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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0668**

Madison Equities, Inc.,
Respondent,

vs.

SEIU MN State Council, et al.,
Appellants.

**Filed March 22, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CV-19-8170

Michael S. Mather, Kelly S. Hadac, HKM, P.A., St. Paul, Minnesota (for respondent)

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Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this interlocutory appeal, appellants challenge the district court's denial of their motion for judgment on the pleadings, arguing that federal labor law preempts respondent's

state-law claims against appellants for defamation and tortious interference with business relations. We affirm.

FACTS

Respondent Madison Equities, Inc. (Madison) is a real estate management company. Madison sued appellants Service Employees International Union Local 26 (Local 26), SEIU MN State Council (SEIU Council), and Christopher Lewis (Lewis), alleging defamation and tortious interference with business relations.

According to Madison's complaint, Local 26 posted a press release entitled "Massive Wage Theft Scheme Alleged at Downtown St. Paul Buildings Run by Madison Equities" on the website of SEIU Council. The press release stated that security officers had made "wage theft complaints" to the Office of the Minnesota Attorney General (AG) concerning "an alleged wage theft scheme that took thousands of dollars of wages from workers." According to the press release, the complaints to the AG alleged that Madison "had employees work 40 hours under one company" and then work for a different company "for time that should have been overtime time-and-a-half pay," resulting in the workers being underpaid by thousands of dollars.

According to Madison's complaint, Local 26, with the help of SEIU Council and Lewis, also publicly posted a flyer stating, "Employees of Madison Equities could be at risk for Wage Theft" and "several employees have filed claims over Thousands of Dollars in wages owed due to unpaid Overtime hours." Madison alleged that the press release and flyer contained false and defamatory statements that interfered with its business relationships.

Appellants filed separate answers asserting, as an affirmative defense, that Madison's state-law claims are preempted by federal labor law. Based on that affirmative defense, appellants moved for judgment on the pleadings. Appellants asked the district court to take judicial notice of certain assertions outside of the pleadings and filed several documents with the district court for that purpose, including a news article and a district court order in a separate case involving Madison and the AG.

The district court denied appellants' motion for judgment on the pleadings, concluding that Madison's claims are not preempted by federal law. In doing so, the court did not consider "additional hearsay documents not attached to or referenced in the pleadings." This interlocutory appeal followed.¹

DECISION

Minn. R. Civ. P. 12.03 provides, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." "To withstand a motion for judgment on the pleadings, [a plaintiff] must state facts that, if proven, would support a colorable claim and entitle it to relief." *Midwest Pipe Insulation, Inc. v. MD Mech., Inc.*, 771 N.W.2d 28, 31 (Minn. 2009). A district court's decision under rule 12.03 is reviewed de novo. *Id.* We accept the facts alleged in the complaint as true, and we "liberally construe the complaint and draw all inferences and assumptions in favor of the nonmoving party," here Madison. *Hoffman v. N. States Power Co.*, 764 N.W.2d 34,

¹ An interlocutory appeal is permitted for review of an order denying a motion to dismiss for lack of subject-matter jurisdiction. *See, e.g., McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 832-33 (Minn. 1995).

45 (Minn. 2009). In doing so, we recognize that “[a] motion for judgment on the pleadings is not a favored way of testing the sufficiency of a pleading, and will not be sustained if by a liberal construction the pleading can be held sufficient.” *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. App. 1986).

Garmon Preemption

Appellants contend that Madison’s claims are preempted under a doctrine articulated in *San Diego Bldg. Trades Council v. Garmon*, which is known as *Garmon* preemption. 359 U.S. 236, 244, 79 S. Ct. 773, 779 (1959). Congress’s power to preempt state law arises under the Supremacy Clause, which provides that the laws of the United States “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.” U.S. Const. art. VI, cl. 2. We review de novo whether federal law preempts state law. *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 428 (Minn. 2014).

Garmon preemption is rooted in Congress’s desire to maintain uniform application of the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169 (2012), which is a “complex and interrelated federal scheme of law, remedy, and administration.” *Int’l Longshoremen’s Ass’n v. Davis*, 476 U.S. 380, 389, 106 S. Ct. 1904, 1911 (1986) (quotation omitted). Since 1935, the NLRA has been the principal expression of federal labor law. *Midwest Motor Express, Inc. v. Int’l Bhd. of Teamsters*, 512 N.W.2d 881, 884 (Minn. 1994). The NLRA legitimizes “labor unionization and encourag[es] the practice of collective bargaining.” *Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of Carpenters*, 436 U.S. 180, 190, 98 S. Ct. 1745, 1754 (1978). “Congress expressly recognized that collective organization of segments of the labor force into bargaining units

capable of exercising economic power comparable to that possessed by employers may produce benefits for the entire economy in the form of higher wages, job security, and improved working conditions.” *Id.*

Under *Garmon*, state causes of action are presumptively preempted if they concern conduct that is actually or “arguably” protected under section 7 or prohibited under section 8 of the NLRA. *Belknap, Inc. v. Hale*, 463 U.S. 491, 498, 103 S. Ct. 3172, 3177 (1983); *Garmon*, 359 U.S. at 245, 79 S. Ct. at 780. Section 7 of the NLRA protects the rights of employees to organize. 29 U.S.C. § 157; see *Midwest Pipe*, 771 N.W.2d at 31 (discussing section 7). Section 8 prohibits unfair labor practices by employers and labor organizations. 29 U.S.C. § 158.

“When an activity is arguably subject to [section] 7 or [section] 8 of the [NLRA], the [s]tates 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.” *Sears*, 436 U.S. at 187-88, 98 S. Ct. at 1752 (quotation omitted). The National Labor Relations Board (NLRB) “is charged with the responsibility of interpreting and enforcing the [NLRA].” *Stardyne, Inc. v. N.L.R.B.*, 41 F.3d 141, 147 (3d Cir. 1994).

There are two exceptions to *Garmon* preemption. Under the *Garmon* exceptions, a cause of action based on conduct that is arguably protected under section 7 or prohibited under section 8 is not preempted if: (1) the conduct is only a peripheral concern of the NLRA or (2) the conduct “touches interests deeply rooted in local feeling and responsibility.” *Belknap*, 463 U.S. at 498, 103 S. Ct. at 3177; see *Garmon*, 359 U.S. at 243-44, 79 S. Ct. at 779.

For example, in *Linn v. United Plant Guard Workers of Am., Local 114*, the Supreme Court held that false and defamatory statements made during a union organizing campaign by the union and its officers were actionable under state law, so long as the statements were made with actual malice and caused actual injury. 383 U.S. 53, 55, 86 S. Ct. 657, 659 (1966). The Court held that such defamation met both of the *Garmon* exceptions because defamation was only a peripheral concern of the NLRA and states had an overriding interest in protecting residents from malicious libels. *Id.* at 61, 86 S. Ct. at 662.

The Record

Before we consider whether *Garmon* preemption applies in this case, we must determine the proper scope of the record before us. Appellants rely on information that is not contained in the pleadings, asserting that this court may consider “documents other than the pleadings when those documents are matters of public record or are ‘embraced’ by the pleadings.” Appellants also challenge the district court’s refusal to take judicial notice of certain facts.

In our de novo review of a ruling on a request for judgment on the pleadings, we are permitted to examine “any documents or statements incorporated by reference into the pleadings.” *Greer v. Prof’l Fiduciary, Inc.*, 792 N.W.2d 120, 131 (Minn. App. 2011). Here, the press release and flyer are referenced in Madison’s complaint and serve as the basis for Madison’s lawsuit. We therefore consider those documents, drawing all inferences and assumptions in favor of Madison. *See Hoffman*, 764 N.W.2d at 45. We decline appellants’ request to consider documents that are not referenced in the pleadings.

As to judicial notice, “Judicial notice may be taken at any stage of the proceeding.” Minn. R. Evid. 201(f). “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the [district] court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Minn. R. Evid. 201(b). A court’s decision to take judicial notice is generally discretionary. Minn. R. Evid. 201(c). However, Minn. R. Evid. 201(d) directs a court to “take judicial notice if requested by a party and supplied with the necessary information.”

Appellants requested judicial notice of the following facts: (1) at least six current or former employees of Madison, including Lewis, pursued wage theft claims with the state against Madison; (2) the state believes it has a reasonable basis to conclude that Madison has engaged in the wage violations alleged by Lewis and other current or former employees; (3) the state continues to investigate the pending wage claims despite Madison’s unsuccessful legal action to stop the investigation; (4) current or former employees of Madison, including Lewis, are pursuing employee benefits claims with the city against Madison; (5) Madison’s lawsuit arises from a labor dispute; and (6) SEIU Council and Local 26 are labor organizations.

The district court accepted as true that SEIU Council and Local 26 are labor organizations under the NLRA. SEIU Council and Local 26 asserted as much in their respective pleadings. For the purposes of our review, we accept that SEIU Council and Local 26 are labor organizations as defined under the NLRA. *See* 29 U.S.C. § 152(5) (defining “labor organization”).

But appellants’ remaining assertions are subject to reasonable dispute and, to some degree, are challenged by Madison. A district court properly refuses to take judicial notice of facts disputed by an adverse party. *Paper v. Rent-A-Wreck*, 463 N.W.2d 298, 300 (Minn. App. 1990), *review denied* (Minn. Jan. 14, 1991). In addition, appellants’ reliance on a news article and a district court order in another case involving Madison and the AG as support for judicial notice is unavailing. We do not view the news article as a source “whose accuracy cannot reasonably be questioned.” Minn. R. Evid. 201(b). And, the district court order regarded a civil investigative demand in a separate case; in effect, the matter had not proceeded beyond a discovery stage. *See Madison Equities, Inc. v. Office of Attorney General*, No. A20-0434 (Minn. App. Jan. 11, 2021), *pet. for review filed* (Minn. Feb. 10, 2021).

In sum, the proffered news article and district court order do not place appellants’ assertions beyond the realm of reasonable dispute. “Judicial notice is to be taken with caution and every reasonable doubt as to the propriety of its exercise in a given case should be resolved against it.” *State ex rel. Remick v. Clousing*, 285 N.W. 711, 714 (Minn. 1939). The district court therefore did not abuse its discretion by denying, in part, appellants’ request for judicial notice. We decline the request for judicial notice as well.

The Relevant Conduct

Having determined the scope of the record, we next identify the relevant conduct, which is appellants’ speech criticizing Madison’s wage practices. The relevant conduct is not the alleged wage practices themselves. As previously discussed, we accept that SEIU Council and Local 26 are labor organizations, and we therefore accept that labor

organizations published the challenged speech. Appellants assert that Lewis is a former Madison employee and offer arguments based on that assertion. But neither the pleadings nor the referenced documents state that Lewis is a former Madison employee. We therefore do not accept that assertion as true at this stage in the proceeding. In sum, the relevant conduct is speech criticizing Madison's wage practices, which was made public by labor organizations.

Potential Application of the NLRA

We now determine whether the relevant conduct is arguably protected by section 7, or prohibited by section 8, of the NLRA. *See Healthcare Ass'n of N.Y. State, Inc. v. Pataki*, 471 F.3d 87, 96 (2d Cir. 2006) ("The first step in establishing *Garmon* preemption is to identify which provision of sections 7 or 8 is alleged to protect or prohibit the conduct regulated.").

Garmon preemption does not apply to all conduct "that touches or concerns in any way the complex interrelationships between employees, employers, and unions." *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 289, 91 S. Ct. 1909, 1919 (1971). The Supreme Court has consistently refused to apply *Garmon* preemption "in a literal, mechanical fashion." *Sears*, 436 U.S. at 188, 98 S. Ct. at 1753.

"The precondition for pre-emption, that the conduct be 'arguably' protected or prohibited, is not without substance. It is not satisfied by a conclusory assertion of pre-emption" *Davis*, 476 U.S. at 394, 106 S. Ct. at 1914. Rather, the party claiming preemption must "demonstrate that his case is one that the [NLRB] could legally decide in

his favor.” *Id.* at 395, 106 S. Ct. at 1914. “The party must then put forth enough evidence to enable the court to find that the [NLRB] reasonably could uphold a claim based on such an interpretation.” *Id.*

Section 7 of the NLRA provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

29 U.S.C. § 157.

Appellants do not identify a provision within section 7 that arguably protects their conduct. Instead, appellants rely on cases that involved section 7 protections, such as *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 94 S. Ct. 2770 (1974). In that case, the Supreme Court recognized that section 7 provides unions with freedom-of-speech protections.² *Old Dominion*, 418 U.S. at 277, 94 S. Ct. at 2777-78. But the Supreme Court indicated, consistent with section 7, that such protections arise in the context of union-organizing efforts. *Id.* Likewise, in *Int’l Longshoremen’s Local 1416 v. Ariadne Shipping Co.*, the Supreme Court concluded that union picketing to protest wages was arguably protected under section 7 because the union represented longshoremen in the area, it was

² *Old Dominion* concerned preemption arising from an executive order governing labor relations, and not under the NLRA. 418 U.S. at 273, 94 S. Ct. at 2775-76. The Supreme Court found the executive order analogous to the NLRA. *Id.*

seeking compliance with area standards, and the picketing occurred near the challenged employer-ship. 397 U.S. 195, 196-97, 200-01, 90 S. Ct. 872, 873, 875 (1970).

Unlike the circumstances in *Old Dominion* and *Ariadne Shipping*, at this early stage of the litigation, the limited record does not show that appellants' conduct arose in the context of union-organizing efforts. Indeed, appellants' motivations are unclear and the subject of dispute. *See Sears*, 436 U.S. at 185-86, 98 S. Ct. at 1751-52 (stating that the union's "purpose" is critical when determining whether conduct is prohibited or protected under the NLRA).

Appellants also do not identify a provision within section 8 of the NLRA that arguably prohibits their conduct. Section 8 is more extensive than section 7, and it specifically prohibits various unfair labor practices by employers and labor organizations. *See* 29 U.S.C. §§ 157, 158.

Once again, the relevant conduct here is appellants' allegedly false publications, and not Madison's alleged failure to pay wages. Thus, the relevant conduct is not an unfair labor practice by an employer. *See* 29 U.S.C. § 158(a) (listing unfair labor practices by employer). As to unfair labor practices by labor organizations, section 8 prohibits, in some instances, the following conduct: restraining employees from exercising section 7 rights; causing an employer to discriminate against an employee; refusing to collectively bargain; encouraging a strike; requiring excessive fees from employees; causing an employer to pay an exaction for services not performed; and causing picketing of an employer to force bargaining. 29 U.S.C. § 158(b). We have reviewed each of those prohibited practices in

light of the pleadings and cannot discern how any would arguably apply to appellants' conduct.

Moreover, when considering *Garmon* preemption, the “critical inquiry” is

whether the controversy presented to the state court is identical to . . . or different from . . . that which could have been, but was not, presented to the [NLRB]. For it is only in the former situation that a state court's exercise of jurisdiction necessarily involves a risk of interference with the unfair labor practice jurisdiction of the [NLRB] which the arguably prohibited branch of the *Garmon* doctrine was designed to avoid.

Sears, 436 U.S. at 197, 98 S. Ct. at 1757-58; *see also Midwest Pipe*, 771 N.W.2d at 31 (indicating that preemption occurs if the state and federal laws are “brought to bear on the same activity” (quotation omitted)).

When this court asked appellants to explain how Madison could present its claims in the underlying lawsuit to the NLRB, appellants suggested that Madison might pursue a claim under section 8(b)(4)(ii). “[S]ection 8(b)(4)(ii) of the NLRA makes it an unfair labor practice for a union ‘to threaten, coerce, or restrain any person engaged in commerce’ where the goal is to force the person ‘to cease doing business with any other person.’” *Midwest Pipe*, 771 N.W.2d at 31 (quoting 29 U.S.C. § 158(b)(4)(ii)(B)).

Appellants' theoretical claim would face a couple of hurdles. First, the Supreme Court has said that “[t]he injury that the [defamatory] statement might cause to an individual's reputation—whether he be an employer or union official—has no relevance to the [NLRB's] function.” *Linn*, 383 U.S. at 63, 86 S. Ct. 663. Second, the Supreme Court has also said that the terms “threaten, coerce, or restrain,” as used in section 8(b)(4)(ii), should be interpreted with caution and not given a broad sweep. *Edward J. DeBartolo*

Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 578, 108 S. Ct. 1392, 1399 (1988). At this stage, there is no indication that appellants’ speech threatened, coerced, or restrained any person engaged in commerce. This case is therefore unlike *Midwest Pipe*, in which the pleading alleged that the union made a threat to force an employer to break a contract. 771 N.W.2d at 30-33.

In sum, appellants do not persuade us that Madison could present its claims to the NLRB, much less that the NLRB could reasonably uphold such claims. Thus, the critical inquiry does not support applying *Garmon* preemption under section 8.

Moreover, section 8 contains a provision stating:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, *if such expression contains no threat of reprisal or force or promise of benefit.*

29 U.S.C. § 158(c) (emphasis added). That provision “protects speech by both unions and employers from regulation by the NLRB.” *Chamber of Commerce v. Brown*, 554 U.S. 60, 67, 128 S. Ct. 2408, 2413 (2008). Here, appellants’ publications do not contain any threats or promises. Section 158(c) therefore supports a conclusion that appellants’ publications do not constitute unfair labor practices that are subject to regulation by the NLRB.

Appellants cite several cases in support of their preemption argument, but none is persuasive because in each case, the court found that the relevant conduct was arguably prohibited by section 8. For example, *Wild Oats Mkts., Inc.*, 336 N.L.R.B. 179, 179-80 (2001), *Saigon Gourmet Rest., Inc.*, 353 N.L.R.B. 1063, 1065 (2009), and *Polly Drummond*

Thriftway, Inc., 292 N.L.R.B. 331, 331-32 (1989), each involved unfair labor practices by employers, in violation of identified provisions in section 8. Likewise, *Nat'l Labor Relations Bd. v. Washington Aluminum Co.*, 370 U.S. 9, 12-13, 82 S. Ct. 1099, 1102 (1962), involved a violation of section 8: an employer's discharge of employees for engaging in conduct protected under section 7. In *Edward J. DeBartolo Corp.*, the conduct at issue was a union's alleged unfair labor practice in violation of section 8: union hand billing aimed at dissuading customers from shopping at a mall's stores unless the mall promised to use contractors who paid fair wages. 485 U.S. at 570, 588, 108 S. Ct. at 1395, 1404. The Supreme Court held that such hand billing did not constitute an unfair labor practice by a union under section 8(b)(4). *Id.*

Reliance on a Labor Dispute

Instead of identifying an applicable provision of sections 7 or 8, appellants broadly argue that a labor organization's speech criticizing conditions of employment is always preempted and that *Garmon* preemption forecloses state court jurisdiction over any "labor dispute." A "labor dispute" is defined by the NLRA as "any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 152(9).

As support for appellants' assertion that the *Garmon* preemption applies to any labor dispute, appellants primarily rely on *Beverly Hills Foodland, Inc. v. United Food & Commercial Workers Union, Local 655*, which involved claims of defamation and tortious

interference based on a labor union's picketing and boycotting activities. 39 F.3d 191, 193-94 (8th Cir. 1994). In determining whether the state tort claims were preempted, the federal appellate court asked whether the activities complained of occurred within the context of a "labor dispute." *Id.* at 194. The plaintiff argued that there was no "labor dispute" because the labor union had ceased organizational efforts. *Id.* The federal appellate court dismissed that argument, noting that courts "have routinely found that a labor dispute exists in situations which do not involve any organizing activities by a union," and "[a] union picketing or boycotting a business which it has not tried to organize (and in some cases cannot organize) nevertheless involves a labor dispute." *Id.* at 194-95 (quotation omitted). The federal appellate court further noted, "[t]he definition of labor dispute under the NLRA is very broad and rarely have courts found concerted union activities to fall outside this broad definition." *Id.* at 195 (quotation omitted). "Where the union acts for some arguably job-related reason and not out of pure social or political concerns, a 'labor dispute' exists." *Id.*

This court is bound by decisions of the Minnesota Supreme Court and the United States Supreme Court. *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003). We are not bound by any other federal court's opinion, even when interpreting federal statutes. *Id.* We therefore are not required to adopt the reasoning of the federal appellate court in *Beverly Hills*.

Moreover, we do not find the reasoning of *Beverly Hills* persuasive. In that case, the federal appellate court relied on *Old Dominion* to support the proposition that union activity during a labor dispute is grounds for preemption. 39 F.3d at 194. The Supreme

Court's finding of preemption in *Old Dominion* was based on a labor union's organizing efforts. 418 U.S. at 266-69, 279, 94 S. Ct. at 2772-74, 2779. The Supreme Court noted that "what constitutes a 'labor dispute'" is not determinative, but rather, whether defamation "is made in a context where the policies of the federal labor laws leading to protection for freedom of speech are significantly implicated." *Id.* at 279, 94 S. Ct. at 2778. The Court noted that the "primary source" for NLRA protection of union speech is section 7, and ultimately concluded "any publication made *during the course of union organizing efforts*, which is arguably relevant to that organizational activity, is entitled to the protection." *Id.* at 277, 279, 94 S. Ct. at 2777-79 (emphasis added). Here, the undeveloped record does not indicate that appellants' conduct occurred during the course of union-organizing efforts.

Appellants' attempt to invoke *Garmon* preemption based on the alleged existence of a labor dispute without articulating how their conduct is either protected or prohibited under the NLRA is inconsistent with Minnesota precedent. The Minnesota Supreme Court has consistently identified an arguably applicable section of the NLRA or a recognized right under the NLRA when considering whether *Garmon* preemption applies. For example, in *Midwest Pipe*, the supreme court determined that the relevant conduct fell "squarely under the prohibitions outlined in section 8." 771 N.W.2d at 32. In *Midwest Motor*, the supreme court identified the question presented as whether the conduct constituted "an unfair labor practice within section 8(1) of the NLRA." 512 N.W.2d at 884; *see also Wright Elec., Inc. v. Ouellette*, 686 N.W.2d 313, 318 (Minn. App. 2004) (recognizing that the "NLRA protects the right of unions and union members to 'salt'

unorganized workplaces by seeking employment with non-union employers in order to engage in union organizing”), *review denied* (Minn. Dec. 14, 2004); *Robillard v. Local 10 Sheet Metal Workers’ Int’l Ass’n*, 353 N.W.2d 248, 250 (Minn. App. 1984) (involving arguable union violation of section 8(b)(2)).

In sum, appellants have the burden to make an “affirmative showing that [their] activity is arguably subject to the [NLRA].” *Davis*, 476 U.S. at 399, 106 S. Ct. at 1916-17. Precedential authority requires appellants to identify an arguably applicable provision of section 7 or section 8 to meet their burden. Appellants’ attempt to instead rely on the alleged existence of a labor dispute is inadequate.

Conclusion

Because appellants do not identify a provision within section 7 or section 8 of the NLRA that arguably protects or prohibits their public dissemination of statements regarding Madison’s alleged wage theft, appellants have not persuaded us that Madison’s state-law tort claims are preempted under *Garmon*. As the district court noted, a more fully developed record might support a different conclusion. This opinion should not be read to foreclose reconsideration of the issue by the district court once the record is developed. But the issue cannot be resolved in appellants’ favor based on the pleadings. We therefore affirm the district court’s order denying judgment on the pleadings and remand for further proceedings.

Affirmed.