

**Cl. 2—Supremacy of the Constitution, Laws, and Treaties**

pensation. But state court jurisdiction, in order that there not be interference with the federal scheme, must be premised on tortious conduct either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened rather than a function of the actual or threatened discrimination itself.<sup>113</sup>

A significant retrenchment of *Garmon* occurred in *Sears, Roebuck & Co. v. Carpenters*,<sup>114</sup> in the context of state court assertion of jurisdiction over trespassory picketing. Objecting to the company's use of nonunion work in one of its departments, the union picketed the store, using the company's property, the lot area surrounding the store, instead of the public sidewalks, to walk on. After the union refused to move its pickets to the sidewalk, the company sought and obtained a state court order enjoining the picketing on company property. Depending upon the union motivation for the picketing, it was either arguably prohibited or arguably protected by federal law, the trespassory nature of the picketing being one factor the NLRB would have looked to in determining at least the protected nature of the conduct. The Court held, however, that under the circumstances, neither the arguably prohibited nor the arguably protected rationale of *Garmon* was sufficient to deprive the state court of jurisdiction.

First, as to conduct arguably prohibited by NLRA, the Court seemingly expanded the *Garmon* exception recognizing state court jurisdiction for conduct that touches interests "deeply rooted in local feeling"<sup>115</sup> in holding that where there exists "a significant state interest in protecting the citizens from the challenged conduct" and there exists "little risk of interference with the regulatory jurisdiction" of the NLRB, state law is not preempted. Here, there was obviously a significant state interest in protecting the company from trespass; the second, "critical inquiry" was whether the controversy presented to the state court was identical to or different from that which could have been presented to the Board. The Court concluded that the controversy was different. The Board would have been presented with determining the motivation of the picketing and the location of the picketing would have been irrelevant; the moti-

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<sup>113</sup> *Farmer v. Carpenters*, 430 U.S. 290 (1977). Following this case, the Court held that a state court action for misrepresentation and breach of contract, brought by replacement workers promised permanent employment when hired during a strike, was not preempted. The action for breach of contract by replacement workers having no remedies under the NLRA was found to be deeply rooted in local law and of only peripheral concern under the Act. *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983). See also *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380 (1986).

<sup>114</sup> 436 U.S. 180 (1978).

<sup>115</sup> *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).