upon the interests of employers, unions, employees, and the

general public in employee self-organization, collective bargaining, or a labor-management dispute." Archibald Cox, *Recent Developments in Federal Labor Law Preemption,* 41 Oh. St. L.J. 277, 281 (1980) (emphasis added). In his view, it was clear that "Congress developed this special framework for self-organization and collective bargaining within a larger context of state law creating rights of property, bodily security, and personality, preserving public order, and promoting public health and welfare." Archibald Cox, *Labor Law Preemption Revisited,* 85 Harv. L. Rev. 1337, 1355-56 (1972).

III. Expanding *Garmon* preemption to displace the Petitioner's claims would invite industrial strife and threaten constitutional and statutory interests.

"It would be difficult to find a regime of federal preemption broader than the one grounded in the National Labor Relations Act." Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 Harv. L. Rev. 1153, 1154 (March 2011). The Washington Supreme Court's interpretation of *Garmon* to displace a property damage claim because it was incidental to a strike and arguably protected conduct would make labor preemption even broader. This is asking too much from the statute.

When the Wagner Act and Taft-Hartley Act were passed, "Nothing then extant [in preemption jurisprudence] could have forewarned Congress that its silence in these Acts respecting preemption would generate

the sweeping, blanket prohibition of parallel state regulation that Garmon later decreed." Gottesman, at 384-85. "Because of this belief that two remedies were available, [the Taft-Hartley] Congress made no attempt to provide general compensation for the victims of tortious acts. The N.L.R.B. was given no general compensatory powers at all, and its injunctive powers are clearly not useable to compensate victims." Dunaj, at 91.

In *Laburnum*, the Court assumed that the union engaged in an unfair labor practice, but noted how the NLRB's procedures would not provide adequate remedies. Preempting the state court "will, in effect, grant petitioners immunity from liability for their tortious conduct" and there was "no substantial reason for reaching such a result." 347 U.S. at 664. The gap in available relief was compelling to the *Linn* Court as well. "The fact that the Board has no authority to grant effective relief aggravates the State's concern since the refusal to redress an otherwise actionable wrong creates disrespect for the law and encourages the victim to take matters into his own hands." *Linn*, 383 U.S. at 64 n.6 (1966). The lack of relief triggers more industrial strife.

Under the doctrine of constitutional avoidance, the NLRA should not be read in a way that allows this broad denial of property rights that touches the Takings Clause. Displacing claims like Petitioner's also raises First Amendment issues. In *Bill Johnson's Rests. v. NLRB*, 461 U.S. 731 (1983), a dispute between restaurant owners and a waitress trying to unionize

the workforce led to the filing of a retaliatory lawsuit by the owners. The NLRB enjoined the action. The Court held that, in consideration of "the First Amendment right of access to the courts and the state interests identified in cases such as *Linn* and *Farmer*" the Board could not enjoin a well-founded lawsuit as an unfair labor practice, even though it had been filed to retaliate against the exercise of § 7 rights. *Id*. at 742.

There are other serious interests at risk. "Protection of the health and safety of the public is a paramount governmental interest." *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 300 (1981). In *Farmer*, the Court declared a substantial state interest "in protecting the health and wellbeing of its citizens." 430 U.S. at 302-03. Furthermore, it is worth repeating that in the Taft-Hartley Act's declaration of purpose and policy, it states that industrial strife is lessened if employers, employees and unions "recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest." 29 U.S.C. § 141(b). Any interpretation of the NLRA that prevents tort liability for work stoppages timed for destruction ultimately incentivizes them. A review of the facts of many cases cited by the Petitioner shows that ill-timed work stoppages can create dangerous or unsafe situations for workers.

In *U.S. Steel Co. (Joliet Coke Works) v. NLRB*, 196 F.2d 459 (7th Cir. 1952), the opinion relates the facts of a strike during which there was a "serious danger of fires and explosions . . . as 82,373 gallons of benzol,

18,532 gallons of toluol, 7,144 gallons of xylol, 5,251 gallons of crude solvent naptha, and 1,189 gallons of naphthalene, all of which was explosive and highly combustible, were stored at the plant." *Id.* at 461. Aside from the risk of physical harm to workers and bystanders resulting from the possible combustion of tons of corrosive chemicals, rebuilding efforts from a prior strike ran into the millions of dollars. *Id.*

Even in cases where massive damage to persons and property was averted, the state interest in preventing even the possibility of such destruction is great. According to the court in *NLRB v. Marshall Car Wheel & Foundry Company*, 218 F.2d 409 (5th Cir. 1955), it was "practically undisputed that the striking employees intentionally chose a time for their walkout when molten iron in the plant cupola was ready to be poured off, and that a lack of sufficient help to carry out the critical pouring operation might well have resulted in substantial property damage and pecuniary loss to respondent." *Id.* at 411. Fortunately, in this case, non-striking employees working with the supervisory staff "were able to pour off the molten metal and prevent any actual damage." *Id.* Understaffed workers were forced to deal with molten metals and other dangerous substances in crisis circumstances. This is an unjustifiable risk to worker and public safety.

The same is true for cases that led to destruction of property and, by force of luck, not physical harm to workers, as in *Rockford Redi-Mix, Inc. v. Teamsters Loc. 325, Gen. Chauffeurs, Helpers & Sales Drivers of Rockford*, 551 N.E.2d 1333 (Ill. App. Ct. 1990). This case

involved a highly similar cement worker strike where cement was left to harden in trucks to inflict property damage to the employers. "The cement had hardened in the trucks, and an attempt to rotate the drums resulted in blowing the hydraulic lines." *Id.* at 1336. Although injuries to the workers were not recorded in the case, it is apparent how workers do not always possess the specialized skills to recover property in instances of intentional misuse. This can lead to unforeseen workplace dangers and damage extending far beyond what may have been the original intent of the striking union. To the extent that the opinion below incentivizes tortious conduct during a strike, it is against the public interest.

CONCLUSION

The Washington Supreme Court's decision should be reversed.

Respectfully submitted,

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