Labor Law - Labor Management Relations Act - Preemption

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LABOR LAW—LABOR MANAGEMENT RELATIONS ACT—PREEMPTION—The United States Supreme Court has held that an application of state law is preempted by section 301 of the Labor Management Relations Act only if such application requires interpretation of a collective bargaining agreement.


Jonna Lingle was employed by the Norge Division of Magic Chef at Norge's manufacturing plant in Herrin, Illinois. On December 5, 1984, Lingle notified her employer that she had been injured in the course of her employment. Lingle requested compensation for her medical expenses pursuant to the Illinois Workers' Compensation Act. On December 11, 1984, Norge discharged Lingle for filing a "false" workers' compensation claim.

The union representing Lingle promptly filed a grievance in accordance with the collective bargaining agreement covering all production and maintenance employees in the Herrin plant. In the grievance, the union asserted that Lingle's workers' compensation claim had not been false. The agreement protected employees from discharge except in cases where the employer could show "just" cause. The agreement also established a procedure for the arbitration of grievances.

On July 9, 1985, prior to her grievance reaching arbitration, Lingle filed a complaint in the Illinois district court. The complaint alleged that she had been discharged for exercising her rights under the Illinois Workers' Compensation Laws. Norge removed the case to federal court. The court granted summary judgment in favor of Norge. Lingle appealed to the U.S. Court of Appeals for the Seventh Circuit. The court affirmed the decision.

2. Id. at 1879.
4. 108 S. Ct. at 1879.
5. Id.
6. Id.
7. Id. Article 26.2 of Lingle's Collective Bargaining Agreement provided in part: "[T]he right of the employer to discharge or suspend an employee for just cause is recognized." Id. appendix at 13.
8. 108 S. Ct. at 1879. Article 8.5 of Lingle's collective bargaining agreement provided for mandatory arbitration and grievance procedures that were to be the exclusive remedy for all disputes. Id. appendix at 10.
9. 108 S. Ct. at 1879.
10. Id. Lingle's cause of action was not based on a statutory provision of the Illinois Workers' Compensation Act. Id. at 1881. Lingle's cause of action was judicially created. See
the case to federal district court on the basis of diversity of citizenship,\(^1\) and then filed a motion to either dismiss the case on pre-emption grounds\(^2\) or stay the proceedings pending the completion of the arbitration.\(^3\)

The federal district court dismissed the complaint,\(^4\) holding that the case was preempted by section 301 of the Labor Management Relations Act (LMRA) as construed by the United States Supreme Court in *Allis-Chalmers v. Lueck*.\(^5\) On appeal, the Seventh Circuit Court of Appeals affirmed the district court,\(^6\) holding that Lingle's state claim was preempted by section 301 because a state court determination of wrongful discharge implicated the same analysis of facts as would an inquiry under the just cause provisions of the collective bargaining agreement.\(^7\)

The United States Supreme Court granted certiorari\(^8\) to resolve the conflict at the circuit court level on the issue of section 301 preemption of state law based claims.\(^9\) In an opinion written by

Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E.2d 353 (1978) (recognizing the tort of retaliatory discharge for filing a workers' compensation claim). This tort action was expanded by the Illinois Supreme Court to allow employees covered by a collective bargaining agreement containing a binding arbitration clause to bring such an action. See Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143, 473 N.E.2d 1280 (1984).

11. 108 S. Ct. at 1879. The issue of whether the case was properly removed to federal court was discussed fully by the Seventh Circuit Court of Appeals. The court concluded that removal was proper and that, therefore, the court had jurisdiction. Lingle v. Norge Div. of Magic Chef, Inc., 823 F.2d 1031, 1037-1042 (7th Cir. 1987).


See infra notes 98-108 and accompanying text.

13. 108 S. Ct. at 1879. The arbitrator ultimately reinstated Lingle with full back pay, finding that her employer had not met the burden of showing just cause for her discharge. Lingle, 823 F.2d at 1034.


15. Id. at 1449. See supra note 12. Section 301(a) of the Labor Management Relations Act of 1947 provides:

Suits for violation of contracts between an employer and a labor organization repre- 
senting employees in an industry affecting commerce as defined in this Act, or be-tween any such labor organizations, may be brought in any district court of the 
United States having jurisdiction of the parties, without respect to the amount in contro-versy or without regard to the citizenship of the parties.


The federal district court reasoned that Lingle's claim for retaliatory discharge was "inex-tricably intertwined" with the collective bargaining provision prohibiting discharge without just cause. Lingle, 618 F. Supp. at 1449. The court also found that Lingle's claim should be dismissed for failure to exhaust grievance and arbitration procedures. Id. at 1450 (citing Republic Steel v. Maddox, 379 U.S. 650 (1965)).

16. Lingle, 823 F.2d at 1046.

17. Id.


19. The Second, Third and Tenth Circuits had allowed state law based retaliatory
Justice Stevens expressing the unanimous view of the Court, the Seventh Circuit Court of Appeals decision was reversed. The Supreme Court held that an application of state law is preempted by section 301 of the Labor Management Relations Act only if such application requires interpretation of the collective bargaining agreement.\(^\text{20}\) The Supreme Court further explained that:

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\text{Even if dispute resolution pursuant to a collective bargaining agreement, on the one hand, and state law, on the other, would require addressing . . . the same set of facts, as long as the state law claim could be resolved without interpreting the [collective bargaining] agreement itself, the claim is "independent" of the agreement for section 301 pre-emption purposes.}\(^\text{21}\)
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The Supreme Court began its analysis by examining previous Supreme Court cases in which section 301 was at issue to determine whether and to what extent state law based claims should be preempted by federal law. Relying on *Textile Workers Union v. Lincoln Mills*,\(^\text{22}\) the Court established that section 301 provides federal courts with jurisdiction over collective bargaining agreements and authorizes these courts to fashion a body of federal law for the enforcement of the collective bargaining agreements.\(^\text{23}\) Justice Stevens noted that the preemptory effect of section 301 was announced in *Teamsters v. Lucas Flour*,\(^\text{24}\) which held that section 301 mandates resort to federal rules of law in order to ensure uniform interpretation of collective bargaining agreements.\(^\text{25}\) In *Lucas Flour*, the Court preempted the application of state law in a discharge claims for filing workers’ compensation claims to proceed, disregarding § 301 pre-emption. See Baldracchi v. Pratt & Whitney Aircraft Div., United Technologies Corp., 814 F.2d 102 (2d Cir. 1987), cert. denied, 108 S. Ct. 2819 (1988); Herring v. Prince Macaroni of N.J., Inc., 799 F.2d 120 (3d Cir. 1986); Peabody Galion v. A.V. Dollar, 666 F.2d 1309 (10th Cir. 1981). The Seventh Circuit in *Lingle* and the Eighth Circuit found state law based retaliatory discharge claims for filing workers’ compensation claims to be preempted by § 301. See Johnson v. Hussman Corp., 805 F.2d 795 (8th Cir. 1986). The Ninth Circuit, although not addressing retaliatory discharge actions for filing workers’ compensation claims, had addressed these actions in other contexts with varying results. See Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367 (9th Cir. 1984) (no § 301 preemption for “whistle blower” wrongful discharge action), cert. denied, 471 U.S. 1099 (1985); Paige v. Henry J. Kaiser Co., 826 F.2d 857 (9th Cir. 1987) (no preemption for retaliatory discharge claim for complaining to employer about unsafe working conditions), cert. denied, 108 S. Ct. 2819 (1988). But see Bale v. General Tel. Co. of California, 795 F.2d 775 (9th Cir. 1986) and Desoto v. Yellow Freight Systems, Inc., 811 F.2d 1332 (9th Cir. 1987), cert. granted and judgment vacated, 108 S. Ct. 2813 (1988).

\(^{20}\) 108 S. Ct. at 1885.

\(^{21}\) Id. at 1883.


\(^{23}\) 108 S. Ct. at 1880.

\(^{24}\) 369 U.S. 95 (1962). *See infra* notes 67-73 and accompanying text.

\(^{25}\) 369 U.S. at 104.
straightforward contract interpretation issue: whether the collective bargaining agreement implicitly prohibited a strike that had been caused by the union.26

Justice Stevens next examined Allis-Chalmers v. Lueck,27 in which the Court held that section 301 preempted the application of a Wisconsin remedy for bad-faith handling of an insurance claim.28 The Lueck court noted that the collective bargaining agreement provided the basis for the manner in which benefit claims would be handled, and concluded that, because an analysis of the collective bargaining agreement was necessary, federal law should apply.29 Justice Stevens opined that Lueck had faithfully applied the section 301 preemption announced in Lucas Flour.30 Based on this case law analysis, the Supreme Court concluded that if resolution of a state law claim depends upon the meaning of a collective bargaining agreement, the application of state law (possibly leading to inconsistent results) should be preempted and uniform federal labor law principles should apply.31

Justice Stevens next applied this conclusion of law to the facts presented in order to determine whether Lingle’s state law claim should be preempted by section 301. In beginning this analysis, the Supreme Court found that the Illinois courts have recognized the tort of retaliatory discharge for filing a workers’ compensation claim,32 and have held that this tort applies to employees covered by union contracts.33 The Court further found that in order to show this type of retaliatory discharge in Illinois, a plaintiff must set forth facts from which it can be inferred that: (1) he was discharged or threatened with such; and (2) the employer’s motive in discharging or threatening to discharge was to deter the employee’s exercise of rights under the Workers’ Compensation Act or to interfere with the exercise of these rights.34 Justice Stevens added

26. Id. at 98.
28. 471 U.S. at 212.
29. Id. at 218.
30. 108 S. Ct. at 1881. See infra notes 67-73 and accompanying text for a more detailed explanation of the § 301 preemption doctrine announced in Lucas Flour.
31. Id.
32. Id. See supra note 10.
33. Id.
that an employer, in order to defend against such an employee claim, must show that it had a non-retaliatory reason for the discharge.\textsuperscript{35} The Supreme Court reasoned that elements which are required to be set forth by the employee and the elements of a proper defense present purely factual questions pertaining to the conduct of the employee and the conduct and motivation of the employer.\textsuperscript{36} The Court said that none of the aforementioned elements requires a court to interpret any term of a collective bargaining agreement.\textsuperscript{37} Since resolution of the state law claim in this case did not require construing the collective bargaining agreement, Justice Stevens concluded that Lingle's state law remedy was "independent" of the collective bargaining agreement such that it was not preempted by section 301 of the Labor Management Relations Act.\textsuperscript{38}

In support of this conclusion, the Supreme Court examined how a state law claim may be considered "independent" of a collective bargaining agreement even though the state claim may require the same analysis of facts as a grievance under the provisions of the labor agreement. Justice Stevens agreed with the Seventh Circuit's explanation that a state court in considering Lingle's claim might implicate the same analysis of facts as would a contractual determination of whether Lingle was fired for just cause.\textsuperscript{39} However, the Supreme Court disagreed with the circuit court's conclusion that such parallelism renders the state law analysis dependent upon the contractual analysis.\textsuperscript{40} The Court reasoned that, although there are instances where the National Labor Relations Act preempts state law on the basis of the subject matter of the law in question,\textsuperscript{41} section 301 preemption merely ensures that federal law will be the basis for interpreting collective bargaining agreements.\textsuperscript{42} Justice Stevens further noted that section 301 says nothing of the substantive rights a state may provide to workers when adjudication of those rights does not depend upon interpretation of a collective bargaining agreement.\textsuperscript{43} The Supreme Court concluded, therefore,
that as long as a state law claim can be resolved without interpretation of a collective bargaining agreement, the claim is "independent" of the agreement for section 301 preemption purposes.\textsuperscript{44}

In further support of its holding, the Supreme Court asserted that the resolution reached was consistent with the policy of fostering uniform, certain adjudication of disputes over the meaning of collective bargaining agreements.\textsuperscript{46} Justice Stevens restated that one of the central underlying reasons for the Court's holding in \textit{Lucas Flour} was to preserve the effectiveness of arbitration.\textsuperscript{46} Furthermore, the Court reiterated previously announced policy considerations stating that any rule that permitted an individual to sidestep available grievance procedure would cause arbitration to lose much of its effectiveness, as well as eviscerate a central tenet of federal labor law under section 301; that is, the arbitrator, not the court, has the responsibility to interpret the labor contract in the first instance.\textsuperscript{47} The Supreme Court concluded that its holding permits the interpretation of collective bargaining agreements to remain firmly in the arbitral realm,\textsuperscript{48} and that judges can determine questions of state law involving labor management relations only if such questions do not require interpreting collective bargaining agreements.\textsuperscript{49}

In final support of its holding, the Supreme Court stated that its holding was consistent with previous Supreme Court cases which have permitted separate fonts of substantive rights to remain unpreempted by federal labor law statutes.\textsuperscript{50} Justice Stevens noted that the Seventh Circuit Court of Appeals has shown its cognizance of this fact in its recognition that section 301 does not preempt state anti-discrimination laws.\textsuperscript{51} This recognition, the Court said, was made even though a suit under these laws, like a suit

\textsuperscript{44} Id.
\textsuperscript{45} Id. at 1884.
\textsuperscript{46} Id.
\textsuperscript{47} Id. (citing Paperworkers v. Misco, Inc., 108 S. Ct. 364 (1987) and Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960)).
\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Id. See infra notes 82-90 and accompanying text.
\textsuperscript{51} 108 S. Ct. at 1885. The circuit court in deciding \textit{Lingle} recognized that § 301 does not preempt state anti-discrimination laws even though a suit under those laws, like a suit alleging retaliatory discharge, requires a state court to determine whether just cause exists to justify the discharge. \textit{Lingle}, 823 F.2d at 1046. The circuit court distinguished these cases by stating that Congress has expressly stated that state anti-discrimination remedies may exist within the framework of federal statues that authorize multiple independent decisions. \textit{Id.} at 1047 n.17.
alleging retaliatory discharge, requires a state court to determine whether just cause existed to justify the action. The Supreme Court opined that this independent operation of state anti-discrimination laws was illustrative of how the mere fact that a broad contractual protection against discrimination may provide a remedy for conduct that coincidentally violates state law does not make the existence of the state law violation dependent upon the terms of the private contract. The Supreme Court reasoned that even if an arbitrator should conclude that the contract does not prohibit a particular discriminatory act, this conclusion might or might not be consistent with a proper interpretation of state law. Hence, the Court concluded that in a typical case, a state tribunal could resolve a discrimination claim without interpreting the "just cause" language of a collective bargaining agreement.

The Supremacy Clause of the United States Constitution grants Congress the power to preempt state law. Whether a state action is preempted by federal law is a question of congressional intent. In 1947, Congress expressed its intent to regulate private sector labor-management relations by enacting the Labor Management Relations Act and the National Labor Relations Act. Congress, however, did not explicitly provide the extent to which state law was to be preempted by these Acts. As a result, the Supreme

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52. 108 S. Ct. at 1885.
53. Id.
54. Id.
55. Id.
56. U.S. CONST. art. VI § 32, cl.2.
57. See Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824) (New York state law awarding exclusive franchise for ferry traffic between New York City and Elizabethtown, New Jersey, preempted by Congressional power to regulate interstate commerce).
58. Id. at 10, stating that "where state laws interfere with, or are contrary to, the laws of Congress, . . . the act of Congress, . . . is supreme, and the law of the state, though enacted in the exercise of power not controverted, must yield to it." Id.
60. See Cox, Recent Developments in Federal Labor Law Preemption, 41 Ohio St. L.J. 277 (1980). Archibald Cox has been the leading commentator on the subject of federal preemption in the labor law area. For additional general information concerning labor law preemption, see Cox, Labor Law Preemption Revisited, 85 HARV. L. REV. 1337 (1972) [hereinafter Cox, Labor Law Preemption]; Cox, Federalism in the Law of Labor Relations, 67 HARV. L. REV. 1297 (1954). The body of literature on the subject of federal labor law preemption is much too vast to cite comprehensively in this casenote. However, among the significant articles on the subject are the following: Smith, The Taft-Hartley Act and State Jurisdiction over Labor Relations, 46 MICH. L. REV. 593 (1948); Hays, Federalism and Labor Relations in the United States, 102 U. PA. L. REV. 959 (1954); Hays, State Courts and Federal Preemption, 23 MO. L. REV. 373 (1958); Wellington, Labor and the Federal System, 26 U. CHI. L. REV. 542 (1959); Michelman, State Power to Govern Concerted Employee
Court in a series of cases has attempted to establish the scope of federal labor law preemption. 61

Section 301 of the LMRA has been a source of law which has provided both a doctrine of federal preemption and procedural safeguards to insure the carrying out of congressional intent. The Supreme Court interpreted section 301 in Textile Workers Union v. Lincoln Mills. 62 In Lincoln Mills, the Court decided that section 301 conferred more than federal jurisdiction over labor organizations. The Court determined that Congress, in section 301, expressed a federal policy that federal courts should enforce collective bargaining agreements and that industrial peace could be best obtained only in that way. 63 To effectuate this congressional intent, the Supreme Court concluded that federal substantive law fashioned from the policy of our national labor laws should be applied


61. The Supreme Court's attempt to determine the scope of preemption under the LMRA has produced over three dozen decisions since 1947. These decisions can be divided into two distinct categories of preemption. See Cox, Labor Law Preemption, supra note 60, at 1339. The first category has been labeled "subject-matter" preemption and is most closely associated with the case of San Diego Building Trades Assoc. v. Garmon, 359 U.S. 236 (1959). In Garmon, the Supreme Court held that both the state and federal judiciaries must defer in the first instance to the expertise of the National Labor Relations Board (NLRB) in the regulation of conduct arguably protected or prohibited by § 7 or § 8 of the National Labor Relations Act (NLRA). Id. at 245. This "Garmon Rule" acted to protect the primary jurisdiction of the NLRB. See also Street, Elec. Ry. & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971); Operating Engineers Local 926 v. Jones, 460 U.S. 669 (1983); Wisconsin Dept. of Industry, Labor & Human Relations v. Gould, 475 U.S. 282 (1986).

The second category of preemption cases is based upon the necessary federal protection of a uniform body of federal labor law. See Cox, Labor Law Preemption, supra note 60, at 1339. This category is associated with the case of International Ass'n of Machinists and Aerospace Workers v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976), and preempts state action in areas that are neither arguably protected nor prohibited by § 7 or § 8 of the NLRA. In Machinists, the Supreme Court determined that, although the conduct in question is neither arguably protected nor prohibited by the Act, Congress intended that the conduct be left unregulated by the states. Id. at 139. See also Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985). This casenote focuses on the narrow doctrine of preemption under § 301 of the LMRA. Generally, § 301 preemption affects claims or rights which are substantially dependent upon or derived from the terms of a collective bargaining agreement.


63. Id. at 455. Subsequent Supreme Court cases expanded the impact of the Lincoln Mills decision to give concurrent jurisdiction to the state courts and requiring the state courts to apply federal law in deciding suits based on breaches of collective bargaining agreements. See Charles Dowd Box Co. v. Courtney, 368 U.S. 502 (1962).
in section 301 suits. In fashioning this new body of federal law, courts were to resort to state law only if it was compatible with the purposes of section 301. Any state law applied would be absorbed as federal law and would not be an independent source of private rights.

The preemptive effect of section 301 was announced by the Supreme Court in Teamsters v. Lucas Flour. In Lucas Flour, the Court faced a situation where an employer sued its employees' union in a state court for damages for business losses caused by a strike. The issue in state court was whether the strike was implicitly prohibited by the parties' collective bargaining agreement. The state supreme court determined the issue using state law. The Supreme Court held that incompatible doctrines of state law must give way to principles of federal law, reasoning that individual contract terms might have different meanings under state and federal law which would in turn exert a disruptive influence upon both the negotiation and administration of collective bargaining agreements. The Court noted that once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation and might substantially impede the parties' willingness to agree to contract terms providing final arbitral or judicial resolution of disputes.

Section 301 has also given rise to procedural prerequisites to bringing suit. The most significant is the exhaustion of contractual remedies as established in Republic Steel Corporation v. Maddox. In Maddox, an employee brought suit in state court for breach of contract, alleging that he was owed severance pay under the terms of a collective bargaining agreement between Republic

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64. 353 U.S. at 456.
65. Id. at 457.
66. Id.
68. Id. at 96.
69. Id.
70. Id. at 103.
71. Id. at 107.
72. Id.
73. Id.
75. 379 U.S. 650 (1965).
Steel and his union.\textsuperscript{76} That agreement contained a three-step grievance procedure culminating in binding arbitration.\textsuperscript{77} The Supreme Court in \textit{Maddox} promulgated the general rule that employees with grievances must attempt to use the contractual grievance procedure unless the collective bargaining agreement otherwise provides.\textsuperscript{78} Three justifications were given for this rule. First, by requiring the individual employee to have his claim processed by the union, a court enhances the union's position as the exclusive bargaining agent.\textsuperscript{79} Second, the employee reduces the choices of remedies against him in contract disputes.\textsuperscript{80} Third, to the extent that the grievance procedure is established as an exclusive remedy, private dispute resolution becomes attractive and the purpose of the Taft-Hartley Act to promote collective bargaining is carried forward.\textsuperscript{81}

\textit{Maddox}, \textit{Lucas Flour} and \textit{Lincoln Mills} established that federal law is paramount in the area covered by section 301 and that the grievance and arbitration procedures contained in collective bargaining agreements are the preferred forum for resolving matters involving the breach of collective bargaining agreements. In \textit{Alexander v. Gardner-Denver Company},\textsuperscript{82} the Supreme Court addressed a situation where an employee covered by a collective bargaining agreement containing grievance and arbitration procedures asserted a federal claim against his employer. In \textit{Alexander}, a black union employee grieved his dismissal, claiming that he was discharged without just cause and in violation of a non-discrimina-

\textsuperscript{76} \textit{Id.} at 650-51.  
\textsuperscript{77} \textit{Id.} at 651.  
\textsuperscript{78} \textit{Id.} at 652-53. The contract between Maddox's union and Republic Steel did not specify an available remedy other than the grievance procedure for breaches of the collective bargaining agreement. \textit{Id.} at 653. Once Maddox received a result from the grievance procedure, whether it was an arbitration award or a decision by the union not to proceed further with the grievance, any subsequent \textsection{301} suit would have to be dismissed. \textit{Id.} at 657.  

The Supreme Court has carved out exceptions to the \textit{Maddox} procedural requirements. See \textit{Vaca v. Sipes}, 386 U.S. 171 (1967) (employee entitled to sue his employer without exhausting contractual remedies if employee can prove that the union has breached its duty of fair representation in handling the employees grievance); see also \textit{Hines v. Anchor Motor Freight, Inc.}, 424 U.S. 554 (1976) (employee able to sue his employer and his union after his wrongful discharge claim has been decided under a final, binding arbitration provision where union has breached its duty of fair representation and discharge violates the collective bargaining agreement).  
\textsuperscript{79} 379 U.S. at 656.  
\textsuperscript{80} \textit{Id.}  
\textsuperscript{81} \textit{Id.} at 653.  
\textsuperscript{82} 415 U.S. 36 (1974).
tion clause in his collective bargaining agreement. The employee pursued his grievance through arbitration and lost. Subsequently, he filed a Title VII discrimination suit.

Although both the district court and the Tenth Circuit held that the arbitration procedure precluded the employee from bringing a Title VII suit, the Supreme Court reversed. The Court stated that neither an adverse arbitral decision nor failure to exhaust the remedies available in the collective bargaining agreement foreclosed a Title VII action. The Court reasoned that Title VII was intended to supplement, not supplant, existing discrimination laws and that Title VII afforded non-waivable private rights. In addition, the Court added that Title VII rights and collective bargaining rights have independent origins and that while arbitration affords vindication of an employee's contractual rights, Title VII provides rights afforded by Congress. The Supreme Court concluded that the distinctly separate nature of these rights is not vitiated merely because both are violated as a result of the same factual occurrence.

In Metropolitan Life Insurance Company v. Massachusetts, the Supreme Court determined the preemptive force of federal labor law over a state statute affecting the substantive terms of collective bargaining agreements. In Metropolitan Life, Massachusetts passed a statute which required that group health insurance plans contain minimum mental health coverage for all employees, union as well as non-union. The Massachusetts Attorney General sued insurance carriers to enforce the statute. The insurers argued that the statute interfered with the substance of collective bargain-

83. Id. at 42.
84. Id.
87. 415 U.S. at 52.
88. Id. at 51.
90. 415 U.S. at 49-50.
92. Id. at 727.
ing agreements, thereby conflicting with federal labor law.\textsuperscript{93} The Supreme Court held that the Massachusetts statute did not impede federal labor law policy and was therefore not preempted.\textsuperscript{94}

The Metropolitan Life Court noted that although the statute did alter the substantive terms of agreements, such a statute was not forbidden by federal labor law.\textsuperscript{95} The Court reasoned that should unions and employers be allowed to strike an agreement that conflicts with a mandatory state benefit law, this would subvert the very premise of the NLRA.\textsuperscript{96} The Court said that such a rule would penalize workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on non-union employees.\textsuperscript{97}

The Supreme Court has also addressed the issue of section 301 preemption as applied to organized employees' state-law based claims. In \textit{Allis-Chalmers v. Lueck},\textsuperscript{98} a unionized employee brought a state action for bad faith handling of an insurance claim against his employer. The employee, Lueck, alleged that his employer intentionally failed to pay disability benefits to which he was entitled under the terms of the disability plan established by his union's collective bargaining agreement with Allis-Chalmers.\textsuperscript{99} Lueck did not attempt to invoke the contract's grievance procedure, but instead brought his suit in state court.\textsuperscript{100} If Lueck's bad faith claim were characterized as breach of contract, then section 301 would govern and the grievance procedures would have to be exhausted before suit could be maintained.\textsuperscript{101} If his claim were characterized as exclusively a tort claim arising only out of breach of statutory duties by the insurance administrator, section 301 would not apply and the state court action could proceed.

The \textit{Leuck} Court held that resolution of the state law claim was dependent upon interpretation of the collective bargaining agreement,\textsuperscript{102} reasoning that the breadth of the grievance clause at issue\textsuperscript{103} hardly suggested that only the right to receive benefits, and

\begin{thebibliography}{99}
\bibitem{93} Id. at 734.
\bibitem{94} Id. at 758.
\bibitem{95} Id. at 748.
\bibitem{96} Id. at 756.
\bibitem{97} Id.
\bibitem{98} 471 U.S. 202 (1985).
\bibitem{99} Id. at 206.
\bibitem{100} Id.
\bibitem{101} Id. at 207.
\bibitem{102} Id. at 214-15.
\bibitem{103} Id. at 215. With reference to the disability plan, a Joint Plant Insurance Commit-
not the manner in which they were received, was covered by the grievance procedure. The Court noted that the collective bargaining agreement did indeed posit two separate duties: the implied duty to act in good faith and the explicit contractual duty to pay. The extent and interpretation of those duties, however, were plainly questions preempted by section 301. The Supreme Court further stated that Lueck's failure to exhaust his contractual grievance should have led to dismissal of the state claim under a Maddox and Lucas Flour analysis. According to the Lueck Court, the need for both an effective arbitration system and avoidance of conflicting state interpretations of contract terms plainly preempted Lueck's tort claim. Lueck fell under the alternative dismissals of preemption by section 301 and failure to exhaust grievance procedures under Maddox.

In Caterpillar, Inc. v. Williams, the Supreme Court addressed the issue of whether section 301 preempts state contract claims. The claims in Caterpillar were brought by unionized employees who alleged breaches of their individual employment contracts which were made with their employer while they held non-union managerial positions. These employees were downgraded to positions covered by the collective bargaining agreement and laid-off pursuant to that agreement. The employees brought suit in state court and Caterpillar removed the action to federal court on the basis that the claims arose under section 301. The Supreme Court held that removal to federal court was improper. The Court noted that the employees could have brought their complaint under section 301, but chose not to do so. Moreover, the Court reasoned that the employees' complaint was not substantially dependent on the collective bargaining agreement nor did the complaint address the relationship between the individual contracts

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104. Id.
105. Id. at 215-16.
106. Id. at 216.
107. Id. at 220-21. See supra notes 67-73 and accompanying text (discussing Lucas Flour § 301 preemption). See also supra notes 74-81 and accompanying text (discussing Maddox exhaustion prerequisites).
108. 471 U.S. at 216.
110. Id. at 2427-28.
111. Id. at 2428.
112. Id. See Williams v. Caterpillar Tractor Co., 786 F.2d 928 (9th Cir. 1986).
113. 107 S. Ct. at 2431.
and the bargaining agreement.\footnote{114}

In \textit{International Brotherhood of Electrical Workers v. Hechler},\footnote{115} the Supreme Court addressed section 301 preemption as applied to an employee's state tort action against her union. In \textit{Hechler}, an employee sued her union for an alleged breach of a duty of care to ensure safe working conditions by assigning her work in dangerous locations. The union removed the action to federal court on the ground that any duty owed the plaintiff arose solely from the collective bargaining agreement and was therefore a section 301 suit.\footnote{116} The union moved to dismiss the action as untimely under the applicable federal statute of limitations.\footnote{117} The Supreme Court held that the employee's action was properly removed to federal court and was preempted by section 301.\footnote{118} The Court noted that the state law imposed upon the employer a duty of care owed to the employee,\footnote{119} and reasoned that to determine the union's liability would necessitate an inquiry into whether the collective bargaining agreement placed upon the union an implied duty of care.\footnote{120} The Court concluded that the source of these inquiries was "inextricably intertwined" with the collective bargaining agreement and required interpretation of the agreement; therefore, \textit{Allis-Chalmers v. Lueck} mandated that the claim be preempted.\footnote{121}

The thrust of \textit{Lueck, Metropolitan Life, Caterpillar} and \textit{Hechler} is that state causes of action, whether founded in tort or in contract, should not be preempted if the claims are grounded in rights which are independent of collective bargaining agreements and do not substantially frustrate federal labor policy. \textit{Lingle} is the first case decided by the Supreme Court in which a state tort

\footnote{114. \textit{Id.} The Court explicitly rejected Caterpillar's argument that § 301 requires that all employment matters involving unionized employees be governed by federal common law created by § 301. \textit{Id.} at 2432 n.10. The Court stated that claims with no relationship to a collective bargaining agreement beyond the fact that they are asserted by an individual covered by such an agreement are not preempted by § 301. \textit{Id.}}

\footnote{115. 107 S. Ct. 2161 (1987).}

\footnote{116. \textit{Id.} at 2162.}

\footnote{117. \textit{Id.} See supra note 74.}

\footnote{118. 107 S. Ct. at 2168.}

\footnote{119. \textit{Id.} at 2167 (citing Putnam Lumber Co. v. Berry, 146 Fla. 595, 2 So. 2d 133 (1941)).}

\footnote{120. \textit{Id.} at 2166.}

\footnote{121. \textit{Id.} (quoting Allis-Chalmers v. Lueck, 471 U.S. 202, 213 (1985)). The Court offered no opinion as to whether the plaintiff's claim in \textit{Hechler} would have survived preemption had the court found that the union owed a duty to the plaintiff independent of the collective bargaining agreement. \textit{Id.} at 2168-69 n.5.)}
claim was sustained against a section 301 preemption challenge. The Court deftly avoided preemption by establishing that the state cause of action was in no way dependent on interpretation of the collective bargaining agreement. The Lingle Court, however, chose not to give deference to Maddox or to any of its previously stated strong policy positions regarding the need to defer to arbitration those matters of dispute arising under collective bargaining agreements. That is, the court failed to consider the effects of its decision on the federal labor scheme.

Although preliminary indications are that federal courts may narrowly construe Lingle,122 employers of unionized employees now face the possibility of defending their actions in two arenas: civil litigation on a state-based tort claim and the arbitration forum. This possibility affects the roles of both unions and employers in the federal labor scheme. Employers may well be discouraged from entering into collective bargaining agreements knowing that arbitration may not be the exclusive remedy for their actions. Unions may also lose one of their key organizing points—protection from unjust dismissal. A weighing of the states’ interest in regulating the conduct in question against the potential for interference with the federal regulatory scheme would result in Lingle’s cause of action being preempted as colliding with the central role of arbitration in the federal scheme of labor law.

Under such an analysis, one could argue that all causes of action of a unionized employee against her employer should be preempted. This is not so, however. For example, federal causes of action such as Title VII suits escape such an analysis by their nature. That is, Congress was presumably aware of federal labor policy in enacting such legislation, and hence, failure to provide exceptions for unionized employees indicates intent to co-exist in the federal scheme. In addition, state law based wrongful discharge claims could also survive, providing union employees with rights independent from those provided in the labor agreement.

Defershould first be given to the arbitration process. In other words, an employee should be permitted to sue in tort only if she has exhausted her contractual remedies and is found to be un-

122. See Newberry v. Pacific Racing Assocs., 854 F.2d 1142 (9th Cir. 1988) (union employee’s claim for intentional infliction of emotional distress preempted by § 301); Knafel v. Pepsi Cola Bottlers of Akron, 850 F.2d 1155 (6th Cir. 1988) (union employee’s claim that conditions of her current employment calculated to bring her intentional harm preempted by § 301); Laws v. Calmat, 852 F.2d 430 (9th Cir. 1988) (union employee’s claim that employer’s drug testing program violates California constitution preempted by § 301).
justly dismissed. If an arbitrator finds that the employee's discharge was for just cause, the employee should not be permitted to sue in tort absent some extraordinary circumstances such as breach of duty of fair representation.

Despite the simplistic test implied by Lingle—that a state law claim is not preempted when it is "independent" of a collective bargaining agreement—it remains to be seen whether lower courts will be able to consistently apply this test. As evidenced by this note, case law prior to and after Lingle suggests otherwise. Until some consistency is reached, employees and employers alike are left without knowing the extent of available remedies for wrongful discharge, and both are left in the dark as to the appropriate forum in which a dispute will be resolved.

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