

Supreme Court Holds That a Parcel Delivery Company Not Subject to the Obligation of Collective Bargaining under the Trade Union Act Prior to Its Amendment is Not Subject to the Prohibition of the Use of Replacement Workers

(Supreme Court Decision 2021Do11473 dated September 2, 2026)

1. Background and Issue

The defendants, who were members of a parcel delivery workers' union, were indicted for allegedly obstructing the delivery company's business during industrial action by parking delivery vehicles at loading areas, inspecting cargo loaded onto replacement vehicles, and preventing those vehicles from departing for deliveries. The defendants argued that their conduct constituted a justified act because the company's deployment of directly employed delivery drivers during industrial action violated the prohibition on replacement work under the former Trade Union and Labor Relations Adjustment Act (the "Pre-amended Trade Union Act").

The principal issue before the Supreme Court was whether a delivery company that had no express or implied employment relationship with the defendants was nevertheless subject to the statutory prohibition on replacement work and, if so, whether the defendants' conduct could be justified on the basis that the company had violated that prohibition. Because the events at issue occurred before the amendments to the Trade Union and Labor Relations Adjustment Act introduced by Act No. 21045, effective September 9, 2025 (the "Yellow Envelope Act"), the Pre-amended Trade Union Act applied.

2. Supreme Court's Decision

Appellate Court

The appellate court held that the delivery company's deployment of directly employed delivery drivers did not violate the prohibition on replacement work under the Pre-amended Trade Union Act. Accordingly, it concluded that the defendants' conduct in attempting to prevent the deployment of those drivers did not constitute a justified act.

The appellate court nevertheless upheld the defendants' acquittal with respect to parking delivery vehicles at the loading areas, finding that such conduct was not contrary to accepted social norms and therefore was not unlawful.

Supreme Court

The Supreme Court held that, under the Pre-amended Trade Union Act, an employer that owes a duty to engage in collective bargaining is one that has entered into an express or implied employment relationship with the relevant employees.

Because industrial action is directed against the party that owes the duty to engage in collective bargaining, the Court further held that, absent special circumstances, a person or entity that does not owe such a duty is likewise not subject to the prohibition on replacement work under Article 43 of the Pre-amended Trade Union Act.

Applying those principles, the Court concluded that, because no express or implied employment relationship existed between the delivery company and the defendants, the company could not be regarded as owing a duty to engage in collective bargaining and thus as being subject to the prohibition on replacement work. Accordingly, the Court agreed with the appellate court's conclusion that the defendants could not justify their conduct on the basis that the deployment of directly employed delivery drivers was unlawful. The Court also upheld the defendants' acquittal with respect to parking delivery vehicles at the loading areas.

3. Significance

This decision clarifies that, under the Pre-amended Trade Union Act, a person or entity that is not an employer owing a duty to engage in collective bargaining is, absent special circumstances, likewise not subject to the statutory prohibition on replacement work during industrial action. Accordingly, when assessing whether conduct aimed at preventing the deployment of replacement workers is justified, it is first necessary to determine whether the party deploying those workers qualifies as an employer owing a duty to engage in collective bargaining under the Pre-amended Trade Union Act and is therefore subject to the prohibition on replacement work.

However, the subject judgment applies the Trade Union Act as it existed prior to the amendment by Act No. 21045 on September 9, 2025. Under the amended Trade Union Act, whether a principal contractor owes a duty to engage in collective bargaining is determined not by the existence of an express or implied employment relationship, as in this case, but by whether the principal contractor exercises substantial control over subcontractor employees.

The Supreme Court also upheld the defendants' acquittal with respect to parking delivery vehicles at the loading areas,

finding that such conduct was not contrary to accepted social norms. Accordingly, even where the prohibition on replacement work does not apply, the lawfulness of particular conduct undertaken to prevent replacement work must be assessed separately in light of the specific manner in which the conduct was carried out and the surrounding circumstances.

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